

# EXHIBIT Q

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(SAN JOSE DIVISION)

In re:

SITE TECHNOLOGIES, INC.,

Case No. 99-50736-RLE

Chapter 11

San Jose, California  
December 17, 2008  
1:11 p.m.

Debtor.

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TRANSCRIPT OF PROCEEDINGS

a) MOTION TO (I) REOPEN CLOSED CASE PURSUANT TO  
11 U.S.C. SECTION 350(b) AND RULE 5010 IN ORDER TO  
PROTECT AND AUCTION PATENTS HELD IN CUSTODIA LEGIS,  
(II) TO APPOINT A TRUSTEE, (III) FOR A STATUS CONFERENCE  
PURSUANT TO SECTION 105(d) TO ARRANGE FOR PROTECTIVE  
ORDERS AND CONFIRMATION OF THE CONTINUING STAY AND  
(IV) FOR OTHER RELIEF BY SHERWOOD FINANCE (DELAWARE), LLC

b) JOINDER IN MOTION TO REOPEN CASE AND FOR RELATED  
RELIEF BY IAC SEARCH & MEDIA, INC.

BEFORE THE HONORABLE ROGER L. EFREMSKY  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:

HENSHAW & CULVERSON  
BY: JOE D'HOPE, ESQ.

1 APPEARANCES (CONTINUED):

2 For Sherwood Finance: LAW OFFICES OF MORRISON AND  
3 FOERSTER  
4 BY: LARRY ENGEL, ESQ.  
5 -and-  
6 VINCE NOVAK, ESQ.  
7 425 Market Street  
8 San Francisco, California 94105

9 For Google, Inc.: BIALSON, BERGEN AND SCHWAB  
10 BY: PATRICK M. COSTELLO, ESQ.  
11 2600 El Camino Real #300  
12 Palo Alto, California 94306

13 For IAC Search & Media: QUINN, EMANUEL, URQUHART, OLIVER  
14 AND HEDGES  
15 BY: JOSH SOHN, ESQ.  
16 -and-  
17 SCOTT C. SHELLEY, ESQ.  
18 (Appearing Telephonically)  
19 50 California Street, 22<sup>nd</sup> Floor  
20 San Francisco, California 94111

21 For Software Rights: SCHNADER, HARRISON, SEGAL AND  
22 LEWIS  
23 BY: GREGORY C. NUTI, ESQ.  
24 -and-  
25 LEE KAPLAN, ESQ.  
(Appearing Telephonically)  
One Montgomery Street, #2200  
San Francisco, California 94104

For the U.S. Trustee: OFFICE OF THE U.S. TRUSTEE  
BY: JOHN WESOLOWSKI, ESQ.  
280 South First Street  
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1 APPEARANCES (CONTINUED) :

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P R O C E E D I N G S

December 17, 2008 1:11 p.m.

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THE CLERK: Item 9, Site Technologies.

THE COURT: Appearances, please. Mr. Engel, thank you. I apologize for the delay.

MR. ENGEL: Not a problem, Your Honor. Larry Engel of Morrison and Foerster for Sherwood Finance.

MR. COSTELLO: Good afternoon, Your Honor, Patrick Costello, Bialson, Bergen and Schwab for Google, Inc.

MR. SOHN: Good afternoon, Your Honor, Josh Sohn, Quinn, Emanuel, Urquhart, Oliver and Hedges for IAC Search and Media, a Plan beneficiary.

MR. NOVAK: Good afternoon, Your Honor, Vince Novak of Morrison and Foerster also for Sherwood Finance.

MR. SOHN: And my colleague, Scott Shelley, also representing IAC. He should be participating telephonically I think.

THE COURT: Do we have Mr. Shelley on the phone?

MR. SHELLEY: Yes, Your Honor. I'm here, thank you.

THE COURT: All right. Good afternoon.

MR. NUTI: Good afternoon, Your Honor, Greg Nuti, Schnader, Harrison, Segal and Lewis, for Software Rights.

