

From: Alastair J. Warr [awarr@kdlegal.com]
Sent: Friday, October 29, 2010 8:28 AM
To: Vare, Todd; Barron, Jeff
Cc: Scott S. Morrisson
Subject: One Number v. Google
Attachments: 3033376_3.doc^.doc

Counsel:

I have attached a proposed case management plan for your review and comment. I also think that we should discuss a protective order; if you are in agreement with a protective order, I will draft one and forward it to you for review. Thank you.

Regards,

Ali

	
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ONE NUMBER CORPORATION)	
)	
Plaintiff / Counterclaim-Defendant,)	
)	Case No. 1:10-cv-0312-RLY-TAB
vs.)	
)	
GOOGLE, INC.)	
)	
Defendant / Counterclaimant.)	

[PROPOSED] JOINT CASE MANAGEMENT PLAN

One Number Corporation (“One Number”), by counsel, and Google, Inc. (“Google”), by counsel, submit this proposed Case Management Plan (“CMP”) under the premise that Google, Inc.’s two Requests for *Inter Parte* Re-examination (the “Requests”) for both of the patents-in-suit will be granted by the United States Patent & Trademark Office (“USPTO”). As of the filing of this proposed CMP, the USPTO has confirmed the validity of some of the patent claims and has granted in part Google's Requests.

I. Parties and Representatives

A. One Number Corporation (“One Number”)

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B. Google, Inc. ("Google")

Counsel: Todd G. Vare
Jeff M. Barron
Jennifer Schuster
BARNES & THORNBURG LLP
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Counsel shall promptly file a notice with the Clerk if there is any change in this information.

II. Synopsis of Case

A. One Number's Synopsis

The Court has diversity and subject matter jurisdiction. 28 U.S.C. §§ 1331, 1338, and 1400. The Court is a court of proper venue. 28 U.S.C. §§ 1391 and 1400. One Number owns all right, title and interest in United States Letters Patent Nos. 7,440,565 and 7,680,256 (respectively the “‘565 and ‘256 Patents”). One Number's

'565 and '256 Patents disclose and claim innovative telecommunications systems and methods that allow users to obtain a primary contact number that is not tied to a specific location or phone, but rather is virtual telephone number that is associated with the individual owning the primary contact number. The systems are capable of being configured, using a control panel, to allow the owner of the primary contact number to have multiple telecommunication devices (e.g. - home phone, work phone, cell phone, etc.) simultaneously ring if the primary contact number associated with the user is called. The control panel also allows the user to add, delete, or modify numbers that are contained in the calling list, allows users to temporarily deactivate numbers in the calling list, and provides various other patented features.

Google operates a system it calls "Google Voice" that One Number claims was copied from its patented technology. Google is using One Number's patented technology without authorization, permission or license. One Number claims Google is infringing the '565 and '256 Patents. One Number is entitled to injunctive relief and damages under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

B. Google's Synopsis

[B&T to complete]

III. Pretrial Pleadings and Disclosures

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before November 12, 2010.
- B. One Number shall file preliminary witness and exhibit lists on or before January 14, 2011.
- C. Google shall file preliminary witness and exhibit lists on or before February 14, 2011.
- D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before January 14, 2011.
- E. The party having the burden of proof on a claim, counterclaim or defense shall disclose the name, address, and curriculum vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) on or before May 14, 2012. However, if such party uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 60 days prior to the summary judgment deadline.
- F. The party defending a claim, counterclaim or defense shall disclose the name, address, and curriculum vita of all expert witnesses, and shall serve the rebuttal report required by Fed. R. Civ. P. 26(a)(2)(B) within 30 days after receipt of the expert witness disclosure identified in (E) preceding; or if none, such party shall make its expert disclosure on or before June 14, 2012. However, if such party uses expert witness testimony at the summary

judgment stage, such disclosures must be made no later than 30 days prior to the summary judgment deadline.

G. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than October 17, 2012. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their response brief within the briefing schedule established by Local Rule 56.1.

H. All parties shall file and serve their final witness and exhibit lists on or before October 22, 2012.

I. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.

J. The parties have discussed preservation and disclosure of electronically stored discovery information (“ESI”), including a timetable for making the materials available to the opposing party. The parties have and shall continue to suspend archiving of ESI that is relevant to the issues or reasonably calculated to lead to the discovery of admissible evidence within the meaning of Rule 26(b). Each party will bear its own costs in connection with producing documents and things to the other party.

The parties shall provide loose native files and/or email files on an acceptable external media (see list below). Emailing files as attachments is

not an acceptable delivery method. All files shall be copied to the external media as to not alter or modify each file's associated metadata. All encryption, passwords, or any other data or file locking techniques shall be removed prior to delivery.

