

1 SPENCER HOSIE (CA Bar No. 101777)
shosie@hosielaw.com
2 DIANE S. RICE (CA Bar No. 118303)
drice@hosielaw.com
3 LYN DSEY C. HEATON (CA Bar No. 262883)
lheaton@hosielaw.com
4 DARRELL R. ATKINSON (CA Bar No. 280564)
datkinson@hosielaw.com
5 HOSIE RICE LLP
6 600 Montgomery Street, 34th Floor
San Francisco, CA 94111
7 (415) 247-6000 Tel.
8 (415) 247-6001 Fax
Attorneys for Plaintiff LookSmart Group, Inc.

JUANITA R. BROOKS (CA Bar No. 75934)
brooks@fr.com
JASON W. WOLFF (CA Bar No. 215819)
wolff@fr.com
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, CA 92130
(858) 678-5070 Tel.
(858) 678-5099 Fax
Attorneys for Defendant Microsoft Corp.

9
10 Additional attorneys listed on signature page.

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

13 LOOKSMART GROUP, INC.,
14
15 Plaintiff,
16 vs.
17 MICROSOFT CORPORATION,
18 Defendant.

Case No. 3:17-cv-4709-JST
STIPULATION AND ~~PROPOSED~~
ORDER GRANTING THE PARTIES'
REQUEST TO AMEND CONTENTIONS
PURSUANT TO PATENT L.R. 3-6

DEMAND FOR JURY TRIAL

20 Pursuant to Local Rules 7-1(a)(5) and 7-12, and Patent Local Rule 3-6, Plaintiff
21 Looksmart Group, Inc. ("Looksmart") and Defendant Microsoft Corporation ("Microsoft")
22 hereby agree and stipulate as follows:

23 WHEREAS, LookSmart served its Patent L.R. 3-1 Infringement Contentions on February
24 14, 2018 and Microsoft served its Patent L.R. 3-3 Invalidity Contentions on April 2, 2018
25 pursuant to the Court's Scheduling Order (ECF No. 45);

26 WHEREAS, on May 4, 2018, LookSmart notified Microsoft of its intent to seek the
27 Court's leave to amend its Infringement Contentions and concurrently provided Microsoft with a
28 copy of its proposed Amended Infringement Contentions and a draft motion for leave to amend;

1 WHEREAS, Microsoft does not oppose LookSmart’s request to amend its Infringement
2 Contentions in the manner represented in LookSmart’s May 4, 2018 correspondence, and
3 LookSmart does not oppose Microsoft’s request to amend its Invalidity Contentions so long as
4 Microsoft does so on or before June 1, 2018 and its amendments are commensurate in scope with
5 LookSmart’s amendments;

6 WHEREAS, LookSmart respectfully submits that good cause exists to amend its
7 Infringement Contentions pursuant to Patent L.R. 3-6 because:

- 8 (a) LookSmart’s amended contentions rely on information ascertained from Microsoft’s
9 non-public, confidential and proprietary information, which was not known to
10 Looksmart prior to Microsoft’s production, and LookSmart diligently reviewed such
11 information;
- 12 (b) LookSmart’s proposed amendments will not unduly prejudice Microsoft due to the
13 relatively early stage of the case and because they do not assert any new patent
14 claims;
- 15 (c) LookSmart acted diligently in seeking this amendment since none of these above
16 bases for amendment were previously available to LookSmart outside the confidential
17 discovery and disclosure mechanisms of this case;
- 18 (d) LookSmart agrees that in its original theory, it found no evidence that a “dynamic
19 rank” value was stored in the “merged indices” for the Accused Products, though it
20 has requested additional information to determine whether a different rank value (e.g.,
21 “sort rank”) is;
- 22 (e) However, LookSmart contends in its amended infringement contentions that the
23 “dynamic rank” value is stored in a “query cache” used with the accused product, and
24 that this is LookSmart’s primary infringement theory subject to its remaining
25 questions on the rank values stored in the “merged indices.”

26 WHEREAS, Microsoft respectfully submits that good cause exists to amend its Invalidity
27 Contentions pursuant to Patent L.R. 3-6 because:

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

- (a) Microsoft contends that the change in the infringement theories between LookSmart’s initial Patent L.R. infringement charts and its amended “query caching” theory present LookSmart’s application of certain claim terms in a new light, which Microsoft did not appreciate when Microsoft prepared its responsive Patent L.R. 3-3 invalidity contentions;
- (b) In view of LookSmart’s amended infringement contentions, Microsoft is performing an additional search for prior art to address these changes provided on May 4, 2018;
- (c) Microsoft’s responsive charts will be diligently served less than 30 days after Looksmart first provided its proposed its amended Patent L.R. infringement charts;
- (d) Looksmart will not be unduly prejudiced by supplementation of Microsoft’s Patent L.R. invalidity contentions because it is relatively early in the case, and the existing Patent L.R.’s already reflect a response to defend against a claim of infringement.

