

EXHIBIT C

18

1 going to be reference to patent trolls, pirates, or
2 playing the lawsuit lottery or corporate shell game, but
3 it's denied otherwise.
4 23 is granted.
5 24 is granted.
6 25 is granted.
7 26 is granted.
8 27 is granted.
9 28 is granted.
10 29 is granted.
11 30 is granted.
12 31 is granted.
13 I'll hear argument on 32, and argument on
14 Plaintiff's 33.
15 Defendant's Joint Motion No. 1 is denied.
16 No. 2 is denied.
17 No. 3 is denied.
18 4 is denied.
19 5 is granted.
20 6 is denied.
21 7, I'm going to hear argument on the prior
22 settlement agreements.
23 8, likewise, I'm going to hear argument on
24 that issue.
25 9 is granted as agreed. That deals with

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1 re-examinations. Is there any -- as I read the papers,
2 the defendant wants to offer certain portions of the
3 re-exam or the defendants do, as well as the plaintiff;
4 is that correct?
5 MR. FENSTER: That's my understanding, Your
6 Honor.
7 MR. VERHOEVEN: Yes, Your Honor.
8 THE COURT: All right. Well, then I'm going
9 to leave it to y'all to object to the extent you think
10 that side or the other is going beyond what's relevant,
11 and I'll just take up relevancy objections at the time
12 of trial, okay, but I'm not going to grant it -- I'm --
13 in other words, I'm not going to grant a motion in
14 limine barring introduction of re-examination
15 proceedings, okay? If either side goes too far, since
16 y'all both want parts of it in, then y'all just need to
17 object at the time of trial, okay?
18 MR. FENSTER: Yes, Your Honor. Just to
19 clarify, nobody has moved, neither side, to exclude or
20 bar any testimony.
21 THE COURT: I understand. I just want the
22 record to be clear in light of what I'm sure is out
23 there in other cases, okay?
24 MR. FENSTER: Thank you.
25 THE COURT: Because I, you know, typically

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1 would -- would preclude that.
2 10 is denied.
3 11 is -- is that agreed as to all parties,
4 the -- with respect to induced and contributory
5 infringement?
6 MR. FENSTER: Yes, it is, Your Honor.
7 THE COURT: All right. That's granted as
8 agreed.
9 12 is granted as agreed.
10 13, you will -- I'm going to deny it as a
11 motion in limine, but you're going to get an order on
12 summary judgment that answers that question, okay?
13 Google and AOL's additional motions in
14 limine, I'll hear argument on No. 1.
15 I'm granting No. 2 with respect to overall
16 size and revenue. You need to tailor your testimony to
17 revenues and profitability of the accused systems.
18 3 is granted as to discovery, any conduct in
19 discovery. If you've got certain things you want to
20 offer in front of the jury, you need to approach the
21 bench before you -- you launch into discovery
22 misconduct, okay?
23 MR. FENSTER: Yes. Can that be mutual, Your
24 Honor?
25 THE COURT: It's going to be, yes, sir.

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1 MR. FENSTER: Thank you, Your Honor.
2 THE COURT: No. 4, with respect to the
3 expert's analysis in the Function Media case, I'm
4 denying that motion in limine. I'm going to allow you
5 to use the conversion of the Stanford-Google agreement,
6 okay? Otherwise, it's granted with respect to
7 references to any other litigation.
8 Yahoo!'s motion in limine, total revenue,
9 that's granted to the same extent as it was against
10 Google. You can use revenues of the accused products
11 and systems and profitability insofar as damages
12 calculations are concerned, but you're not going to
13 launch into what their -- their total revenues are, even
14 at the time of the hypothetical negotiation. You need
15 to instruct your damages expert that I'm not going to
16 allow that, okay? I mean, I think the jury is going to
17 have a fair understanding of the relative bargaining
18 power between the parties, all right?
19 No. 2, I'll hear argument on the
20 admissibility of the Stanford license against Yahoo!.
21 3, I'll hear argument on.
22 4 is granted.
23 5 is granted as agreed.
24 Go back to the plaintiff's motions in
25 limine. Let's talk about this fact -- Branting as a

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1 to grant the motions in limine. I think there's a
2 companion one from Yahoo! to avoid using the Google
3 agreement as part of the computation of damages against
4 Yahoo!. I'm going to -- those types of licenses need to
5 be directed toward the respective parties that entered
6 into them for purposes of supporting those damages
7 award. I'll give a limiting instruction to the jury to
8 consider them only for that purpose, but it's -- I'm,
9 you know -- it's going to be incumbent upon the
10 defendants to give me a limiting instruction that they
11 want me to read to the jury, okay?

