

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 OVERTURE SERVICES, INC., a
13 Delaware Corporation,

14 Plaintiff,

15 vs.

16 GOOGLE INC., a California Corporation,
17 Defendant.

No. C02-01991 CRB

**JOINT REPORT, CASE MANAGEMENT
STATEMENT, AND [PROPOSED]
ORDER**

18
19 Plaintiff Overture Services, Inc. ("Overture") and defendant Google Inc.
20 ("Google") jointly submit this combined Report, Case Management Statement, and
21 [Proposed] Order and request that the Court adopt it as its Case Management Order in
22 this case.

23 **I. DESCRIPTION OF THE CASE**

24 **A. Underlying Events**

25 Overture is a Delaware corporation headquartered in Pasadena, California that
26 describes itself as offering pay-per-click search engines and advertising services for
27 computer networks, including the Internet. Overture is the owner of a number of patents
28 that cover technologies, devices, and systems for pay-per-click searching and

1 advertising. One of those patents is at issue here: United States Patent No. 5,269,361
2 (“the ’361 patent”), entitled “System and Method for Influencing a Position on a Search
3 Result List Generated by a Computer Network Search Engine.”

4 Google is a California corporation headquartered in Mountain View, California
5 that describes itself as offering search engines and advertising services for computer
6 networks, including the Internet.

7 **B. Disputed Factual and Legal Issues**

8 The parties do not intend any description in this Joint Case Management
9 Statement of any issue of law, or fact, or both, to constitute an admission or to be
10 otherwise probative of any matter in dispute. The parties agree that no statement or
11 omission herein shall constitute a waiver of any of either party’s claims or defenses to
12 any issue. Each party acknowledges that disputed issues in addition to those described
13 below may arise in this case.

14 The parties can be expected to dispute the proper construction of various terms
15 found in the claims of the ’361 patent.

16 Overture alleges, and Google denies, that Google is directly infringing, inducing
17 infringement by others, and/or contributorily infringing the ’361 patent, and that Google’s
18 infringement is willful. Overture seeks a permanent injunction, damages, attorneys’ fees
19 and costs.

20 Google alleges, and Overture denies, that Google does not and has never
21 infringed, contributorily infringed, or induced others to infringe any claim, properly
22 construed, of the ’361 patent. Google further alleges, and Overture further denies, that
23 the ’361 patent is invalid based at least on Overture’s prior public use of the claimed
24 invention, and that the ’361 patent is unenforceable based at least on Overture’s
25 inequitable conduct during the prosecution of the patent application that led to the grant
26 of the ’361 patent.

1
2 **C. Other Disputed Factual Issues (Service of Process,
Jurisdiction, and Venue)**

3 There are no disputed factual issues regarding service of process, personal
4 jurisdiction, subject matter jurisdiction, or venue.

5 **D. Service**

6 All parties have been served.

7 **E. Additional Parties**

8 At the present time, the parties do not intend to join any additional parties.
9 However, Overture is presently investigating whether to seek to amend its complaint, to
10 include one or more affiliates of Google, in accordance with the provisions of the
11 Federal Rules of Civil Procedure.

12 **II. ALTERNATIVE DISPUTE RESOLUTION**

13 **A. Consent to Jurisdiction of Magistrate Judge for Trial**

14 The parties do not consent to the jurisdiction of a United States Magistrate Judge
15 for trial.

16 **B. Assigned Alternative Dispute Resolution Processes**

17 The parties will prepare and file a Stipulation and Proposed Order Selecting an
18 ADR Process. The parties have elected mediation and have agreed to use a private
19 mediator for this purpose. The parties agree that mediation would be most useful if
20 scheduled around the time of, but prior to, the Court's claim construction hearing.

21 **III. DISCLOSURES**

22 **A. Discovery Plan**

23 The parties agree to the following discovery plan:

24 **1. Discovery limits**

25 Based on the facts currently known to each party and the contentions to date, the
26 parties agree that the presumptive limit on the number of depositions should be
27 increased to 15 per party, exclusive of expert depositions. The parties do not at this
28 time anticipate requiring specific relief from any other discovery limitations, but

1 respectfully reserve their rights to seek such relief, including additional depositions, by
2 stipulation or by application to the Court as warranted.

3 The parties expect to prepare and file a proposed form of Protective Order
4 specifically tailored to the kind of information that will be generated by discovery in this
5 case. For example, many of the writings that will be exchanged in document discovery
6 will be in electronic form. The parties will seek to work out a protocol governing the
7 scope of search obligations for electronically stored writings and the manner in which
8 such information will be exchanged.

