

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF TEXAS
 TYLER AND MARSHALL DIVISIONS

3 IP INNOVATION, LLC, ET AL)
 -vs-) DOCKET NO. 2:07cv447
 4 RED HAT, INC., ET AL)

5 SWIT ELECTRONICS CO.)
 -vs-) DOCKET NO. 6:07cv480
 6 LITEPANELS, LLC)

7 TRENT WEST)
 -vs-) DOCKET NO. 6:07cv492
 8 TARGET CORPORATION)

9 DR. PAUL TEIRSTEIN)
 -vs-) DOCKET NO. 6:08cv14
 10 AGA MEDICAL CORPORATION)

11 PERFORMANCE PRICING, INC.)
 -vs-) DOCKET NO. 2:07cv432
 12 GOOGLE, INC., ET AL)

13 SAXON INNOVATIONS, LLC)
 -vs-) DOCKET NO. 6:07cv490
 14 NOKIA CORPORATION)

15 DIGITAL REG OF TEXAS, LLC)
 -vs-) DOCKET NO. 6:07cv467
 16 HUSTLER.COM, ET AL)

17 TRANSCRIPT OF STATUS CONFERENCE CASES
 18 BEFORE THE HONORABLE LEONARD DAVIS,
 UNITED STATES DISTRICT JUDGE
 19 AND BEFORE THE HONORABLE JOHN D. LOVE,
 UNITED STATES MAGISTRATE JUDGE

20 HEARING HELD APRIL 7, 2008 AT 1:30 P.M. IN TYLER, TEXAS

21 A P P E A R A N C E S
 22 (SEE ATTORNEY SIGN IN SHEETS ATTACHED AND DOCKETED IN
 EACH OF THE ABOVE-CAPTIONED CASES)

23 COURT REPORTER: MS. SHEA SLOAN
 shea_sloan@txed.uscourts.gov

24
 25 Proceedings taken by Machine Stenotype; transcript was
 produced by a Computer.

1 P R O C E E D I N G S

2 HON. JUDGE DAVIS: Please be seated.

3 All right. We are here for a Status Conference.
4 I'm going to call each case, and I am just going to ask you
5 just for your announcements, just who you are and who you
6 represent at this point. And then I will have a few comments,
7 and then we will go into the status.

8 So the first case, 2:07cv447, IP Innovation v. Red
9 Hat.

10 MR. WARD: Johnny Ward for the plaintiffs, Your
11 Honor.

12 MR. GEISZLER: Steven Geiszler for defendants.

13 HON. JUDGE DAVIS: Thank you.

14 6:07cv480, Swit Electronics v. Litepanels.

15 MR. CAULEY: Richard Cauley and Travis Bardon for
16 defendants.

17 MS. DeRIEUX: Elizabeth DeRieux for Litepanels.

18 HON. JUDGE DAVIS: All right. Now, is Swit the
19 plaintiff or the defendant in this case?

20 MR. CAULEY: I believe, Your Honor, actually we are
21 the plaintiff, and I believe the consolidated action that you
22 are proceeding --

23 HON. JUDGE DAVIS: It is the same patents and
24 everything as the other Litepanels case?

25 MR. CAULEY: Same patents, Your Honor, so we are

1 defendants in their action filed here, and we were the
2 plaintiff in the action filed in California that was
3 transferred and consolidated.

4 HON. JUDGE DAVIS: Okay. Very good. Thank you.
5 6:07cv492, Trent West v. Target Corporation.

6 MS. DeVASTO: Diane DeVasto for Trent West, Your
7 Honor. Ready to proceed.

8 MR. YARBROUGH: Your Honor, Trey Yarbrough and
9 Debbie Gunter on behalf of defendant, Target Corporation.

10 HON. JUDGE DAVIS: Very good. Anyone else?

11 All right. 6:08cv14, Dr. Paul Teirstein v. AGA
12 Medical Corp.

13 MR. ALLEN: Vincent Allen for the plaintiff.

14 MR. PICKETT: John Pickett, together with Ray Kurz
15 and Robert Weinschenk for the defendant, Your Honor.

16 HON. JUDGE DAVIS: Very good. Thank you.

17 2:07cv432, Performance Pricing, Inc. v. Google.

