IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

PRAGMATUS AV, LLC, **Plaintiff,** **v.** **FACEBOOK, INC., et al.,** **Defendants.**	**Civil Action No. 1:10-cv-1288 (LMB/JFA)**

JOINT PROPOSED DISCOVERY PLAN

Pursuant to Rule 26(f) and this Court's Order dated January 12, 2011, the parties submit the following Proposed Joint Proposed Discovery Plan:

I. INITIAL DISCLOSURES

Initial disclosures as required by Federal Rule of Civil Procedure 26(a)(1) will be exchanged on or before February 8, 2011.

II. PROTECTIVE ORDER

The parties shall submit a stipulated protective order to the Court on or before February 7, 2011, or, should they fail to agree, by that date they shall file any motions for entry of a protective order.

III. INITIAL DISCLOSURES OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

The Rule 26(a) disclosures shall be augmented as follows:

A. On or before February 18, 2011, Plaintiff shall serve an "Initial Disclosure of Asserted Claims and Infringement Contentions" that identifies separately and as specifically as possible, the following information:

1. A claim chart identifying as specifically as possible where each limitation of each asserted claim is found within each accused device or system, including for each limitation that Plaintiff contends is governed by 35 U.S.C. § 112(6) (means-plus-function), the identity of the structure(s), act(s), or material(s) in the accused device or system that corresponds to the structure identified in the patent specification that performs the claimed function.

2. Whether each limitation of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the accused device.

3. The date of conception and the date of reduction to practice of each allegedly infringed claim.

B. Together with the "Initial Disclosure of Asserted Claims and Infringement Contentions," Plaintiff shall produce, or make available for inspection and copying, to the extent within its custody or control, the following (together with any English translations of the documents completed prior to this litigation):

1. A copy of the file history for the patents-in-suit.

2. Any licenses for the patents-in-suit (current or expired) which do not have any confidentiality provision or which Plaintiff has been able to obtain permission to produce without an order of the Court (this does not limit Defendants' right to seek all licenses through discovery).

3. All rulings in any other cases in which the patents-in-suit have been asserted, regarding claim construction, validity, infringement, license defense, enforceability, and any other defenses.

4. Documents sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of, or offer to sell, the claimed invention prior

to the date of application for the patents-in-suit. Plaintiff's production of these documents shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102.

5. All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application or the priority date identified in the patents-in-suit.

C. Defendants shall serve their "Preliminary Invalidity Contentions" on or before March 11, 2011, which must identify as specifically as possible the following:

1. Each item or combination of prior art that Defendants contend anticipates each specified claim.

2. Each item or combination of prior art that Defendants contend renders each specified claim obvious and the motivation to combine such items.

3. A chart identifying specifically in each alleged item of prior art where each limitation of each asserted claim is found, including for each limitation that Defendants contend is governed by 35 U.S.C. § 112(6) (means-plus-function), the identity of the structure(s), act(s), or material(s) in each item of prior art that corresponds to the structure identified in the patent specification that performs the claimed function.

4. Any grounds of invalidity for any of the asserted claims based on indefiniteness under 35 U.S.C. § 112(2), or enablement or written description under 35 U.S.C. § 112(1).

D. With the "Preliminary Invalidity Contentions," Defendants must produce or make available for inspection and copying, to the extent within their custody or control, the following (together with any English translations of the documents completed prior to this litigation): A

copy of each item of prior art identified by Defendants that does not appear in the file history of the patent(s) at issue.

E. The foregoing disclosure requirements do not limit the parties' rights to initiate or oppose discovery, nor limit their rights to timely supplement or otherwise amend their disclosures for cause shown based on discovery.

IV. CLAIM CONSTRUCTION CONTENTIONS

A. Plaintiff shall submit a claim construction chart to Defendants regarding the patents-in-suit on or before March 22, 2011. For each asserted claim, Plaintiff will state what Plaintiff contends the proper interpretation of each of those claims to be on an element-by-element basis, and will document all intrinsic and extrinsic evidence that Plaintiff relies upon to form the basis of such interpretation.

