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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC.,

Defendant.

CASE NO. C10-1385MJP

SCHEDULING ORDER

INTERVAL LICENSING LLC,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No. C11-708MJP

Lead Case No. C10-1385MJP

INTERVAL LICENSING LLC,

Plaintiff,

v.

EBAY, INC.,

Defendant.

Case No. C11-709MJP

Lead Case No. C10-1385MJP

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INTERVAL LICENSING LLC,
Plaintiff,
v.
FACEBOOK, INC.,
Defendant.

Case No. C11-710MJP
Lead Case No. C10-1385MJP

INTERVAL LICENSING LLC,
Plaintiff,
v.
GOOGLE, INC.,
Defendant.

Case No. C11-711MJP
Lead Case No. C10-1385MJP

INTERVAL LICENSING LLC,
Plaintiff,
v.
NETFLIX, INC.,
Defendant.

Case No. C11-712MJP
Lead Case No. C10-1385MJP

INTERVAL LICENSING LLC,
Plaintiff,
v.
OFFICE DEPOT, INC.,
Defendant.

CASE NO. C11-713MJP
Lead Case No. C10-1385MJP

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INTERVAL LICENSING LLC,
Plaintiff,
v.
OFFICEMAX, INC.,
Defendant.

CASE NO. C11-714MJP
Lead Case No. C10-1385MJP

INTERVAL LICENSING LLC,
Plaintiff,
v.
STAPLES, INC.,
Defendant.

CASE NO. C11-715MJP
Lead Case No. C10-1385MJP

INTERVAL LICENSING LLC,
Plaintiff,
v.
YAHOO! INC.,
Defendant.

CASE NO. C11-716MJP
Lead Case No. C10-1385MJP

INTERVAL LICENSING LLC,
Plaintiff,
v.
YOUTUBE, INC.,
Defendant.

CASE NO. C11-717MJP
Lead Case No. C10-1385MJP

1 This matter comes before the Court on the parties' joint status report. Requesting
2 alternations to schedule. (Dkt. No. 232.) Having reviewed the report, the Court sets the
3 following schedule and parameters:

4 1. Case Tracks: The Court agrees with Plaintiff that this litigation should be divided into
5 two tracks. The Court therefore groups U.S. Patent Nos. 6,034,652 (“‘652 Patent”)
6 6,788,314 (“‘314 Patent”) together, and U.S. Patent Nos. 6,757,682 (“‘682 Patent”)
7 6,263,507 (“‘507 Patent”) together. All deadlines set forth apply with equal force to each
8 track, with the sole exception being the trial date. The trial date for the ‘507 and ‘682
9 patent is June 18, 2012, and the trial date for the ‘652 and ‘314 track is July 16, 2012.

10 2. Stay: The Court will not set a deadline by which Defendants must move to stay the case
11 for inter partes examination.

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

14 4. Discovery Limitations

15 A. Inventor Depositions: Defendants in the ‘652 and ‘314 Patents track shall have
16 63 hours to depose the inventors of the two patents. Defendants in the ‘507 and
17 ‘582 Patents shall have 91 hours to depose the inventors of the two patents.
18 Defendants may not depose any single inventor for more than 12 hours.
19 Defendants may otherwise divide this bank of time as they see appropriate.

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

2 C. 30(b)(6) Depositions: Each side shall have a total bank of 82.5 hours to conduct
3 30(b)(6) depositions of the other side. This does not mean Plaintiff may depose
4 each Defendant for 82.5 hours. Rather, Plaintiff may use 82.5 hours to depose all
5 of the Defendants collectively; how Plaintiff divides that time is up to Plaintiff.
6 The same applies to Defendants. Defendants collectively share 82.5 hours to
7 conduct 30(b)(6) depositions of Plaintiff and they may divide up that time as they
8 see fit. No single person designated as a 30(b)(6) deponent may be deposed for
9 more than 7 hours, unless leave of Court is obtained on a showing of good cause.
10 No other restrictions apply.

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

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

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

19 7. Markman Issues

20 A. Claim Terms: The Court will construe a maximum of 10 claim terms per track.
21 That is, the '314 and '652 Patents track shall have 10 claim terms in total selected
22 from the '314 and '652 Patents to be presented for claim construction, and the
23 '507 and '682 Patents track shall have 10 claim terms in total selected from the
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1 '507 and '682 Patents to be presented for construction.

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

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

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

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

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

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

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

13 11. Electronic Discovery Protocol: The parties are hereby ordered to provide the Court with
14 an electronic discovery protocol agreed upon by all parties. The Court recommends the
15 parties consult the Federal Judiciary Center's guide on electronic discovery entitled
16 "Managing Discovery of Electronic Information: A Pocket Guide for Judges." It is
17 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).
18 The parties shall provide the Court with their proposed electronic discovery protocol
19 within ten days from entry of this order.

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

23 13. Scheduled Dates: The Court sets the following dates that may only be changed by
24

1 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
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	12/5/2011
Rebuttal Expert Reports Due	1/6/2012
Joint Status Report to address trial issues	1/6/2012
Complete all Expert Discovery by	1/25/2012
Dispositive Motion Deadline	2/10/2012
Settlement Conference per Local Rule CR 39.1(c)(2) held no later than	4/19/2012

1	Mediation per Local Rule CR 39.1(c)(3) held no later than	5/14/2012
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3	All Motions in Limine must be filed by and noted on the motion calendar no later than the second Friday thereafter	5/14/2012
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5	Agreed Pretrial Order due	6/6/2012
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7	Trial Briefs, Proposed Voir Dire Questions, Proposed Jury Instructions, and Trial Exhibits for both Tracks due	6/13/2012
8		
9	Pretrial Conference for '507 and '682 Patent Track	6/8/2012 at 1:30 PM
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11	Trial Date on '507 and '682 Patents	6/18/2012 at 9:00 AM
12		
13	Pretrial Conference for '314 and '652 Patent Track	7/6/2012 at 1:30 PM
14		
15	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 7th day of June, 2011.



Marsha J. Pechman
United States District Judge