12 MS. CANDIDO: Yes, Your Honor.

13 THE COURT: That takes care of No. 2 on
14 Yahoo!'s, I believe, and No. 3.

15 MR. ROOKLIDGE: Your Honor, No. 3 --
16 Yahoo!'s Motion in Limine No. 3, we can -- we can
17 focus -- sharpen the focus to what's it about, and
18 plaintiff identified correctly what it was about in
19 their opposition, and that's Yahoo!'s/Overture portfolio
20 patent licenses.

21 Their expert relies upon Yahoo! and its
22 predecessor, Overture's, out licensing of a large
23 portfolio of patents. There are about 20 U.S. patents
24 and some 50 published applications, foreign -- foreign
25 applications that make up a portfolio of patents. That

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1 is the patents that was foundation to -- or that covered
2 the technology that was foundation to a company called
3 Overture.

4 Overture was the company that was supplying
5 to Yahoo! the sponsored search service. Yahoo!
6 eventually acquired Overture and its sponsor search
7 service, and then later that sponsored search service
8 became the service that is -- is what is accused of
9 infringement here today.

10 There was a large portfolio of patents that
11 were related to that sponsored search service, and
12 Overture and now Yahoo! have been very successful in
13 licensing out that large portfolio. Because it is a
14 large portfolio of patents that are fundamental to an
15 entire business, we believe that that is completely
16 noncomparable, although the technology may be much
17 closer because of the fact of the place of Overture, the
18 place of its patent portfolio in the industry, and the
19 number of those patents, it cannot be comparable, and
20 it's not been demonstrated to be comparable, and,
21 therefore, they shouldn't be able to rely on those.

22 THE COURT: I'm probably going to get a
23 little better handle on exactly what's licensed on that
24 on Monday after jury selection, okay? I'm going to
25 carry this -- this, as well.

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1 MR. ROOKLIDGE: Thank you, Your Honor.

2 THE COURT: Yes, sir?

3 MR. FENSTER: Your Honor, may I ask for the
4 opportunity -- you've given us your ruling with respect
5 to one motion in limine, and I would like to ask for the
6 opportunity to argue Motion in Limine No. 5 for
7 plaintiff, and that's the only one.

8 THE COURT: Forgive me, I don't have those
9 memorized.

10 MR. FENSTER: Your Honor, that is to
11 preclude defendants on relying on the CBR manuals --

12 THE COURT: Right.

13 MR. FENSTER: -- that were recently
14 discovered.

15 THE COURT: Right.

16 MR. FENSTER: Your Honor, the basis for this
17 is we discovered last week in the deposition of Bradley
18 Allen, who is a prior art inventor retained by
19 defendants, that these CBR manuals were -- became known
20 to defendants in March of 2010.

21 And, specifically, Mr. Allen didn't have
22 them but he referred the defense counsel to Mr. -- to
23 Bruce Clayton, who is the person who we believe supplied
24 the CBR manuals. Mr. Allen testified that he disclosed
25 Bruce Clayton, who was the head of documents at

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1 Inference, which is the company in which they worked
2 and --

3 THE COURT: Listen, I don't mean to cut you
4 off, but this is one of those issues, it's just not a
5 motion in limine. I'll take it up Monday after jury
6 selection whether or not they're allowed to use the CBR
7 manuals. I'm not ruling definitively one way or the
8 other on whether they're going to be allowed to do that.
9 I'm just -- I mean, it seems to me going through the
10 motions that it was -- I mean, it's just one that I can
11 handle as -- as part of the evidentiary hearing, okay?
12 I'm --

13 MR. FENSTER: Very well, Your Honor.

14 THE COURT: All right?

15 MR. FENSTER: May I just narrow the case for
16 you?

17 THE COURT: Of course.

18 MR. FENSTER: Your Honor, in light of the
19 motions in limine, plaintiffs will not be pursuing
20 Claims 28 and 38, and we will -- we're also -- in light
21 of -- in order to minimize -- to streamline the case for
22 trial and in light of the small damages associated with
23 defendant AOL, we're seeking to dismiss AOL. We're
24 trying to work that out with the defendant -- with
25 defendant AOL, but we are trying to -- to accomplish