THE COURT: Nice to see you, Mr. Nuti.

1           MR. D'HOPE: Your Honor, I'm Joe D'Hope. I'm with  
2 Henshaw and Culvertson. I don't represent a party to this  
3 proceeding, but Murray and Murray was counsel for Site  
4 Technologies earlier in the bankruptcy. They don't  
5 represent anybody now. We've been asked to assist them and  
6 responded to discovery on various positions on that, and we  
7 just want to make it clear so there's no misunderstanding,  
8 Murray and Murray is not representing anyone here. They  
9 take no position in this motion as to whether this case  
10 should be reopened or how it should proceed. But we do  
11 have a definite interest in getting guidance from the Court  
12 in an order as to the proper procedure so that the  
13 appropriate privileges can be protected.

14           THE COURT: Okay.

15           MR. D'HOPE: Thank you.

16           THE COURT: Thank you.

17           MR. WESOLOWSKI: John Wesolowski for the U.S.  
18 Trustee and interested observer, Your Honor.

19           THE COURT: All right.

20           MR. NUTI: Your Honor, also on the phone is my co-  
21 counsel, Lee Kaplan.

22           MR. KAPLAN: Hello, Your Honor.

23           THE COURT: All right. Mr. Kaplan, I think I  
24 signed off on your application, pro hac vice application,  
25 this morning.

1 Legis.

2           So nothing that's happened here can be sufficient  
3 to remove these assets from the estate and our process and  
4 what our status conference asked was a scheduling process  
5 in this court that can resolve the issues of who acts for  
6 this estate. You know, does Mr. Ait have any power or is  
7 everything he's done been a nullity as well as a violation  
8 of his duties and the stay and that's our position.

9           Once we know how the estate is going to be  
10 represented and spoken for, we can then have alliances with  
11 the people that have the money to fight this fight and  
12 bring the patents into our estate clearly free of this  
13 claim by the plaintiffs in Texas and then we can have them  
14 sold and we can get on with life. You know, we're not  
15 interested in punishing people for the wrongdoing, you  
16 know, we just want to get the patents.

17           THE COURT: Okay.

18           MR. NUTI: Thank you, Your Honor. Your Honor,  
19 counsel has made lots of allegations. He jumps to the  
20 conclusion that these patents are property of the estate.  
21 I think that's an issue that needs to be addressed  
22 undoubtedly. I'll just back up for a minute. The genesis  
23 of my client's title to these patents was a pre-petition  
24 transfer to Mr. Egger in 1998, ten years ago. Subsequent  
25 to that transaction, Site Tech filed for bankruptcy,

1 disclosed the transaction in the Disclosure Statement,  
2 disclosed the transaction in the schedules, that it sold to  
3 an insider -- I believe it was an insider -- these patents.

4 Nobody made an issue of it until now. The Plan  
5 was confirmed. Assets of both the sub, Site Tech/ were  
6 sold on behalf of the Debtor's estate with nobody claiming,  
7 wait a minute, the Debtor can't sell those because those  
8 are the sub's assets. None of those issues were raised.  
9 The Plan was confirmed; it was consummated; everybody went  
10 home.

11 Ten years later, my client is suing Google,  
12 Yahoo, AOL, all the rest, for patent infringement, because  
13 they own these patents that are Mr. Egger's. Only now do  
14 these defendants say, wait a minute, there may be a problem  
15 in title, as a litigation tactic to defend themselves in  
16 Texas. They've raised this standing issue on the title in  
17 the patents in the Texas Court, in the Northern District  
18 here in front of Judge White, and now this court -- all the  
19 same issues; this is bankruptcy estate assets; there's a  
20 break in the chain of title; they had no standing to sue  
21 for patent infringement.

