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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16	DIGITAL ENVOY, INC.,)	CASE NO.: C 04 01497 RS
17)	
18	Plaintiff/Counterdefendant,)	UPDATED JOINT CASE
19	v.)	MANAGEMENT STATEMENT
20	GOOGLE INC.,)	Date: January 5, 2005
21	Defendant/Counterclaimant.)	Time: 2:30 p.m.
22)	Courtroom: 4, 5 th Floor
)	Judge: Hon. Richard Seeborg

23 Pursuant to Civil Local Rule 16-9(a) and Fed. R. Civ. P. 26(f), Digital Envoy, Inc.
 24 (“Digital Envoy”) and Google Inc. (“Google”) jointly submit this updated Joint Case
 25 Management Statement for the Case Management Conference on January 5, 2005.
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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 In addition, as a result of recent discovery in this case, Google further contends that
17 Digital Envoy has disclosed to Google's competitors information about the parties' relationship
18 and the manner in which Google used Digital Envoy's technology. Google contends that such
19 disclosures breached two contracts between the parties and constitute trade secret
20 misappropriation. Digital Envoy has opposed granting Google leave to add these counterclaims.
21 Accordingly, Google has filed a motion seeking leave, which is set for hearing on February 9,
22 2005. Digital Envoy believes the claims are without merit and will oppose Google's motion for
23 leave to add these counterclaims.

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

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

1 damages. In the event that Google's motion to amend is granted: (5) whether Digital Envoy has
2 wrongfully disclosed information about the parties' relationship and Google's use of Digital
3 Envoy's technology.

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

5 The parties dispute whether: (1) Google's conduct constitutes a misappropriation of trade
6 secrets; (2) Google's conduct constitutes a violation of federal, state, and/or common law unfair
7 business practices; (3) Google was unjustly enriched as a result of its conduct; (4) Digital Envoy
8 has breached the forum selection clause in the Agreement; (5) Google is entitled to a declaratory
9 judgment that it has not exceeded the scope of, or otherwise breached, the Agreement; (6)
10 Google is entitled to a declaratory judgment that it has not misused Digital Envoy's intellectual
11 property; (7) the doctrines of laches, waiver, estoppel, accord and satisfaction, or a statute of
12 limitations precludes any recovery by Digital Envoy; (8) Digital Envoy has impliedly licensed
13 Google's conduct through a course of dealing; (9) Digital Envoy's claims are preempted in
14 whole or in part; (10) the limitation of liability clause in the Agreement limits either party's
15 recovery, if any; (11) either party is entitled to damages and, if so, the measure of such damages;
16 (12) either party is entitled to entitled to recover treble damages, punitive damages or its
17 attorneys' fees from the other; and (13) either party is entitled to an injunction against the other.

18 If Google's motion to amend is granted, whether: (14) Digital Envoy has wrongfully
19 disclosed information about the parties' relationship and Google's use of Digital Envoy's
20 technology in breach of the Agreement and/or a non-disclosure agreement between the parties;
21 (15) Digital Envoy's conduct constitutes a misappropriation of trade secrets; and (16) Google
22 was damaged or Digital Envoy was unjustly enriched as a result of Digital Envoy's conduct.

23 **D. Other Unresolved Factual Issues**

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

25 **E. Parties Not Served**

26 All of the Defendants have been served at this time.
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1 **F. Amendments / Additional Parties to be Joined**

2 The parties do not anticipate joinder of any additional parties. Google seeks leave to
3 amend its counterclaims to add in additional causes of action seeking redress based on recent
4 discovery that Digital Envoy has disclosed information about the parties' relationship and
5 Google's use of Digital Envoy's technology.

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

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

8 **II. ALTERNATIVE DISPUTE RESOLUTION**

9 The parties have considered alternative dispute resolution ("ADR") pursuant to Civil
10 Local Rule 16-8(b). The parties' Rule 16-8(b) ADR certifications were filed with the previous
11 Joint Case Management Statement. The parties have agreed to pursue ADR through a private
12 process, and have a mediation scheduled for February 10, 2005 through Judicial Arbitration &
13 Mediation Services ("JAMS").

14 **III. DISCOVERY**

15 **A. Current Scheduling Order:**

16 The Court's current Case Management Scheduling Order dated August 27, 2004 sets out
17 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
Further case management conference	January 5, 2005
Non-expert discovery cut-off	April 29, 2005
Digital Envoy's expert reports	May 13, 2005
Google's expert reports	June 1, 2005
Expert discovery cut-off	July 1, 2005
Pre-trial motions to be heard by	August 31, 2005
Joint Pre-trial Statement to be filed	October 3, 2005
Final pre-trial conference	October 12, 2005

ACTION	DUE DATE
Trial	October 24, 2005

B. Other Discovery Issues

1. Interrogatories

The parties have previously agreed 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 have previously agreed 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.

IV. TRIAL SCHEDULE

A. Trial Date

The parties believe that this matter should be tried before a jury in October 2005, as presently scheduled.

B. Length of Trial

The parties anticipate a two-week trial.

V. MISCELLANEOUS PROVISIONS

C. Service of Court Filings

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

1 **D. Modification To This Schedule**

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

6 **E. Protective Order**

7 **Google's Position:**

8 Google seeks a modification of the existing Protective Order to provide for a designation
9 of "Outside Counsel's Eyes Only" to cover extremely sensitive financial information that it
10 believes should not be disclosed to anyone at Digital Envoy. Digital Envoy's in-house counsel,
11 Mr. Friedman, is also executive vice president of corporate development for the company.
12 Discovery has revealed that he is a competitive decision maker for Digital Envoy who is
13 intimately involved in business development and licensing for Digital Envoy, and who regularly
14 communicates with Google's principal competitors. For obvious reasons, Google does not wish
15 to allow Mr. Friedman to view extremely sensitive financial information. Google has proposed a
16 straightforward modification of the protective order to Digital Envoy, but Digital Envoy's
17 counsel has refused to consent to the proposed modification.

18 **Digital Envoy's Position:**

19 Digital Envoy has not agreed to the proposed change.
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1 Respectfully Submitted:

2 Dated: December 29, 2004

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8 Dated: December 29, 2004

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CERTIFICATION

I, David H. Kramer, am the ECF User whose identification and password are being used to file this Update Joint Case Management Statement. In compliance with General Order 45.X.B, I hereby attest that both parties have concurred in this filing.

DATED: December 29, 2004

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ David H. Kramer
David H. Kramer
Attorneys for Google Inc