

# EXHIBIT P

1 Gregory C. Nuti (Bar No. 151754)  
2 [gnuti@schnader.com](mailto:gnuti@schnader.com)  
3 Kevin W. Coleman (Bar No. 168538)  
4 [kcoleman@schnader.com](mailto:kcoleman@schnader.com)  
5 SCHNADER HARRISON SEGAL & LEWIS LLP  
6 One Montgomery Street, Suite 2200  
7 San Francisco, CA 94104-5501  
8 Telephone: 415-364-6700  
9 Facsimile: 415-364-6785

10 Attorneys for  
11 Software Rights Archive, LLC

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN JOSE DIVISION

15 Case No.: 99-50736-RLE

16 In re  
17 Site Technologies, Inc.  
18 Reorganized Chapter 11 Debtor.

19 **STATUS CONFERENCE STATEMENT**  
20 **BY SOFTWARE RIGHTS ARCHIVE,**  
21 **LLC**

22 Date: December 17, 2008  
23 Time: 10:30 a.m.  
24 Location: 280 S. First Street  
25 San Jose, California  
26 Courtroom: 3099  
27 Judge: Hon. Roger Efremsky

28 Software Rights Archive, LLC ("SRA") submits its Status Conference Statement setting forth its position with respect to the scheduling of issues raised by Sherwood Finance (Delaware), LLC ("Sherwood"). SRA owns the patents that Sherwood claims are property of the estate. SRA agreed with Sherwood that the December 17, 2008 hearing should be a status and scheduling conference. In evaluating what schedule is appropriate, the Court should consider a few key facts Sherwood fails to mention.

29 **BACKGROUND**

30 Within one year before the Debtor filed for bankruptcy, the Debtor entered into an agreement with Daniel Egger, SRA's predecessor in title, pursuant to which Mr. Egger purchased the patents at issue. The Debtor disclosed its transfer of the patents in the Debtor's Statement of Financial Affairs. Debtor's approved disclosure statement in support of its plan of

SCHNADER HARRISON SEGAL & LEWIS LLP  
ONE MONTGOMERY STREET, SUITE 2200  
SAN FRANCISCO, CALIFORNIA 94104-5501  
415-364-6700

1 reorganization also disclosed the transfer. No creditor or party in interest challenged the validity  
2 of the transfer or Mr. Egger’s ownership of the patents. Creditors were paid in full under the  
3 plan, and interest holders received a dividend.

4 After SRA sued Google, Yahoo!, Lycos, and others (“Infringement Defendants”) for  
5 infringement of the patents in the United States District Court for the Eastern District of Texas  
6 (“Infringement Action”), the Infringement Defendants filed a motion for summary judgment  
7 seeking dismissal of the Infringement Action on the grounds that SRA was not the true and valid  
8 owner of the patents and therefore had no standing to bring the Infringement Action. That issue  
9 is fully briefed before the District Court in the Eastern District of Texas (“District Court”).

10 It is important to note that the questions before the District Court are the same questions  
11 Sherwood and the Infringement Defendants are asking this Court to resolve<sup>1</sup>. The Infringement  
12 Defendants contend that at the time the Debtor sold the patents to Mr. Egger, it did not own  
13 them. Rather, according to the Infringement Defendants, the patents were owned by its non-  
14 debtor subsidiary, Site/Technologies, Inc., and therefore the instrument of assignment executed  
15 by the Debtor did not validly transfer the patents from the subsidiary to Mr. Eggers. Sherwood  
16 further contends that because Site/Technology, Inc. merged into its Debtor parent approximately  
17 six months after the plan was confirmed, those patents became the Debtor’s property as a result  
18 of the merger, and so now the Debtor should be allowed to sell the patents again in order to make  
19 a further distribution to its equity holders. Again, Sherwood makes these contentions despite the  
20 fact that Mr. Egger relied upon the Debtor’s representations in its bankruptcy that Mr. Egger was  
21 the assignee of the patents, representations neither Sherwood nor any other party in interest made  
22 an effort to challenge at the time. The issue of whether the Debtor validly assigned the patents to  
23 Mr. Egger in the first instance, or whether the Debtor is estopped or otherwise barred under  
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26 <sup>1</sup> In fact, this is the third forum in which the Infringement Defendants have raised these  
27 issues. In addition to the District Court, and now this Court, the Infringement Defendants also  
28 filed an action in the United States District Court for the Northern District of California, San Jose  
Division, case no. C08-03172(RMW), challenging SRA’s ownership of the patents.