22 So there is no determination yet that this is  
23 property of this estate, so I think the first issue is, we  
24 have three courts of jurisdiction right now. Which is the  
25 proper one? I didn't suggest that this court shouldn't

1 take it without having a full -- everybody having full  
2 briefing and have an analysis of what may or may not be the  
3 proper court. It's our position Texas is the proper court.  
4 We litigated this in Texas for the last six months. All  
5 these binders here are the motions on that. There's been  
6 discovery in Texas. There's been depositions in Texas. I  
7 don't see how which court decides the issue of the title to  
8 the patents would make a difference.

9           So, we're not going to get to the bottom of all  
10 the disputed legal issues, all the disputed factual issues,  
11 but I think the first issue to decide is, will this court  
12 retain jurisdiction or let another court make the initial  
13 determination on patents. We can brief that in our  
14 arguments about that. Next, Your Honor, would be the issue  
15 of, okay, if it's in this court, what's the schedule for  
16 briefing on finding out who truly owns these patents and  
17 what was the effect of the 1998 transaction. Only then we  
18 get a decision on whether these are patents of this  
19 bankruptcy estate. Then we can talk about how to sell  
20 them; who's entitled to them; and what rights flow from  
21 that. But we can't jump to the conclusion -- the Court  
22 shouldn't come to the conclusion that what these people did  
23 was wrong or that these were actual assets of the estate  
24 because no court has made that determination yet.

25           THE COURT: Yes. When was the action filed in

1 it seems to me -- it seems to us that this is the  
2 appropriate place for that explanation to take place.

3 MR. ENGEL: And the explanation, Your Honor, that  
4 Mr. Kaplan offered which is that, you know, he engaged in  
5 avoidable transfers to correct a pre-petition mistake, that  
6 is not a legal justification for a fiduciary who's only  
7 been a -- whose only duty is to the Plan beneficiaries. He  
8 doesn't have a duty to Mr. Egger. His duty is to the Plan  
9 beneficiaries, which means he has to get them assets. I  
10 mean, the choice is does Mr. Egger and therefore SRA the  
11 troll that he created a week after they closed this case,  
12 do they get this windfall or is the value of this set of  
13 patents going to belong to the Plan beneficiaries? I mean  
14 it's as simple as that.

15 And so here what you have is Mr. Ait whose legal  
16 duty is to the Plan beneficiaries exclusively in accordance  
17 with the Plan and in accordance with law, siding with the  
18 adversaries, hiring their lawyer, you know, doing transfers  
19 to Mr. Egger. I mean how can he justify that?

20 MR. KAPLAN: Well, actually, Your Honor, let me  
21 return to what Mr. Nuti said at the beginning, and of  
22 course Mr. Ait explained this too as people who attended  
23 the deposition know, Mr. Ait said, you know, we sold other  
24 assets that funded this bankruptcy, as Mr. Nuti pointed  
25 out. Nobody complained about that at the time. Everyone

1 got paid, and it's under the same theory and announcements  
2 of who owned what and who did what. Nobody complained at  
3 the time. Mr. Ait said, and he explained all of the post-  
4 confirmation activities as being nothing more than  
5 confirming what he did originally. We sold these patents  
6 to Daniel Egger for \$100,000. We did it because we needed  
7 the money at the time to keep the company going.

8           The exact same kinds of legal theories underpin  
9 the assets that remained in the bankrupt that Site  
10 Technologies, the parent, sold and that funded payment to  
11 all these creditors. So I'm listening to people having  
12 their cake -- seeking to have their cake and eat it too  
13 after the fact, and I guess what I would say is, every one  
14 of these arguments has been available to defendants, and  
15 all I can tell you is they have breached the bankruptcy law  
16 fairly extensively in the reply brief they filed in  
17 response to our brief that discussed the doctrine such as  
18 after-acquired title.

19           So all I can say is I don't think defendants were  
20 caught napping anywhere in the Eastern District of Texas.  
21 I think that if they've read all this, they're just hoping  
22 that somewhere else they can argue about things that  
23 happened in 2005 or 2008 and make that into a jury argument  
24 to overturn the res judicata that applies in the  
25 bankruptcy. And all this is already briefed. We have a

1 competent court that they chose to raise this issue in and  
2 we briefed it fully after discovery. So frankly, I can  
3 fight a three-front war if forced to do so, but I regard it  
4 as vexatious litigation.

