

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HYPERPHRASE TECHNOLOGIES,)	
LLC, and HYPERPHRASE INC.)	
)	
Plaintiffs,)	
)	Civil Action No. 06-C-0199-S
v.)	
)	
GOOGLE INC.,)	
)	
Defendant.)	

**HYPERPHRASE’S MOTION FOR A NEW SCHEDULE
FOR SUMMARY JUDGMENT ON GOOGLE’S LICENSE DEFENSE**

The summary judgment motions filed by Google on the last day set by the Court for filing such motions included a request for a summary determination that Google is protected by a license granted by HyperPhrase to Microsoft – an affirmative defense that Google sought to add to this lawsuit less than a week before the deadline for filing summary judgment motions. At the time Google’s summary judgment motions were filed, Google’s license defense was not part of this lawsuit.

Given the new trial schedule, on March 25, 2008, Judge Crabb granted Google’s motion to add its license defense (3/25/08 Order, Docket No. 118). Specifically, the Court noted that HyperPhrase had presented an argument that additional discovery would be needed to respond to the license defense and found that “Plaintiffs’ [HyperPhrase’s] argument would be compelling were it not for the fact that the trial date has been continued until March 16, 2009,” well after Google’s summary judgment motions had been filed. The Court’s March 25, 2008 Order further held that HyperPhrase “may apply to the [M]agistrate [J]udge for either a delay in the present deadlines or for a new deadline for a summary judgment motion, limited to the license issue.”

As permitted by the Court's March 25, 2008 Order, HyperPhrase respectfully seeks a new schedule for briefing the motion for summary judgment on the license defense to dates after the other summary judgment motions filed by Google (for invalidity, non-infringement and no willfulness) have been decided. If the Court's decision on those motions does not terminate the case, then discovery can proceed on all issues and briefing completed on the license summary judgment as follows:

- **HyperPhrase discovery concerning Google's license defense:** a period of four weeks after the Court's summary judgment decisions on invalidity and non-infringement.
- **HyperPhrase's response to Google's motion for summary judgment concerning the license defense:** three weeks after the conclusion of discovery on the license issue.
- **Google's reply brief:** to be filed three weeks after HyperPhrase's response brief is filed.

The license issue will then be fully briefed ten weeks after decisions on the other summary judgment motions and well in advance of the March 26, 2009 trial date. This will avoid unfair prejudice to HyperPhrase by providing the opportunity to take discovery concerning the license defense – which the Court recognized as appropriate in its March 25, 2008 Order. This approach also is consistent with the agreement reached at the March 20, 2008 status conference to await the Court's decision on summary judgment before beginning full-scale discovery on the merits.

A proposed Order rescheduling the summary judgment briefing concerning Google's license defense is attached as Exhibit A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **HYPERPHRASE'S MOTION FOR A NEW SCHEDULE FOR SUMMARY JUDGMENT ON GOOGLE'S LICENSE DEFENSE** was filed with the Clerk of the Court for the Western District of Wisconsin using the ECF filing system which will send notification of such filing to the following:

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on this 1st day of April 2008.

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