

EXHIBIT A

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7 Sherwood Finance (Delaware), LLC,
a plan of reorganization beneficiary
and a party-in-interest

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12
13 In re Site Technologies, Inc.,

14 A Chapter 11 reorganized debtor under a
consummated, liquidating plan.

Case No. 99-50736 RLE

CHAPTER 11

15 **STATUS CONFERENCE**
16 **STATEMENT BY SHERWOOD**
FINANCE (DELAWARE), LLC

17 Date: December 17, 2008
18 Time: 10:30 a.m.
19 Place: 280 South First Street,
Courtroom 3099
San Jose, California 95113

20 Honorable Roger Efremsky

21
22 Sherwood Finance (Delaware), LLC ("Sherwood"), a major beneficiary of the plan of
23 reorganization (the "Plan") previously confirmed and effective in the above-captioned case (this
24 "Case") and a party-in-interest herein, respectfully submits this Status Conference Statement
25 requesting that the December 17, 2008 hearing to be a status and scheduling conference and
26 identifying the issues for scheduling in January 2009.¹

27 ¹ Because the allowed claims of creditors were paid in full by the Debtor prior to the entering of the Final Decree
28 closing this Case in January 2004, the remaining beneficiaries of the confirmed and effective Plan are the former
(Footnote continues on next page.)

1 **I. INTRODUCTION**

2 Sherwood respectfully asks this Court to treat the upcoming hearing as a status and
3 scheduling conference pursuant to section 105(d)(1) of the Bankruptcy Code,² and to create an
4 orderly schedule to quickly and fairly resolve the various issues before the Court, including a dispute
5 related to the ownership of certain patents, which is highly relevant to this matter and pending
6 litigations in Texas and California involving such patents. See Section II below. On December 2,
7 2008, the Court reopened this Case in response to a Reopening Motion filed by Sherwood on
8 November 26, 2008.³ In its Reopening Motion, Sherwood requested that the Court: (a) appoint a
9 trustee or Responsible Person under the Plan, (b) issue protective orders against what Sherwood
10 believes to be attempts to convert assets of the estate (such as the patents), (c) reaffirm that the
11 automatic stay under the bankruptcy law applies to the Texas and California actions involving the
12 patents at issue in this case (or provide injunctive and other equitable relief with respect to these
13 related cases under section 105), (d) quiet title to the patents at issue in this case, and (e) grant any
14 other necessary relief. See *Motion* at 4 [Docket No. 284]. Sherwood requests that the Court establish
15 deadlines to resolve these issues during the upcoming hearing.

16 Sherwood does not intend to seek any substantive relief at the hearing; rather, such relief will
17 be requested at hearings to be scheduled in January. By asking the Court to limit this first hearing to
18 a status and scheduling conference, Sherwood does *not* mean to imply any diminished urgency or

19 _____
20 (Footnote continued from previous page.)

21 equityholders of the Debtor. The interests of such "Plan beneficiaries" are measured by reference to their shares of stock,
22 although their shares were cancelled by the Plan in favor of contract rights to payment under the Plan. As a result, Plan
23 beneficiaries who were formerly equityholders (or their successors-in-interest) are now creditors, with standing and right
24 to challenge the relevant purported transfers of the patents at issue, such as those repeatedly attempted by Ait, Egger, and
25 SRA. With respect to the former equity, Plan beneficiary Sherwood holds the rights derived from at least 762,615 former
26 shares of the dissolved Debtor, consisting of approximately 9 percent (9%) of the Debtor's issued and outstanding former
27 shares. Other Plan beneficiaries joined in the Reopening Motion.

28 ² All references herein to the "Bankruptcy Code" or section references thereto are to Title 11 of the United States
Code, as amended.

³ Sherwood's "Reopening Motion" consisted of the following documents: (a) Sherwood's *Ex Party Application to Reopen Closed Case Pursuant to 11 U.S.C. § 350(b) and Rule 5010*, and (b) Sherwood's *Motion (i) to Reopen Closed Case Pursuant to 11 U.S.C. § 350(b) and Rule 5010 in Order to Protect and Auction Patents Held in Custodia Legis, (ii) to Appoint a Trustee, (iii) for a Status Conference Pursuant to § 105(d) to Arrange for Protective Orders and Confirmation of the Continuing Stay, and (iv) for Other Relief*, and the related Request for Judicial Notice and supporting Declarations. Capitalized terms used, but not otherwise defined, herein have the meanings given them in the Reopening Motion.

1 importance with respect to the challenges confronting this Chapter 11 estate. To the contrary,
2 Sherwood has accepted the scheduling adjustment in light of the upcoming holidays, and to
3 accommodate the parties in the Texas and California Actions, including Software Rights Archive,
4 LLC ("SRA"), the alleged "owner" of the patents, and Daniel Egger, a former insider of Slash.
5 Sherwood therefore respectfully requests that the Court use the upcoming hearing as a forum to
6 discuss a process by which the relief sought by Sherwood and the Plan beneficiaries for the
7 Chapter 11 estate can be scheduled to be addressed as soon as possible in January. For the Court's
8 convenience, Sherwood sets forth its view of the relevant issues to be discussed and scheduled during
9 the upcoming hearing in the following sections.

