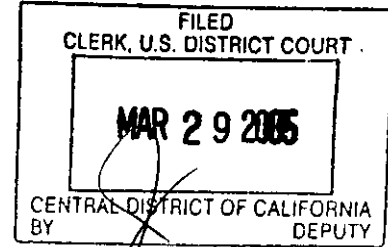


Perfect 10 Inc v. Google Inc et al

- Priority
- Send
- Cisd
- Enter
- JS-5/JS-6
- JS-2/JS-3



Doc. 1

SCANNED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Perfect 10, Inc.,

Case No. CV 04-09484-NM(CWx)

Plaintiff(s),

ORDER RE: CIVIL TRIAL

Discovery Cut-Off: 5/26/06

v.

Motion Filing Cut-Off: 6/26/06

Google, Inc.,
Defendant(s).

Pretrial Conference: 10/30/06

J/Trial: 12/12/06

The above matter is set before the Honorable Nora M. Manella, Courtroom
11 (Spring Street level), United States Courthouse, 312 N. Spring Street, Los
Angeles, California.

Contents

Pre-Trial and Trial Dates ¶¶ 1

Discovery ¶¶ 2-4

Settlement ¶¶ 5

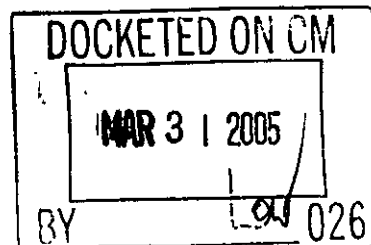
Preparation for the Pre-Trial Conference ¶¶ 6-9

Exhibits ¶¶ 10-12

Trial Preparation for Jury Trial ¶¶ 13-22

Trial Preparation for Court Trial ¶¶ 23-24

revised 11/05/01



17

Pre-Trial and Trial Dates

1
2 1. The Court has ordered the dates as indicated above and described as
3 follows:

4 a. Discovery Cut-Off. This is the last date to complete discovery,
5 including expert discovery, and the resolution of any discovery motions before the
6 magistrate judge.

7 b. Motion Filing Cut-Off. The Court hears motions on Mondays
8 at 10:00 a.m. The motion filing cut-off date is the last day motions may be filed.
9 The cut-off date applies to all motions except motions in limine.

10 Motions in limine, i.e., those pertaining only to evidentiary matters, shall be
11 filed in accordance with the requirements of Local Rule 7. Parties must notice
12 motions in limine for hearing no later than the Monday eight days before the
13 Tuesday trial date. If that Monday is a holiday, the motions must be noticed for
14 hearing on the preceding Monday. Motions in limine may not be used as a
15 substitute for a summary judgment motion.

16 c. Pre-Trial Conference dates, dates for hearing on motions in
17 limine and trial dates will be set after motions have been heard or notice has been
18 given that no motions will be filed. Each party appearing in this action shall be
19 represented at the Pre-Trial Conference and at all pre-trial meetings by the lead
20 trial counsel. Counsel should be prepared to discuss streamlining the trial,
21 including bifurcation, presentation of testimony by deposition excerpts, time limits,
22 stipulations as to undisputed facts, and qualification of experts by admitted
23 resumes.

24 d. Trial. Trials are conducted Tuesday through Friday, from
25 9:00 a.m. to 5:00 p.m. on the first day, 8:00 a.m. to 3:00 p.m. each day thereafter.
26 Counsel should plan to meet with the Court at 8:30 a.m. on the first day of trial.
27 Jury selection generally takes two hours. Counsel must be ready to proceed with
28 opening statements and witnesses immediately thereafter.

1 **Discovery**

2 2. Counsel shall initiate all discovery other than depositions at least
3 forty-five (45) days prior to the cut-off date. The Court will not approve
4 stipulations between counsel which permit responses to be served after the cut-off
5 date, except in unusual circumstances and for good cause shown.

6 3. Counsel shall commence all depositions at least five (5) working days
7 prior to the cut-off date. **Counsel shall lodge all original depositions to be used
8 in trial with the Courtroom Deputy Clerk on the first day of trial.**

9 4. The required expert witness disclosures shall be made seventy (70)
10 days before the discovery cut-off date.

11 **Settlement**

12 5. As set forth in the Court's Standing Order, the parties in every case
13 must elect a settlement procedure, pursuant to Local Rule 16-14. The final meeting
14 with the parties' settlement officer must take place no later than 45 days before the
15 Pre-Trial Conference. Given the high costs of litigation and the enormous
16 commitment of resources that a trial requires, the Court urges the parties to explore
17 every option for resolving their disputes short of trial. If the Court may assist in
18 the process, please so notify the Courtroom Deputy Clerk, Judy Hurley, (213) 894-
19 0200.