9 2. Discovery and claim construction schedule

10 The parties agree to the following non-expert discovery and claim construction
11 schedule:

12 Event	Patent Local Rule	Proposed Date
13 Last Day for Overture to Serve Disclosure of 14 Asserted Claims, Preliminary Infringement 15 Contentions, Documents in Support Thereof	Patent L.R. 3-1 & 3-2	9/16/02
16 Last Day for Google to Serve Preliminary 17 Invalidity Contentions and Documents in 18 Support Thereof	Patent L.R. 3-3 & 3-4	10/31/02
19 Last Day for Simultaneous Exchange of 20 Proposed Terms and Claim Elements for 21 Construction and/or Governed by 35 U.S.C. 22 § 112(6)	Patent L.R. 4-1	11/15/02
23 Last Day for Simultaneous Exchange of 24 Preliminary Claim Constructions and Extrinsic 25 Evidence	Patent L.R. 4-2	12/4/02
26 Last Day for Parties to File Joint Claim Construction and Prehearing Statement	Patent L.R. 4-3	1/8/03 ¹
Last Day to Take Discovery Relating to Claim Construction	Patent L.R. 4-4	1/29/03 ²

27 ¹ The default deadline, per Patent L.R. 4-3, would be 12/30/02 (sixty calendar days after Google's service
of preliminary invalidity contentions).

28 ² By default, per Patent L.R. 4-4, claim construction discovery closes thirty calendar days after filing of the
joint claim construction statement. The parties' proposed date for the close of claim construction

Event	Patent Local Rule	Proposed Date
Last Day for Overture to File Opening Claim Construction Brief and Supporting Evidence	Patent L.R. 4-5	2/13/03 ³
Last Day for Google to File Responsive Claim Construction Brief and Supporting Evidence	Patent L.R. 4-5	2/27/03
Last Day for Overture to File Reply Claim Construction Brief and Rebuttal Evidence	Patent L.R. 4-5	3/10/03
Last Day for Simultaneous Exchange of Proposed Exhibits for Claim Construction Prehearing Conference and Claim Construction Hearing		3/13/03
Technology Tutorial for Court and Claim Construction Prehearing Conference (if desired by the Court separate from the Claim Construction hearing)		on or about 3/17/03
Claim Construction Hearing	Patent L.R. 4-6	on or about 3/24/03
Service of Markman Ruling by Court		To be determined by the Court
Last Day for Overture to Serve Final Infringement Contentions	Patent L.R. 3-6(a)	30 days after service of the Markman ruling
Last Day for Google to Serve Final Invalidity Contentions	Patent L.R. 3-6(b)	50 days after service of the Markman ruling
Non-Expert Discovery Cut-Off	8/29/03	8/29/03

///

///

discovery is thirty days after 12/30/02 (the default deadline for the filing of a joint claim construction statement).

³ By default, per Patent L.R. 4-5, the opening claim construction brief is due forty-five calendar days after filing of the joint claim construction statement. The parties' proposed due date for the opening claim construction brief is forty-five days after 12/30/02 (the default deadline for the filing of a joint claim construction statement).

1 The parties propose the following alternative expert discovery and pre-trial
2 schedules:

Event	Overture's Proposed Date	Google's Proposed Date
Last Day to Disclose Affirmative Experts (<i>i.e.</i> , any expert who will testify on an issue for which the disclosing party bears the burden of proof)	9/29/03	9/19/03
Last Day to Disclose Rebuttal Experts (<i>i.e.</i> , any expert who will offer evidence intended solely to contradict or rebut an Affirmative Expert on the same subject matter disclosed by the Affirmative Expert)	10/29/03	10/10/03
Expert Discovery Cut-Off	11/21/03	10/31/03
Last Day to File Dispositive Motions	12/12/03	11/12/03 ⁴
Last Day to File Oppositions to Dispositive Motions	1/8/04	11/26/03
Last Day to File Replies in Support of Dispositive Motions	1/22/04	12/5/03
Last Day for Hearings on Dispositive Motions	2/5/04	12/19/03
Pre-Trial Conference	on or about 4/5/04	on or about 1/12/04

20 IV. TRIAL SCHEDULE

21 A. Trial Date

22 Overture requests that trial be set on or about: May 4, 2004.

23 Google requests that trial be set on or about: February 9, 2004.

24 ///

25 ///

26 ///

27

28 ⁴ The briefing schedule proposed by Google departs slightly from the default deadlines, per the Local Rules; Google's proposed changes are intended to accommodate the Thanksgiving holiday.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Trial Length

The parties expect that the trial will last approximately 15 days.

Dated: August 19, 2002 BRINKS HOFER GILSON & LIONE

By: _____ /s/
Jack C. Berenzweig
Attorney for Plaintiff
OVERTURE SERVICES, INC.

Dated: August 19, 2002 KEKER & VAN NEST, L.L.P

By: _____ /s/
Jon B. Streeter
Attorney for Defendant
GOOGLE INC.

SO ORDERED.

Dated: _____
Hon. Charles R. Breyer
Judge, United States District Court

I hereby attest, pursuant to section X of General Order 45, that concurrence in the filing of this document has been obtained from Jack C. Berenzweig and Jon B. Streeter.

Dated: August 19, 2002 By: _____ /s/
Charles M. McMahon
BRINKS HOFER GILSON & LIONE
Attorney for Plaintiff
OVERTURE SERVICES, INC.