

EXHIBIT D

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VIA EMAIL

January 4, 2008

Max L. Tribble, Jr.
Joseph S. Grinstein
Susman Godfrey LLP
1000 Louisiana, Suite 5100
Houston TX 77002

Re: Function Media, LLC v. Google Inc. and Yahoo!, Inc.
USDC-E.D. Texas. - C.A. No. 2-007-CV-279 (TJW)



ATLANTA

AUSTIN

BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Dear Counsel:

With the status conference rapidly approaching, we wanted to take the opportunity to write to you in order to help facilitate the prompt production of documents by Function Media, LLC ("Function Media" or "Plaintiff"). Accordingly, Google identifies the following non-exclusive categories of documents it expects to be included as part of the disclosures required by the Local Rules of the Eastern District of Texas, Federal Rule of Civil Procedure 26, and Judge Ward's discovery order:

1. All documents and things identified or referred to in, or relied upon to prepare, Function Media's disclosures pursuant to P.R. 3-1 and 3-2.
2. All documents and things relating to the patents-in-suit.
3. All documents and things identified in, or which provide support or a basis for (a) Plaintiff's original complaint, (b) Plaintiff's amended complaint(s), and/or (c) responses to any discovery requests.
4. All documents and things relating to the assignment, ownership, or any other legal or equitable interest in and/or license of or attempt to license any of the patents-in-suit or any other of Function Media's patents.
5. All documents and things relating to the relationship between Function Media, on the one side, and the following persons and/or entities, on the other side: (a) any predecessors in interest to the patents-in-suit, (b) Lucinda Stone, (c) Michael Dean, (d) Virtual Cities, Inc., (e) virtualcities.com, (f) Virtual Cities, LLC, (g) 1st Traveler's Choice, and (h) O.N.S., Inc.

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6. All documents and things relating to the relationship between or among the following persons and/or entities: (a) any predecessors in interest to the patents-in-suit, (b) Lucinda Stone, (c) Michael Dean, (d) Virtual Cities, Inc., (e) virtualcities.com, (f) Virtual Cities, LLC, (g) 1st Traveler's Choice, (h) Function Media, and (i) O.N.S., Inc.
7. All documents and things relating to any alleged invention of any of the claims in the patents-in-suit, including any alleged conception, reduction to practice, and/or diligence therein, including but not limited to correspondence, internal memoranda, notebooks, drawings, specifications, and source code, as well as information to identify the alleged contribution of each named inventor on the patents-in-suit.
8. One working sample and/or copy of all alleged reductions to practice or working embodiments of any claims in the patents-in-suit by Function Media, its predecessors-in-interest, and/or the named inventors.
9. All documents and things relating to the prosecution history of the patents-in-suit and all patent applications and/or patents, whether abandoned, pending, or issued, claiming priority to any patent application that is common to any of the patents-in-suit, including but not limited to materials involving the U.S. Patent & Trademark Office, materials or information exchanged with or by any third parties, and internal correspondence and memoranda.
10. All documents and things relating to the success or lack of success of any embodiment or reduction to practice of the patents-in-suit, including but not limited to financial information.
11. All documents and things that relate to searches, investigations, or evaluations as to the novelty, patentability, validity, enforceability, or scope of the claims of the patents-in-suit or any related patent applications or patents.
12. All documents and things that relate to any web server and/or website administration product used by Function Media and/or its predecessors-in-interest and/or the named inventors prior to July 11, 2002.
13. All documents and things that relate to any online advertising and/or website promotion performed by or used by Function Media, its predecessors-in-interest, Virtual Cities, Inc., virtualcities.com, O.N.S., Inc., and/or the named inventors.

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14. All documents and things that relate to any product or technology that Function Media alleges to infringe the patents-in-suit.
15. All documents and things that relate to the decision by Function Media to bring this patent infringement lawsuit, including Function Media's first awareness of the alleged infringement by Google, and any action taken by Function Media and/or its attorneys or agents upon and after gaining such awareness, including but not limited to any tests and analysis performed on the alleged infringing products, any discussion of the alleged infringing products, and any alleged notification to any alleged infringer.
16. All documents and things that relate to any interviews or articles pertaining to this lawsuit, including but not limited to comments on those interviews or articles.
17. Documents relating to the conception or reduction to practice of the patented invention(s).
18. Documents relating to any effort to commercialize the patented invention(s), whether by the inventor or by others.
19. Documents relating to any invention disclosure or other description of the invention prepared by one or more of the inventors of the patents-in-suit.
20. Documents relating to the prosecution of the patent applications which led to the patent-in-suit or any foreign counterpart, including (without limitation) comments by the inventor on any office action.
21. Documents relating to any reissue or reexamination, or possible reissue or reexamination, of the patent-in-suit or any foreign counterpart.
22. Documents relating to the ownership of the patent-in-suit or any foreign counterpart, or any transfer of ownership rights.
23. Documents relating to Function Media's rights with respect to the patent-in-suit, including (without limitation) documents showing when those rights were acquired, from whom, and on what terms.
24. Documents received or generated by Function Media in connection with its acquisition or prospective acquisition of an interest in the patents-in-suit.

