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## **II. STATEMENT OF JURISDICTION**

Plaintiff claims that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 1 *et seq.* Defendants claim that the Court does not have subject matter jurisdiction over this action. *See* Defendants’ Motion to Dismiss for Lack of Standing (Dkt. 452).

Venue and personal jurisdiction are not disputed in this case.

## **III. NATURE OF ACTION**

- **Bedrock’s Statement Regarding the Description of the Case**

This is a patent infringement lawsuit. Plaintiff Bedrock Computer Technologies LLC (“Bedrock”) alleges that Defendants SoftLayer, Yahoo!, MySpace, Amazon, and AOL directly infringe U.S. Patent No. 5,893,120 (“the ’120 patent” or “patent-in-suit”). Bedrock further alleges that Defendants’ infringement is and has been willful. Additionally, Bedrock alleges that Defendants infringe literally. Bedrock seeks both pre-verdict and post-verdict damages up to the time of judgment to compensate Bedrock for Defendants’ alleged acts of infringement, but in no

event less than a reasonable royalty, as well as permanent injunctive relief against future acts of infringement by Defendants. Bedrock also seeks treble damages, together with prejudgment and post judgment interests and costs, pursuant to 35 U.S.C. § 284 and attorneys' fees pursuant to 35 U.S.C. § 285.

Defendants deny that they have willfully or otherwise infringed the '120 patent and allege that the patent-in-suit is invalid.

Defendants<sup>1</sup> counterclaim for a declaratory judgment of non-infringement and invalidity of the patent-in-suit. Bedrock denies Defendants' counterclaims.

- **Defendants' Statement Regarding the Description of the Case**

This is a patent infringement case wherein Plaintiff Bedrock has asserted that all Defendants except AOL infringe claims 1, 2, 5 and 6 (the "asserted claims") of United States Patent No. 5,893,120 ("the '120 patent) and that AOL infringes claims 1 and 2. Defendants contend that none of their products infringe the asserted claims of the '120 patent and that the asserted claims are invalid because they fail to meet one or more of the requirements for patentability. Defendants further allege that Bedrock does not have standing to sue for infringement of the '120 patent. Defendants also deny Bedrock's allegations of willful infringement and deny Bedrock's claim for damages. Defendants further allege that Bedrock's claim for damages is barred by the doctrine of laches.

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<sup>1</sup> Defendants SoftLayer and Amazon did not assert any counterclaims.

#### IV. CONTENTIONS OF THE PARTIES

- **Bedrock's Statement of Its Contentions**

By providing these Contentions, Bedrock does not concede that all of these issues are appropriate for trial. In addition, Bedrock does not waive any of its motions *in limine* or motions for summary judgment.

1. In this case, Bedrock contends that Defendants are directly infringing claims 1, 2, 5, and 6 of the '120 patent under 35 U.S.C. §§ 271 and 281-285, by making, using, offering for sale, selling, and/or importing various products and/or services in the United States, without authority or license of Bedrock, including Linux kernel versions or software based on the following Linux kernel versions:<sup>2</sup> 2.4.22.x, 2.4.23.x, 2.4.24.x, 2.4.25.x, 2.4.26.x, 2.4.27.x, 2.4.28.x, 2.4.29.x, 2.4.30.x, 2.4.31.x, 2.4.32.x, 2.4.33.x, 2.4.37.x, 2.6.0.x, 2.6.1.x, 2.6.2.x, 2.6.3.x, 2.6.4.x, 2.6.5.x, 2.6.6.x, 2.6.7.x, 2.6.8.x, 2.6.9.x, 2.6.10.x, 2.6.11.x, 2.6.12.x, 2.6.13.x, 2.6.14.x, 2.6.15.x, 2.6.16.x, 2.6.17.x, 2.6.18.x, 2.6.19.x, 2.6.20.x, 2.6.21.x, 2.6.22.x, 2.6.23.x, 2.6.24.x, 2.6.25.x, 2.6.26.x, 2.6.27.x, 2.6.28.x, 2.6.29.x, 2.6.30.x, 2.6.31.x, 2.6.32.x, 2.6.33.x, 2.6.34.x, *et seq.*, and products and software with similar functionality that practice the inventions of the '120 patent.

2. Bedrock contends that the inventions of the '120 patent were conceived at least as early as November 2, 1996, and that diligence was used from that point forward to reduce the invention to practice by at least January 2, 1997. On this basis, Bedrock contends that the '120 patent is entitled to a priority date of at least as early as November 2, 1996.

