

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

ALOFT MEDIA LLC,

Plaintiff,

v.

**YAHOO! INC., GOOGLE, INC., AND
AOL LLC,**

Defendants.

Case No. 6:08-CV-0509 (LED)

**DECLARATION OF BROOKS BEARD
IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER**

I, Brooks M. Beard, declare as follows:

1. I am a member of the bar of the State of California, and I am admitted to practice before this Court. I am a partner with the law firm of Morrison & Foerster LLP, counsel of record for Defendant Yahoo! Inc. in the above-captioned action. Unless stated otherwise, I have personal knowledge of the facts set forth below and, if called as a witness, could and would competently testify thereto.

2. No Discovery Order or Docket Control Order has yet been issued in the above-captioned matter.

3. As it did in the two earlier lawsuits filed against it by Aloft—*Aloft Media, LLC v. Microsoft Corporation, et al.*, Case No. 6:08-CV-50 (E.D. Tex.), and *Aloft Media, LLC v. Yahoo! Inc., et al.*, Case No. 6:08-CV-255 (E.D. Tex.)—Yahoo! will make the source code relevant to this lawsuit available to Aloft only in Northern California.

4. I called Texas Secretary of State office (telephone number 512-463-5555) to determine when Aloft was formed as a Texas limited liability company. The Secretary of State representative I spoke with informed me that Aloft filed its formation papers on July 12, 2007.

5. Attached to this declaration as **Exhibit 1** is a copy of the front page of U.S. Patent number 7,472,351, which is the patent asserted by Aloft in this lawsuit.

6. Attached to this declaration as **Exhibit 2** are excerpts from the May 15, 2008 deposition transcript of Kevin Zilka. Mr. Zilka was deposed in San Jose, California, before a court reporter licensed to administer oaths in the State of California. Although the attached deposition excerpts have been designated “Confidential - Attorneys’ Eyes Only,” I obtained permission from Aloft’s counsel to de-designate those excerpts so that they can be treated as having no confidentiality designation. A copy of the March 9, 2009 email exchange between me and Chris Cravey, counsel for Aloft, is attached as **Exhibit 3**.

7. Attached to this declaration as **Exhibit 4** is a copy of a page from the Zilka-Kotab PC website showing that entity's street address.

8. Attached to this declaration as **Exhibit 5** is a copy of a page from Yahoo! Local Maps showing the distance between the Zilka-Kotab PC San Jose office and the Aloft Media San Jose office.

9. Attached to this declaration as **Exhibit 6** is a copy of a page from the Zilka-Kotab PC website showing Mr. Zilka's bio, including his court admissions.

10. Attached to this declaration as **Exhibit 7** is a copy of a page from the Zilka-Kotab PC website indicating that Zilka-Kotab—formerly known as Silicon Valley IP Group—has celebrated its 7-year anniversary.

11. I have reviewed the Zilka-Kotab PC website and saw no indication that Zilka-Kotab has an office in Texas, or anywhere else other than San Jose, California.

12. Attached to this declaration as **Exhibit 8** is a copy of a page from the Zilka-Kotab PC website showing potential non-party witness Dominic Kotab's bio.


13. Because this litigation is still in its infancy, we have not yet conducted a thorough search for potential non-party witnesses.

14. I have review Plaintiff Aloft Media LLC's First Amended Initial Disclosures served in the two earlier lawsuits Aloft filed against Aloft. In both documents, Aloft identifies Dominic Kotab and Jesse Ozog as non-party witnesses with potential knowledge relevant to those lawsuits. We anticipate that Aloft will again identify those individuals as potential non-party witnesses in its initial disclosures in this lawsuit.

15. Attached to this declaration as **Exhibit 9** is a copy of a page from the Zilka-Kotab PC website showing potential non-party witness Jesse Ozog's bio.

16. Using the “distance calculator” feature on Ask.com and the mileage calculator on Yahoo! Local Maps, I determined that: (i) the distance in air miles between San Francisco and Dallas is approximately 1,485 one way; (ii) the distance in air miles between Seattle and Dallas is approximately 1,680 one way; (iii) the distance in air miles between Seattle and San Francisco is approximately 680 miles; and (iv) the distance in driving miles between Dallas-Ft. Worth Airport (“DFW”) and Tyler, Texas, is approximately 120 miles one way. Furthermore, after performing several Internet searches for flights, I was unable to locate any direct flights between San Francisco’s airport and Tyler’s airport, nor was I able to locate any direct flights between Seattle’s airport and Tyler’s airport. Accordingly, I concluded that a witness residing in Northern California would need to travel approximately 1,600 miles one way—consisting of either indirect air travel involving two flights, or direct air travel to DFW combined with an approximately 120 mile drive—to get to Tyler, Texas. I also concluded that a witness residing in Seattle, Washington, would need to travel approximately 1,800 miles one way—consisting of either indirect air travel involving two flights, or direct air travel to DFW combined with an approximately 120 mile drive—to get to Tyler, Texas. Furthermore, I concluded that a witness residing in or near Seattle, Washington, would need to travel approximately 680 miles one way—on one of many available direct flights—to get to San Francisco.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 6, 2009, at San Francisco, California.


Brooks B. Beard