18 MR. BUNT: Chris Bunt and Elizabeth DeRieux here on
19 behalf of Performance Pricing. We are ready.

20 MR. COFFEY: Your Honor, Brad Coffey here for the
21 defendants, Google and AOL.

22 MR. BUFE: Your Honor, John Bufe here for defendant
23 Yahoo.

24 MR. MALONEY: Collin Maloney here for IAC Search &
25 Media.

1 MR. TINDEL: Your Honor, Andy Tindel. I am here on
2 behalf of A9.com.

3 MR. FINDLAY: Your Honor, Eric Findlay and Richard
4 Cederoth here on behalf of Microsoft.

5 HON. JUDGE DAVIS: Thank you.

6 6:07cv490, Saxon Innovations v. Nokia Corp.

7 MR. WARD: Johnny Ward for the plaintiff.

8 MR. GARDNER: Your Honor, Allen Gardner and Matt
9 Brigham here for Nintendo.

10 MR. CHASSMAN: Your Honor, Pete Chassman and Gil
11 Gillam on behalf of Research in Motion Corporation and
12 Research in Motion, Ltd.

13 MS. DeVASTO: Diane DeVasto on behalf of Nokia Corp,
14 Inc.

15 MR. WILCOX: Melvin Wilcox on behalf of the Sharp
16 entities, Your Honor.

17 MR. GUARAGNA: Your Honor, John Guaragna for Palm,
18 Inc.

19 MR. CRAFT: Brian Craft on behalf of High Tech
20 Computer. We are ready.

21 HON. JUDGE DAVIS: Thank you.

22 MR. ALBRITTON: Eric Albritton on behalf of the Sony
23 entity.

24 MR. CARTER: Good afternoon, Your Honor, Winn Carter
25 for LG.

1 HON. JUDGE DAVIS: Okay. Thank you.

2 6:07cv467, Digital Register -- I guess that is -- of
3 Texas v. Hustler.

4 MR. WARD: Johnny Ward for the plaintiff.

5 MR. ALBRITTON: Eric Albritton for Apple.

6 MR. HEARTFIELD: Thad Heartfield for Audible, Inc.

7 MR. MALONEY: Collin Maloney for Blockbuster and
8 Playboy, Your Honor.

9 MR. CHASSMAN: Pete Chassman and James Tidwell on
10 behalf of LFP Internet Group, LLC.

11 MR. WILCOX: Melvin Wilcox on behalf of the Sony
12 entities, Your Honor.

13 MR. FINDLAY: Eric Findlay and Joe Micallef on
14 behalf of Microsoft, Your Honor.

15 HON. JUDGE DAVIS: What's that case about? We'll
16 get into it later. I'm going to keep that one.

17 HON. JUDGE LOVE: No comment.

18 HON. JUDGE DAVIS: All right. I think that y'all
19 know why we are here, in an effort to try to move our docket.
20 We have got three goals for the Court; try to be
21 user-friendly, correct on the law, and timely in our
22 dispositions. We are sort of lagging behind on timely, so we
23 are soliciting some of the Bar's help to try to keep our cases
24 moving on a 24-month trial schedule on the IP docket and get
25 those matters resolved, hopefully, economically and promptly

1 for all of the parties.

2 But we have limited resources; and to most
3 effectively utilize those, we are having this early Status
4 Conference in an effort to help you and your clients make an
5 early determination who will try your case, myself or Judge
6 Love so that everybody is on the same page rather than
7 becoming a moving target of whether you are going to consent
8 or not.

9 So what I am going to do, is I am going to call each
10 of your cases again, and we will ask you to tell me whether
11 you consent to trial before Judge Love or not. And for those
12 of you who do, you will have my undying gratitude. And I hope
13 we can get several consents during this exercise.

14 And so with that, let me go back through the cases,
15 and I will call them in no particular order. But the first
16 one IP Innovation, LLC v. Red Hat.

17 MR. WARD: The plaintiffs consent.

18 MR. GEISZLER: Your Honor, the defendants do not
19 consent.

20 HON. JUDGE DAVIS: All right. 6:07cv480, Swit
21 Electronics v. Litepanels. That will stay with me since it is
22 an affiliated case.

