

**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. 2:07-cv-279 (CE)

JURY TRIAL DEMANDED

DOCKET CONTROL ORDER

In accordance with the case status conference held herein on the 8th day of January, 2008, it is hereby

ORDERED that the following schedule of deadlines is in effect until further order of this court:

November 2, 2009

Jury Selection - 9:00 a.m. in **Marshall, Texas**

October 27, 2009

Pretrial Conference -9:00 a.m. in
Marshall, Texas

October 22, 2009, or 10 days
before jury selection, whichever
is later

Joint Pretrial Order, Joint Proposed Jury Instructions
and Form of the Verdict.

October 24, 2009

Responses to Motions in *Limine* Due

The parties are ordered to **meet and confer** on their respective motions *in limine* and **advise the court of any agreements in this regard by 3:00 p.m. the business day before** the pretrial conference. The parties shall limit their motions *in limine* to those issues which, if improperly introduced into the trial of the case would be so prejudicial that the court could not alleviate the prejudice with appropriate instruction(s).

October 2, 2009

Motions in *Limine* Due

October 2, 2009	Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Susan Simmons, at lssimmons@yahoo.com .
October 24, 2009	Response to Dispositive Motions (including Daubert motions). ¹ Responses to dispositive motions filed prior to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV-7(e). Motions for Summary Judgment shall comply with Local Rule CV56.
October 2, 2009	Deadline for filing Dispositive Motions and any other motions that may require a hearing (including <i>Daubert</i> motions)
October 2, 2009	Mediation to be completed
October 2, 2009	Defendant to Identify Trial Witnesses
September 18, 2009	Plaintiff to Identify Trial Witnesses
September 18, 2009	Discovery Deadline
_____	30 Days after claim construction ruling Designate Rebuttal Expert Witnesses other than claims construction Expert witness report due Refer to Discovery Order for required information.
_____	15 Days after claim construction ruling Comply with P.R. 3-8

¹ The parties are directed to Local Rule CV-7(d), which provides in part that "[i]n the event a party fails to oppose a motion in the manner prescribed herein the court will assume that the party has no opposition." Local Rule CV-7(e) provides that a party opposing a motion has **12 days, in addition to any added time permitted under Fed. R. Civ. P. 6(e)**, in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision.

15 Days after claim construction ruling
Party with the burden of proof to designate Expert
Witnesses other than claims construction
Expert witness report due
Refer to Discovery Order for required information.

August 12, 2009 Claim construction hearing 9:00 a.m., **Marshall, Texas**

July 31, 2009 Comply with P.R. 4-5(d)

July 29, 2009 Technical Tutorials on DVD to Court

May 13, 2009 Comply with P.R. 4-5(c).

April 30, 2009 Comply with P.R. 4-5(b).

April 9, 2009 Comply with P.R. 4-5(a).

March 27, 2009 Discovery deadline – claims construction issues

May 6, 2009 Respond to Amended Pleadings

April 20, 2009 Amend Pleadings
(It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings except to the extent the amendment seeks to add a new patent in suit. It is necessary to file a Motion for Leave to Amend after the amended pleadings date set forth herein.)

February 20, 2009 Parties to exchange declarations from experts, if any, regarding claim construction issues

January 30, 2009 Comply with P.R. 4-3.

December 19, 2008	Comply with P.R. 4-2.
October 1, 2008	Comply with P.R. 4-1.
August 29, 2008	Letter to the Court stating that there are no disputes as to claims of privileged documents (if there are no such disputes)
June 30, 2008	Privilege Logs to be exchanged by parties.
September 30, 2008	Join Additional Parties

OTHER LIMITATIONS

1. All depositions to be read into evidence as part of the parties' case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence.
2. The Court will refuse to entertain any motion to compel discovery filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Eastern District of Texas Local Rule CV-7(h).
3. The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:
 - (a) The fact that there are motions for summary judgment or motions to dismiss pending;
 - (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
 - (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.