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1 that.
2 THE COURT: 28 and 38?
3 MR. FENSTER: Yes, Your Honor.
4 So the claims at issue will be 30, 31, and
5 33.
6 THE COURT: All right.
7 MR. FENSTER: Thank you, Your Honor.
8 THE COURT: All right. I want to hear some
9 argument on the -- yes.
10 MR. VERHOEVEN: I was just going to say,
11 Your Honor, this is the very first time we've ever heard
12 this, and I don't understand, I sat here through the
13 whole hearing, how dropping those relate to your rulings
14 on motions in limine.
15 However, we'll -- if they're dropping
16 certain claims, the reason I'm standing up is we need to
17 go back and evaluate how that may affect -- you were
18 asking questions about how long we need for trial and
19 whatnot, and so we would need to go back and look at
20 that, Your Honor.
21 THE COURT: Okay.
22 MR. ROOKLIDGE: Your Honor, it also relates
23 to a motion that I believe you granted earlier, which is
24 not being able to refer to claims that have been
25 dropped. What this does is dramatically narrows the

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1 scope of their claims, and now we've got to go back and
2 look at the design-arounds that our experts have talked
3 about because design-around suddenly becomes a lot
4 simpler in view of narrowing the claims of infringement.
5 So it's certainly kind of thrown us into
6 a -- into a quandary, particularly not being able to
7 refer to the -- the dropping of those claims.
8 THE COURT: Okay.
9 MR. FENSTER: Your Honor, none of the
10 design-arounds relate to any of those claims. The
11 design-arounds that Mr. Rooklidge is referring to relate
12 to the classifying step of Claim 28. All of the
13 asserted Claims, 30, 31, 32, they're --
14 THE COURT: Still have the classifying step
15 in them.
16 MR. FENSTER: Yes, Your Honor, because
17 they're dependent on 28.
18 THE COURT: Right.
19 MR. FENSTER: Thank you.
20 MR. VERHOEVEN: There is one thing -- sorry
21 to bother you, Your Honor, but there is one thing that
22 just did occur to me off the top of my head, and that is
23 on the motion in limine relating to the re-exam, Your
24 Honor.
25 THE COURT: Uh-huh.

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1 MR. VERHOEVEN: As I'm reading what they've
2 done, knowing the re-exam, they've just dropped the
3 claims in which the examiner has said that Allen
4 anticipates.
5 THE COURT: Okay.
6 MR. VERHOEVEN: And so that changes the
7 ball -- that changes the ballpark for us in terms of
8 re-exams.
9 You know, we had a situation before where
10 there was something helpful for them they wanted to put
11 in. There's something that we wanted to point out.
12 Now they've dropped that part of their case at the last
13 second for the stuff that we want to point out, and that
14 would make entering the re-exams prejudicial for us.
15 I haven't even talked to my client about
16 that, Your Honor, but I just wanted to highlight that.
17 That may be something that -- I know Your Honor's normal
18 course is to not allow re-exams. Here we had a
19 stipulation based on an understanding that they were
20 asserting these claims. Well, now they're not, and so
21 we don't have a stipulation anymore.
22 MR. FENSTER: And --
23 THE COURT: Well, are y'all going to assert
24 invalidity of these claims over references --
25 MR. VERHOEVEN: We certainly have

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1 declaratory relief --
2 THE COURT: -- that were addressed in the --
3 well, hold on a second there.
4 MR. VERHOEVEN: Sorry, Your Honor.
5 THE COURT: Are you asserting invalidity
6 over references that were asserted in the re-exam?
7 MR. VERHOEVEN: We're asserting invalidity
8 on the -- one reference, the Allen reference. It wasn't
9 cited in the re-exam, Your Honor, but in the spec -- I'm
10 sorry, it was cited in the re-exam. It wasn't cited in
11 the original patent.
12 I may have misunderstood the question, Your
13 Honor. What was the question?
14 THE COURT: Well, my question is are you
15 going to -- are you going to argue that these are
16 invalid based on references that were -- that the PTO
17 considered during the re-exam and confirmed these claims
18 to be patentable over?
19 MR. VERHOEVEN: What we were intending to
20 do, Your Honor, was when Claims 28 and by dependent upon
21 that with 26 or dependent upon 26, so 26, 28, and 38,
22 which depended upon those, the examiner found in the
23 re-exam that those -- that 28 and 26 were anticipated,
24 okay?
25 And so the plaintiff wants to talk about

