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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 INTERVAL LICENSING LLC,

11 Plaintiff,

12 v.

13 AOL, INC., et al.,

14 Defendants.

CASE NO. C10-1385 MJP

SCHEDULING ORDER

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16 This matter comes before the Court on the parties' supplemental joint status report. (Dkt.
17 No. 167.) Having reviewed the report, the Court sets the following schedule and parameters:

- 18 1. Case Tracks: The Court agrees with Plaintiff that this litigation should be divided into
19 two tracks. The Court therefore groups U.S. Patent Nos. 6,034,652 (“‘652 Patent’”)
20 6,788,314 (“‘314 Patent’”) together, and U.S. Patent Nos. 6,757,682 (“‘682 Patent’”)
21 6,263,507 (“‘507 Patent’”) together. All deadlines set forth apply with equal force to each
22 track, with the sole exception being the trial date. The trial date for the ‘507 and ‘682
23 patent is June 18, 2012, and the trial date for the ‘652 and ‘314 track is July 16, 2012.
- 24 2. Stay: The Court will not set a deadline by which Defendants must move to stay the case

1 for inter partes examination.

2 3. Discovery Tracks: The Court rejects Defendants' request to have separate tracks for
3 discovery. Discovery on all issues shall proceed concurrently.

4 4. Discovery Limitations

5 A. Inventor Depositions: Defendants in the '652 and '314 Patents track shall have
6 63 hours to depose the inventors of the two patents. Defendants in the '507 and
7 '582 Patents shall have 91 hours to depose the inventors of the two patents.
8 Defendants may not depose any single inventor for more than 12 hours.
9 Defendants may otherwise divide this bank of time as they see appropriate.

10 B. Third-Party Depositions: The parties shall have no more than 7 hours of
11 deposition time per third-party. Each third-party may be deposed only once by
12 each side (Plaintiff and Defendants). That is, Plaintiff shall be entitled to depose
13 each third-party witness for no more than 7 hours and Defendants, jointly, shall be
14 entitled to depose each third-party witness for no more than 7 hours.

15 C. 30(b)(6) Depositions: Each side shall have a total bank of 82.5 hours to conduct
16 30(b)(6) depositions of the other side. This does not mean Plaintiff may depose
17 each Defendant for 82.5 hours. Rather, Plaintiff may use 82.5 hours to depose all
18 of the Defendants collectively; how Plaintiff divides that time is up to Plaintiff.
19 The same applies to Defendants. Defendants collectively share 82.5 hours to
20 conduct 30(b)(6) depositions of Plaintiff and they may divide up that time as they
21 see fit. No single person designated as a 30(b)(6) deponent may be deposed for
22 more than 7 hours, unless leave of Court is obtained on a showing of good cause.
23 No other restrictions apply.

1 D. Total Time Limits: The Court does not set a separate time limit for all
2 depositions combined.

3 5. Interrogatories: Plaintiff shall have no more than 30 interrogatories. Defendants shall
4 have 20 common interrogatories that they may file. Each Defendant shall additionally be
5 permitted to serve 5 individual interrogatories.

6 6. Requests for Admission: The Court imposes no limitations on requests for limitations
7 beyond those contained in the Federal Rules of Civil Procedure and the Local Patent
8 Rules.

9 7. Markman Issues

10 A. Claim Terms: The Court will construe a maximum of 10 claim terms per track.
11 That is, the '314 and '652 Patents track shall have 10 claim terms in total selected
12 from the '314 and '652 Patents to be presented for claim construction, and the
13 '507 and '682 Patents track shall have 10 claim terms in total selected from the
14 '507 and '682 Patents to be presented for construction.

15 B. Number of Claims: The Court refuses to set a limit on the number of claims
16 Plaintiff may pursue in this litigation. Plaintiff is limited only the Federal Rules
17 of Civil Procedure and the Local Patent Rules.

18 C. Number of Prior Art References: The Court refuses to set a limit on the number
19 of prior art references Defendants may claim. Defendants are limited only the
20 Federal Rules of Civil Procedure and the Local Patent Rules.

21 D. Non-Infringement Contentions: Defendants are required to serve non-
22 infringement contentions by no later than February 26, 2011.

23 E. Tutorial: Any tutorial for the Markman hearing must be conducted live. Each
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1 side may present a tutorial, although the Court encourages the parties to work
2 jointly. The parties must provide a plan to the Court as to how they wish to
3 proceed at least 3 days before the hearing. The hearing will commence at 9:00
4 AM.

