

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

FUNCTION MEDIA, L.L.C.,	§	
	§	
Plaintiff,	§	Civil Action No. 2007-CV-279
	§	
vs.	§	
	§	
GOOGLE, INC. AND YAHOO, INC.,	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

**UNOPPOSED MOTION FOR ENTRY OF ORDER
REGARDING CONDUCT OF EXPERT DEPOSITIONS**

The parties in this case each designated a single expert on the issues of both infringement and validity (Dr. Rhyne for Function Media, and Mr. Lanning for Google). The parties have agreed that each side's expert will be deposed the week of December 28 on issues for which they bear the burden of proof (infringement for Function Media, and validity for Google), and then the week of January 4 on issues for which the other party bears the burden (validity for Function Media and infringement for Google).

It would frustrate the parties' agreed schedule for one side to ask validity questions at an infringement deposition, or infringement questions at a validity deposition. The Local Rules of the Eastern District, however, strictly limit the range of permissible objections at deposition. Without modification of those Rules to allow objections and instructions not to answer, therefore, the parties' agreement as to the staging of expert discovery could not be enforced.

Accordingly, the parties request that the Court enter the attached agreed order. The order would create a limited exception to the Local Rules that would permit objections and

instructions not to answer to questions on expert topics that are not fairly the subject of the current deposition.

Respectfully submitted,

/s/ Joseph S. Grinstein
Max L. Tribble, Jr.
State Bar No. 20213950
Email: mtribble@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas, 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666

Lead Attorney for Plaintiff

OF COUNSEL:

Joseph S. Grinstein
State Bar No. 24002188
Aimée Robert
State Bar No. 24046729
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002-5096
Telephone: (713) 651-9366
Fax: (713) 654-6666
jgrinstein@susmangodfrey.com
arobert@susmangodfrey.com

Jeremy Brandon
State Bar No. 24040563
Warren T. Burns
State Bar No. 24053119
SUSMAN GODFREY L.L.P.
901 Main Street, Suite 5100
Dallas, Texas 75202-3775
Telephone: (214) 754-1900
Fax: (214) 754-1933
jbrandon@susmangodfrey.com
wburns@susmangodfrey.com

Justin A. Nelson
State Bar No. 24034766
SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, Washington 98101-3000
Telephone: (206) 516-3880
Fax: (206) 516-3883
jnelson@susmangodfrey.com

Robert Christopher Bunt
State Bar No. 00787165
Charles Ainsworth
PARKER, BUNT & AINSWORTH, P.C.
100 East Ferguson, Suite 1114
Tyler, Texas 75702
Telephone: (903) 531-3535
Fax: (903) 533-9687
rbunt@pbatyler.com
charley@pbatyler.com

S. Calvin Capshaw
State Bar No. 037839000
Elizabeth L. DeRieux
State Bar No. 05770585
D. Jeffrey Rambin
CAPSHAW DERIEUX, LLP
Energy Centre
1127 Judson Road, Suite 220
P.O. Box 3999 (75606-3999)
Longview, Texas 75601-5157
Telephone: (903) 236-9800
Fax: (903) 236-8787
ccapshaw@capshawlaw.com
ederieux@capshawlaw.com
jrambin@capshawlaw.com

Otis Carroll
State Bar No. 03895700
Collin Maloney
State Bar No. 00794219
IRELAND, CARROLL & KELLEY, P.C.
6101 S. Broadway, Suite 500
Tyler, Texas 75703
Telephone: (903) 561-1600

Fax: (903) 581-1071
otiscarroll@icklawn.com
cmaloney@icklawn.com

CERTIFICATE OF CONFERENCE

Counsel for plaintiff has conferred with counsel for defendant on December 28, 2009 and counsel for defendant is unopposed as to the disposition of the matters raised in this motion.

/s/ Joseph S. Grinstein
Joseph S. Grinstein

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2009, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Joseph S. Grinstein
Joseph S. Grinstein