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<sup>2</sup> Defendants object in that not all defendants use all of these versions of Linux and not all defendants are accused with respect to all of these versions of Linux..

3. Bedrock is the owner of all rights, title, and interest in and to the '120 patent at least as of March 26, 2009. Bedrock possesses all rights of recovery for past, present, and future infringement of the '120 patent.

4. Bedrock contends that it has been damaged by Defendants' conduct and seeks pre-verdict and post-verdict damages up to the time of judgment adequate to compensate for the infringement by Defendants, but in no event less than a reasonable royalty, together with prejudgment and post-judgment interest and costs as fixed by the Court.

5. Bedrock contends that Bedrock and all predecessors in interest have complied with 35 U.S.C. § 287.

6. Bedrock contends that this case is exceptional and that Bedrock is entitled to reasonable attorneys' fees and costs (and consultant fees and costs) pursuant to 35 U.S.C. § 285.

7. Bedrock contends that Defendants' infringement is and has been willful and thus requests that the Court award to Bedrock enhanced damages pursuant to 35 U.S.C. § 284, as well as supplemental damages for any continuing post-verdict infringement up until entry of final judgment, and an accounting for damages if necessary.

8. Bedrock contends that they are entitled to a permanent injunction against Defendants. In the alternative, Bedrock contends that any denial of a permanent injunction should be conditioned on payment of reasonable royalties for future infringement, including during any stay of an injunction pending appeal.

9. Bedrock denies Defendants' defenses and declaratory judgment claims that the patent-in-suit is invalid, or not infringed by Defendants.



10. Bedrock denies that Defendants are entitled to costs, a declaration that this case is exceptional, and attorneys' fees.

11. Bedrock contends that jurisdiction is proper in this Court.

12. Bedrock contends that venue is proper in the United States District Court for the Eastern District of Texas.

13. Bedrock contends that Defendants make, use, offer for sale, sell, and/or import various products and/or services, without authority or license of Bedrock, in the United States, including Linux kernel versions or software based on the following Linux kernel versions:<sup>3</sup> 2.4.22.x, 2.4.23.x, 2.4.24.x, 2.4.25.x, 2.4.26.x, 2.4.27.x, 2.4.28.x, 2.4.29.x, 2.4.30.x, 2.4.31.x, 2.4.32.x, 2.4.33.x, 2.4.37.x, 2.6.0.x, 2.6.1.x, 2.6.2.x, 2.6.3.x, 2.6.4.x, 2.6.5.x, 2.6.6.x, 2.6.7.x, 2.6.8.x, 2.6.9.x, 2.6.10.x, 2.6.11.x, 2.6.12.x, 2.6.13.x, 2.6.14.x, 2.6.15.x, 2.6.16.x, 2.6.17.x, 2.6.18.x, 2.6.19.x, 2.6.20.x, 2.6.21.x, 2.6.22.x, 2.6.23.x, 2.6.24.x, 2.6.25.x, 2.6.26.x, 2.6.27.x, 2.6.28.x, 2.6.29.x, 2.6.30.x, 2.6.31.x, 2.6.32.x, 2.6.33.x, 2.6.34.x, *et seq.*, and products with similar functionality.

- **Defendants' Statement of Their Contentions**

By providing these contentions, Defendants do not concede that all of these issues are appropriate for trial. In particular, Defendants do not waive any of their motions *in limine*, motions for summary judgment, or *Daubert* motions, which, if granted, would render some or all of these issues moot. Defendants' contentions in this case are detailed in their answers, affirmative defenses and counterclaims to Bedrock's Third Amended Complaint, and Defendants' invalidity contentions, all of which are incorporated herein by reference. In sum, Defendants contend the following:

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<sup>3</sup> Defendants object in that not all defendants use all of these versions of Linux and not all defendants are accused with respect to all of these versions of Linux.

1. Bedrock does not own, and therefore does not have standing to sue for infringement of the '120 patent.

2. Defendants do not directly infringe, and have not directly infringed, the asserted '120 patent claims.

3. The asserted claims of the '120 patent are invalid because they were anticipated and/or would have been obvious to one of skill in the art at the time of the claimed invention. The asserted claims are invalid for the reasons stated in Defendants' Invalidity Contentions and the expert reports of Joel Williams and Kevin Jeffay.