10 **II. MATTERS TO BE SCHEDULED AND DISCUSSED AT THE STATUS**
11 **CONFERENCE**

12 Sherwood would like to discuss at this status conference a process and schedule for
13 addressing in January at least the following issues:

14 **A. Appointment of a New Responsible Person.**

15 At the status conference, Sherwood would like to discuss a process for appointing a qualified,
16 compatible and cost-effective individual to serve as Responsible Person under the Plan.

17 **Sherwood's Position:** Sherwood's position is that the Responsible Person must be one who
18 can protect and sell the patents at issue in this Case (the "Patents") and otherwise perform the Plan
19 for its beneficiaries, which is critical in order to protect rights and to recover benefits to which the
20 Plan beneficiaries are entitled. The person serving in this role will need substantial expertise in
21 intellectual property litigation, and have familiarity with bankruptcy law and procedure. As
22 discussed in the Reopening Motion, Sherwood believes that Jeffrey Ait, the former Responsible
23 Person now aligned with the estate's adversaries, was discharged of his duties as Responsible Person
24 upon the closing of the Case and, for the reasons set forth in the Reopening Motion, that Ait cannot
25 serve in this capacity in the future—thus giving rise to a need for appointment of an appropriate,
26 qualified person. Because the Chapter 11 estate and Plan beneficiaries have been prejudiced by what
27 Sherwood views as unauthorized actions of Ait and others in violation of the section 362 stay, the
28 Plan, and applicable law, in Sherwood's view it would be inappropriate for any person closely

1 associated with Ait, Egger, SRA or their counsel to serve in the capacity of Responsible Person. A
2 process thus is needed to find an estate representative with whom the Plan beneficiaries can work
3 effectively.

4 Sherwood believes the new Responsible Person also should be acceptable to the major Plan
5 beneficiaries, including Sherwood, as well as Google Inc. and IAC Search & Media, Inc, both
6 stakeholders under the Plan and both a Co-Defendant in ongoing litigation over the Patents. If the
7 Court requires the appointment of a trustee, the Responsible Person also could serve in that role. A
8 process for selecting candidates, as well as for analyzing the nature of the alliances desired by Plan
9 beneficiaries, thus should be discussed at the status conference.

10 **B. Enforcement of Automatic Stay or Injunction and Other Equitable Relief**
11 **Pursuant to 11 U.S.C. § 105.**

12 At the status conference, Sherwood also would like to discuss a process for addressing in
13 January the enforcement of the automatic stay pursuant to section 362 as to:

- 14 (1) the Patent assets, and
15 (2) the stock of Slash (Site/Technologies/Inc.), the Debtor's wholly owned
16 subsidiary, which previously owned the Patents,

17 each of which Sherwood believes is or was property of the bankruptcy estate *in custodia legis* for the
18 reasons set forth in the Reopening Motion. Sherwood also would like to discuss a process for
19 addressing the protection of the Patents, either by virtue of the automatic stay or by injunction
20 pursuant to section 105.

21 **Sherwood's Position:** Sherwood's position is that Ait has violated the stay and acted in
22 contravention to the terms of the Plan and against the interests of Plan beneficiaries, and Sherwood
23 would like to discuss a process for promptly addressing this conduct. Sherwood thus would like this
24 Court to clarify, pursuant to a schedule to be set at the status conference, that Ait has had no authority
25 to take any action on behalf of the Debtor or the bankruptcy estate following the closing of the Case
26 in January 2004. Sherwood also would like the Court to address, pursuant to the schedule to be
27 determined, the consequences of Ait's purporting to act in the name of the bankruptcy estate after the
28 Case had closed, including what Sherwood views to be the fraudulent, purported transfer of the

1 Patents in 2008 to Egger and the unauthorized retention of counsel for SRA purportedly to represent
2 the Debtor.

3 Sherwood further believes that Egger and SRA are attempting to convert the Patents from the
4 estate. Sherwood also believes that various former insiders and Plan fiduciaries, including Egger and
5 Ait, have engaged in a pattern of unauthorized and wrongful conduct in violation of the automatic
6 stay, and that their conduct threatens to convert or impair the value, title, and marketability of the
7 Patents, which threat requires this Court's intervention.

8 **C. Quieting Title to the Patents.**

9 At the status conference, Sherwood also would like to discuss a process for resolving the
10 issues relating to the title of the Patents.

