

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FUNCTION MEDIA, L.L.C.,

v.

GOOGLE INC. AND YAHOO!, INC.

Civil Case No. 2:007-CV-279 (TJW)

GOOGLE INC.'S INITIAL DISCLOSURES

Google provides its initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and the Court's January 24, 2008 Discovery Order based on the information reasonably available to Google at this time. Google reserves its right to supplement these disclosures, including after Google completes its review and analysis of Function Media's voluminous infringement contentions. By making these disclosures, Google does not intend to waive any applicable privilege or work product protection and expressly reserves its right to object to the production of any of the information identified herein on those grounds. Google also reserves its right to object to the admissibility of any of the information disclosed below. Subject to these reservations, Google provides the following information:

A. Names of the Parties

The correct name of Google is "Google Inc." (no comma). Google believes that the correct names have been used for the other parties as set forth in the complaint.

B. Potential Parties

Google is continuing its investigation into this issue and reserves the right to identify any additional parties to this suit on or before the deadline for adding parties set forth in the Court's January 24, 2008 Docket Control Order.

C. Google's Legal Theories and Factual Bases

1. Failure to State a Claim

Because (a) Google has not directly or indirectly infringed, nor contributed to or induced the infringement of, either literally or by the doctrine of equivalents, any valid and enforceable claim of any of the patents-in-suit, (b) Google has not committed any acts in violation of 35 U.S.C. § 271, (c) the patents-in-suit are invalid for failing to satisfy the conditions of patentability found in 35 U.S.C. §§ 102, 103, and 112, and (d) at least two of the patents-in-suit are unenforceable, Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted.

2. Noninfringement

Google has not and does not directly or indirectly infringe, nor contributed to or induced the infringement of, either literally or by the doctrine of equivalents, any valid and enforceable claim of U.S. Patent Nos. 6,446,045, 6,829,587, 7,240,025, and 7,249,059 (collectively the "patents-in-suit"), and has not committed any acts in violation of 35 U.S.C. § 271.

Google does not directly or indirectly infringe any valid or enforceable claim of the patents-in-suit because not all of the limitations as properly construed are performed or present in the alleged infringing instrumentalities offered or alleged to be offered by Google, either literally or under the doctrine of equivalents. Google's claim construction positions will be specified as required under the Local Patent Rules and the Court's January 24, 2008 Docket Control Order.

3. Invalidity

The patents-in-suit are invalid for failing to satisfy the conditions of patentability found in 35 U.S.C. §§ 102, 103, and 112. Google's invalidity contentions will be specified as required under the Local Patent Rules and the Court's January 24, 2008 Docket Control Order.

4. Inequitable Conduct

U.S. Patent Nos. 7,240,025 and 7,249,059 are unenforceable pursuant to 37 C.F.R. § 1.56 and the doctrine of inequitable conduct for the reasons stated in Google's September 24, 2007 Answer, Defenses, and Counterclaims in Response to Plaintiff's First Amended Complaint.

5. Claim's Barred

As shown in the prosecution history of the patents-in-suit, Google alleges that Plaintiff's claims are barred in whole or in part based on prosecution history estoppel and/or prosecution history disclaimer.

6. Cost of Defense

Google should receive its attorneys fees and defense costs because this case is exceptional in that the patents-in-suit are not infringed, invalid, and at least two of the asserted patents are unenforceable due to inequitable conduct.

D. Individuals Likely to Have Discoverable Information

At this time, Google believes the following individuals are likely to have discoverable information that Google may use to support its claims and/or defenses. Some of the individuals identified below are Google employees or were Google employees during the relevant time period when they may have gained knowledge regarding the identified subjects. Plaintiffs may contact them only through Google's attorneys of record.