4. If Defendants are found to infringe the asserted claims of the '120 patent, and those claims are found to be valid, Bedrock is entitled to no more than the amount set forth in the Expert Report of Keith Ugone.

5. If Defendants are found to infringe the asserted claims of the '120 patent, Plaintiff's claims for damages are barred and/or unenforceable by the doctrine of laches.

6. If Defendants are found to infringe the asserted claims of the '120 patent, and those claims are found to be valid, Defendants' infringement was not willful.

7. Defendants are entitled to a declaratory judgment finding that Defendants are not directly or indirectly infringing, and have not directly or indirectly infringed, any claim of the '120 patent.

8. Defendants are entitled to a declaratory judgment finding that the claims of the '120 patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and/or 112.

9. Defendants are entitled to a declaratory judgment finding that Bedrock does not own the '120 patent and does not have standing to sue for infringement of the '120 patent.<sup>4</sup>

## V. STIPULATIONS AND UNCONTESTED FACTS

The parties agree to the following stipulations and uncontested facts.

- **Bedrock's and Defendants' Statement of Uncontested Facts**

1. The '120 patent has an effective filing date of January 2, 1997 and was issued on April 6, 1999.

2. The '120 patent is entitled "Methods and Apparatus for Information Storage and Retrieval Using A Hashing Technique with External chaining and On-The-Fly Removal of Expired Data."

3. The '120 patent identifies Richard Michael Nemes of New York as the named inventor.

4. Venue is proper in the United States District Court for the Eastern District of Texas, Tyler Division, in this case only.

5. Claims 1, 2, 5, and 6 of the '120 patent are at issue and asserted in this case against all Defendants except AOL. Only claims 1 and 2 of the '120 patent are asserted against AOL.

6. Bedrock filed its Original Complaint for Patent Infringement on June 16, 2009 ("Original Complaint").

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<sup>4</sup> Plaintiff Bedrock objects that no Defendant has standing to request a declaratory judgment on this issue (as evidenced in Bedrock's Motion to Dismiss Google Inc.'s and Match.com, LLC's Counterclaims (DKT. NOS. 476 and 477)). Plaintiff Bedrock further objects that Yahoo, SoftLayer, Amazon, MySpace, and AOL have not counterclaimed for a declaratory judgment on standing.

7. Bedrock is a corporation organized under the laws of the State of Texas with its principal place of business at 100 E. Ferguson Street, Suite 712, Tyler, Texas 75702.

8. SoftLayer is a Delaware corporation with its corporate headquarters and principal place of business at 4849 Alpha Road, Dallas, Texas.

9. Bedrock did not inform SoftLayer of the '120 patent before filing this lawsuit.

10. Amazon is a Delaware corporation with its corporate headquarters and principal place of business at 440 Terry Avenue N., Seattle, Washington 98109-5210.

11. Bedrock did not inform Amazon of the '120 patent before filing this lawsuit.

12. MySpace is a Delaware corporation with its corporate headquarters and principal place of business at 407 N. Maple Drive, Beverly Hills, California 90210.

13. Bedrock did not inform MySpace of the '120 patent before filing this lawsuit.

14. AOL is a Delaware corporation with its corporate headquarters and principal place of business at 770 Broadway, New York, New York 10003.

15. Bedrock did not inform AOL of the '120 patent before filing this lawsuit.

16. Yahoo! is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 701 First Avenue, Sunnyvale, California 94089-1019.

17. Bedrock did not inform Yahoo! of the '120 patent before filing this lawsuit.

18. United States Patent No. 6,119,214 to Dirks is a patent granted on an patent application which was filed with the U.S. Patent and Trademark Office prior to the conception date of the '120 Patent.

19. Robert L. Kruse, *Data Structures and Program Design* (2d ed. 1987), was publicly available prior to the conception date of the '120 Patent.

20. United States Patent No. 5,724,538 to Morris et al. is a patent granted on an patent application which was filed with the U.S. Patent and Trademark Office prior to the conception date of the '120 Patent.

21. DONALD E. KNUTH, *THE ART OF COMPUTER PROGRAMMING: VOL. 3 SORTING AND SEARCHING* (Richard S. Varga & Michael A. Harrison eds., 1st ed. 1973), was publicly available prior to the conception date of the '120 Patent.

