

# **EXHIBIT A**

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COPY

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 11 Software Rights Archive, LLC

12 UNITED STATES BANKRUPTCY COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN JOSE DIVISION

15 Case No.: 99-50736-RLE

16 In re  
 17 Site Technologies, Inc.  
 18 Reorganized Chapter 11 Debtor.

19 **STATUS CONFERENCE STATEMENT  
 20 BY SOFTWARE RIGHTS ARCHIVE,  
 21 LLC**

22 Date: December 17, 2008  
 23 Time: 10:30 a.m.  
 24 Location: 280 S. First Street  
 25 San Jose, California  
 26 Courtroom: 3099  
 27 Judge: Hon. Roger Efremsky

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28 Software Rights Archive, LLC ("SRA") submits its Status Conference Statement setting forth its position with respect to the scheduling of issues raised by Sherwood Finance (Delaware), LLC ("Sherwood"). SRA owns the patents that Sherwood claims are property of the estate. SRA agreed with Sherwood that the December 17, 2008 hearing should be a status and scheduling conference. In evaluating what schedule is appropriate, the Court should consider a few key facts Sherwood fails to mention.

29 **BACKGROUND**

30 Within one year before the Debtor filed for bankruptcy, the Debtor entered into an agreement with Daniel Egger, SRA's predecessor in title, pursuant to which Mr. Egger purchased the patents at issue. The Debtor disclosed its transfer of the patents in the Debtor's Statement of Financial Affairs. Debtor's approved disclosure statement in support of its plan of

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1 reorganization also disclosed the transfer. No creditor or party in interest challenged the validity  
2 of the transfer or Mr. Egger's ownership of the patents. Creditors were paid in full under the  
3 plan, and interest holders received a dividend.

4 After SRA sued Google, Yahoo!, Lycos, and others ("Infringement Defendants") for  
5 infringement of the patents in the United States District Court for the Eastern District of Texas  
6 ("Infringement Action"), the Infringement Defendants filed a motion for summary judgment  
7 seeking dismissal of the Infringement Action on the grounds that SRA was not the true and valid  
8 owner of the patents and therefore had no standing to bring the Infringement Action. That issue  
9 is fully briefed before the District Court in the Eastern District of Texas ("District Court").

10 It is important to note that the questions before the District Court are the same questions  
11 Sherwood and the Infringement Defendants are asking this Court to resolve<sup>1</sup>. The Infringement  
12 Defendants contend that at the time the Debtor sold the patents to Mr. Egger, it did not own  
13 them. Rather, according to the Infringement Defendants, the patents were owned by its non-  
14 debtor subsidiary, Site/Technologies, Inc., and therefore the instrument of assignment executed  
15 by the Debtor did not validly transfer the patents from the subsidiary to Mr. Eggers. Sherwood  
16 further contends that because Site/Technology, Inc. merged into its Debtor parent approximately  
17 six months after the plan was confirmed, those patents became the Debtor's property as a result  
18 of the merger, and so now the Debtor should be allowed to sell the patents again in order to make  
19 a further distribution to its equity holders. Again, Sherwood makes these contentions despite the  
20 fact that Mr. Egger relied upon the Debtor's representations in its bankruptcy that Mr. Egger was  
21 the assignee of the patents, representations neither Sherwood nor any other party in interest made  
22 an effort to challenge at the time. The issue of whether the Debtor validly assigned the patents to  
23 Mr. Egger in the first instance, or whether the Debtor is estopped or otherwise barred under  
24  
25

26 <sup>1</sup> In fact, this is the third forum in which the Infringement Defendants have raised these  
27 issues. In addition to the District Court, and now this Court, the Infringement Defendants also  
28 filed an action in the United States District Court for the Northern District of California, San Jose  
Division, case no. C08-03172(RMW), challenging SRA's ownership of the patents.

1 applicable law from denying the validity of the transfer is now fully briefed before the District  
2 Court in Texas<sup>2</sup>.

