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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 TEXTSCAPE LLC, 17 18 Plaintiff, 19 v. 20 GOOGLE INC., 21 22 Defendant.	§ § § § § § § § § §	Civil Action No.: 5:09-cv-04552 JF AMENDED JOINT CASE MANAGEMENT CONFERENCE STATEMENT AND 26(f) REPORT
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23 **AMENDED JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

24 Pursuant to the *Stipulation and Order Continuing Case Management Conference*
 25 *to March 12, 2010* (Dkt. 42), Plaintiff Textscape LLC (“Textscape” or “Plaintiff”) and
 26 Defendant Google Inc. (“Google” or “Defendant”) respectfully submit their Amended
 27 Joint Case Management Statement and Proposed Order as required under Fed.R.Civ.P.
 28

1 26(f), Civil L.R. 16-9(a) and Patent L.R. 2-1(a) and request the Court to adopt it as its
2 Case Management Order in this case.

3 **1. Jurisdiction and Service**

4 The Court has subject matter jurisdiction in this patent infringement matter as it
5 arises under the patent laws of the United States, Title 35 United States Code, particularly
6 §§ 271 and 281 and Title 28 United States Code, particularly §1338(a). Venue is proper
7 in this Court under Title 28 United States Code §§ 1391(b) and (c) and 1400(b). The sole
8 Defendant Google has been properly served.

9 **2. Facts**

10 Plaintiff Textscape alleges that Defendant Google infringes U.S. Patent No.
11 5,713,740 (“the ‘740 patent”) titled “System and method for converting written text into a
12 graphical image for improved comprehension by the learning disabled.” Plaintiff alleges
13 that Defendant has infringed at least claim 1 of the ‘740 patent by providing software
14 embodying the technology claimed in the ‘740 patent, including but not limited to its
15 Google Chrome web browser.

16 Defendant Google asserts that its products and services do not infringe the ‘740
17 patent. Moreover, Google maintains that the asserted claims are invalid and/or
18 unenforceable, and that one or more prior art references anticipate and/or render obvious
19 the asserted claims of the ‘740 patent. Furthermore, Google states that Textscape is not
20 entitled to any damages or other relief.

21 **3. Legal Issues**

22 Plaintiff and the Defendant agree that infringement, validity, and enforceability of
23 the ‘740 patent will all be subjects of dispute. Plaintiff and Defendant also agree that
24 issues of claim construction and damages will be subjects of dispute.

25 **4. Motions**

26 There are no motions pending at this time. Currently, Plaintiff does not anticipate
27 any specific motions that it intends to file. Defendant does not anticipate any specific
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1 motions that it intends to file at this time. However, Defendant does anticipate that
2 Summary Judgment motions for non-infringement and/or invalidity may be appropriate
3 once Plaintiff provides more specific allegations during the course of discovery.

4 **5. Amendment of Pleadings**

5 Plaintiff does not anticipate filing any amended pleadings at this time. Defendant
6 does not anticipate filing any amended pleadings at this time. The parties have agreed
7 that any amended pleadings, without leave of Court, should be filed by July 2, 2010.

8 **6. Evidence Preservation**

9 The parties have been advised not to destroy evidence relevant to the issues
10 reasonably evident in this action, including putting a litigation hold on document
11 destruction programs and electronic evidence.

12 **7. Disclosures**

13 The parties have not yet exchanged initial disclosures under Rule 26, but have
14 agreed to do so by March 22, 2010.

15 **8. Discovery**

16 Pursuant to the Court's standing orders and Rule 26(f)(3), the parties state as
17 follows:

18 (A) The parties anticipate that the disclosures required under Fed.R.Civ.P
19 26(a) will be made on the dates indicated in the proposed schedule set forth herein.
20 Initial disclosures will be served by the date specified above.

21 (B) The parties have not taken any discovery to date.

22 Plaintiff states that it anticipates taking discovery related to Google's
23 infringement of the '740 patent and the damages to which Plaintiff is entitled. Defendant
24 states that it anticipates taking discovery related to invalidity and unenforceability of the
25 '740 patent, ownership and licensing rights in the '740 patent, Plaintiff's allegations of
26 infringement, and the damages claimed by Plaintiff.
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1 The parties anticipate that discovery will be completed at the date(s) indicated in
2 the proposed schedule set forth herein.

