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20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT OF CALIFORNIA
 22 SAN JOSE DIVISION

23	DIGITAL ENVOY, INC.,)	CASE NO.: C 04 01497 RS
24)	
25	Plaintiff/Counterdefendant,)	JOINT CASE MANAGEMENT
26)	STATEMENT AND [PROPOSED]
27	v.)	ORDER
28)	
	GOOGLE INC.,)	
)	
	Defendant/Counterclaimant.)	
)	

29 Pursuant to Civil Local Rule 16-9(a) and Fed. R. Civ. P. 26(f), Digital Envoy, Inc.
 30 (“Digital Envoy”) and Google Inc. (“Google”) jointly submit this Joint Case Management
 31 Statement and [Proposed] Order.

1 **I. DESCRIPTION OF THE CASE**

2 **A. Brief Description of the Events Underlying the Action**

3 This is a dispute regarding the scope of a license agreement and the consequences of a
4 party allegedly exceeding the scope of that license. Digital Envoy developed technology that
5 assists users in making educated guesses about the approximate geographic location of visitors to
6 websites. Google licensed this technology from Digital Envoy in November 2000.

7 Digital Envoy contends that Google's use of Digital Envoy's technology exceeded the
8 authorization contained in the parties' November 2000 agreement between the parties and the
9 amendments thereto (the "Agreement"). Digital Envoy contends that Google's allegedly
10 unauthorized use of Digital Envoy technology constitutes a misappropriation of trade secrets,
11 unfair competition under federal, state and common law and unjust enrichment.

12 Google denies Digital Envoy's claims and maintains that the Agreement permits its uses
13 of Digital Envoy's technology. Separately, Google contends that Digital Envoy's conduct in
14 originally bringing this suit in Georgia federal court was a breach of the forum selection clause
15 contained in the Agreement.

16 **B. Principal Factual Issues In Dispute**

17 The factual issues in dispute may include: (1) the parties' intent with respect to the scope
18 of the license in the Agreement at the time it was signed; (2) whether Google's use of Digital
19 Envoy's technology was authorized by the Agreement; (3) whether either party was damaged by
20 the conduct of the other; and (4) assuming a party was damaged, the measure and extent of such
21 damages.

22 **C. Principal Legal Issues In Dispute**

23 The parties dispute whether: (1) Google's conduct constitutes a misappropriation of trade
24 secrets; (2) Google's conduct constitutes a violation of federal, state, and/or common law unfair
25 business practices; (3) Google was unjustly enriched as a result of its conduct; (4) Digital Envoy
26 has breached the forum selection clause in the Agreement; (5) Google is entitled to a declaratory
27 judgment that it has not exceeded the scope of, or otherwise breached, the Agreement; (6)
28 Google is entitled to a declaratory judgment that it has not misused Digital Envoy's intellectual

1 property; (7) the doctrines of laches, waiver, estoppel, accord and satisfaction, or a statute of
 2 limitations precludes any recovery by Digital Envoy; (8) Digital Envoy has impliedly licensed
 3 Google’s conduct through a course of dealing; (9) Digital Envoy’s claims are preempted in
 4 whole or in part; (10) the limitation of liability clause in the Agreement limits either party’s
 5 recovery, if any; (11) either party is entitled to damages and, if so, the measure of such damages;
 6 (12) Digital Envoy is entitled to entitled to recover treble damages, punitive damages or its
 7 attorneys’ fees from Google; and (13) Digital Envoy is entitled to an injunction against Google.

8 **D. Other Unresolved Factual Issues**

9 The parties are unaware of any additional factual issues in dispute at this time.

10 **E. Parties Not Served**

11 All of the Defendants have been served at this time.

12 **F. Amendments / Additional Parties to be Joined**

13 The parties do not anticipate joinder of any additional parties. Any amendments to the
 14 pleadings will be done by August 27, 2004 (*see* discovery schedule--Section III--below).

15 **G. Consent to Assignment of Magistrate Judge for Trial**

16 The parties have consented to assignment of this case to a magistrate judge for trial.

17 **II. ALTERNATIVE DISPUTE RESOLUTION**

18 The parties have considered alternative dispute resolution (“ADR”) pursuant to Civil
 19 Local Rule 16-8(b). The parties’ Rule 16-8(b) ADR certifications are filed concurrently with
 20 this Joint Case Management Statement. The parties have agreed to pursue ADR through a
 21 private process, such as Judicial Arbitration & Mediation Services (“JAMS”), by December 15,
 22 2004.