- **Bedrock's Objections to Defendants' Statement of Its Contentions**

1. Plaintiff Bedrock objects that no Defendant has standing to request a declaratory judgment on this issue (as evidenced in Bedrock's Motion to Dismiss Google Inc.'s and Match.com, LLC's Counterclaims (DKT. NOS. 476 and 477)). Plaintiff Bedrock further objects that Yahoo, Softlayer, Amazon, MySpace, and AOL have not counterclaimed for a declaratory judgment on standing.

- **Defendants' Objections to Bedrock's Statement of Its Contentions**

1. Defendants object to Bedrock's contention that the following Linux kernel versions are accused in this case: 2.4.22.x, 2.4.23.x, 2.4.24.x, 2.4.25.x, 2.4.26.x, 2.4.27.x, 2.4.28.x, 2.4.29.x, 2.4.30.x, 2.4.31.x, 2.4.32.x, 2.4.33.x, 2.4.37.x, 2.6.0.x, 2.6.1.x, 2.6.2.x, 2.6.3.x, 2.6.4.x, 2.6.5.x, 2.6.6.x, 2.6.7.x, 2.6.8.x, 2.6.9.x, 2.6.10.x, 2.6.11.x, 2.6.12.x, 2.6.13.x, 2.6.14.x, 2.6.15.x, 2.6.16.x, 2.6.17.x, 2.6.18.x, 2.6.19.x, 2.6.20.x, 2.6.21.x, 2.6.22.x, 2.6.23.x, 2.6.24.x, 2.6.25.x, 2.6.26.x, 2.6.27.x, 2.6.28.x, 2.6.29.x, 2.6.30.x, 2.6.31.x, 2.6.32.x, 2.6.33.x, 2.6.34.x, *et seq.*, and products and software with similar functionality that practice the inventions of the '120 patent. Bedrock has only accused Yahoo! of infringing claims 1 and 2 due to its use of Linux

kernel versions 2.4.29, 2.4.31, 2.6.9, 2.6.18, and 2.6.22 on its servers, and accused Yahoo! of infringing claims 1, 2, 5, and 6 due to its of Linux kernel versions 2.6.27 and 2.6.29 on its servers. Bedrock has only accused SoftLayer of infringing claims 1 and 2 due to its use of Linux kernel versions 2.6.9, 2.6.15, 2.6.16, 2.6.18, 2.6.21, 2.6.23, and 2.6.24, and Bedrock has only accused SoftLayer of infringing claims 1, 2, 5, and 6 due to its use of Linux kernel versions 2.6.26, 2.6.27, 2.6.29, 2.6.32, and 2.6.33 on its servers. Bedrock has only accused Amazon of infringing claims 1 and 2 due to its use of Linux kernel versions 2.6.9, 2.6.18, and 2.6.21, and Bedrock has only accused Amazon of infringing claims 1, 2, 5, and 6 due to its use of Linux kernel version 2.6.34 on its servers. Bedrock has only accused AOL of infringing claims 1 and 2 due to its use of Linux kernel versions 2.6.9, 2.6.18 and 2.6.24. Bedrock has only accused MySpace of infringing claims 1 and 2 due to its use of Linux kernel versions 2.6.18, 2.6.20, and 2.6.24 and claims 1, 2, 5, and 6 due to its use of Linux kernel version 2.6.31.

2. Defendants object to Bedrock's contention that the inventions of the '120 patent were conceived at least as early as November 2, 1996, and that diligence was used from that point forward to reduce the invention to practice by at least January 2, 1997. Bedrock declined to provide this information during discovery to any of the defendants and first asserted this information in this pretrial order.<sup>5</sup> Bedrock also has not corroborated such a conception date or diligence.

3. Defendants object to Bedrock's contention that it owns the '120 patent and, therefore, has standing to sue and confer jurisdiction on this Court.

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<sup>5</sup> In response to Defendants' objection, Bedrock contends that it disclosed the conception date of November 2, 1996 in at least the August 31<sup>st</sup>, 2010 deposition of Dr. Nemes and in Bedrock's January 22<sup>nd</sup>, 2010 response to Google's First Set of Interrogatories.

## **VI. CONTESTED ISSUES OF FACT AND LAW**

The Parties identify the following issues of fact that remain to be litigated. To the extent any issue of law discussed below is deemed to be an issue of fact, it is incorporated into this section. The Parties reserve the right to identify additional factual or legal issues that may arise, including issues raised in any motions *in limine*.

