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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484 AHM (SHx) CV 05-4753 AHM (SHx) CV 07-5156 AHM (SHx)	Date	December 2, 2008
Title	PERFECT 10, INC. v. GOOGLE, INC., <i>et al.</i> PERFECT 10, INC. v. AMAZON.COM, INC., <i>et al.</i> PERFECT 10, INC. v. MICROSOFT CORPORATION		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE		
Stephen Montes	Not Reported		
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys NOT Present for Plaintiffs:		Attorneys NOT Present for Defendants:	

Proceedings: IN CHAMBERS (No Proceedings Held)

ORDER SETTING STATUS CONFERENCE RE. CASE MANAGEMENT

The Court orders the parties in all three of the *Perfect 10* cases to appear for a status conference on December 18, 2008 at 3 p.m. The Court intends to issue an "Order Re Management of *Perfect 10 v. Microsoft* and Staying Related Actions." (See Tentative Order below.) The parties may respond in writing to the Court's tentative order by not later than December 12, 2008. No replies to responses may be filed.

In its written response, Perfect 10 shall disclose whether it intends to bring any actions against new parties raising claims similar to those it has asserted in these cases. In addition, both Microsoft and Perfect 10 shall disclose whether there are existing or emerging discovery disputes other than those they have already identified to the Court.

Outline of Tentative Order Re Management of *Perfect 10 v. Microsoft* and Staying Related Actions

1. The Court stays *Perfect 10 v. Google* and *Perfect 10 v. Amazon.com* in their entirety. The stay will remain in place pending the resolution of *Perfect 10 v. Microsoft*. No discovery or motion practice in the two stayed cases is permitted while the stay is in place. Rulings on pending motions will not be issued during the stay, with one exception: The Court will rule on Perfect 10's fully briefed

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motion for partial summary judgment against Amazon and Alexa, as well as the related motion to strike and Rule 56(f) motion filed by Amazon and Alexa.

2. Perfect 10 and Microsoft must adhere to the strict schedule that the Court will set. The schedule will either be the current schedule or one close to it, with a trial date in the summer of 2009. The Court is highly unlikely to grant continuances, especially if sought by Perfect 10, absent compelling reasons, such as medical emergencies.

3. Perfect 10 and Microsoft filed a Joint Status Report on November 10, 2008 detailing the significant progress that they have made toward negotiating a fair and efficient approach to the litigation. The Court agrees with and adopts Microsoft’s proposal for structuring the litigation and rejects Perfect 10's opposition, criticisms or reservations. (See Joint Status Report at 2:22-3:6.) For *Perfect 10 v. Microsoft*, the Court ORDERS that:
 - (a) Perfect 10 shall select the factual and legal “scenarios” (or “combinations”) that it will pursue using the list in Exhibit C to the Joint Status Report. The following instructions apply:
 - (i) Perfect 10 shall select at least one vicarious infringement scenario.

 - (ii) Perfect 10 may, but is not required to, choose any of scenarios N67-N70, theories of trademark infringement. In other words, Perfect 10 may choose to defer the prosecution of its trademark claim without waiving it.

 - (iii) All factual and legal scenarios that Perfect 10 does not select shall be considered waived. Perfect 10 may not thereafter pursue any claims against Microsoft based on a waived scenario.

 - (iv) Perfect 10 may not select more than _____[tbd] scenarios.

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(v) Perfect 10 shall produce a document listing its selected scenarios using the codes in Exhibit C.

- (b) For each scenario Perfect 10 does choose to pursue, it must designate _____ [tbd] works to serve as exemplar(s) for that scenario. Microsoft would then designate the same number of works. These works shall serve as the “sample” for summary judgment and the basis for future extrapolation to the rest of the works falling within that scenario that Perfect 10 claims were infringed.
- (c) Perfect 10 must produce all the information listed in Exhibit A, except for #13 (damages claimed), for each designated work. It must produce a spreadsheet that compiles the information.
- (d) The parties shall jointly file an agreed-upon schedule for the completion of (a), (b), and (c) by the end of non-expert discovery. That schedule will become part of the scheduling order.

Initials of Preparer _____ : _____