23 **III. DISCOVERY**

24 **A. Proposed Schedules:**

25 Digital Envoy proposes the following schedule:

ACTION	DUE DATE
Initial disclosures under Fed. R. Civ. P. 26	August 4, 2004
Last day to amend/join additional parties	August 27, 2004

ACTION	DUE DATE
Fact discovery cut-off	December 14, 2005
Exchange of expert reports	January 4, 2005
Exchange of rebuttal expert reports	February 4, 2005
Expert discovery cut-off	February 25, 2005
Dispositive motions cutoff	Motion: March 15, 2005 Opposition: April, 14, 2005 Reply: April 28, 2005 Hearing: May 10, 2005
Pre-trial conference	June 2005
Trial	July 2005

Google proposes the following schedule:

ACTION	DUE DATE
Initial disclosures under Fed. R. Civ. P. 26	August 4, 2004
Last day to amend/join additional parties	August 27, 2004
Fact discovery cut-off (re: license defense)	October 15, 2004
Motion for Summary Judgment (re: license defense)	Motion: November 19, 2004 Opposition: December 23, 2004 Reply: January 21, 2005 Hearing: February 9, 2005
Commencement of fact discovery re: liability and damages	Upon denial of Motion for Summary Judgment (if applicable).
Fact discovery cut-off:	May 20, 2005
Exchange of expert reports	June 24, 2005
Exchange of rebuttal expert reports	July 22, 2005
Expert discovery cut-off	August 19, 2005
Dispositive motion cutoff	September 23, 2005
Pre-trial conference	November 2005

ACTION	DUE DATE
Trial	December 2005

B. Other Discovery Issues

1. Interrogatories

The parties agree to the limits on interrogatories set forth in the Federal Rules of Civil Procedure. Each party reserves the right to seek leave of the Court to obtain additional interrogatories.

2. Depositions

The parties agree to the limits on depositions set forth in the Federal Rules of Civil Procedure. Each party reserves the right to seek leave of the Court to obtain additional deposition days or hours.

3. Bifurcation of Discovery

a. Google's Position

Google submits that it would be appropriate to bifurcate discovery in this matter, allowing only for discovery concerning the parties' agreement and Google's license defense in a brief, initial stage. Google expects such bifurcation would allow the parties to avoid substantial and potentially unnecessary discovery expense, as it believes it will prevail on a motion for summary judgment based on its license defense on the issue at the close of the first phase of discovery. Should Digital Envoy's claims survive Google's summary judgment motion, the parties could then take up discovery on Digital Envoy's liability and damages theories. As Digital Envoy has not agreed to such a stipulation, Google will be filing a motion seeking to bifurcate discovery in this manner.

b. Digital Envoy's Position

Digital Envoy does not consent to bifurcating discovery and opposes Google's request to impose such a restriction on the discovery process. Bifurcating discovery will add to discovery expense due to the increased length of discovery and multiple depositions of each witness since there would be no clear demarcation between license defense witnesses and witnesses bearing on

1 the remaining issues in this case. Bifurcating discovery will delay Digital Envoy's access to
2 judicial resolution of its claims without substantial justification. Bifurcating discovery will also
3 invite additional disputes between the parties regarding whether any particular interrogatory,
4 request for production or deposition question falls within the bifurcated discovery boundary, and
5 create an additional layer of consideration during the initial dispositive motion phase as to
6 whether Digital Envoy was given a fair opportunity during the restricted discovery period to
7 defend against the motion. Google's position serves its own purpose but does not promote the
8 efficient administration of justice and is prejudicial to Digital Envoy.

9 **IV. TRIAL SCHEDULE**

10 **A. Trial Date**

11 Google believes that this matter should be tried before a jury in December 2005.

12 Digital Envoy believes that this matter should be tried before a jury in July 2005.

13 **B. Length of Trial**

14 The parties anticipate a two-week trial.

15 **V. MISCELLANEOUS PROVISIONS**

16 **C. Service of Court Filings**

17 The parties agree to serve all pleadings and other papers on one another by overnight
18 mail and to serve briefs and affidavits, exclusive of exhibits, by facsimile. Google agrees to
19 serve Digital Envoy's Atlanta counsel via facsimile and overnight mail and to serve Digital
20 Envoy's California counsel via facsimile.

21 **D. Modification To This Schedule**

22 All schedules proposed herein are premised on discovery proceeding expeditiously and
23 without protracted disputes over production of documents and witnesses. In the event of such
24 protracted disputes, all parties reserve their right to seek to modify the schedules set forth herein.

25 **E. Protective Order**

26 The parties agree to submit a Stipulation and [Proposed] Order governing production of
27 confidential information produced in this case.
28

1 Respectfully Submitted:

2 Dated: August 9, 2004

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9 Dated: August, 9, 2004

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[PROPOSED] ORDER

The Joint Case Management Statement and Proposed Order is hereby adopted as the Case Management Order for this case.

DATED: _____

Honorable Richard Seeborg
United States Magistrate Judge