20 **Preparation for the Pre-Trial Conference**

21 6. Compliance with the requirements of Local Rule 16 is mandatory.
22 Counsel shall submit carefully prepared Memoranda of Contentions of Fact and
23 Law (which may also serve as the trial briefs) and Proposed Pre-Trial Conference
24 Order in accordance with the provisions of Local Rules 16-2.8 through 16-6. The
25 Proposed Pre-Trial Conference Order shall conform to the example set forth in
26 Appendix A to the Local Rules, modified as necessary to comply with this order.

27 7. The Memoranda of Contentions of Fact and Law, Exhibit Lists, and
28 Witness Lists shall be served and filed no later than twenty-one (21) calendar days

1 before the Pre-Trial Conference. The Proposed Pre-Trial Conference Order shall
2 be lodged fourteen (14) calendar days before the Pre-Trial Conference. Adherence
3 to time limits is essential to in-chambers preparation.

4 8. Proposed Pre-Trial Conference Order

5 a. The Proposed Pre-Trial Conference Order must contain a Table
6 of Contents.

7 b. Under paragraph 1, list each claim, counterclaim, or defense
8 that has been dismissed or abandoned.

9 c. The factual issues in dispute should track the elements of a
10 claim or defense upon which the jury would be required to make findings. Counsel
11 should state issues in ultimate fact form, not as evidentiary fact issues (i.e., “was
12 the defendant negligent,” “was defendant’s negligence the proximate cause of
13 plaintiff’s injury;” not “was the plaintiff standing on the corner of 5th and Spring at
14 10:00 a.m. on May 3”).

15 d. Issues of law should state legal issues upon which the Court
16 will be required to rule after the Pre-Trial Conference, including during the trial,
17 and should not list ultimate fact issues to be submitted to the trier of fact.

18 e. If expert witnesses are to be called at trial, each party must list
19 and identify its respective expert witnesses. Failure of a party to list and identify
20 an expert witness in the Proposed Pre-Trial Conference Order shall preclude a
21 party from calling that expert witness at trial.

22 9. Summary of Witness Testimony and Time Estimates

23 Counsel shall prepare a list of their witnesses, including a brief summary
24 (two to three paragraphs) of each witness’s expected testimony and an estimate of
25 the length of time needed for direct examination. Counsel shall exchange these
26 lists with opposing counsel. **Counsel shall jointly file a single list of witness
27 testimony summaries, including estimates for direct examination of their own
28 witnesses and estimates for cross-examination of opposing witnesses.** These

1 statements shall be filed at the time counsel lodge the Proposed Pre-Trial
2 Conference Order, i.e., fourteen (14) days before the Pre-Trial Conference.

3 **Exhibits**

4 10. Counsel are to assemble their exhibits by placing them in 3-ring
5 binders, with each exhibit separated by a tabbed divider on the right side. Counsel
6 shall provide original exhibits for the Courtroom Deputy Clerk and a duplicate set
7 for the judge. The original exhibits shall be tagged with the appropriate exhibit
8 tags in the upper or lower right corner of the first page of each exhibit. Each
9 binder shall contain a Table of Contents.

10 Counsel must comply with Local Rule 26-4 when numbering the exhibits.
11 The Clerk's Office, Room G-8, 312 North Spring Street, Los Angeles, can supply
12 counsel with appropriate exhibit tags.

13 11. The Court requires the following to be submitted to the Courtroom
14 Deputy Clerk on the first day of trial:

15 a. The original exhibits with the Court's exhibit tags. Plaintiff
16 shall use yellow tags; defendant shall use blue tags. Each tag shall be
17 stapled to the front of the exhibit on the upper right corner and include the
18 case number, case name, and exhibit number.

19 b. One bench book with a copy of each exhibit for the Court's use,
20 tabbed as described above; a copy of the witness list(s).

21 c. Three (3) copies of exhibit lists.

22 d. Three (3) copies of witness lists in the order in which the
23 witnesses will be called to testify.

24 12. All counsel are to meet no later than ten (10) calendar days before trial
25 to discuss and agree to the extent possible on issues including foundation, waiver
26 of the best evidence rule, and which exhibits may be received into evidence at the
27 start of trial.

1 Trial Preparation for Jury Trials

2 13. Fourteen (14) calendar days prior to counsel's Rule 16-2 pre-trial
3 meeting, counsel shall exchange proposed jury instructions(general and special)
4 and special verdict forms (if applicable). Seven (7) calendar days prior to the
5 Rule 16-2 meeting, counsel shall exchange any objections to the instructions and
6 special verdict forms. Prior to, or at the time of the Rule 16-2 meeting, counsel
7 shall meet and confer with the goal of reaching agreement on one set of joint jury
8 instructions and one special verdict form.