- **Bedrock's Statement of Contested Issues of Fact and Law**

By providing this Statement, Bedrock does not concede that all of these issues are appropriate for trial. In addition, Bedrock does not waive any of its pending motions.

1. Whether Defendants directly infringe claims 1, 2, 5, and 6 of the '120 patent.

2. Whether Defendants' infringement is willful.

3. Whether Bedrock is entitled to enhanced damages pursuant to 35 U.S.C. § 284, and, if so, the dollar amount of the enhancement.

4. Whether this case is an exceptional case pursuant to 35 U.S.C. § 285 and whether Bedrock is entitled to an award of attorneys' fees.

5. Whether Bedrock is entitled to damages to compensate for Defendants' infringement, and, if so, the dollar amount of pre-verdict and post-verdict damages to the time of judgment adequate to compensate for the infringement of the patent-in-suit, but in no event less than a reasonable royalty.

6. Whether Bedrock is entitled to costs, and, if so, the dollar amount of their costs.

7. Whether Bedrock is entitled to prejudgment and post-judgment interest, and, if so, the dollar amount of prejudgment and post-judgment interest.

8. Whether Bedrock is entitled to a permanent injunction against Defendants, requiring Defendants to refrain from directly infringing, contributing to, or inducing the infringement of the patent-in-suit in the United States.

9. Whether any denial of a permanent injunction should be conditioned on payment of reasonable royalties for future infringement, and if so, the royalty amount set for future infringement and a means or mechanism to account for future royalty payments, including during any stay of an injunction pending appeal.

10. Whether Defendants have proven by a preponderance of the evidence that the claims of the patent-in-suit are invalid because they are anticipated by Defendants' prior art references under 35 U.S.C. § 102.

11. Whether Defendants have proven by a preponderance of the evidence that the claims of the patent-in-suit are obvious under 35 U.S.C. § 103 in view of Defendants' prior art references.

Any issues of fact that are determined to constitute issues of law are hereby designated as such, and vice versa. Bedrock also incorporates by reference the contested issues raised in its pending motions. *See* Section IX, *infra*.

- **Defendants' Statement of Contested Issues of Fact and Law**

(To the extent any issue of law is deemed to be an issue of fact, it is incorporated into this section).

1. Whether Bedrock owns and therefore has standing to sue for infringement of the '120 patent.



2. Whether Bedrock has proven by a preponderance of the evidence that each of Defendants' accused products literally and directly infringes the asserted claims of the '120 patent listed below:

- a. Claim 1
- b. Claim 2
- c. Claim 5
- d. Claim 6

3. Whether Defendants have proven by a preponderance of the evidence that the asserted claims of the '120 patent are invalid because they are anticipated under 35 U.S.C. §102.

4. Whether Defendants have proven by a preponderance of the evidence that the asserted claims of the '120 patent are invalid because they would have been obvious to one of ordinary skill in the art at the time of the claimed invention under 35 U.S.C. §103.

5. Whether Defendants have proven by a preponderance of the evidence that the asserted claims of the '120 patent are invalid for failure to satisfy the written description requirement of 35 U.S.C. §112.<sup>6</sup>

6. If Defendants are found to have infringed the asserted claims of the '120 patent, and the asserted claims are found to be valid, the amount Bedrock has proven by a preponderance of the evidence that it is entitled to damages for that infringement.

7. If Defendants are found to have infringed the asserted claims of the '120 patent, and the asserted claims are found to be valid, whether Bedrock has proven by clear and convincing evidence that Defendants' infringement was willful.

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<sup>6</sup> Bedrock objects to Defendants' defense of written description as it was not included in Defendants' expert reports.

8. Whether Defendants have proven that Defendants are entitled to a declaratory judgment finding that Defendants are not directly infringing, and have not directly infringed, any claims of the '120 patent.

9. Whether Defendants have proven that Defendants are entitled to a declaratory judgment finding that the claims of the '120 patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and/or 112.

10. Whether Defendants have proven that Defendants are entitled to a declaratory judgment finding that Bedrock does not own the '120 patent and therefore does not have standing to sue for infringement of the '120 patent.<sup>7</sup>

11. Whether Bedrock has a failure of proof that it owns and therefore has standing to sue the Defendants for infringement of the '120 patent.

12. Whether each accused product of the Defendants infringes the asserted claims of the '120 patent.

13. Whether the asserted claims of the '120 Patent are valid.

14. If Defendants are found to infringe the asserted claims of the '120 patent, and those claims are found to be valid, Bedrock is entitled to no more than the amount set forth in the Expert Report of Keith Ugone.

