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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 SAN JOSE DIVISION

19 DIGITAL ENVOY, INC.,  
 20 Plaintiff/Counterdefendant,  
 21 v.  
 22 GOOGLE, INC.,  
 23 Defendant/Counterclaimant.  
 24

Case No. C 04 01497 RS

**STIPULATION AND [PROPOSED]  
 ORDER RE: AMENDING SCHEDULING  
 ORDER**

1 Digital Envoy, Inc. (“Digital Envoy”) and Google Inc. (“Google”) submit, through their  
2 counsel of record, this stipulation and proposed order to amend the Case Scheduling Order entered  
3 by the Court in this matter on August 27, 2004, and amended by Order of the Court on October  
4 21, 2005 and December 1, 2005. Digital Envoy filed a Motion to Compel, which was noticed for  
5 hearing for December 5, 2005. The Court in its November 22, 2005 Order continued the hearing  
6 on Digital Envoy’s Motion to Compel indefinitely. Digital Envoy states that the discovery issues  
7 raised in its Motion to Compel should be resolved prior to expert disclosures and the  
8 commencement of expert discovery. (At the time the previous Stipulation to Amend the  
9 Scheduling Order was submitted, the parties understood that the Motion to Compel would be  
10 heard prior to the date for expert disclosures.) During the January 12, 2006 hearing, the Court  
11 suggested that the parties propose amendments to the Scheduling Order.

12 The parties state that these proposed amendments to the Scheduling Order will  
13 serve the interests of efficiency and economy. Therefore, the parties, through their undersigned  
14 counsel, propose an amendment to the Scheduling Order as follows:

15 1. EXPERT WITNESSES. The disclosure and discovery of expert witness opinions  
16 shall proceed as follows:

- 17 a. On or before **March 3, 2006**, plaintiff shall disclose expert testimony and  
18 reports in accordance with Rule 26(a)(2), F.R. Civ. P.  
19 b. On or before **April 7, 2006**, defendant shall disclose expert testimony and  
20 reports in accordance with Rule 26(a)(2), F.R. Civ. P.  
21 c. On or before **April 28, 2006**, all discovery of expert witnesses pursuant to  
22 Rule 26(b)(4), F.R. Civ. P. shall be completed.

23 2. PRETRIAL MOTIONS. All pretrial motions must be filed and served pursuant to  
24 Civil Local Rule 7. All pretrial motions shall be heard no later than **June 7, 2006**.

25 3. PRETRIAL STATEMENTS. At a time convenient to both, counsel shall meet and  
26 confer to discuss preparation of a joint pretrial statement and on or before **June 16, 2006**, counsel  
27 shall file a Joint Pretrial Statement in accordance with the attached Standing Order re: Pretrial  
28 Preparation.

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4. PRETRIAL CONFERENCE. The final pretrial conference will be held **after June 16, 2006**, on such date as the Court shall order. Each party or lead counsel who will try the case shall attend personally. Counsel shall comply with the attached Standing Order re: Pretrial Preparation.

5. TRIAL DATE. Jury trial shall commence **after June 16, 2006**, on such date as the Court shall order.

In all other respects, the Scheduling Order remains in full force and effect. Nothing contained in the parties' stipulation shall operate to re-open fact discovery or extend the period for fact discovery. Nothing in the stipulation shall prohibit any party from seeking to amend this or any subsequent Scheduling Order if it believes that such relief is warranted.

IT IS SO STIPULATED.

*[SIGNATURES ON FOLLOWING PAGE]*

1 DATED: January 20, 2006

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3  
4 By \_\_\_\_\_ /s/ Brian R. Blackman  
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10 Attorneys for DIGITAL ENVOY, INC.

11  
12 DATED: January 20, 2006

13 WILSON SONSINI GOODRICH & ROSATI PC

14  
15 By \_\_\_\_\_ /s/ David Lansky  
16 DAVID H. KRAMER  
17 DAVID LANSKY  
Attorneys for GOOGLE, INC.

18 **ORDER**

19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20 DATED: \_\_\_\_\_

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23 \_\_\_\_\_  
24 HON. RICHARD SEEBORG  
United States Magistrate Judge

CERTIFICATION

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I, Brian R. Blackman, am the ECF user whose identification and password are being used to file the Stipulation and [Proposed] Order re: Amending Scheduling Order. In compliance with General Order 45.X.B I hereby attest that all parties have concurred in this filing.

DATED: January 20, 2006

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By \_\_\_\_\_ /s/ Brian R. Blackman  
BRIAN R. BLACKMAN

Attorneys for DIGITAL ENVOY, INC.