Name	Contact Information	Subjects
Virtual Cities, LLC and/or Virtual Cities Inc.	Known to plaintiff	Patents-in-suit, prosecution, conception, reduction to practice, design, development, embodiments, licensing, commercial success, predecessors in interest, and related issues
O.N.S., Inc.	Known to plaintiff	Patents-in-suit, prosecution, conception, reduction to practice, design, development, embodiments, licensing, commercial success, predecessors in interest, and related issues
Michael Coker, Esq.	Known to plaintiff	Patents-in-suit, predecessors in interest, and related issues
Lucinda Stone	Known to plaintiff	Patents-in-suit, prosecution, conception, reduction to practice, design, development, embodiments, licensing, commercial success, predecessors in interest, and related issues
Michael Dean	Known to plaintiff	Patents-in-suit, prosecution, conception, reduction to practice, design, development, embodiments, licensing, commercial success, predecessors in interest, and related issues
Kenneth S. Roberts, Esq.	Known to plaintiff	Prior art, prosecution of patents-in-suit, and related issues
Henry Croskell, Esq.	Known to plaintiff	Prosecution of patents-in-suit, and related issues
Orrick, Herrington & Sutcliffe LLP	Known to plaintiff	Prior art, prosecution of patents-in-suit, and related issues
Arnold Behrman	301 Pleasant Valley Rd. Morganville, NJ 07751 (732) 946-3304	Prior art, prosecution of patents-in-suit
DoubleClick Inc. (current and former employees and related entities, e.g., NetGravity, L90)	A company recently acquired by Google Inc., contact may be made through counsel for Google Inc.	Prior art
Microsoft Corporation (current and former employees and related entities, e.g., Accipiter, Atlas, Engage, Go Toast)	One Microsoft Way Redmond, WA 98025 (800) 642-7676	Prior art, Internet Explorer APIs, commerce server products

Name	Contact Information	Subjects
CMGI Corporate (current and former employees and related entities, e.g., Accipiter, AdForce, AdKnowledge, Engage, ClickOver, Flycast Communications, FocalLink Media Services)	11000 Winter Street, Suite 4600 Waltham, MA 02451 (781) 663-5001	Prior art
Mozilla Foundation	1981 Landings Drive Building K Mountain View, CA 94043 (650) 387-0625	Mozilla FireFox APIs
Association for Computing Machinery (ACM)	1515 Broadway New York, NY 10036 (212) 869-7440	Prior art
IEEE	3 Park Avenue, 17th Fl. New York, NY 10016 (212) 419-7900	Prior art
WPP Group plc (current and former employees and related entities, e.g., 24/7 Media, Real Media)	125 Park Avenue New York, NY 10017 (212) 632-2200	Prior art
Internet Advertising Bureau	116 East 27 th Street, 7 th Floor New York, NY 10016 (212) 380-4700	Prior art
Internet Archive	116 Sheridan Avenue The Presidio of San Francisco San Francisco, CA 94129 (415) 561-6767	Prior art
Omnicom Group (current and former employees and related entities, e.g. BBDO)	437 Madison Avenue New York, NY 10022 (212) 415-3600	Prior art
Yahoo! Inc. (current and former employees and related entities, e.g. , Overture Services, GoTo.com, etc.)	701 First Street Sunnyvale, CA 94089 (408) 349-3300	Prior art
Match.com (current and former employees and related entities, e.g. Electric Classifieds, Inc.	Post Office Box 25472 Dallas, TX 75225 (214) 265-3039	Prior art
Amazon.com, Inc. (current and former employees and related entities)	1200 12 th Ave., S, Ste. 1200 Seattle, WA 98144 (206) 266-1000	Prior art
Travelocity.com, L.P.	3150 Sabre Drive	Prior art