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<sup>7</sup> Plaintiff Bedrock objects that no Defendant has standing to request a declaratory judgment on this issue (as evidenced in Bedrock's Motion to Dismiss Google Inc.'s and Match.com, LLC's Counterclaims (DKT. NOS. 476 and 477)). Plaintiff Bedrock further objects that Yahoo, SoftLayer, Amazon, MySpace, and AOL have not counterclaimed for a declaratory judgment on standing.

15. If Defendants are found to infringe the asserted claims of the '120 patent, and those claims are found to be valid, Defendants' infringement was not willful and Bedrock is not entitled to enhanced damages of up to three times actual damages.

16. If Defendants are found to infringe the asserted claims of the '120 patent, and those claims are found to be valid, Bedrock is not entitled to prejudgment interest and costs.

17. Whether Bedrock has admitted to noninfringement for Linux kernel versions 2.6.9 and 2.6.18.<sup>8</sup>

18. Whether this is an exceptional case that entitles Defendants to attorneys' fees, costs and interest.

- **Bedrock's Statement Regarding Issues to Be Decided by the Court**

1. Bedrock reserves the right to object to the language and substance of any proposed instructions and questions on the issues of obviousness.

2. Bedrock contends that all issues related to Bedrock's claim for injunctive relief require determination by the Court, should not be submitted to the jury, and the jury should not be advised of the defense.

- **Defendants' Statement Regarding Issues to Be Decided by the Court**

1. Whether Bedrock owns the '120 patent and, therefore, has standing to sue the Defendants for infringement of the '120 patent.

2. Whether Plaintiff's claim of damages is barred and/or unenforceable by the doctrine of laches.

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<sup>8</sup> Bedrock objects to this issue as outlined in its to be filed motion regarding Yahoo's First Set of RFAs. Furthermore, Bedrock objects to the extent any other defendant other than Yahoo is attempting to avail itself of this issue.

## **VII. LIST OF WITNESSES**

- Bedrock's Witness List is attached as Exhibit A.
- Defendants' Witness Lists are attached as Exhibit B

## **VIII. DEPOSITION DESIGNATIONS**

Pursuant to the Court's Order Granting Joint Motion to Amend Docket Control Order (Dkt. 556), the parties will exchange deposition designations on March 11, 2011. Rebuttal designations and objections to deposition designations will be exchanged on March 18, 2011. Objections to rebuttal deposition designations will be exchanged on March 22, 2011. The parties have attached deposition designations at Exhibit C and D as described below. The parties will supplement this pre-trial order to include additional designations as described in Exhibit E, G, I, and J below.:

- Bedrock's Deposition Designations are submitted as Exhibit C.
- Defendants' Deposition Designations are submitted as Exhibit D.
- Bedrock's objections and rebuttal designations will be supplemented as Exhibits E and F, respectively.
- Defendants' objections and rebuttal designations will be supplemented as Exhibits G and H, respectively.
- Bedrock's objections to any rebuttal designations will be supplemented as Exhibit I.
- Defendants' objections to any rebuttal designations will be supplemented as Exhibit J.

The parties will meet and confer regarding their respective objections in order to strive to resolve all objections and issues prior to presenting them to the Court.

## **IX. LIST OF EXHIBITS**

Pursuant to the Court's Order Granting Joint Motion to Amend Docket Control Order (Dkt. 556), the parties will exchange trial exhibit lists on March 11, 2011, and will exchange

pretrial objections, including objections to exhibit lists, on March 18, 2011. The parties have submitted exhibit lists as described in Exhibit K and L below. The parties will supplement this pre-trial order to include these exhibit lists and objections described below in Exhibits M and N.

- Bedrock’s Exhibit List is submitted as Exhibit K.
- Defendants’ Exhibit List is submitted as Exhibit L.
- Bedrock’s objections to Defendants’ Exhibit List will be supplemented as Exhibit M.
- Defendants’ objections to Plaintiff’s Exhibit List will be supplemented as Exhibit N.

