

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ALOFT MEDIA, LLC,

Plaintiff,

v.

YAHOO!, INC., GOOGLE INC., and AOL LLC,

Defendant.

CASE NO. 6:08-CV-509 (LED)

**DECLARATION OF
SCOTT T. WEINGAERTNER IN
SUPPORT OF DEFENDANTS'
MOTION TO TRANSFER**

I, Scott T. Weingaertner, declare as follows:

1. I am a Partner at King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, and am one of the attorneys who represents Google Inc. (“Google”) in this action. I submit this Declaration in support of *Defendants’ Motion to Transfer*.
2. Google is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.
3. The products and/or services that Google understands to be accused of infringement in this action (“Google Talk”) were, and continue to be, developed in the northwestern United States at Google’s Kirkland Engineering Office, located at Central Way Plaza, 720 4th Avenue, Suite 400, Kirkland, Washington 98033.
4. Individuals (including Google engineers involved in the past and present development of “Google Talk”) who are likely to have discoverable information that Google may use to support

its claims or defenses (including deponents and trial witnesses) are generally located in the Northern California/Pacific Northwest region and more specifically, in Mountain View, California and/or Kirkland, Washington.

5. Individuals (including Google engineers involved in the past and present development of “Google Talk”) who are likely to have discoverable information that Google may be required to produce to Plaintiff (including deponents and trial witnesses) are generally located in the Northern California/Pacific Northwest region and more specifically, in Mountain View, California and/or Kirkland, Washington.

6. Most, if not all, documentary evidence that Google may be required to produce to Plaintiff is either located in, or most accessible at, Google’s offices in Mountain View, California or Kirkland, Washington.

7. Discoverable source code relating to the accused products are either located in, or most accessible at, Google’s offices in Mountain View, California or Kirkland, Washington and will be made available for inspection only at those offices.

8. Google has no office or employee located in the Eastern District of Texas.

9. Google has not identified any potentially relevant information or witness for this case that is located in Texas.

10. Upon information and belief: Microsoft Corporation (“Microsoft”) is headquartered in Redmond, Washington; Microsoft released an instant messenger application in 1999; subsequent versions of the instant messenger application supported file transfers and PC-to-PC and PC-to-phone audio capabilities. Discoverable information (including publications, products and witness testimony) relating to Microsoft products may present prior art important to Google’s defense.

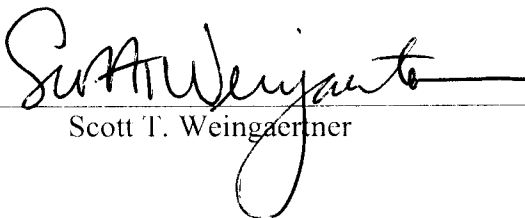
11. Upon information and belief, Microsoft and possibly other third party individuals and companies located in the Northern California/Pacific Northwest region are believed to constitute likely sources of discoverable information concerning prior art with respect to the patent asserted as infringed in this action.

12. Witnesses in Redmond or Kirkland, Washington would have to travel approximately 700 miles to the Northern District of California, but approximately 1800 miles to attend a hearing or trial in Tyler, Texas.

13. As a result of the foregoing, it is apparent that most, if not all, witnesses and documentary evidence relevant to the present action are generally located in the Northern California/Pacific Northwest region and, more specifically, in northern California and the greater Seattle, Washington area. Google is not presently aware of any witnesses or documentary evidence relevant to the present action that would be located in Texas.

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

Executed on April 3, 2009.



Scott T. Weingaertner