23 MS. DeRIEUX: Thank you, Your Honor.

24 HON. JUDGE DAVIS: Were y'all going to consent?

25 MR. CAULEY: Oh, yes, we consent, Your Honor.

1 HON. JUDGE DAVIS: Okay. Ms. DeRieux, do you
2 consent?

3 MS. DeRIEUX: It is our position that it ought to
4 stay with you, Your Honor.

5 HON. JUDGE DAVIS: Okay. We'll look at that since
6 it is already here and we have got some time invested in it.
7 We will probably keep that one.

8 6:07cv492, Trent West v. Target Corp.

9 MS. DeVASTO: Your Honor, we do not consent. We
10 have Trent West.

11 HON. JUDGE DAVIS: All right.

12 MR. YARBROUGH: Do I need to speak, Your Honor?
13 Defendant Target Corporation does not consent.

14 HON. JUDGE DAVIS: All right. Hope we get on a roll
15 here. 6:08cv14, Dr. Teirstein v. AGA Medical Corp.

16 MR. ALLEN: The plaintiff consents, Your Honor.

17 MR. PICKETT: Your Honor, respectfully we would not
18 consent. We would like to consider this particular inquiry of
19 the Court given the fact that we were not under the impression
20 that the plaintiff was going to consent until the first thing
21 this morning. We have just not had a chance to discuss that
22 with our clients and to go to obtain that type of authority.
23 We would just like to advise the Court some time in the future
24 about that.

25 HON. JUDGE DAVIS: Well, we issued this status

1 order -- I thought it was pretty clear.

2 MR. PICKETT: Yes, Your Honor.

3 HON. JUDGE DAVIS: But you have not had meaningful
4 discussions with your client?

5 MR. PICKETT: No, we have not, Your Honor, because
6 the early-on discussions that we had during the
7 meet-and-confer process with the plaintiff, there was
8 indication they were not going to consent. So as a result,
9 open and full discussion with our client did not take place.
10 I apologize.

11 HON. JUDGE DAVIS: Have you made an effort to
12 contact your client today?

13 MR. WEINSCHENK: Your Honor, if I may, up until this
14 morning, as we mentioned, we agreed not to consent. We
15 understood the plaintiff not to consent, so we need to -- we
16 were just advised this morning about the fact that they had
17 changed their position. We are still talking and discussing
18 with Local Counsel --

19 HON. JUDGE DAVIS: Why don't y'all step out and see
20 if you can get your client on the phone and come back and
21 report to me.

22 MR. ALLEN: Thank you very much.

23 HON. JUDGE DAVIS: All right. Saxon Innovations v.
24 Nokia Corporation.

25 MR. WARD: The plaintiff does not consent, Your

1 Honor.

2 MR. GARDNER: Nintendo consents, Your Honor.

3 MR. CHASSMAN: Research in motion consents, Your

4 Honor.

5 MR. GUARAGNA: Palm consents, Your Honor.

6 MS. DeVASTO: Nokia consents.

7 MR. WILCOX: Sharp does not consent.

8 MR. ALBRITTON: Samsung consents, Your Honor.

9 MR. CRAFT: High Tech Computer does not consent.

10 MR. CARTER: LG consents.

11 HON. JUDGE DAVIS: Okay. 6:07cv467, Digital

12 Register of Texas v. Hustler.com.

13 MR. WARD: The plaintiff does not consent, Your

14 Honor.

15 MR. HEARTFIELD: Audible consents.

16 MR. CHASSMAN: LFP Internet Group, LLC consents.

17 MR. FINDLAY: Microsoft consents, Your Honor.

18 MR. WILCOX: Sony does not consent, Your Honor.

19 MR. ALBRITTON: Apple consents.

20 MR. MALONEY: Blockbuster and Playboy both consent,

21 Your Honor.

22 HON. JUDGE DAVIS: All right. We are going to take

23 a short recess. Did I call Performance Pricing 2:07cv432?

