

1 BRINKS HOFER GILSON & LIONE
 JACK C. BERENZWEIG (Admitted Pro Hac Vice)
 2 WILLIAM H. FRANKEL (Admitted Pro Hac Vice)
 JASON C. WHITE (Admitted Pro Hac Vice)
 3 CHARLES M. MCMAHON (Admitted Pro Hac Vice)
 NBC Tower - Suite 3600
 4 455 North Cityfront Plaza Drive
 Chicago, Illinois 60611
 5 Telephone: (312) 321-4200
 Facsimile: (312) 321-4299
 6
 Attorneys For Plaintiff
 7 OVERTURE SERVICES, INC.

8
 KEKER & VAN NEST, LLP
 9 JOHN W. KEKER - #49092
 JON B. STREETER - #101970
 10 DARALYN J. DURIE - #169825
 MICHAEL S. KWUN - #198945
 11 710 Sansome Street
 San Francisco, CA 94111-1704
 12 Telephone: (415) 391-5400
 Facsimile: (415) 397-7188
 13
 Attorneys for Defendant
 14 GOOGLE INC.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

19 OVERTURE SERVICES, INC., a Delaware
 20 corporation,

21 Plaintiff,

22 v.

23 GOOGLE INC., a California corporation,

24 Defendant.

Case No. C 02-01991 JSW ADR

**JOINT CASE MANAGEMENT
 STATEMENT, AND REQUEST FOR
 CASE MANAGEMENT CONFERENCE
 OR, IN THE ALTERNATIVE, FOR CASE
 MANAGEMENT ORDER**

Judge: Hon. Jeffrey S. White

26 Plaintiff Overture Services, Inc. ("Overture") and defendant Google Inc. ("Google")
 27 hereby submit this Joint Case Management Statement, and request that the Court either set a
 28 Case Management Conference or, in the alternative, that the Court adopt the proposed Case

1 Management Order that is being filed herewith.

2 **I. DESCRIPTION OF THE CASE**

3 **A. Underlying Events**

4 Overture is a Delaware corporation headquartered in Pasadena, California that describes
5 itself as offering pay-per-click search engines and advertising services for computer networks,
6 including the Internet. Overture is the owner of a number of patents that cover technologies,
7 devices, and systems for pay-per-click searching and advertising. One of those patents is at issue
8 here: United States Patent No. 5,269,361 (“the ’361 patent”), entitled “System and Method for
9 Influencing a Position on a Search Result List Generated by a Computer Network Search
10 Engine.”

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

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

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

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

22 Overture alleges, and Google denies, that Google is directly infringing, inducing
23 infringement by others, and/or contributorily infringing the ’361 patent, and that Google's
24 infringement is willful. Overture seeks a permanent injunction, damages, attorneys' fees and
25 costs.

26 Google alleges, and Overture denies, that Google does not and has never infringed,
27 contributorily infringed, or induced others to infringe any claim, properly construed, of the ’361
28 patent. Google further alleges, and Overture further denies, that the ’361 patent is invalid based

1 at least on Overture's prior public use of the claimed invention, and that the '361 patent is
2 unenforceable based at least on Overture's inequitable conduct during the prosecution of the
3 patent application that led to the grant of the '361 patent.

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

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

7 **D. Service**

8 All parties have been served.

9 **E. Additional Parties**

10 At the present time, the parties do not intend to join any additional parties.

11 **F. Procedural History**

12 Overture filed its complaint on April 23, 2002. The case was initially assigned to
13 Magistrate Judge Zimmerman, but was reassigned to Judge Breyer upon Google's filing of a
14 request for reassignment to a District Court Judge. Google filed its answer and counterclaims on
15 June 7, 2002, and Overture filed its reply to Google's counterclaims on June 25, 2002.

16 On August 19, 2002, the parties jointly proposed a case management schedule that, for
17 claim construction proceedings, substantially tracked the default deadlines set by the Patent
18 Local Rules. At an August 30, 2002 Case Management Conference, Judge Breyer adopted the
19 proposed schedule for claim construction proceedings, and declined at that time to set dates for
20 post-claim construction proceedings.

21 Pursuant to the agreed upon schedule, Overture served its Disclosure of Asserted Claims
22 and Preliminary Infringement Contentions (hereinafter, "Preliminary Infringement Contentions")
23 on September 16, 2002. On October 7, 2002, Google moved to compel Overture to supplement
24 its Preliminary Infringement Contentions, and to extend Google's time to serve Preliminary
25 Invalidity Contentions to forty-five days after Overture served revised Preliminary Infringement
26 Contentions.

27 Judge Breyer referred Google's motion to a Magistrate Judge. At the parties' request,
28 Judge Breyer stayed all case management dates pending resolution of Google's motion.

1 Magistrate Judge Laporte granted Google's motion on December 18, 2002, as memorialized in
2 an order filed on January 6, 2003. Based on Magistrate Judge Laporte's ruling, the parties
3 jointly proposed a revised case management schedule, which Judge Breyer adopted on January 7,
4 2003.