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25. Documents relating to any residual payable to a third party of the net proceeds from licensing or enforcement action involving any of the patents-in-suit, any change in the amount of such residual (e.g., a change from a 35% residual to a 30% residual), or any lapse in residual buydown rights.
26. Documents relating to any direct or indirect financial interest that the inventor(s) or any other third party has in the outcome of this case.
27. Any communication or agreement between Function Media (or any affiliate of Function Media) and the named inventors (or any affiliate of the inventors).
28. Documents relating to any security interest in any of the patents-in-suit.
29. Documents relating to the licensing or attempted licensing of any of the patents-in-suit or any foreign counterpart, or any technology covered by any claim of the patents-in-suit, including any license offers or contemplated license offers.
30. Documents relating to any royalties received in connection with any of the patents-in-suit or any foreign counterpart.
31. Documents relating to any valuation or appraisal of any of the patents-in-suit.
32. Documents relating to actual or alleged infringement of any of the patents-in-suit or any foreign counterpart, and any response(s) thereto.
33. Documents relating to any litigation, apart from this case, involving any of the patents-in-suit or any foreign counterpart.
34. Documents relating to any licenses to patents (other than the patents-in-suit) which involve advertising over the Internet.
35. Documents relating to or reflecting any offers by anyone to license any of the patents-in-suit.
36. Documents relating to the licensing policy of any entity which Function Media contends would have participated in a hypothetical license negotiation with any Defendant relating to any of the patents-in-suit.

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37. Documents relating to Function Media's licensing policy(ies), including the policy(ies) themselves.
38. Documents relating to the effect of licensing any of the patents-in-suit on the sale of other products of the licensee.
39. Documents relating to the profitability of products or services made under any of the patents-in-suit.
40. Documents relating to the commercial success of the invention(s) of the patents-in-suit or to its popularity.
41. Documents relating to the utility and advantages of the invention(s) of the patent-in-suit over the old modes or devices, if any, that had been used for working out similar results.
42. Documents relating to the benefits to those who have used the invention(s) of any of the patent-in-suit.
43. Documents relating to the value to any defendant of its alleged infringement of any of the patents-in-suit.
44. Documents relating to the portion of the profit or of the selling price that are or may be customary to allow for the use of inventions analogous to those of any of the patents-in-suit.
45. Documents relating to the portion of the realizable profit that should be credited to the invention any of the patents-in-suit as distinguished from other factors (e.g., nonpatented elements, business risks, or significant features or improvements added by the alleged infringer).
46. Documents relating to any damages suffered as a result of the alleged infringement of any of the patents-in-suit by any defendant.
47. Documents required to be produced under the Court's Patent Rules, Local Rules, Discovery Order, and/or Amended Discovery Order.
48. Documents relating to and/or referring to any of the Defendants in this lawsuit and/or any of their affiliated companies.
49. Any notice letters asserting alleged infringement of any the patents-in-suit which have been sent to any of the Defendants in this lawsuit and/or any of their affiliated companies.

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50. Any notice letters asserting alleged infringement of any of the patents-in-suit which have been sent to any third party.
51. All prior art related to any of the patents-in-suit.
52. All prior art ever asserted by anyone against any of the patents-in-suit in a formal lawsuit, a letter, or otherwise.
53. All documents and things that refer or relate to any searches or investigations ever conducted to locate prior art pertinent to the patentability of any of the patents-in-suit.
54. All documents and things that refer or relate to the scope, interpretation, infringement, validity, or enforceability of any of the patents-in-suit.
55. All documents and things that comprise, refer to, or relate to any studies, analyses, or opinions concerning the scope, interpretation, infringement, validity, or enforceability of any of the patents-in-suit.
56. All documents and things that refer or relate to any financial support by any person or entity other than Function Media for the conduct of the present civil action.
57. All documents and things reflecting communications by Function Media with any of the Defendants in this lawsuit and/or any of their affiliated companies.
58. All documents and things reflecting communications by and/or between Function Media, its predecessors-in-interest, members, and/or by and/or between the named inventors, concerning this lawsuit and/or the patents-in-suit.
59. All documents and things that pertain to Function Media's document retention policies.

There may, of course, be additional relevant documents, and the above categories are not intended to be exhaustive. In addition, we understand that there may be some overlap between some of the above categories. Our intention is not to be oppressive, so if you notice a few categories that you think are fairly covered by another category, just identify them to us so we clear up any confusion. Finally, if there is any category for which Function Media cannot or will not produce (or log on a privilege log) the requested documents, please let us know.

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On a related note, we request that Function Media provide Google with a similar list of documents which Function Media expects to be included as part of the disclosures required by the above-referenced rules. Finally, although we recognize that Function Media's PR 3-1 disclosures are not yet due, given that there are 520 claims in the four asserted patents, we request that Function Media identify the specific claims by number from each of the patents-in-suit that Function Media will assert are infringed by Google. This identification of the patent claims, along with a similar list of documents which Function Media expects to be included as part of the disclosures required by the above-referenced rules, will allow Google to better and more promptly search for relevant documents for possible production in this case.

Very truly yours,

A handwritten signature in black ink that reads "Thomas B. Walsh, IV". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas B. Walsh, IV

cc: S. Calvin Capshaw
Elizabeth L. DeRieux
Gil Gillam