B. Defendants will respond in writing to Plaintiff's claim chart on or before March 31, 2011, stating to what extent Defendants agree with Plaintiff's proposed claim construction. Where any Defendant differs with Plaintiff's claim construction, such Defendant will state what it contends the proper interpretation of each of those claims to be on an element by element basis, and will document all intrinsic and extrinsic evidence that the Defendant relies upon to form the basis of such interpretation.

V. SETTLEMENT CONFERENCE

A settlement conference may be requested at any time in the case.

VI. FACT AND EXPERT DISCOVERY

A. By April 8, 2011, the parties shall serve expert disclosures under Rule 26(a)(2) regarding those matters for which the proposing party bears the burden of proof.

B. By April 22, 2011, the parties shall serve responsive expert disclosures under Rule 26(a)(2) regarding those matters for which they do not bear the burden of proof.

C. By April 29, 2011, the parties shall serve rebuttal expert disclosures under Rule 26(a)(2) regarding those matters for which they bear the burden of proof.

D. All fact discovery and all discovery regarding experts, including depositions, shall be completed by May 13, 2011.

VII. CLAIM CONSTRUCTION AND DISPOSITIVE MOTION BRIEFING

A. The parties shall file any claim construction briefs and any dispositive motions on or before May 23, 2011. Any briefs in opposition to a claim construction brief or dispositive motion shall be filed within 14 days of the filing of the opening claim construction brief or dispositive motion, respectively, and any reply briefs shall be filed within 7 days of the filing of the brief in opposition.

B. In conjunction with any claim construction brief, the filing party will inform the Court whether it believes that expert testimony will be necessary at the claim construction stage and, if so, who the party anticipates using as experts, specifically identifying their areas of expertise and the anticipated scope of their testimony on claim construction issues; a copy of the curriculum vitae for any proposed expert on claim construction issues must be submitted with the Court at this time.

VIII. DEPOSITION LIMITS

A. The parties agree that the Defendants collectively shall be entitled to take no more than twenty (20) fact witness depositions, and that Plaintiff shall be entitled to take no more than eight (8) fact witness depositions, including no more than two (2) of each Defendant's employees. For the purposes of the foregoing, a deposition of one witness shall count as one deposition, regardless of whether more than one Defendant conducts an examination of the witness, and a “fact witness” is understood to be any individual who is not testifying as a corporate designee under Rule 30(b)(6) of the Federal Rules of Civil Procedure or an expert

witness. One 30(6)(6) deposition of each party shall also be allowed, but shall not exceed ten and one-half (10.5) hours. Any party may seek leave from the Court at a future time, for good cause shown, to increase these limits.

B. In addition, the parties agree that no fact witness employed by a party, or a member of a party in the case of an LLC, shall be deposed for more than seven hours without leave of Court, inclusive of time as a 30(b)(6) designee; in the case of a deposition by a Defendant of a fact witness employed by or a member of Plaintiff, this seven-hour limitation shall apply regardless of whether more than one Defendant notices the deposition of the witness.

IX. OTHER MATTERS

A. The parties do not wish to proceed to trial before a Magistrate Judge.

B. A jury trial has been demanded.

C. The parties are developing a joint plan regarding electronic discovery (ESI).

D. The Defendants have each filed a Motion to Dismiss the Complaint. In the event the Court grants the motions, Pragmatus has requested leave to amend the Complaint. Otherwise, with the exception of the Defendants filing Answers to the extent required, the parties do not currently anticipate any further amendments to the pleadings or joinder of any additional parties. Further amendments to the pleadings or joinder of additional parties may only be granted by leave of Court for good cause shown.

E. The parties agree that Rule 26(b)(4)(B) and (C) apply in this action.

X. FINAL PRETRIAL CONFERENCE

A final pretrial conference shall be held on May 19, 2011 at 10:00 a.m.

Dated: January 26, 2011

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Magistrate Judge, United States District Court

AGREED:

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CERTIFICATE OF SERVICE

I certify that on the 26th day of January 2011, I will electronically file the foregoing JOINT PROPOSED DISCOVERY PLAN with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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