Name	Contact Information	Subjects
(current and former employees and related entities)	Southlake, TX 76092 (682) 605-1000	
Expedia, Inc. (current and former employees and related entities)	3150 139 th Ave., SE Bellevue, WA 98005 (800) 397-3342	Prior art
Information Access Technologies, Inc. (current and former employees and related entities)	1500 Oliver Road, Ste. K Fairfield, CA 94534 (510) 704-0160	Prior art
Newspaper National Network LP (current and former employees and related entities)	20 W. 33 rd Street New York, NY 10001 (866) 451-4636	Prior art
Nestor, Inc. (current and former employees and related entities)	42 Oriental Street Providence, RI 02908-3238 (401) 274-5658	Prior art
ad pepper media USA, LLC (current and former employees and related entities)	108 West 39th Street, Suite 1000 10018 New York (212) 686-1000	Prior art
ad pepper media International N.V. (current and former employees and related entities)	Frankenstraße 150 C FrankenCampus 90461 Nürnberg 49 (0) 911/ 92 90 57-0	Prior art
Eclipse Services (current and former employees and related entities)	P.O. Box 2075 Upper Darby, PA 19082 (610) 352-6800	Prior art
AdStar, Inc. (current and former employees and related entities)	4553 Glencoe Ave., Ste. 300 Marina del Rey, CA 90292 (310) 577-8255	Prior art
Priceline.com, Inc. (current and former employees and related entities)	800 Connecticut Ave., Norwalk, CT 06854	Prior art
Arthur Britto	2536 College Avenue, #4A Berkeley, CA 94704 (510) 704-0160	Prior art
Christopher Evans	8354 Six Forks Road, #204 Raleigh, NC 27615 (919) 844-9991	Prior art
Roy Fielding	Represented by counsel for Google Inc. 80 Corisica Drive Newport Beach, CA 92660 (949) 573-4007	Prior art

Name	Contact Information	Subjects
Sandilee Mathers	Represented by counsel for Google Inc. 2536 Santa Ana, #2 Costa Mesa, CA 92627 (949) 574-1984	Prior art
Drew Schulz	Represented by counsel for Google Inc. 267 Kelton Avenue San Carlos, CA 94070 (650) 274-7008	Prior art
Robbin Zeff	3111 20 th Street, N. C542 Arlington, VA 22201 (703) 966-2457	Prior art
Tom Shields	1205 Drake Avenue Burlingame, CA 94010 (415) 699-3474	Prior art
Phillip Lindsay	Google Inc. 19540 Jamboree Road, 2 nd Fl. Irvine, CA 92612	Prior art
Mark Scheele	Google Inc. 19540 Jamboree Road, 2nd Fl. Irvine, CA 92612	Prior art
Brian Axe	Google Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043	Accused products
Richard Holden	Google Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043	Accused products
Adam Leader	Google Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043	Accused products
Angela Lai	Google Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043	Accused products
Scott Bonneau	Google Inc. 76 Ninth Ave, 4 th Fl. New York, NY 10011	Accused products
Jeffrey Dean	Google Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043	Accused products
Peter Kappler	Google Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043	Accused products
Sridhar Ramaswamy	Google Inc.	Accused products

Name	Contact Information	Subjects
	1600 Amphitheatre Parkway Mountain View, CA 94043	
Jason Miller	Google Inc. 76 Ninth Ave, 4th Fl. New York, NY 10011	Accused products

E. Indemnity and Insurance Agreements

Google is not aware at this time of any pertinent indemnity or insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in this action or reimburse for payments made to satisfy the judgment.

F. Settlement Agreements

Google is not aware at this time of any pertinent settlement agreements relevant to the subject matter of this action.

G. Statement of Parties

Google is not aware at this time of any pertinent statements by the parties.

H. Documentary Evidence

The following documents, tangible things, and data compilations are in Google's possession, custody, or control and may be used to support its claims or defenses where reasonably accessible. Not all information falling under the categories below is reasonably accessible, in particular certain electronically stored information falling under categories 3 and 5. The information is believed to be located through Google's corporate headquarters at 1600 Amphitheatre Parkway, Mountain View, California 94043 or through its counsel of record unless otherwise specified.

1. The patents-in-suit.
2. Files histories of the patents-in-suit.

3. Documents and things relating to the conception, design, development, operation, and performance of Google Ad Sense, Google Ad Words, Google Print Ads, and Google My Client Center.

4. Prior art cited in the patents-in-suit, and other documents and things that may be prior art to the patents-in-suit.

5. Documents and things regarding Google's marketing, sales, and revenue.

6. Google's publicly available website (<http://www.google.com>) contains and indexes information pertaining to Google's history, products, services, marketing, financial performance, and prior art information (e.g. Google Groups) that may be relevant to this case and is just as easily obtained by Function Media as by Google.

Dated: March 24, 2008

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Jason W. Wolff

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Counsel for Defendant and Counter-Claimant
GOOGLE INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served by email on March 24, 2007 to counsel of record as earlier agreed between the parties.

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