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1 re-exams, and we thought, well, if they want to talk
2 about re-exams, there's stuff in the re-exams that
3 actually is helpful for us, and so when that -- when
4 those claims were in the case, Your Honor --
5 THE COURT: Well, y'all filed a motion to
6 admit evidence of re-exam, as I remember, and they
7 agreed to it.
8 MR. VERHOEVEN: We filed a motion based on
9 the -- but we assumed that they were asserting these
10 claims, Your Honor, and all I'm pointing out is these
11 claims are no longer asserted. Now, we have declaratory
12 relief claims on those very claims. We have to go back
13 and talk to our client about that, but I just wanted to
14 highlight, that changes the background for that
15 particular motion in limine.
16 THE COURT: I understand. I understand.
17 I'm going to grant -- well, y'all tell me what you want
18 to do before jury selection, if you want to --
19 MR. VERHOEVEN: I will, Your Honor. Thank
20 you.
21 THE COURT: Yeah. And if -- well, Mr. -- is
22 your decision, abandon those claims, contingent on
23 allowing evidence of re-exam?
24 MR. FENSTER: Yes, sir. Yes, Your Honor.
25 If you're going to keep -- if Your Honor is inclined to

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1 exclude the re-exam, then we'll keep 28 and 38 in.
2 I do want to answer the Court's question
3 posed to Mr. Verhoeven, and that is, yes, we think it's
4 still relevant because defendants are seeking to
5 invalidate the claims at issue in light of prior art
6 that's been considered in the re-exam.
7 THE COURT: You want to show what the --
8 that the PTO actually considered those references --
9 MR. FENSTER: That's right.
10 THE COURT: -- at least once and maybe
11 twice?
12 MR. FENSTER: That's right, three times,
13 actually.
14 THE COURT: Okay. Well, maybe. Okay. All
15 right. Well, I'll -- I'll let him tell me what
16 they're -- what they want to do, and I'll decide that on
17 Monday.
18 MR. VERHOEVEN: Thank you, Your Honor.
19 MR. FENSTER: Your Honor, in light of the
20 Court's rulings with respect to damages, you did change
21 the scope of what Dr. Becker relied on. Can we revise
22 Dr. Becker's opinion to accord with the Court's ruling
23 relying only on the Yahoo! information and Google and so
24 forth?
25 THE COURT: Yes. Yeah, I mean, well, you --

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1 I mean, you need to limit his testimony in front of the
2 jury as I've indicated in connection with the motions in
3 limine. He's not entitled to testify in front of the
4 jury that his rate against Google is derived from the
5 royalty agreements that were entered into with you and
6 vice versa, okay?
7 MR. FENSTER: I understand.
8 MR. ROOKLIDGE: And, Your Honor, that just
9 makes clear -- or, excuse me.
10 MR. FENSTER: Excuse me.
11 MR. ROOKLIDGE: The Court isn't allowing a
12 new damages report from Dr. Becker. He's just -- he's
13 just not able to -- to consider those pieces of evidence
14 and testify about those; is that correct?
15 THE COURT: Well, he's not able to testify
16 in front of the jury that his rate is founded or derived
17 or relies on the royalty agreements that were entered by
18 the -- by the other defendant.
19 MR. ROOKLIDGE: Thank you, Your Honor.
20 THE COURT: Okay. Now, I don't know what
21 you're going to do with him on cross, but, I mean,
22 that's up to you.
23 MR. ROOKLIDGE: Thank you.
24 THE COURT: So...
25 MR. FENSTER: In light of Your Honor's

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1 rulings on the motion in limine, can we assume that the
2 motion to strike is moot? I think that the defendants
3 have filed a motion to strike Dr. Becker's report
4 because of issues similar to --
5 THE COURT: It's moot.
6 MR. FENSTER: Thank you, Your Honor.
7 THE COURT: I want to hear some argument on
8 the production of this -- two things, this affidavit.
9 What is the status of the other two affidavits that -- I
10 think it's Angotti refers to in his declaration.
11 MR. SPANGLER: Yes, Your Honor. As to your
12 direct question, we're still seeking those other two
13 declarations. We contacted Latham and Watkins and
14 Mr. Spangenberg specifically who was the attorney that
15 first worked with Angotti when Latham and Watkins took
16 over and became outside counsel of record.
17 He and Mr. Sean Pak were the lawyers
18 handling the day-to-day. We contacted him. We asked
19 for what he had. We said, "Keep looking." He said he's
20 going to continue to keep looking, but he has not
21 provided it to us to date.
22 THE COURT: Here's my problem, is, you know,
23 I accept your representations that this was
24 unintentional, but if the shoe was on the other foot, I
25 know sure as I am sitting here, you would be up in arms