

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

XEROX CORPORATION,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	C.A. No. 10-136-JJF-MPT
)	
GOOGLE INC., YAHOO! INC., RIGHT)	
MEDIA INC., RIGHT MEDIA LLC,)	
YOUTUBE, INC., and YOUTUBE, LLC,)	
)	
<i>Defendants.</i>)	

STIPULATION AND INTERIM PROTECTIVE ORDER

WHEREAS the parties have met and conferred regarding an agreed-upon, permanent Protective Order to govern this action; and

WHEREAS the parties are largely in agreement concerning the terms of that Protective Order; and

WHEREAS the Amended Scheduling Order in this action requires Defendants to make all reasonable efforts to substantially complete the production of relevant source code and design documents for the accused products by July 30, 2010; and

WHEREAS the production of relevant source code and design documents for the accused products will include materials deemed confidential by Defendants; and

WHEREAS the remaining disagreements between the parties concerning the terms of a permanent Protective Order cannot be resolved by the Court before July 30; and

WHEREAS the parties desire to stipulate to an interim Protective Order to govern this action until the Court resolves the parties' disagreements concerning the final terms of a permanent Protective Order;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for all parties that:

1. With the exception of paragraphs 1.C.2(e), 1.C.2(k)(4) and 2.C of the draft permanent Protective Order attached hereto as Exhibit A, the provisions of that draft Protective Order shall take effect immediately upon approval and entry of this Stipulation and Interim Protective Order by the Court and shall continue in effect until approval and entry of a permanent Protective Order by the Court.

2. In lieu of paragraph 2.C of Exhibit A, the following provision shall take effect immediately upon approval and entry of this Stipulation and Interim Protective Order by the Court:

“Prosecution Activity shall mean: (1) prepare and/or prosecute any patent application (or portion thereof), whether design or utility, and either in the United States or abroad on behalf of a patentee or assignee/assignor of patentee’s rights; (2) prepare patent claim(s) on behalf of a patentee or assignee/assignor of patentee’s rights; (3) participate in any reissue proceedings on behalf of a patentee or assignee/assignor of patentee’s rights; or (4) provide advice, counsel or suggestions regarding, or in any other way influencing, claim scope and/or language, embodiment(s) for claim coverage, claim(s) for prosecution, or products or processes for coverage by claim(s) on behalf of a patentee or assignee/assignor of patentee’s rights.

The parties disagree as to whether Prosecution Activity, as defined above, should encompass participation in certain reexamination proceedings. Plaintiff contends

that Prosecution Activity should not encompass participation, on its behalf or on behalf of its assignee(s)/assignor(s), by its counsel in reexamination proceedings involving the patents-in-suit. Defendants contend that Prosecution Activity should encompass participation, on behalf of Plaintiff or Plaintiff's assignee(s)/assignor(s), by Plaintiff's counsel in reexamination proceedings involving the patents-in-suit. Should the Court ultimately agree with Plaintiff's position, any person who reviewed Prosecution Bar Materials (as that term is defined in paragraphs 2.A-B of Exhibit A) during the effective term of this Interim Protective Order shall not be subject to the terms of paragraph 2.C of Exhibit A with respect to reexamination proceedings involving the patents-in-suit. Should the Court ultimately agree with Defendants' position, any person who reviewed Prosecution Bar Materials (as that term is defined in paragraphs 2.A-B of Exhibit A) during the effective term of this Interim Protective Order shall be subject to the terms of paragraph 2.C of Exhibit A.

Nothing in this Interim Protective Order shall prevent any attorney from sending Prior Art to an attorney involved in patent prosecution for purposes of ensuring that such Prior Art is submitted to the U.S. Patent and Trademark Office (or any similar agency of a foreign government) to assist a patent applicant in complying with its duty of candor. Prior Art shall mean (i) publications, including patents and published patent applications; and (ii) materials or information regarding a third party system or product that was publicly known, on sale, or in public use as of the relevant priority date, unless such materials are designated as Prosecution

Bar Materials by that third party or are subject to confidentiality obligations owed to that third party.”

3. The parties’ respective consent to this Stipulation and Interim Protective Order has no relevance to the merits of the parties’ remaining disagreements over the terms of the permanent Protective Order. In litigating those remaining disagreements, no party shall support its position by referencing or relying upon the fact of another party’s agreement to the terms of this Stipulation and Interim Protective Order.

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SO ORDERED this _____ day of August, 2010.

UNITED STATES MAGISTRATE JUDGE