WHEREAS, LookSmart and Microsoft have agreed that, to avoid burdening the Court, the parties will stipulate to allow amendments to their respective Infringement and Invalidity Contentions, subject to the Court’s approval.

IT IS HEREBY STIPULATED AND AGREED, by and between LookSmart and Microsoft, subject to the Court’s approval, that:

- (a) LookSmart is hereby given leave to amend its Patent L.R. 3-1 infringement contentions in the manner set forth in LookSmart’s May 4, 2018 correspondence; and
- (b) Microsoft is hereby given leave to amend its Patent L.R. 3-3 invalidity contentions on or before June 1, 2018 in a manner that is commensurate in scope with LookSmart’s amendments.

1 Dated: May 15, 2018

2 Respectfully submitted,

<u>/s/ Eric J. Enger</u>	<u>/s/ Jason W. Wolff (by permission)</u>
<p>4 SPENCER HOSIE (CA Bar No. 101777) shosie@hosielaw.com</p> <p>5 DIANE S. RICE (CA Bar No. 118303) drice@hosielaw.com</p> <p>6 LYNDSSEY C. HEATON (CA Bar No. 262883) lheaton@hosielaw.com</p> <p>7 DARRELL R. ATKINSON (CA Bar No. 8 280564) datkinson@hosielaw.com</p> <p>9 HOSIE RICE LLP 600 Montgomery Street, 34th Floor San 10 Francisco, CA 94111 Telephone: (415) 247-6000 11 Facsimile: (415) 247-6001</p> <p>12 Leslie V. Payne 13 TX State Bar No. 00784736 (<i>pro hac vice</i>) lpayne@hpcllp.com</p> <p>14 Eric J. Enger 15 TX State Bar No. 24045833 (<i>pro hac vice</i>) eenger@hpcllp.com</p> <p>16 R. Allan Bullwinkel 17 TX State Bar No. 24064327 (<i>pro hac vice</i>) abullwinkel@hpcllp.com</p> <p>18 HEIM, PAYNE & CHORUSH, LLP 1111 Bagby St. Ste. 2100 18 Houston, Texas 77002 Telephone: (713) 221-2000 19 Facsimile: (713) 221-2021</p> <p>20 Derek Gilliland 21 TX State Bar No. 24007239 (<i>pro hac vice</i>) dgilliland@nixlawfirm.com</p> <p>22 NIX PATTERSON & ROACH, L.L.P. 205 Linda Drive 23 Daingerfield, TX 75638 Telephone: (903) 645-7333 24 Facsimile: (903) 645-5389</p> <p>25 ATTORNEYS FOR LOOKSMART GROUP, INC.</p>	<p>Juanita R. Brooks (SBN 75934 / brooks@fr.com)</p> <p>Jason W. Wolff (SBN 215819 / wolff@fr.com)</p> <p>FISH & RICHARDSON P.C. 12390 El Camino Real San Diego, CA 92130 Telephone: (858) 678-5070 Facsimile: (858) 678-5099</p> <p>Betty H. Chen (SBN 290588 / bchen@fr.com)</p> <p>Andrew M. Goldberg (SBN 307254 / goldberg@fr.com)</p> <p>FISH & RICHARDSON P.C. 500 Arguello Street, Suite 500 Redwood City, California 94063 Telephone: (650) 839-5070 Facsimile: (650) 839-5071</p> <p>ATTORNEYS FOR MICROSOFT CORPORATION</p>

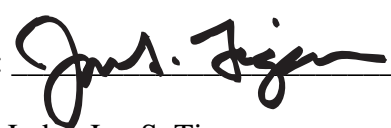
26
27
28

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

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED that the Parties' request to amend their contentions is GRANTED. LookSmart is hereby ordered to serve a copy of its Amended Infringement Contentions on counsel for Microsoft within two days of this Order. Microsoft is hereby ordered to serve a copy of its Amended Invalidity Contentions on counsel for LookSmart on or before June 1, 2018.

Dated: May 17, 2018

By:  _____

Judge Jon S. Tigar
UNITED STATES DISTRICT COURT