3 (C) The parties will work toward reaching agreement on the form and format
4 of their respective document productions.

5 (D) The parties will work toward reaching agreement on issues of privilege
6 and the protection of confidential information, and anticipate submitting a proposed
7 Protective Order to the Court.

8 (E) The parties do not believe that any discovery limitations are warranted
9 beyond those set forth in the Federal Rules of Civil Procedure and the local civil and
10 patent rules.

11 (F) Subject to the foregoing, at this time, the parties are not aware of any other
12 order the Court should issue under Rule 26(c) or under Rule 16(b) and (c).

13 **9. Class Actions**

14 This is not a class action case.

15 **10. Related Cases**

16 There are currently no pending cases related to this litigation.

17 **11. Relief**

18 In accordance with the patent laws, Textscape alleges it is entitled to at least a
19 reasonable royalty for Defendant's infringement of the claimed invention – a claim that
20 Defendant denies. Textscape alleges that a determination of a reasonable royalty cannot
21 be made at this time because no sales data or royalty information has been provided by
22 the Defendant. In addition, Textscape alleges that it is entitled to interest and costs as
23 fixed by the Court and seeks attorneys fees under 35 U.S.C. § 285.

24 Google seeks a judgment that the '740 patent is invalid, unenforceable, and not
25 infringed by Google. Google further seeks a judgment denying Textscape any damages
26 or other relief and awarding Google its reasonable costs and expenses of litigation,
27 including attorneys' fees and expert witness fees.

1 **12. Settlement and ADR**

2 The parties have agreed to non-binding mediation as the appropriate ADR method
3 for this case. The parties have had settlement discussions, but have not yet resolved the
4 matter.

5 **13. Consent to Magistrate**

6 The parties have declined to consent to have a magistrate judge conduct any
7 further proceedings in this matter.

8 **14. Other References**

9 The parties do not believe that this case is suitable for reference to binding
10 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

11 **15. Narrowing of Issues**

12 The parties do not anticipate at this time any particular issues that can be
13 narrowed by agreement or motion. However, the parties will cooperate in discovery
14 issues and motion practice in an effort to proceed efficiently to trial.

15 **16. Expedited Schedule**

16 The parties do not believe that this case should have an expedited schedule, but
17 have agreed on a schedule as set forth below.

18 **17. Scheduling**

19 In accordance with the principles of the Northern District's Patent Local Rules,
20 Textscape and Google have agreed to the following schedule:

- 21
- | | | |
|----|---|----------------|
| 22 | a. Parties to provide Initial Disclosures | March 22, 2010 |
| 23 | b. Patent Disclosures pursuant to Patent L.R.
24 3-1 and 3-2 (including Disclosure of
25 Asserted Claims and Infringement
Contentions) | March 26, 2010 |
| 26 | c. Patent Disclosures pursuant to Patent L.R.
27 3-3 and 3-4 (including Invalidity
Contentions) | May 10, 2010 |
- 28

