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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

PAID SEARCH ENGINE TOOLS, LLC § Civil Docket No.  
§ 2:08-CV-61-DF-CE  
V. §  
§ Marshall, Texas  
GOOGLE, INC. and MICROSOFT § October 27, 2008  
CORPORATION § 11:05 a.m.

TRANSCRIPT OF SCHEDULING CONFERENCE  
BEFORE THE HONORABLE CHAD EVERINGHAM  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

MS. ELIZABETH L. DeRIEUX  
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FOR THE DEFENDANTS:

MR. NICHOLAS H. PATTON  
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MR. ROGER BRIAN CRAFT  
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COURT REPORTER/TRANSCRIBER:

MS. SUSAN SIMMONS, CSR  
Official Court Reporter  
100 East Houston, Suite 125  
Marshall, Texas 75670  
903/935-3868

(Proceedings recorded by electronic recording, transcript  
produced on CAT system.)

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P R O C E E D I N G S

THE COURT: All right. We'll call for announcements in Paid Search Engine Tools against Google. It's Case Number 2:08-CV-61. We've got a scheduling conference set today.

Who's here for the Plaintiff?

MS. DeRIEUX: Elizabeth DeRieux and Tom Gorham for Plaintiff, Your Honor, and we're ready to proceed.

THE COURT: Okay.

MR. PATTON: Nick Patton for Google, Your Honor.

MR. CRAFT: Brian Craft here for Microsoft Corporation. We're ready.

THE COURT: All right. Good morning to all of you.

All right. The Court has looked at your report in the case. Y'all submitted to me, I believe, a docket control order in the case. Are there any objections to the dates, or is that all by agreement?

MS. DeRIEUX: We've agreed to everything, Your Honor. There is one wrinkle in this case I'd bring to your attention. There is a --

THE COURT: Additional case pending in front of Judge Ward. Is that against Yahoo?

MS. DeRIEUX: It is.

1 THE COURT: Is that right?

2 MS. DeRIEUX: And we have spoken with counsel  
3 for Yahoo regarding the proposed consolidation. All the  
4 parties in this case are in agreement regarding the  
5 consolidation of the cases, and we are waiting on final word  
6 from the client in the Yahoo matter. And we are hoping to  
7 submit something by agreement shortly.

8 THE COURT: Okay. And the proposal is to -- to  
9 ask Judge Ward to transfer the Yahoo case to Judge Folsom for  
10 development in conjunction with this case?

11 MS. DeRIEUX: That's correct.

12 THE COURT: Is that correct? Okay. Putting  
13 aside that issue, the schedule that y'all have submitted in  
14 this case is by agreement, correct?

15 MS. DeRIEUX: It is, Your Honor.

16 THE COURT: Okay. All right. How about  
17 additional discovery issues?

18 MS. DeRIEUX: Attached to the filing was  
19 Exhibit B, and those are our proposed limitations on  
20 discovery, also by agreement.

21 THE COURT: Okay. Those are -- appear to be  
22 fine. Y'all have a mediator in this case that y'all are  
23 talking about?

24 MS. DeRIEUX: We have discussed mediation, Your  
25 Honor. I believe that the Defendants' position was that they

1 are not yet ready to discuss mediation because it's too early  
2 and they need a little discovery, so we have not selected a  
3 mediator, but we have had some preliminary discussions.

4 MR. PATTON: That's correct, Your Honor.

5 MR. CRAFT: Correct.

6 THE COURT: Well, do you think you know enough  
7 about it to go -- to select a mediator or --

8 MR. PATTON: Judge, my people tell me that they  
9 do not know enough -- no matter who the mediator is, they just  
10 don't know enough to make a judgment about whether mediation  
11 is warranted early or not.

12 THE COURT: Okay. Tell you what, I'll give you  
13 thirty days to talk about a mediator. I -- I don't require  
14 mediation in all cases. I mean, if -- Mr. Patton, if you come  
15 back to me and say, Judge, it's -- we know enough now that  
16 mediation isn't going to be helpful, just file a motion to  
17 dispense with the need to mediate. But I'd like to at least  
18 appoint someone so we can talk about schedules with the  
19 mediator. Sometimes those can get kind of tight.

20 If you can't agree on a mediator, then tell me  
21 withing thirty days that you're unable to agree on a mediator  
22 and I'll select one.

23 Where are y'all on your protective order?

24 MS. DeRIEUX: Plaintiff is going to propose  
25 that we adopt the protective order that's also in place in

1 Yahoo, and we'd like to coordinate with all Defendants to get  
2 those protective orders either identical or as close as  
3 possible. And the Defendants have agreed that they would  
4 review it and we can get back to you -- I guess I need to let  
5 them talk about it in terms of --

6 THE COURT: Sure.

7 MS. DeRIEUX: -- the appropriate timing.

8 THE COURT: Thirty days enough time?

9 MR. PATTON: Thirty days.

10 MR. CRAFT: That should be fine.

11 MR. PATTON: That's fine, Judge.

12 THE COURT: Okay. Let's -- either submit me an  
13 agreed upon protective order within thirty days or submit me  
14 your competing versions.

15 Mr. Patton, I'll not impose any kind of an  
16 early mediation deadline at this time in the docket control  
17 order, but I'm going to go ahead and set a mediation cutoff  
18 for completing it by -- to the extent you do go ahead and  
19 mediate. All right?

20 All right. We've got you a schedule,  
21 discovery, procedure for the protective order, procedure for  
22 appointing a mediator. What else can we do here today to  
23 resolve the case sooner rather than later?

24 MS. DeRIEUX: I had one additional question  
25 from counsel for Defendants in Yahoo regarding whether we

1 would be doing all pretrial matters, including *Markman*, in  
2 front of Your Honor in this matter, or if we know yet. And I  
3 told them I didn't know, but I would check with you.

4 THE COURT: The Yahoo case is not referred to  
5 me; is that correct?

6 MS. DeRIEUX: That's correct at this time.

7 THE COURT: I don't know the answer to that.

8 MS. DeRIEUX: Okay.

9 THE COURT: But --

10 MS. DeRIEUX: Then I was right when I told them  
11 we didn't know.

12 THE COURT: Since this one's referred to me, my  
13 assumption would be that both cases would be referred to me  
14 for pretrial -- pretrial management, and I'll probably offer  
15 that to Judge Folsom in case -- to the extent this case -- the  
16 cases are consolidated, I'll probably advise him of that fact  
17 and let him know I'm happy to develop both of them.

18 MS. DeRIEUX: Okay.

19 THE COURT: Okay?

20 MS. DeRIEUX: Thank you.

21 THE COURT: All right. Anything else from the  
22 Defendant?

23 MR. CRAFT: Nothing from Microsoft, Your Honor.

24 MR. PATTON: No, Your Honor.

25 THE COURT: All right. That concludes my list

1 of things to do today. Good to see y'all. Y'all travel  
2 safely.

3 MS. DeRIEUX: Thank you, Your Honor.

4 THE COURT: We're adjourned.

5 (Court adjourned.)

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\_\_\_\_\_ I HEREBY CERTIFY that the foregoing is a correct transcript from the electronic recording of the proceedings in the above-entitled matter to the best of my ability.

\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration date: 12/31/08

\_\_\_\_\_  
DATE