5 THE COURT: Excuse me. Ms. Barnill, can you hang  
6 on for another ten minutes or do you want to take a break?  
7 Okay. All right. Go ahead.

8 MR. ENGEL: Your Honor, just briefly, and I  
9 appreciate your patience. This is a very important matter  
10 for the beneficiaries, and again Mr. Kaplan is mixing up  
11 the parties because the Plan beneficiaries are not in  
12 Texas. The question I would ask Mr. Ait if I had an  
13 opportunity to, which I haven't, is a simple basic one,  
14 which is, if Mr. Egger and Mr. Ait were so confident that  
15 their transfer worked from the parent that didn't own the  
16 patents to Mr. Egger in '98, why did they do all this  
17 secret mysterious stuff after the Plan was confirmed, after  
18 the case was closed? I mean, these are not normal things.  
19 You look at the docket in this case, and there are rules by  
20 the way that Mr. Kaplan isn't paying any attention to as  
21 well as the language of the Plan itself, which wasn't being  
22 obeyed, that there's nothing -- the case is closed; there's  
23 nothing.

24 If Mr. Ait wanted to do an honest thing, he would  
25 have come to this court in 2005 and he would have come to

1 this court in 2007, some other time, and said, you know,  
2 hey, I think I need instructions because there's this  
3 issue. The fact is that no one said anything until we had  
4 figured this out the hard way by digging into the documents  
5 out of the Federal Depository. They didn't come forward  
6 with any of this. They hid it. And an honest person  
7 doesn't hide things. A Plan fiduciary doesn't hide things.  
8 He comes to the court and he reopens the case and he lays  
9 the issues in front of them, and the fact that they didn't  
10 do that is an admission of wrongdoing.

11 THE COURT: Okay. Anything else, Mr. Nuti?

12 MR. KAPLAN: Yes, Your Honor, if I can respond.  
13 Number one, there's no mystery to any of this. It was all  
14 provided in discovery. Number two, we were the ones who  
15 were surprised by the motion and had to go to the  
16 Bankruptcy Court to get the documents that demonstrated  
17 that all this was disclosed at the time, something that  
18 defendants, had they followed the Rule 11 obligations,  
19 probably should have done at the beginning.

20 If there's a question for Mr. Ait as to why he  
21 did these things, I can provide one of the answers that was  
22 given, which is, I didn't want anybody to come back and sue  
23 over the other things we did that everybody agreed to and  
24 helped to fund the bankruptcy in getting the creditors  
25 paid. He said, look -- I mean Mr. Ait knew nothing of

1 this. He was selling real estate in 2008 when the  
2 defendants filed their motion and at some point around  
3 then, they had called him up and leaned on him and scared  
4 the dickens out of him really, and he just said look, I  
5 sold, you know, on behalf of the company. I sold these  
6 patents to Daniel Egger. We were trying to raise money.  
7 And he said and I feel that anything I can do to stand up  
8 and make it clear that that is what happened in 1998 is  
9 what I should do. I owe that to all the people who were  
10 involved with the company as well as Mr. Egger. That's  
11 just a matter of business ethics and what is right.

12           So the idea that Mr. Ait has somehow done  
13 something terrible to defraud the beneficiaries of the Plan  
14 is precisely 180 degrees wrong. And he's testified to  
15 that. If people had questions they wanted to ask him, the  
16 Morrison and Foerster, the Quinn Emanuel, and Fish and  
17 Richardson firms were there to ask those questions. And he  
18 was quite competently examined and thoroughly examined in  
19 his deposition.

20           THE COURT: All right. Thank you, Mr. Kaplan.  
21 Mr. Nuti?

22           MR. NUTI: Your Honor, I'll come back to where I  
23 started. We're not going to get to the bottom of this  
24 today.