SCHNADER HARRISON SEGAL & LEWIS LLP  
ONE MONTGOMERY STREET, SUITE 2200  
SAN FRANCISCO, CALIFORNIA 94104-5501  
415-364-6700

1 applicable law from denying the validity of the transfer is now fully briefed before the District  
2 Court in Texas<sup>2</sup>.

3 It should also be noted that, the parties seeking relief here are by their own admission the  
4 same as, are aligned with, or are in privity with, the Infringement Defendants litigating these  
5 issues in the District Court in Texas. Sherwood admits that its interests are aligned with the  
6 Infringement Defendants<sup>3</sup>. *See* Reopening Motion, fn. 8, (“Sherwood has entered into an  
7 alliance with Yahoo! Inc., including by executing a joint defense agreement and option  
8 arrangement. Upon information and belief, Google, Inc. and IAC Search & Media, Inc. are also  
9 beneficiaries of the Plan.” Moreover, Google asserts that it recently acquired 15,000 shares of  
10 the Debtor’s stock, and it has now joined in Sherwood’s Reopening Motion. *See* Joinder to  
11 Motion to Reopen Case and Related Relief [Docket No. 290].

### 12 DISCUSSION

13 In its Status Conference Statement, Sherwood raises the following issues to be decided:  
14 (1) the appointment of a new Responsible Person; (2) enforcement of the Automatic Stay,  
15 Injunction or other Equitable Relief; (3) quieting title to the patents at issue; and (4) discovery.  
16 Except for leaving discovery for last, Sherwood has reversed the order of importance of these  
17 issues. But more importantly, Sherwood ignores the threshold issue of which court is best suited  
18 to decide title to the patents in the first instance, the District Court or this Court.

19 SRA’s position is that the District Court in Texas is well suited to decide whether SRA  
20 has valid title to the patents. To the extent that the Debtor has any interest in the patent  
21 ownership issue before the District Court, that interest is now and will continue to be fully and  
22 effectively litigated by the Infringement Defendants in the Texas litigation. Of course,  
23 Sherwood and the Infringement Defendants dispute this position. Therefore, SRA suggests that  
24 the issue to be decided by this Court in the first instance is whether this Court or the District  
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26 <sup>2</sup> The parties in the Infringement Action have already conducted discovery on the issue,  
including three (3) depositions.

27 <sup>3</sup> Not by coincidence, Sherwood is represented by the same law firm, Morrison &  
28 Foerster, that represents Yahoo! in the Infringement Action.

SCHNADER HARRISON SEGAL & LEWIS LLP  
ONE MONTGOMERY STREET, SUITE 2200  
SAN FRANCISCO, CALIFORNIA 94104-5501  
415-364-6700

1 Court in Texas should decide the question of quieting title to the patents. The Court should set a  
2 briefing schedule on this issue to be heard prior to any other issue.

3 Depending upon the outcome of that issue, the parties would address next the title issues  
4 to the patents, either in Texas or this Court.

5 If the District Court determines that the Debtor did not retain any interest in the patents,  
6 then there is nothing more for this Court to decide. If the District Court finds the opposite, the  
7 parties can return to this Court to address the procedures for administering the estate, including  
8 the appointment of a new Responsible Person or trustee and the application of the automatic stay  
9 or other equitable relief.

10 Similarly, if this Court retains jurisdiction, it should first resolve who owns title to the  
11 patents. Only after finding that the Debtor retained an interest in the patents, should this Court  
12 consider issues of estate administration. Thus, before this Court even considers the appointment  
13 of a new Responsible Person or injunctive relief, it should be certain that the estate has an asset  
14 to administer and protect.

15 **CONCLUSION**

16 Wherefore, SRA respectfully suggests that the Court consider the issues in the following  
17 order and set a briefing schedule accordingly:

- 18 1. The court most appropriate to resolve title to the patents;
- 19 2. The procedure for resolving title to the patents in the event this Court retains  
20 jurisdiction;
- 21 3. The procedure for administering assets of the estate in the event either court finds  
22 that the Debtor retains an interest in the patents; and
- 23 4. The need for discovery depending on the nature of the dispute before the Court.

24 Dated December 16, 2008

25 SCHNADER HARRISON SEGAL & LEWIS LLP

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27 By: Gregory C. Nuti  
Gregory C. Nuti  
28 Attorneys for Software Rights Archive, LLC