11 **Sherwood's Position:** For the reasons discussed in the Reopening Motion, Sherwood
12 believes that the Patents still remain *in custodia legis* in the bankruptcy estate. The Patents originally
13 were owned by Slash, and Sherwood believes that when the Debtor purportedly sold the Patents to
14 Egger in 1998 for \$100,000 before the filing of the Chapter 11 petition, no transfer could have
15 occurred then, because the Debtor had no interest to transfer at the time. Slash later merged into the
16 Debtor in December 2000, at which point Sherwood believes that the Patents became part of the
17 bankruptcy estate, and that any subsequent attempts by Egger to transfer the Patents from the Debtor
18 took place after he was divested of his authority upon the entering of the Final Decree.

19 As a result, because Sherwood believes that the Patents remain in the estate *in custodia legis*
20 and therefore must be dealt with pursuant to the Plan, Sherwood would like to discuss process at the
21 status conference to resolve these issues. Resolution of issues relating to title of the Patents is critical
22 for all parties-in-interest in this Case, as well as in the Texas Action and the California Action. This
23 Court thus should address at the status conference the most appropriate means of quieting title to the
24 Patents so that, in Sherwood's view, the Patents can be auctioned for the benefit of the Plan
25 beneficiaries, including Sherwood. Such a process would need to involve an adversary proceeding
26 and related discovery and motions in this Court.

27 **D. Discovery.**

28 Finally, Sherwood would like to discuss a process for resolving a host of near-term discovery

1 issues in the main Case. In particular, Sherwood would like to discuss at the status conference an
2 appropriate process for addressing discovery issues related to the prior fiduciaries for the Chapter 11
3 estate, such as the firm of Murray & Murray, former bankruptcy counsel for the debtor-in-possession
4 and reorganized Debtor. Additionally, Sherwood would like to discuss a process at the status
5 conference to determine the extent, if any, to which information held by former counsel to the
6 Debtor, including Murray & Murray, is still protected by the attorney-client privilege or any other
7 applicable privileges, and to allow them to cooperate with Sherwood in all other respects. Finally,
8 Sherwood would like to discuss at the status conference the need for coordinated discovery efforts in
9 this Case, including the examination of, and production of documents from, certain key individuals
10 and others pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure.

11 **Sherwood's Position:** Faced with conflicting demands of the various litigating parties,
12 Sherwood understands that Murray & Murray and other relevant professionals (including, for
13 example, Wilson Sonsini Goodrich & Rosati) have requested clarification of the rights and powers of
14 the competing parties purporting to speak for the estate. Sherwood believes that confusion has arisen,
15 for example, from the *former* Responsible Person, Ait, purporting after the Case was closed to hire
16 defendant Egger and SRA's current counsel as counsel for the Debtor. Issues such as these hinder
17 the parties' discovery efforts, and Sherwood believes that resolving the question of who can speak
18 and act now on behalf of the estate and Plan beneficiaries is one of the highest priorities of the estate
19 so that parties such as Murray & Murray can be confident in cooperating and responding to discovery
20 to the proper representative of the estate.

21 Sherwood also believes that the Debtor has no attorney-client privilege surviving the closing
22 of the Case, and that such professionals are free now to cooperate with Sherwood. The Debtor was to
23 be dissolved pursuant to the terms of the Plan and was to cease to exist after the case was closed. The
24 Plan provided for no successor in interest. As a result, Sherwood believes that no "client" exists on
25 whose behalf former counsel can assert an attorney-client privilege in connection with discovery
26 efforts. This Court thus should address such issues directly, pursuant to a process scheduled at the
27 status conference, so that the Debtor's former counsel may respond to discovery freely without the
28 concern of waiving any privileges.

1 Sherwood further believes that a thorough examination of the significant pre- and post-
2 petition transactions of Ait, Egger, SRA, and their counsel is critical to the resolution of the matters
3 discussed herein, including for the purpose of addressing the automatic stay issues and issues relating
4 to title of the Patents, each of which are matters that "affect the administration of the Debtor's estate."
5 See Rule 2004(b). Sherwood thus would like to discuss the need for such discovery and related
6 issues at the status conference and schedule in January an orderly process by which such issues can
7 be resolved.

8 **III. CONCLUSION**

9 Sherwood believes that the issues before this Court are critical to the effective administration
10 of this Case and the proper disposition of the Patents. As a result, Sherwood would like to discuss a
11 process that provides for relief in January, including setting an appropriate timeframe and set of
12 procedures for resolving the issues relating to the appointment of a Responsible Person, enforcing the
13 automatic stay and section 105, and addressing what Sherwood views as past violations of the stay,
14 the Plan, and applicable law, quieting title to the Patents in order to facilitate an auction for the
15 benefit of the Plan beneficiaries, and addressing the discovery issues discussed herein.

16 Dated: December 15, 2008

Respectfully submitted,

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18 VINCENT J. NOVAK
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20 By: /s/ G. Larry Engel
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