

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

FUNCTION MEDIA, L.L.C.

*Plaintiff,*

v.

GOOGLE, INC. and YAHOO!, INC.,

*Defendant.*

Civil Action No. 2:07-CV-279-TJW

**JURY DEMANDED**

**JOINT MOTION TO ADOPT PROPOSED DOCKET CONTROL ORDER AND PROPOSED  
DISCOVERY ORDER**

In accordance with the Court's instructions at the January 8, 2008 Status Conference, the parties jointly and timely submit (a) an agreed proposed Docket Control Order (Exhibit A) and (b) an agreed proposed Discovery Order (Exhibit B). The parties jointly respectfully request that Exhibit A and Exhibit B be adopted by the Court in their entirety.

For the Court's convenience, a master schedule of case events (as memorialized in Exhibit A and Exhibit B) is included below. Those case events which are highlighted in yellow below were not included in the blank forms provided by the Court at the January 8, 2008 Status Conference, but the parties respectfully request that these case events be included in Exhibit A or Exhibit B, as applicable. Finally, please note that the parties have agreed to the discovery limitations set forth in paragraph 4 of the proposed Discovery Order (Exhibit B), and these proposed discovery limitations are also set forth below.

STEP	EVENT	DUE DATE
1.	Deadline to submit Agreed Protective Order to Court	February 25, 2008
2.	Comply with P.R. 3-1: Plaintiff's Disclosure of Asserted Claims and Infringement Contentions.	March 3, 2008
3.	Comply with P.R. 3-2: Plaintiff's initial document production with regard to categories set forth in P.R. 3-2	March 3, 2008

STEP	EVENT	DUE DATE
4.	Deadline to submit Initial Disclosures by all parties: -Paragraph 1(a)-(g) disclosures from Discovery Order	March 24, 2008
5.	Deadline to join additional parties	September 30, 2008
6.	Deadline to submit computation of damages pursuant to Paragraph 3(c) of Discovery Order	April 30, 2008
7.	Deadline for parties to produce all documents, electronically stored information, and tangible things that are relevant to the pleaded claims or defenses involved in this action, except to the extent these disclosures are affected by the times limits set forth in the Patent Rules for the E.D. of Texas (as required by Discovery Order at Paragraph 3(b))	June 30, 2008
8.	Deadline for producing the documents and authorizations described in Local Rule CV-34	April 30, 2008
9.	Comply with P.R. 3-3: Defendants' Invalidity Contentions.	May 30, 2008
10.	Defendants' document production under P.R. 3-4	May 30, 2008
11.	Deadline to exchange privilege logs	June 30, 2008
12.	Deadline for letter to the Court stating that there are no disputes as to claims of privileged documents	August 29, 2008
13.	Comply with P.R. 4-1: Exchange Proposed Terms and Claim Elements for Construction by all parties	October 1, 2008
14.	Comply with P.R. 4-2: Exchange Preliminary Claim Constructions and Identification of Extrinsic Evidence	December 19, 2008
15.	Comply with P.R. 4-3: Joint Claim Construction and Prehearing Statement	January 30, 2009
16.	Parties to exchange declarations from experts, if any, regarding claim construction issues	February 20, 2009
17.	Deadline to amend pleadings without leave of court (unless the amendment seeks to add a new patent in suit)	April 20, 2009
18.	Deadline to respond to amended pleadings	May 6, 2009
19.	Close of claim construction discovery	March 27, 2009
20.	Comply with P.R. 4-5(a): Plaintiff's Opening Claim Construction Brief	April 9, 2009
21.	Comply with P.R. 4-5(b): Defendants' Opposing Claim Construction Brief	April 30, 2009