24 MR. BUNT: No, Your Honor.

25 HON. JUDGE DAVIS: I'm sorry. I missed that one.

1 MR. BUNT: I could use as much gratitude as I can
2 get from Your Honor, so we will gladly consent.

3 HON. JUDGE DAVIS: Thank you.

4 MR. BUFE: Your Honor, defendant Yahoo consents.

5 HON. JUDGE DAVIS: Wonderful.

6 MR. COFFEY: Your Honor, defendants Google and AOL,
7 unfortunately, do not consent.

8 MR. MALONEY: Your Honor, IAC also does not consent.

9 MR. TINDEL: A9 does not consent, Your Honor.

10 MR. FINDLAY: Your Honor, Microsoft does not
11 consent.

12 HON. JUDGE DAVIS: Okay. All right. Well, I don't
13 know what this is going to do to us, but we are going to take
14 a brief recess about ten minutes and review the schedule and
15 come back and call the cases.

16 (Recess was taken at this time.)

17 HON. JUDGE DAVIS: Please be seated.

18 All right. AGA Medical, what did we find out?

19 MR. PICKETT: Your Honor, we would respectfully not
20 consent to Magistrate Judge Love presiding.

21 HON. JUDGE DAVIS: Very well.

22 Judge Love, if you would read the settings so
23 everyone can take note.

24 HON. JUDGE LOVE: All right. First of all, IP
25 Innovation 2:07cv447, your Markman date before Judge Davis is

1 July 9th of '09. Trial date April 6th of '10 before Judge
2 Davis. And all of these, obviously, will be before Judge
3 Davis -- well, actually -- I will go ahead and state that.

4 Let me go to the next case. 6:07cv480, Swit
5 Electronics v. Litepanels, your Markman date is before Judge
6 Davis, September 3rd of '09; trial date, May 3rd of '10.

7 The next case, 6:07cv492, Trent West v. Target Corp.
8 Your Markman date before Judge Davis, September 10th, '09;
9 trial date, May 3rd, '10.

10 The next case, 6:08cv14, Teirstein v. AGA Medical,
11 Markman date before me will be August 20th of '09; trial date
12 February 1st of '10.

13 The next case, 2:07cv432, Performance Pricing v.
14 Google. Your Markman date before me is June 18th, 2009;
15 trial date before Judge Davis, April 6th, 2010.

16 6:07cv490, Saxon v. Nokia. Markman date before me
17 June 25th, '09; trial date May 3rd of '10 before Judge Davis.

18 The next case, 6:07cv467, Digital Register v.
19 Hustler. The Markman date before Judge Davis July 2nd of '09;
20 trial date before Judge Davis, February 1st of 2010.

21 HON. JUDGE DAVIS: All right. Everyone has those
22 settings. I would encourage the three cases that Judge Love
23 is handling the Markman in, you can still consent. He is
24 going to be handling everything right up until putting a jury
25 in the box, so I would encourage you to continue to talk to

1 your clients and see if you might be interested in consenting
2 in those cases. He, of course, will be a lot more familiar
3 with the cases than I am by the time those cases reach trial.
4 But if you elect not to, you have your trial dates for me. If
5 you do decide to consent in any of those cases, contact Judge
6 Love and he can give you a trial date that is fairly close to
7 what I was able to give you on those settings.

8 Does anyone have any questions? We will be issuing
9 an order in each of these cases today giving you the pertinent
10 dates for you to plug into your Docket Control Order and
11 Scheduling Order. And, hopefully, you can meet and confer, if
12 you have not already done so, and submit those to us in agreed
13 format. If you can't agree, as stated in the order, indicate
14 your differences and submit it to us by the date called for
15 and we will make a decision and get that in and get you
16 rolling. This order we will be entering will also tell you
17 what the exact date is to start triggering all of your other
18 dates under the Docket Control Order. I think it is stated in
19 the order and you can calculate it. We are going to issue
20 that order so there won't be any confusion among any of the
21 attorneys.

22 All right. Well, y'all were not a lot of help
23 today. I hope by the next time we get together that y'all can
24 get a little more agreement, but I hope we have been helpful
25 to you. So any questions from anybody? All right. We will

1 see you down the road. Good luck.

2 (End of hearing.)

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5 C E R T I F I C A T I O N

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7 I certify that the foregoing is a correct transcript from the
8 record of proceedings in the above-entitled matter.

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11 /s/

12 SHEA SLOAN, CSR, RPR
13 OFFICIAL COURT REPORTER
14 STATE OF TEXAS NO. 3081

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