

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

ALOFT MEDIA, LLC,

Plaintiff,

v.

YAHOO!, INC., et al.,

Defendants.

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Civil Action No. 6:08-cv-509

JURY TRIAL DEMANDED

EXHIBIT "9"

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

ALOFT MEDIA, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

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Civil Action No. 6:08-CV-050-LED

JURY TRIAL DEMANDED

PLAINTIFF ALOFT MEDIA LLC’S FIRST AMENDED INITIAL DISCLOSURES

Plaintiff Aloft Media, LLC (“Aloft”) hereby provides the following First Amended Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and the Court’s August 5, 2008 *Discovery Order*. Aloft will supplement as required.

A. The correct names of the parties to the lawsuit:

Plaintiff: Aloft Media, LLC (“Aloft”) is the correct name of the Plaintiff in this action.

Defendants: Google, Inc. (“Google”), Yahoo!, Inc. (“Yahoo!”) and AOL LLC (“AOL”) (hereinafter “Defendants”) are the correct names of the Defendants in this action. Defendant Microsoft Corporation (“Microsoft”) was dismissed from the present case on October 1, 2008.

B. The name, address, and telephone number of any potential parties:

Aloft is not presently aware of any potential additional parties to this action.

C. The legal theories and, in general, the factual bases of the disclosing party’s claims or defenses:

Upon information and belief, Defendants manufacture, make, have made, use, sell, and/or offer for sale computer program products that infringe claims in United States Patent No.

7,305,625 (“the ‘625 Patent”). In manufacturing, making, having made, using, selling and/or offering to sell such computer program products, Defendants are directly infringing the ‘625 Patent. Aloft identified accused products and provided claims charts pursuant to P.R. 3-1 on August 25, 2008, pursuant to the Court’s Docket Control Order. Due to this infringement, Aloft is entitled to, at least, a reasonable royalty.

D. The name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person’s connection with the case, and a brief, fair summary of the substance of the information known by such person:

Aloft believes the following individuals may have knowledge of facts relevant to a claim or defense. Aloft does not consent to or authorize other parties’ communications with Aloft’s employees or former employees and does not consent to or authorize any communications otherwise prohibited by any applicable rules of professional conduct. Other parties’ contact with Aloft’s employees or former employees should take place through Aloft’s counsel-of-record. Since Aloft is continuing its investigation of the case, it is possible that some of the individuals listed herein may not, in fact, possess knowledge of facts relevant to a claim or defense or may only have knowledge that is duplicative of knowledge possessed by others.

Name	Contact Information	Connection With the Case	Summary of Information Known
Kevin J. Zilka	Aloft Media, LLC 211 W Tyler Suite C Longview, TX 75601	Co-inventor of patent in suit; Chief Executive Officer of Aloft Media, LLC	Has knowledge of the ‘625 Patent, the prosecution of the ‘625 Patent, and the technology covered by the ‘625 Patent
Dominic M. Kotab	Zilka-Kotab, P.C. 100 W. San Fernando St., Suite 300 San Jose, CA 95113	Co-inventor of patent in suit	Has knowledge of the ‘625 Patent and the technology covered by the ‘625 Patent

James W. Pemrick	GE Energy 1 River Rd. Schenectady, NY 12345	Performed prior art search	Has knowledge of search results
Jesse Ozog	Zilka-Kotab, P.C. 100 W. San Fernando St., Suite 300 San Jose, CA 95113	Built software for Aloft Media, LLC	Has knowledge of software built for Aloft Media, LLC
Christopher M. Edgeworth	Aloft Media, LLC 211 W Tyler Suite C Longview, TX 75601	President of Aloft Media, LLC	Has knowledge about Aloft Media, LLC
Abe Herskovitz	Herskovitz & Associates 2485 Duke Street Alexandra, VA 22314	Patent attorney working on reexamination of the '625 Patent	Has knowledge of the reexamination proceeding regarding the '625 Patent

Aloft also incorporates all other persons identified by Defendants in their disclosures. Aloft may modify or supplement this list of knowledgeable individuals based on its investigation and further discovery, pursuant to Fed. R. Civ. P. 26(e).

E. Any indemnity and insuring agreements under which any person or entity may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment:

Aloft is not aware of any relevant indemnity or insurance agreements.

F. Any settlement agreements relevant to the subject matter of this action:

Aloft discloses a settlement agreement between Aloft and Adobe Systems, Inc. reached in the matter of *Aloft Media, LLC v. Adobe Systems, Inc. et al.*, Civil Action No. 6:07-CV-355 (LED) (JDL) in the United States District Court for the Eastern District of Texas, Tyler Division. The agreement is dated July 25, 2008.

Aloft discloses a settlement agreement between it and Microsoft Corporation reached in the matters of *Aloft Media, LLC v. Adobe Systems, Inc. et al.*, Civil Action No. 6:07-CV-355 in

the United States District Court for the Eastern District of Texas, Tyler Division; *Aloft Media, LLC v. Microsoft Corporation, et. al.*, Civil Action No. 6:08-CV-50 in the United States District Court for the Eastern District of Texas, Tyler Division; *Aloft Media, LLC v. Microsoft Corporation, et. al.*, Civil Action No. 6:08-CV-51 in the United States District Court for the Eastern District of Texas, Tyler Division; *Stragent, LLC v. Nokia, Inc., et al.*, Civil Action No. 2:08-CV-293 in the United States District Court for the Eastern District of Texas, Marshall Division; and *Stragent, LLC v. Microsoft Corporation, et al.*, Civil Action No. 2:08-CV-341 in the United States District Court for the Eastern District of Texas, Marshall Division. The agreement is dated September 29, 2008.

G. Any statement of any party to the litigation:

Aloft is aware of the following records which might be considered “statement[s] of any party”:

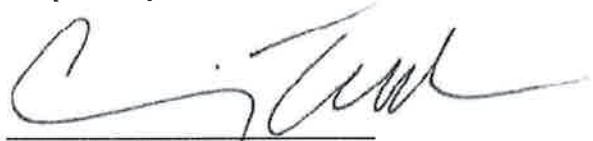
1) The personal deposition of Kevin J. Zilka taken in the matter of *Aloft Media, LLC v. Adobe Systems, Inc. and Microsoft Corp.*, C.A. No. 6:07-CV-355, in the United States District Court for the Eastern District of Texas, Tyler Division, on May 15, 2008.

2) The personal deposition of Kevin J. Zilka taken in the matter of *Aloft Media, LLC v. Microsoft Corporation, et. al.*, Civil Action No. 6:08-CV-50 in the United States District Court for the Eastern District of Texas, Tyler Division, on December 16, 2008.

3) The 30(b)(6) deposition of Aloft Media taken in the matter of *Aloft Media, LLC v. Nokia, et al.*, Civil Action No. 2:08-CV-99 in the United States District Court for the Eastern District of Texas, Marshall Division, on December 17, 2008.

4) The personal deposition of Kevin J. Zilka taken in the matter of *Aloft Media, LLC v. Nokia, et al.*, Civil Action No. 2:08-CV-99 in the United States District Court for the Eastern District of Texas, Marshall Division, on December 18, 2008.

Respectfully submitted,



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DATE: March 25, 2009

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*ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served on counsel of record in this case via e-mail, today, March 25, 2009.



Craig Tadlock