

HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC.; APPLE, INC.; eBAY, INC.;
FACEBOOK, INC.; GOOGLE INC.;
NETFLIX, INC.; OFFICE DEPOT, INC.;
OFFICEMAX INC.; STAPLES, INC.;
YAHOO! INC.; AND YOUTUBE, LLC,

Defendants.

Case No. 2:10-cv-01385-MJP

**DEFENDANTS EBAY INC., NETFLIX,
INC., OFFICE DEPOT, INC., AND
STAPLES, INC.'S NOTICE OF
JOINDER IN DEFENDANTS GOOGLE
INC. AND YOUTUBE, LLC'S REPLY
IN SUPPORT OF MOTION TO
DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN
BE GRANTED PURSUANT TO
FED. R. CIV. P. 12(b)(6)**

**Oral Argument Requested
Noted on Motion Calendar:
November 12, 2010**

Defendants eBay Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc. hereby join
Defendants Google Inc. and YouTube, LLC's Reply in Support of Motion to Dismiss For Failure
to State a Claim Upon Which Relief Can Be Granted Pursuant to Fed. R. Civ. P. 12(b)(6)
(Docket No. 130), and the arguments and authorities found therein.

1 Interval Licensing LLC's allegations of infringement fail to identify what products or
2 services are accused. Interval Licensing Opposition to the Motion to Dismiss does not suggest
3 that it cannot identify what it accuses; rather that it won't – until it serves its infringement
4 contentions. As set forth in the Motion and Reply, Interval's suggestion that its forthcoming
5 non-infringement contentions cure the deficiencies of its Complaint is unfounded. (See, e.g.,
6 Dkt. No. 130 at 5:1-22). Likewise, Interval's agreement to delay the initiation of discovery until
7 after infringement contentions are served cannot cure its deficient pleading. *See Ashcroft v.*
8 *Iqbal*, 129 S. Ct. 1937, 1953-54 (2009) (“We decline respondent’s invitation to relax the
9 pleading requirement on the ground that the Court of Appeals promises petitioners minimally
10 intrusive discovery.”)

11 Because Interval Licensing LLC has not adequately pled the facts required to support an
12 allegation that eBay Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc., directly or indirectly
13 infringe the '507 and '682 patents, and for the reasons discussed in Google Inc. and YouTube,
14 LLC's Motion to Dismiss and Reply in support thereof, eBay Inc., Netflix, Inc., Office Depot,
15 Inc., and Staples, Inc. respectfully request that all claims against eBay Inc., Netflix, Inc., Office
16 Depot, Inc., and Staples, Inc. be dismissed.

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18 DATED this 12th day of November, 2010.

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20 KLARQUIST SPARKMAN, LLP

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22 By: /s/ Kristin L. Cleveland
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EBAY, NETFLIX, OFFICE DEPOT AND
STAPLES: NOTICE OF JOINDER IN REPLY IN
SUPPORT OF MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6) (2:10-
cv-01385-MJP)

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing on all counsel who are deemed to have consented to electronic service.

By: /s/ Kristin L. Cleveland
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