

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

XEROX CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 10-136-LPS
)	
GOOGLE INC., YAHOO! INC., RIGHT)	
MEDIA INC., RIGHT MEDIA LLC,)	
YOUTUBE, INC., and YOUTUBE, LLC,)	
)	
Defendants.)	

AMENDED PROPOSED SCHEDULING ORDER

This ____ day of February, 2011, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) on February 3, 2011, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard.

a. The parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) by May 25, 2010. If they have not already done so, the parties are to review the Court's Default Standard for Discovery of Electronic Documents, which is posted at <http://www.ded.uscourts.gov> (see Orders, etc., Policies & Procedures, Ad Hoc Committee for Electronic Discovery), and is incorporated herein by reference.

b. The parties agree to produce electronically stored information in a format to be agreed upon and to share reasonable costs to have the stored information electronically searchable, *e.g.*, costs for optical character recognition. E-discovery shall be produced by November 19, 2010. Electronically stored information shall be produced on suitable electronic

media and transmitted to counsel with a load file in the format the counsel has requested for its document management software application. In accordance with Local Rules and the Federal Rules, including Federal Rule of Civil Procedure 26, the parties have agreed that no voice mails, instant messages or cell phone text messages will be preserved, searched for, or produced under any circumstances.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before December 17, 2010.

3. Discovery. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

a. Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before July 1, 2011, and all expert discovery shall be initiated so that it will be completed on or before September 23, 2011.

b. Document Production. Document production shall be substantially complete by November 19, 2010. In addition, the defendants shall make all reasonable efforts to substantially complete the production of relevant source code and design documents for the accused products by July 30, 2010.

c. Requests for Admission. A maximum of 25 requests for admission are permitted for Xerox Corporation (“Xerox”), a maximum of 15 requests for admission are permitted for Google Inc. (“Google”) and YouTube, LLC (successor to YouTube Inc.) (together, “YouTube”) collectively, and a maximum of 15 requests for admission are permitted for Yahoo! Inc. (“Yahoo”) and Right Media LLC (successor to Right Media Inc.) (together, “Right Media”) collectively. There is no limit on RFAs on authentication.

d. Interrogatories.

i. A maximum of 22 interrogatories, including contention interrogatories, are permitted for Xerox, a maximum of 10 interrogatories, including contention interrogatories, are permitted for Google and YouTube collectively, a maximum of 10 interrogatories, including contention interrogatories, are permitted for Yahoo and Right Media collectively, and a maximum of 10 joint interrogatories, including contention interrogatories, are permitted for all defendants.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

e. Depositions.

i. Limitation on Hours for Fact Deposition Discovery. Each side is limited to a total of 140 hours of taking fact depositions, with (a) no more than 70 hours of depositions taken of employees of Google Inc. and/or YouTube, LLC (including 30(b)(6) deposition hours) and (b) no more than 70 hours of depositions taken of employees of Yahoo! Inc. and/or Right Media LLC (including 30(b)(6) deposition hours). The parties further agree that expert depositions will not count toward these limits. The parties reserve the right to revisit the issue of the number and length of depositions as discovery progresses. If any party requests more than 7 hours for any individual witness or if any side seeks more total deposition time, the parties agree to meet and confer in good faith to attempt to resolve the issue without intervention

by the Court. If any deposition lasts more than 7 hours, the parties shall meet and confer regarding whether the deposition should be divided over the course of two days.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court or by agreement of the parties and deponent. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before July 29, 2011. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before August 19, 2011. Reply expert reports from the party with the initial burden of proof are due on or before September 9, 2011. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

Depositions of expert witnesses shall be limited to 7 hours per witness, unless an expert's report addresses issues relating to both Defendant groups. If so, such expert's deposition shall be limited to 14 hours. Additionally, any expert opining on both validity and infringement may be deposed for up to an additional 3 hours over the above limits. The parties reserve the right to revisit the issue of the number and length of expert depositions as discovery progresses.

Draft expert reports and communications between experts and litigation counsel are not discoverable.

ii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

g. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact chambers at (302) 573-4571 to schedule a telephone conference. On a date to be set by separate order, but not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one (1) hour of e-filing the document(s).

Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

If a discovery related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

4. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one (1) copy of the papers. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

5. Courtesy Copies. The parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

6. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

7. Interim Status Report. On June 14, 2011, counsel shall submit a joint letter to the Court with an interim report on the nature of the matters in issue and the progress of discovery to date. Thereafter, if the Court deems it necessary, it will schedule a status conference.

8. Tutorial Describing the Technology and Matters in Issue. Unless otherwise ordered by the Court, the parties shall provide the Court, no later than the date on which their opening claim construction briefs are due, a tutorial on the technology at issue. In that regard, the parties may separately or jointly submit a DVD of not more than 30 minutes. The tutorial should focus on the technology in issue and should not be used to argue claim construction contentions. The parties may choose to file their tutorial(s) under seal, subject to any protective

order in effect. Each party may comment, in writing (in no more than 5 pages) on the opposing party's tutorial. Any such comment shall be filed no later than the date on which the answering claim construction briefs are due. As to the format selected, the parties should confirm the Court's technical abilities to access the information contained in the tutorial.

9. Claim Construction Issue Identification. If the Court does not find that a limited earlier claim construction would be helpful in resolving the case, on February 7, 2011, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted on February 28, 2011. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

10. Claim Construction Briefing. The parties shall contemporaneously submit initial briefs on claim construction issues on March 25, 2011. The parties' answering/responsive briefs shall be contemporaneously submitted on April 15, 2011. No reply briefs or supplemental papers on claim construction shall be submitted without leave of the Court. Local Rule 7.1.3(4) shall control the page limitation for initial (opening) and responsive (answering) briefs.

11. Hearing on Claim Construction. Beginning at 10 a.m. on May 19, 2011, the Court will hear argument on claim construction. The parties shall notify the Court, by joint letter

submission, no later than the date on which their answering claim construction briefs are due:

(i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing.

12. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before October 21, 2011. Briefing will be presented pursuant to the Court's Local Rules. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court.

13. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion filed with the Clerk. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

14. Pretrial Conference. On a date to be determined, the Court will hold a pretrial conference in Court with counsel beginning at 9 a.m. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before a date to be determined. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order. The Court will advise the parties at or before the above-scheduled pretrial conference whether an additional pretrial conference will be necessary.

15. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall

be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument and may be opposed by a maximum of three (3) pages of argument, and the party making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

16. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47 and 51 the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms three (3) full business days before the final pretrial conference. This submission shall be accompanied by a computer diskette containing each of the foregoing four (4) documents in WordPerfect format.

17. Trial. This matter is scheduled for a jury trial of length to be determined beginning at 9:30 a.m. on a date to be determined, with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

18. Separation of Issues. The issues of infringement and invalidity will be separated from the issues of willfulness and damages for purposes of discovery and trial.

Hon. Leonard P. Stark
UNITED STATES DISTRICT JUDGE