9 14. The Court directs the parties to make every attempt to agree upon the
10 jury instructions before submitting them to the Court. The Court expects counsel
11 to agree on the substantial majority of jury instructions, particularly when pattern
12 instructions provide a statement of applicable law. When the Manual of Model
13 Civil Jury Instructions for the Ninth Circuit provides a version of an applicable
14 requested instruction, the parties should submit the most recent version of the
15 Model instruction, modified as necessary to fit the facts of the case (e.g., inserting
16 names of parties to whom instruction applies). Where language appears in
17 brackets in the model instruction, counsel shall select the appropriate text and
18 eliminate the inapplicable bracketed text. Where California law applies, counsel
19 are directed to use California Jury Instructions -- Civil (8th ed.) ("BAJI"). If
20 neither of the above sources is applicable, counsel are directed to use the
21 instructions from O'Malley, Grenig & Lee (formerly Devitt, et al), Federal Jury
22 Practice and Instructions (latest edition). Each requested jury instruction shall
23 cover only one subject or principle of law and shall be numbered and set forth in
24 full on a separate page, citing the authority or source of the requested instruction
25 (except for the "clean" jury copy discussed below).

26 15. When the parties disagree on an instruction, the party opposing the
27 instruction must attach a short statement (one to two paragraphs) supporting the
28 objection, and the party submitting the instruction must attach a short statement

SCANNED

1 supporting the instruction. Each statement should be on a separate page and should
2 follow directly after the disputed instruction.

3 16. The parties ultimately must submit one document or, if the parties
4 disagree over any proposed jury instructions, two documents. If the parties submit
5 two documents, those documents shall consist of: (1) a set of Joint Proposed Jury
6 Instructions and (2) a set of Disputed Jury Instructions, along with reasons
7 supporting and opposing each disputed instruction in the format set forth in
8 paragraph 15.

9 17. The parties must file proposed jury instructions seven (7) calendar
10 days before the Pre-Trial Conference. If the court is closed that day, counsel shall
11 file the proposed instructions the preceding Friday. No later than 5:00 p.m. on the
12 date such instructions are due, the parties must submit conformed courtesy copies
13 to the Court's courtesy box located outside the entrance to Judge Manella's
14 chambers on the Spring Street level of the U.S. Courthouse. Counsel shall also
15 provide the Court with a 3½ inch diskette compatible with WordPerfect 6.1 or 7.0
16 containing the proposed jury instructions, in accordance with this paragraph and
17 paragraph 18.

18 18. The Court will send a copy of the instructions into the jury room for
19 the jury's use during deliberations. Accordingly, in addition to the file copies
20 described above, the diskette submitted with the jury instructions shall contain a
21 "clean set" of Joint Proposed and/or Disputed Jury Instructions, containing only
22 the text of each instruction set forth in full on each page, with the caption "Court's
23 Instruction No. ___" (eliminating titles, supporting authority, indication of party
24 proposing, etc.).

SCANNED

1 19. An index page shall accompany all jury instructions submitted to the
2 Court. The index page shall indicate the following:

- 3 a. The number of the instruction;
- 4 b. A brief title of the instruction;
- 5 c. The source of the instruction and any relevant case citations;
- 6 and
- 7 d. The page number of the instruction.

8 EXAMPLE:

9 <u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
10 1	Trademark-Defined (15 U.S.C. § 1127)	9th Cir. 15.3.2	7

11
12 20. Along with the jury instructions, counsel shall submit any necessary
13 special verdict form seven (7) calendar days before the Pre-Trial Conference.

14 21. Counsel may, but need not, submit brief proposed voir dire questions
15 for the jury seven (7) calendar days before the Pre-Trial Conference. The Court
16 will conduct its own voir dire after consulting any proposed voir dire submitted by
17 counsel.

18 22. Counsel shall prepare a joint statement of the case for the Court to
19 read to the prospective panel of jurors prior to the commencement of voir dire.
20 The statement should not exceed one page. The statement shall be filed with the
21 Court seven (7) calendar days before the Pre-Trial Conference.

22 **Trial Preparation for Court Trials**

23 23. Fourteen (14) calendar days before the trial date, each party shall
24 prepare and serve on opposing counsel copies of the proposed Findings of Fact and
25 Conclusions of Law. Each party shall review the other party's proposed Findings
26 and Conclusions and make such changes in the party's own proposed Findings and
27 Conclusions as necessary following such review.

28 24. Seven (7) calendar days before the trial date, each party shall lodge two

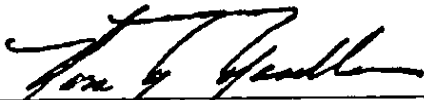
SCANNED

1 copies of its proposed Findings of Fact and Conclusions of Law with the Court
2 together with a copy on diskette. Each party shall serve other parties if changes have
3 been made. The parties shall be prepared to submit to the Court, and to exchange
4 among themselves, supplemental Findings of Fact and Conclusions of Law during he
5 course of the trial.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: March 29, 2005



NORA M. MANELLA
United States District Judge