25           THE COURT: I understand.

1           MR. NUTI: I think Your Honor now appreciates we  
2 have three -- we have one dispute basically in three  
3 different courts right now.

4           THE COURT: Right.

5           MR. NUTI: Eastern District of Texas, Northern  
6 District and before Your Honor. I think the very first  
7 decision the Court needs to make is who is best to decide  
8 this issue. Is it here? Are we going to leave it in the  
9 Eastern District of Texas or somewhere else. Only after  
10 that decision is made can we then decide what else to do.

11           THE COURT: All right. The Court has jurisdiction  
12 only if this is an asset of the estate. If it's not an  
13 asset of the estate, this Court doesn't have jurisdiction  
14 over this. And I may be reading through things that Mr.  
15 Engel is getting at and maybe I'm just dull and this is my  
16 way of articulating it. You seem to be concerned, Mr.  
17 Engel, that there might be things that the Bankruptcy Court  
18 who deals with these issues, compliance with the Plan,  
19 certain equitable issues that the Bankruptcy Court would be  
20 more familiar with than a District Court judge. I don't  
21 necessarily disagree with you on that.

22           I can see that with one of the defenses that if  
23 in fact the parent didn't have -- didn't own the patents at  
24 the time they sold them, and as Mr. Kaplan says -- and I  
25 have no reason to doubt it -- that Mr. Ait maybe out of

1 ignorance assuming that when he was trying to clean things  
2 up after the fact, maybe didn't have standing to do what he  
3 did, one; two, didn't appreciate that if he did have  
4 standing, the manner in which he went about it with all the  
5 best intentions, may not have been appropriate and may have  
6 been a nullity.

7           In that to the extent the District Court might  
8 have to look at what transpired, especially post-petition  
9 or post-confirmation, will the District Court get it,  
10 because if the Court's going to rely upon some of those  
11 things, and if Mr. Engel is correct either that Mr. Ait  
12 didn't -- assuming they need it, because it's a possibility  
13 that the parent corporation as far as I know had owned the  
14 patents, I don't know the answer for sure, but I'm just  
15 saying, if they did, it's not an issue. But if they  
16 didn't, then when they tried to clean it up after the fact  
17 because it was the right thing to do as Mr. Kaplan says,  
18 either again Mr. Ait may not have had standing, may not  
19 have gone about it in the best manner, may have needed to  
20 come back to this court, I'm not so sure that the District  
21 Court in Texas can't look at those issues and deal with it.

22           I think at this juncture, what I'm inclined to  
23 do is, put this off for further status conference. I'd  
24 like to see what -- even if the court in Texas, if they  
25 grant the motion, I think Mr. Engel will be happy. If the

1 court doesn't grant it there, then some of these issues can  
2 be -- if they haven't been raised and there's a dispute by  
3 Mr. Kaplan and Mr. Engel whether they have or haven't, or  
4 at least adequately been raised, they can then be raised in  
5 the District Court action. Also, there may be a motion --

6 MR. ENGEL: That District Court or the --

7 THE COURT: In the Texas Court action. I'm just  
8 saying it may come up; it may not. But my point at this  
9 time -- what I'm inclined to do is simply continue this  
10 without taking any action until early April to see if  
11 there's a ruling out of Texas and/or what happens with the  
12 California District Court action. I'm just not at this  
13 juncture, based on this record, because really all I have  
14 is what Mr. Engel has put before me, he raises some  
15 interesting arguments, not only the Custodia Legis  
16 argument, but the issue that on this after-acquired title,  
17 the defense that's being put forth, that if they didn't  
18 have title, was this an executory contract. And by terms  
19 of the confirmed Plan, if it wasn't specifically assumed,  
20 it was rejected, and then there would have been a  
21 requirement for the damaged party, apparently the --  
22 whoever held the patents at that point or the party who  
23 thought they bought them would have had to file a claim  
24 within I think 30 days of the effective date of the Plan.

25 MR. ENGEL: Right.