5 On January 15, 2003, this case was reassigned to Judge White. The parties understand
6 that all of the pending case management dates, including all of the dates set by the orders dated
7 January 6 and 7, 2003 by Magistrate Judge Laporte and Judge Breyer, were vacated by the
8 reassignment order.

9 II. ALTERNATIVE DISPUTE RESOLUTION

10 A. Consent to Jurisdiction of Magistrate Judge for Trial

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

12 B. Assigned Alternative Dispute Resolution Processes

13 The parties have agreed to mediate the case before a private mediator, and intend to
14 mediate the case around the time of, but prior to, the Court's claim construction hearing. On
15 August 6, 2002, Judge Breyer approved the parties' stipulation regarding ADR.

16 III. DISCLOSURES

17 A. Discovery Plan

18 1. Discovery limits

19 Based on the facts currently known to each party and the contentions to date, the parties
20 agree that the presumptive limit on the number of depositions should be increased to fifteen per
21 party, exclusive of expert depositions. The parties do not at this time anticipate requiring
22 specific relief from any other discovery limitations, but respectfully reserve their rights to seek
23 such relief, including additional depositions, by stipulation or by application to the Court as
24 warranted.

25 Judge Breyer has previously entered two stipulated protective orders regarding discovery
26 in this case. The first order, dated December 18, 2002, addresses generally the disclosure of
27 confidential information in this case. The second order, dated January 9, 2003, addresses the
28 disclosure of confidential source code in this action. The parties are still in the process of

1 meeting and conferring regarding an appropriate protocol for the production of electronic mail in
2 this case.

3 2. Discovery and claim construction schedule

4 In light of Judge Breyer's previous decision to defer the setting of any post-claim
5 construction dates, the parties do not propose any such dates below. However, the parties are
6 prepared to propose such dates, should the Court so desire.

7 With respect to claim construction proceedings, the parties jointly propose a schedule that
8 is similar to the schedule set by the orders dated January 6 and 7, 2003 by Magistrate Judge
9 Laporte and Judge Breyer. However, due to technical difficulties with Overture's production of
10 source code, the dates in the schedule below are one week later than the dates previously ordered
11 by Magistrate Judge Laporte and Judge Breyer.

12 Event	Patent L.R.	Old Date	New Date
13 Last Day for the Parties to Exchange Source 14 Code Responsive to Discovery Requests Served 15 Prior to December 18, 2002, Subject to Any Appropriate Objections		1/17/03	1/24/03
16 Last Day for Overture to Serve Revised 17 Preliminary Infringement Contentions with Respect to Claim 14 of the '361 Patent	3-1	1/31/03	2/7/03
18 Last Day for Google to Serve Preliminary 19 Invalidity Contentions	3-3	2/14/03	2/21/03
20 Last Day for Simultaneous Exchange of Proposed 21 Terms and Claim Elements for Construction and/or Governed by 35 U.S.C. § 112 ¶ 6	4-1	3/3/03	3/10/03
22 Last Day for Simultaneous Exchange of 23 Preliminary Claim Constructions and Extrinsic Evidence	4-2	3/24/03	3/31/03
24 Last Day for Parties to File Joint Claim 25 Construction and Prehearing Statement	4-3	4/15/03	4/22/03
26 Last Day to Take Discovery Relating to Claim 27 Construction	4-4	5/15/03	5/22/03
28 Last Day for Overture to File Opening Claim Construction Brief and Supporting Evidence	4-5	5/30/03	6/6/03

Event	Patent L.R.	Old Date	New Date
Last Day for Google to File Responsive Claim Construction Brief and Supporting Evidence	4-5	6/13/03	6/20/03
Last Day for Overture to File Reply Claim Construction Brief and Rebuttal Evidence	4-5	6/24/03	7/1/03
Technology Tutorial for Court and Claim Construction Prehearing Conference; Claim Construction Hearing	4-6	7/8/03, 2:30 p.m. (tutorial) 7/9/03, 2:30 p.m. (claim construction)	On or after 7/15/03

IV. TRIAL SCHEDULE

A. Trial Date

In light of Judge Breyer's previous decision to defer the setting of any post-claim construction dates, the parties do not propose a trial schedule at this time. However, the parties are prepared to propose such dates, should the Court so desire.

B. Trial Length

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

Dated: January 24, 2003

BRINKS HOFER GILSON & LIONE

By: /s/ Jack C. Berenzweig

JACK C. BERENZWEIG
Attorneys for Plaintiff
OVERTURE SERVICES, INC.

Dated: January 24, 2003

KEKER & VAN NEST, LLP

By: /s/ Daralyn J. Durie by Michael S. Kwun

DARALYN J. DURIE
Attorneys for Defendant
GOOGLE INC.

I hereby attest that concurrence in the filing of this document has been obtained from

1 Jack C. Berenzweig and Daralyn J. Durie.

2 Dated: January 24, 2003

KEKER & VAN NEST, LLP

3

4

By: /s/ Michael S. Kwun
MICHAEL S. KWUN
Attorneys for Defendant
GOOGLE INC.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28