

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

STEVEN A. SILVERS, an individual,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

GOOGLE INC., a Delaware corporation,

Counterclaimant,

v.

STEVEN A. SILVERS, an individual;
STELOR PRODUCTIONS, INC., a Delaware
Corporation; STELOR PRODUCTIONS, LLC, a
Delaware limited liability company, and
STEVEN ESRIG, an individual,Counterdefendants.
_____**STELOR PRODUCTIONS, LLC'S REPLY TO SILVERS' RESPONSE
IN OPPOSITION TO MOTION FOR BENCH TRIAL AND MEMORANDUM**

Cross-Plaintiff Stelor Productions, LLC, hereby replies to Silvers' Opposition to Stelor's Motion for Bench Trial:

Silvers has no right to jury trial in this Phase I trial. The matter must be tried non-jury. The issue is not one of discretion or choice by the parties. As a matter of law, no legal right exists to a jury trial in this phase of the action.

Silvers' Opposition provides no authority to the contrary. First, Silvers improperly cites Florida law, even though the right to jury trial in a federal action – even on state law claims – is

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governed by federal law. *Ford v. Citizens and Southern National Bank*, 928 F.2d 1118, 1121 (11th Cir. 1991) (“Even though the ‘substantive dimension’ of a claim brought in federal court may be governed by state law, “the right to a jury trial in federal courts is to be determined as a matter of federal law.’ ”) (quoting *Simler v. Conner*, 372 U.S. 221, 222 (1964) (emphasis added).

The controlling federal law is uniform that the right to jury trial, even in a declaratory judgment action such as this, is determined by the nature of the relief sought. *Id*; *Leary v. Daeschner*, 349 F.3d 888, 908 (6th Cir. 2003). Here, Stelor seeks *purely equitable relief*, specifically declaratory and injunctive relief that Silvers’ termination is invalid, the Agreements are reinstated and in effect, and must be specifically performed. Stelor seeks no damages or other legal relief in Phase I; nor does Silvers.

Under these circumstances, the uniform weight of authority confirms that this trial must be *non-jury*. *E.g.*, *CBS Broadcasting, Inc., v. Echostar Comm. Corp.*, 450 F.3d 505, 518 (11th Cir. 2006) (“There is no right to a jury trial . . . when the plaintiffs seek purely equitable relief such as an injunction.”); *Ford*, 928 F. 2d at 1121-1122 (“purely equitable claims . . . are matters to be resolved by the court rather than a jury.”); *Leary*, 349 F.3d at 910 (since the plaintiffs only requested injunctive and declaratory relief, the court considered the claims equitable and, therefore, held that the Court – rather than a jury – must hear the case); *Owens-Illinois, Inc., v. Lake Shore Land Co.*, 610 F.2d 1185, 1189 (3rd Cir. 1979) (holding that a declaratory action was equitable as it sought to establish plaintiff’s rights under an agreement, and the only remedy sought was legal); *U.S. v. Barker*, 19 F. Supp. 2d 1380, 1385 (S.D. Ga. 1998) (stating that there is generally no right to a jury trial of historically equitable claims, such as specific performance and actions for injunctions).

WHEREFORE, as Stelor proceeds solely in equity in the Phase I trial, no right to jury trial exists. Accordingly, Stelor respectfully requests that the Court issue an Order confirming that the Phase I trial shall proceed as a non-jury bench trial.

Respectfully submitted,

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LLC and STEVEN ESRIG

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that on January 10, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Kevin C. Kaplan

SERVICE LIST

**STEVEN A. SILVERS, Plaintiff, v. GOOGLE INC.
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