5 8. Page Limitations: The sides in each track shall have no more than 40 pages to present
6 their opening arguments on claim construction. Response briefs are limited to 20 pages.
7 For any dispositive motions, each side shall have 40 pages maximum for opening and
8 responsive briefing. Reply briefs are limited to 20 pages. If any individual Defendants
9 wish to file separate dispositive motions on issues not common to all Defendants, they
10 must seek leave of Court at least 5 days before filing. Per Local Rule CR 7(e), the filing
11 of multiple dispositive motions to avoid page limits are strongly discouraged and
12 successive motions will be stricken. For all discovery disputes, the parties must use the
13 unified format set forth in Local Rule CR 37. The 12 page limitation applies equally to
14 this litigation. Local Rule CR 37(a)(1)(B)(v).

15 9. Defense Whip: The Court requires the whip for Defendants to be a member of the
16 Washington State Bar. For that reason, the Court appoints Mark Walters as the whip for
17 Defendants. Responsibilities of the whip include speaking on behalf of all Defendants at
18 status conferences, coordinating motions filing, tabulating hours used in depositions, and
19 coordinating the claims construction process. These are important tasks, which require
20 great attention of the whip. As a local practitioner, Mr. Walters is instructed to share his
21 knowledge of how the Court operates and the Local Rules.

22 10. Plaintiff Whip: The Court requires Plaintiff to select one member of its team of counsel
23 to be appointed whip. This individual must be a member of the Washington State Bar.
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1 Responsibilities are identical to those of the defendant's whip. Plaintiff is required to
2 select its whip and inform the court of its decision within 7 days of entry of this order.

3 11. Electronic Discovery Protocol: The parties are hereby ordered to provide the Court with
4 an electronic discovery protocol agreed upon by all parties. The Court recommends the
5 parties consult the Federal Judiciary Center's guide on electronic discovery entitled
6 "Managing Discovery of Electronic Information: A Pocket Guide for Judges." It is
7 available at: [http://www.fjc.gov/public/pdf.nsf/lookup/eldscpkt.pdf/\\$file/eldscpkt.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/eldscpkt.pdf/$file/eldscpkt.pdf).
8 The parties shall provide the Court with their proposed electronic discovery protocol
9 within ten days from entry of this order.

10 12. Deposition Protocol: The parties are hereby ordered to provide the Court with a proposed
11 deposition protocol agreed upon by all parties. The protocol is to be submitted to the
12 Court within ten days of entry of this order.

13 13. Scheduled Dates: The Court sets the following dates that may only be changed by
14 showing of good cause:

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EVENT	DATE
Disclosures of Preliminary Invalidity and Non-Infringement Contentions	2/26/2011
Deadline to Join Parties	3/11/2011
Terms Selected for Claims Construction	3/18/2011
Claim Construction Expert Report Deadline	4/4/2011
Claim Construction Expert Rebuttal Reports	5/2/2011
Preliminary Claim Chart	5/2/2011

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Joint Claim Chart and Prehearing Statement	5/27/2011
Opening Briefs on Claim Construction	6/16/2011
Response Briefs on Claim Construction	7/8/2011
<u>Markman</u> Hearing	7/22/2011 at 9:00 AM
Close of Fact Discovery	11/11/2011
Opening Expert Reports on all issues	11/28/2011
Rebuttal Expert Reports Due	12/30/2011
Complete all Expert Discovery by	1/13/2012
Dispositive Motion Deadline	2/10/2012
Settlement Conference per Local Rule CR 39.1(c)(2) held no later than	4/19/2012
Mediation per Local Rule CR 39.1(c)(3) held no later than	5/14/2012
All Motions in Limine must be filed by and noted on the motion calendar no later than the second Friday thereafter	5/14/2012
Agreed Pretrial Order due	6/6/2012
Trial Briefs, Proposed Voir Dire Questions, Proposed Jury Instructions, and Trial Exhibits for both Tracks due	6/13/2012
Pretrial Conference for '507 and '682 Patent Track	6/8/2012 at 1:30 PM
Trial Date on '507 and '682 Patents	6/18/2012 at 9:00 AM
Pretrial Conference for '314 and '652 Patent	7/6/2012 at 1:30 PM

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Track	
Trial Date on '314 and '652 Patents	7/16/2012 at 9:00 AM

The clerk is ordered to provide copies of this order to all counsel.

Dated this 16th day of February, 2011.



Marsha J. Pechman
United States District Judge