

**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

**JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

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Pursuant to Eastern District of Texas Patent Rule 4-3, Plaintiff Function Media and Defendants Google Inc. and Yahoo!, Inc. hereby provide their Joint Claim Construction and Prehearing Statement.

**I. AGREED CLAIM CONSTRUCTIONS**

The parties have met and conferred regarding their Rule 4-2 Exchange and have agreed to the meaning of certain claim terms, phrases, or clauses, including the functions of certain of the means-plus-function terms in one of the patents-in-suit. These terms, and their agreed meanings, are set forth in Exhibit A (attached).

**II. DISPUTED CLAIM CONSTRUCTIONS**

With respect to those terms, phrases, or clauses on which the parties could not reach agreement, the parties have set forth their respective proposed constructions, including the intrinsic and extrinsic evidence relied upon in support thereof, in Exhibit B (attached). The parties reserve the right to rely on and rebut any evidence cited by any party. The parties further reserve the right to offer expert testimony in accordance with the Court's Docket

Control Order and rebuttal expert testimony on any claim term for which any party offers expert testimony. Furthermore, Defendants believe that additional intrinsic evidence that is likely to be relevant to claim construction is evolving through copending inter partes reexaminations pending before the United States Patent & Trademark Office. All parties reserve their rights to rely on materials from those reexaminations for purposes of claim construction here.

### **III. ANTICIPATED LENGTH OF CLAIM CONSTRUCTION HEARING**

The parties believe that it would be appropriate for the Court to allocate six hours for the claim construction hearing, with three hours allocated to each side (including reserved rebuttal time).

### **IV. CLAIM CONSTRUCTION LIVE WITNESSES**

The parties do not anticipate calling live witnesses at the claim construction hearing except as the Court may request. If so requested, Plaintiff would present the live testimony of Dr. V. Thomas Rhyne. Defendants would present the testimony of Gene Kincaid (Yahoo!) and Roy Jenevein (Google).

### **V. CLAIM CONSTRUCTION PREHEARING CONFERENCE**

The parties do not believe a claim construction prehearing conference is needed.

Dated: January 30, 2009

Respectfully submitted,

Respectfully submitted,

**FISH & RICHARDSON P.C.**

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**COUNSEL FOR DEFENDANT AND  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic filing on all counsel of record, this 30th day of January, 2009.

/s/ Jeremy Brandon  
Jeremy Brandon