3 It should also be noted that, the parties seeking relief here are by their own admission the  
4 same as, are aligned with, or are in privity with, the Infringement Defendants litigating these  
5 issues in the District Court in Texas. Sherwood admits that its interests are aligned with the  
6 Infringement Defendants<sup>3</sup>. See Reopening Motion, fn. 8, (“Sherwood has entered into an  
7 alliance with Yahoo! Inc., including by executing a joint defense agreement and option  
8 arrangement. Upon information and belief, Google, Inc. and IAC Search & Media, Inc. are also  
9 beneficiaries of the Plan.” Moreover, Google asserts that it recently acquired 15,000 shares of  
10 the Debtor’s stock, and it has now joined in Sherwood’s Reopening Motion. See Joinder to  
11 Motion to Reopen Case and Related Relief [Docket No. 290].

#### 12 DISCUSSION

13 In its Status Conference Statement, Sherwood raises the following issues to be decided:  
14 (1) the appointment of a new Responsible Person; (2) enforcement of the Automatic Stay,  
15 Injunction or other Equitable Relief; (3) quieting title to the patents at issue; and (4) discovery.  
16 Except for leaving discovery for last, Sherwood has reversed the order of importance of these  
17 issues. But more importantly, Sherwood ignores the threshold issue of which court is best suited  
18 to decide title to the patents in the first instance, the District Court or this Court.

19 SRA’s position is that the District Court in Texas is well suited to decide whether SRA  
20 has valid title to the patents. To the extent that the Debtor has any interest in the patent  
21 ownership issue before the District Court, that interest is now and will continue to be fully and  
22 effectively litigated by the Infringement Defendants in the Texas litigation. Of course,  
23 Sherwood and the Infringement Defendants dispute this position. Therefore, SRA suggests that  
24 the issue to be decided by this Court in the first instance is whether this Court or the District

25 <sup>2</sup> The parties in the Infringement Action have already conducted discovery on the issue,  
26 including three (3) depositions.

27 <sup>3</sup> Not by coincidence, Sherwood is represented by the same law firm, Morrison &  
28 Foerster, that represents Yahoo! in the Infringement Action.



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15 Case No.: 99-50736-RLE

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17 Site Technologies, Inc.  
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19 **CERTIFICATE OF SERVICE RE**  
20 **STATUS CONFERENCE STATEMENT**  
21 **BY SOFTWARE RIGHTS ARCHIVE,**  
22 **LLC**

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**CERTIFICATE OF SERVICE BY MAIL**

I, the undersigned, declare:

I am over the age of eighteen years, employed in the City and County of San Francisco, State of California; and not a party to nor interested in the within action; my business address is One Montgomery Street, Suite 2200, San Francisco, California 94104.

On December 8, 2008, I served the following documents:

**STATUS CONFERENCE STATEMENT BY SOFTWARE RIGHTS ARCHIVE, LLC**

I enclosed true and correct copies of said document in envelopes and placed same for collection and mailing with the United States Postal Service on, December 16, 2008, following the ordinary business practice; addressed as follows:

Craig M. Prim Law Offices of Murray & Murray 19330 Stevens Creek Blvd., Suite 100 Cupertino, CA 95014	Office of the U.S. Trustee U.S. Federal Building 280 South 1 <sup>st</sup> . St., #268 San Jose, CA 95113	G. Larry Engel Vincent J. Novak Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105
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I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

I am employed in the office of a member of the bar of this court, at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 16, 2008, San Francisco, California.

/s/ Yolanda Johnson  
Yolanda Johnson



**Miscellaneous:**99-50736 Site Technologies, Inc.

Type: bk

Chapter: 11 v

Office: 5 (San Jose)

Judge: RLE

Assets: y

Disp: Standard Discharge

Case Flag: PreAct, REOPENED

**U.S. Bankruptcy Court****Northern District of California**

## Notice of Electronic Filing

The following transaction was received from Nuti, Gregory C. entered on 12/16/2008 at 2:32 PM PST and filed on 12/16/2008

**Case Name:** Site Technologies, Inc.**Case Number:** 99-50736**Document Number:** 295**Docket Text:**

Status Conference Statement *by Software Rights Archive LLC* Filed by Interested Party Software Rights Archive, LLC (Attachments: # (1) Certificate of Service) (Nuti, Gregory)

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**H:\ecf>Status Conference Statement [3155198\_1].pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1017961465 [Date=12/16/2008] [FileNumber=9428289-0] [93535a4283f29125929a4df18d39e3dc99962cfa020221db5eb579eba4d84aefa3976daa6e84fc7374f5e060804283b981febd4187757b7f11e77ec4bfa9c040]]

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