LOOSE NATIVE FILES. These are files that might be saved directly on a custodian's local hard drive, on a public network drive or any other location the custodian has permission to access. These files might include, among others, Microsoft Word for Windows (.DOC or DOCX), Microsoft Excel (.XLS or .XLSX), Microsoft PowerPoint (.PPT or PPTX), Adobe Acrobat (.PDF), HTML (.HTM, .HTML), XML (.XML), WordPerfect (WP or WPD), Standard Text Files (.TXT), Rich Text Files (.RTF).

EMAIL FILES. All email personal folder file types should either be in a Microsoft Outlook (.PST) or Lotus Notes (.NSF) file format. Loose email files should be in a Microsoft Outlook Message Format (.MSG). All email messages, whether in a personal folder or loose, shall contain any and all original attachments and metadata information.

ACCEPTABLE EXTERNAL MEDIA. USB attached external hard drive, USB attached Flash Drive, DVD, or CD.

Documents may be marked "confidential", "attorneys' eyes only" or "privileged" after inspection by opposing counsel without resulting in the waiver of those claims. The parties have agreed that they shall have thirty

(30) days after receipt of deposition transcripts to mark portions thereof or exhibits thereto "confidential" or "attorneys' eyes only".

IV. Discovery and Dispositive Motions

Counsel for the parties have explored whether this case is appropriate for such dispositive motions (including specifically motions for summary judgment), whether expert witnesses will be needed, and how long discovery should continue.

One Number anticipates that it will file a motion for partial summary judgment relating to the liability of Google for infringement of the patents-in-suit. One Number reasonably believes that discovery will show that no material facts will be in dispute as it relates to the literal infringement, or in the alternative infringement under the doctrine of equivalents, of one or more claims of the patents-in-suit. One Number also anticipates the filing of claim construction briefs that will advance the litigation. Due to the pending Re-exams, the parties agree that this case is appropriate for Track 2.

Google

- A. Select the track that best suits this case: **Track 2:** Dispositive motions are expected and shall be filed by July 15, 2012; non-expert witness discovery and discovery relating to liability issues shall be completed by June 15, 2012; expert witness discovery and discovery relating to damages shall be completed by December 14, 2012.

V. Pre-Trial/Settlement Conferences

The parties believe that it would be helpful to hold periodic conferences with the Magistrate Judge or District Judge by telephone or in person. At any time, any party may call the Judge's Staff to request a conference, or the Court may *sua sponte* schedule a conference at any time.

VI. Trial Date

The parties request a trial date in February 2013. The trial is by jury and is anticipated to take 7 days.

VII. Referral to Magistrate Judge

At this time, all parties do not consent to refer this matter to the Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rules of Civil Procedure 73 for all further proceedings including trial.

VIII. Required Pre-Trial Preparation

A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. File a list of witnesses who are expected to be called to testify at trial.
2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel.

Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.

3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
 - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.);
or
 - b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a

motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.

2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

Respectfully submitted,

/s/ Alastair J. Warr
Alastair J. Warr
Scott S. Morrisson
Dean E. McConnell

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Attorneys for Google, Inc.

_____ PARTIES APPEARED IN PERSON/BY COUNSEL ON
FOR A PRETRIAL/STATUS CONFERENCE.

_____ APPROVED AS SUBMITTED.

_____ APPROVED AS AMENDED.

_____ APPROVED AS AMENDED PER SEPARATE ORDER.

_____ APPROVED, BUT ALL OF THE FOREGOING DEADLINES
ARE
SHORTENED/LENGTHENED BY _____ MONTHS.

_____ APPROVED, BUT THE DEADLINES SET IN SECTION(S)
_____ OF THE PLAN IS/ARE
SHORTENED/LENGTHENED BY _____ MONTHS.

_____ THIS MATTER IS SET FOR TRIAL BY
ON _____. FINAL PRETRIAL
CONFERENCE IS SCHEDULED FOR
_____ AT _____.M.,
ROOM _____.

_____ A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS
CASE FOR _____ AT _____.M. COUNSEL
SHALL
APPEAR:

_____ IN PERSON IN ROOM _____; OR

_____ BY TELEPHONE, WITH COUNSEL FOR
INITIATING THE CALL TO ALL OTHER PARTIES AND
ADDING THE COURT JUDGE AT (____) _____;
OR

_____ BY TELEPHONE, WITH COUNSEL
CALLING THE JUDGE'S STAFF AT (____)
_____; OR

_____ DISPOSITIVE MOTIONS SHALL BE FILED NO LATER
THAN

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

Approved and So Ordered.

Date

U. S. District Court
Southern District of Indiana

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