STEP	EVENT	DUE DATE
22.	Comply with P.R. 4-5(c): Plaintiff's Reply Claim Construction Brief	May 13, 2009
23.	Technical Tutorials on DVD	July 29, 2009
24.	Comply with P.R. 4-5(d): Parties shall jointly submit a claim construction chart on computer disk in WordPerfect format or in such other format as the Court may direct.	July 31, 2009
25.	Claim Construction Hearing	August 12, 2009 at 9:00 am in Marshall, Texas
26.	Party with burden of proof to designate Expert Witnesses other than claim construction; Expert reports due	<b>15 days after claim construction ruling</b>
27.	Comply with P.R. 3-8: Production of Opinions of Counsel and related documents; privilege logs related to subject matter of opinions of counsel	<b>15 days after claim construction ruling</b>
28.	Designate Rebuttal Expert Witnesses other than claim construction; Expert reports due	<b>30 days after claim construction ruling</b>
29.	Close of discovery	September 18, 2009
30.	Plaintiff to identify trial witnesses	September 18, 2009
31.	Mediation to be completed	October 2, 2009
32.	Defendants to identify trial witnesses	October 2, 2009
33.	Deadline for filing dispositive motions and motions requiring a hearing (including <i>Daubert</i> motions).	October 2, 2009
34.	Deadline for Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings	October 2, 2009
35.	Response to Dispositive Motions (including <i>Daubert</i> Motions) NOTE: Responses to Dispositive Motions filed prior to the Dispositive Motions deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV-7(e)	October 24, 2009
36.	Pre-trial disclosures (witness list, depo designations, exhibit list)	October 2, 2009 or 30 days before jury selection, whichever

STEP	EVENT	DUE DATE
		is later
37.	Objections to pre-trial disclosures	October 16, 2009 or 16 days before jury selection, whichever is later.
38.	Joint Pretrial Order, Joint Proposed Jury Instructions, and Form of the Verdict	October 22, 2009, or 10 days before jury selection, whichever is later
39.	<i>Motions in limine</i> due	October 2, 2009
40.	Responses to <i>Motions in limine</i> due	October 24, 2009
41.	Deadline to confer and advise the Court which motions <i>in limine</i> are agreed to	3 pm Central on October 26, 2009, or 3 pm on the day before the Pretrial Conference, whichever is later
42.	Pretrial Conference	October 27, 2009 at 9:00 am in Marshall, Texas
43.	Jury Selection	November 2, 2009 in Marshall, Texas

The parties further state as follows:

P.R. 2-1(a)(2)	The parties agree that there will be no live testimony at the claim construction hearing.
P.R. 2-1(a)(3)	The parties' agreements are detailed in the above chart.
P.R. 2-1(a)(4)	Each side will have equal time at the claim construction hearing. Plaintiff will argue first, followed by Defendants, followed by Plaintiff to the extent Plaintiff has reserved time for rebuttal. Plaintiff's rebuttal time will be determined by Judge Ward's and Judge Everingham's standard procedure for same.
P.R. 2-1(a)(5)	At this time, the parties do not believe that a claim construction prehearing conference is necessary.
P.R. 2-1(a)(6)	This case will involve a significant volume of confidential information, and the parties request authorization to file that material under seal.

With respect to the Discovery Order, the parties agree as follows:

“The discovery in this cause is limited to the disclosures described in paragraphs 1 and 3 of the Discovery Order together with the following:

(a) Interrogatories: Plaintiff shall have 45 interrogatories, of which 15 interrogatories may be served on each defendant, and 15 interrogatories may be served jointly on the defendants. The two named defendants shall have, collectively: 45 interrogatories, of which 15 shall be common to the defendants.

(b) Requests for Admission: Plaintiff shall have 90 requests for admission, of which 30 requests for admission may be served on each defendant, and 30 requests for admission may be served jointly on the defendants. The two named defendants shall have, collectively: 90 requests for admission, of which 30 shall be common to the defendants.

(c) the depositions of the parties pursuant to F.R.C.P. 30(b)(6);

(d) depositions on written questions of custodians of business records for third parties;

(e) 120 hours of nonparty fact witness depositions (i.e., non 30(b)(6) depositions) per side;

(f) depositions of each testifying expert tendered by a party, per the Federal Rules of Civil Procedure; and

(g) 6 expert witnesses per side, not including experts on claim construction issues.

‘Side’ means a party or a group of parties with a common interest. All discovery to which defendants are entitled shall be divided equally between each defendant, unless the defendants agree otherwise. Any party may move to modify these limitations for good cause.”

Dated: January 22, 2008

Respectfully submitted,

By: /s/ Elizabeth L. DeRieux with permission  
by Robert Christopher Bunt

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**CERTIFICATE OF SERVICE**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 22nd day of January, 2008, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Robert Christopher Bunt  
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