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|----|----|--|--|
| 1 | d. | Exchange of Proposed Terms and Claim Elements for Construction pursuant to Patent L.R. 4-1 | May 24, 2010 |
| 2 | | | |
| 3 | e. | Exchange of Preliminary Claim Constructions and Extrinsic Evidence pursuant to Patent L.R. 4-2 | June 14, 2010 |
| 4 | | | |
| 5 | f. | Deadline to amend pleadings and add additional parties without leave of Court | July 2, 2010 |
| 6 | | | |
| 7 | g. | Joint Claim Construction and Prehearing Statement pursuant to Patent L.R. 4-3, including submission of claim construction expert reports or declarations (other than rebuttal expert reports or declarations relating to claim construction) | July 9, 2010 |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | h. | Submission of rebuttal expert reports or declarations relating to claim construction | July 23, 2010 |
| 12 | | | |
| 13 | i. | Completion of Claim Construction Discovery pursuant to Patent L.R. 4-4 | August 9, 2010 |
| 14 | | | |
| 15 | j. | Opening Claim Construction Brief pursuant to Patent L.R. 4-5(a) | August 23, 2010 |
| 16 | | | |
| 17 | k. | Responsive Claim Construction Brief pursuant to Patent L.R. 4-5(b) | September 7, 2010 |
| 18 | | | |
| 19 | l. | Reply Claim Construction Brief pursuant to Patent L.R. 4-5(c) | September 13, 2010 |
| 20 | | | |
| 21 | m. | Claim Construction Hearing | October 2010 |
| 22 | | | |
| 23 | n. | Production of Opinions of Counsel pursuant to Patent L.R. 3-7 | 50 days after Claim Construction Ruling |
| 24 | | | |
| 25 | o. | Deadline to Complete Fact Discovery | 90 days after Claim Construction Ruling |
| 26 | | | |
| 27 | p. | Deadline for party with the burden of proof to submit expert reports | 120 days after Claim Construction Ruling |
| 28 | | | |
| | q. | Deadline for parties to submit responsive expert reports | 150 days after Claim Construction Ruling |
| | | | |
| | r. | Deadline to complete expert discovery | 165 days after Claim Construction Ruling |
| | | | |
| | s. | Deadline for parties to file dispositive | 180 days after Claim |

1	motions	Construction Ruling
2	t. Pretrial Order	30 days before trial
3	u. Trial	_____ 2011

4
5 **18. Trial**

6 The trial will be a jury trial, and the parties estimate that 6 trial days should be
7 sufficient.

8 **19. Disclosure of Non-party Interested Entities or Persons**

9 Plaintiff Textscape LLC filed its *Certification of Interested Entities or Parties* on
10 February 5, 2010, certifying that there is no interest to report other than the named
11 parties.

12 Defendant Google Inc. filed a *Certification of Interested Entities or Persons*
13 *Pursuant to Civil L.R. 3-16* (Dkt. 20) on January 19, 2010, certifying that, other than the
14 named parties and their shareholders, there is no interest to report under Civil Local Rule
15 3-16.

16 **20. Other Matters**

17 There are no other matters that the parties believe need to be addressed at this
18 time.

19 **21. Patent L.R. 2-1(a)**

20 Pursuant to Patent L.R. 2-1(a), the parties additionally address the following
21 topics:

22 (1) The parties do not propose any modification of the obligations or
23 deadlines set forth in the Patent Local Rules at this time, except to the extent modified by
24 the proposed schedule above, and that the parties' agree to a timely, but rolling
25 production of documents required by Patent L.R. 3-2 and 3-4, and as required under local
26 and federal rules of discovery.
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1 (2) As provided in the proposed schedule set forth herein, the parties agree
2 that the completion of claim construction discovery, including the disclosure of and
3 discovery from any expert witness permitted by the court, will be on August 6, 2010.
4

5 However:

6 (a) Claim construction experts submitting an expert report or
7 declaration, or providing testimony at the Claim Construction Hearing,
8 shall be made available for deposition after July 9, 2010; and

9 (b) Claim construction experts submitting a rebuttal expert report or
10 declaration, or providing rebuttal testimony at the Claim Construction
11 Hearing, shall be made available for deposition after July 23, 2010.

12 (3) The parties have not yet determined if any live testimony will be necessary
13 at the Claim Construction Hearing, but expect the hearing to take no longer than 5 hours,
14 wherein the parties anticipate that each disputed claim term or phrase will be addressed
15 first by Plaintiff and then by Defendant, before moving on to the next disputed claim term
16 or phrase.

17 (4) The parties have not yet determined how the Court would be best educated
18 on the technology-at-issue, or whether any introduction is necessary. Preliminarily, the
19 parties are considering the merits of (jointly or individually) submitting a tutorial to the
20 Court before the Claim Construction Hearing, and/or presenting a brief tutorial (jointly or
21 individually) at the Claim Construction Hearing.
22

23 Dated: February 22, 2010

Respectfully submitted,

24 /s/ Edward W. Goldstein

25 Edward W. Goldstein

26 Corby R. Vowell

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ATTORNEYS FOR DEFENDANT
GOOGLE INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on February 22, 2010. Any other counsel of record will be served by first class U.S. mail.

/s/ Edward W. Goldstein
Edward W. Goldstein