## **X. LIST OF PENDING MOTIONS**

Docket Number	Motion
462	Defendants’ Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,893,120 dated February 8, 2011
463	Defendants’ Motion for Summary Judgment of Non-Infringement of the ‘120 Patent dated February 8, 2011
473	Yahoo!’s Motion to Dismiss For Failure to State a Claim for Willful Infringement dated February 10, 2011
553	Bedrock’s Motion to Dismiss Google Inc.’s and Match.com, LLC’s Counterclaims (DKT. NOS. 476 and 477)
558	Defendants’ Combined Daubert and Rule 26(A) Motion to Exclude the Expert Testimony of Dr. Mark Jones
559	Defendants’ Joint Motion to Exclude and/or Strike the Expert Report and Opinions of Roy Weinstein
567	MOTION for Relief from Trial in Observance of Passover Holiday by Google Inc., Match.Com LLC.
568	Unopposed MOTION from Trial in Observance of Passover Holidays by Bedrock Computer Technologies, LLC.
570	Emergency Motion for Separate Trial Pursuant to Magistrate Judge Love's Trial Plan Order [Dkt. No. 540] by AOL Inc, MySpace Inc.
571	MOTION to Expedite the Briefing Schedule Regarding AOL & MySpace's Sealed Emergency Motion for a Separate Trial by AOL Inc, MySpace Inc.
572	Joint MOTION to Amend/Correct [174] Order by AOL Inc, Bedrock Computer Technologies, LLC, Google Inc., Match.Com LLC, MySpace Inc., Softlayer Technologies, Inc., Yahoo! Inc.

Docket Number	Motion
To Be Filed	Bedrock's Motion Regarding Yahoo's First Set of RFAs

In addition, all parties' motions *in limine* are to be filed on March 14, 2011 pursuant to the Docket Control Order dated February 3, 2010 (Dkt. 174).

## **XI. PROBABLE LENGTH OF TRIAL**

Bedrock estimates the probable length of trial will be 6-7 days. Bedrock requests 11 hours per side for direct, cross, and rebuttal examination. Bedrock further requests 30 minutes per side for voir dire, 45 minutes for opening statements, and 1 hour for closing arguments.

Defendants Google and Match.com estimate the probable length of the first trial will be 7-8 court days. Google and Match.com request 15 hours per side for direct, cross and rebuttal examination. Defendants further request 30 minutes per side for voir dire, 45 minutes for opening statements, and 1 hour for closing arguments.

Defendants estimate the probable length of the second trial will be 9-10 court days.<sup>9</sup> Defendants Softlayer, Amazon, MySpace, AOL, and Yahoo! request 22 hours per side for direct, cross and rebuttal examination. Given the large number of defendants, they further request 50 minutes per side for voir dire, 1 hour for opening statements, and 1 hour for closing arguments.

Defendants AOL and MySpace have filed a Motion for a Separate Trial for AOL and MySpace. If that motion is granted, Defendants AOL and MySpace estimate the probably length of trial for AOL and MySpace to be 5 Court days. AOL and MySpace request 15 hours per side for direct, cross and rebuttal examination, and 1.5 hours combined for opening and closing statements for both sides. AOL and MySpace anticipate fewer issues, and less evidence to be

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<sup>9</sup> Defendants object to a consolidated trial of all of the Defendants.

presented during the AOL/MySpace trial than during the Google/Match and Yahoo!/Softlayer/Amazon trials.<sup>10</sup>

## **XII. MANAGEMENT CONFERENCE LIMITATIONS**

The parties will confer concerning additional limitations and propose them in advance of the pre-trial conference.

## **XIII. CERTIFICATIONS**

The undersigned counsel for each of the parties to this action does hereby certify and acknowledge the following:

1. Full and complete disclosure has been made in accordance with the Federal Rules of Civil Procedure, the Local Rules, and the Court's orders;

2. The parties have complied with discovery limitations set forth in the Federal Rules of Civil Procedure, the Local Rules, and the Court's orders.<sup>11</sup> The parties have stipulated and moved this Court on various issues altering discovery limitations, which have all been approved by this Court;

3. Except as otherwise agreed or ordered, counsel for each party will provide the following certification when their respective exhibit lists are filed. Each exhibit in the List of Exhibits (excluding demonstratives):

(a) is in existence;

(b) will be numbered; and

(c) will be disclosed and shown to opposing counsel on March 16, 2011.

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<sup>10</sup> Bedrock objects to and opposes AOL's and Myspace's motion for separate trial.

<sup>11</sup> This representation is subject to any matters addressed in pending motions and/or objections.

Dated: March 11, 2011.

Respectfully submitted,

**McKOOL SMITH, P.C.**

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This Joint PreTrial Order is hereby approved