UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN SEATTLE

INTERVAL LICENSING, LLC,	)	
	)	
Plaintiff,	)	No. C10-1385
	)	
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.	)	
	)	
	)	

STATUS CONFERENCE

BEFORE THE HONORABLE MARSHA J. PECHMAN

December 13, 2010

THE COURT: Good afternoon. For those of you who were here before, I am sorry we are such weather wimps and made you come back. Why don't we start by having everybody introduce themselves to me, and identifying who you represent for me, please.

MR. McGANN: Kevin McGann, representing Google and YouTube. With me is Shannon Jost of Stokes Lawrence.

THE COURT: Very good.

MR. WALTERS: Good afternoon, your Honor. I am Mark Walters for the defendant Yahoo! Inc. I'm with the Seattle office of Frommer Lawrence & Haug. With me is my colleague, Dario Machleidt.

MR. ALMELINS: Good afternoon, your Honor. My name is David Almelins. I'm from O'Melveny & Myers. We represent Apple. With me is Jeremy Roller from Yarmuth Wilsdon Calfo.

MS. DUBOIS: Good afternoon, your Honor. I am Christen Dubois with Cooley LLP, here representing Facebook, Inc. And also here with me is Heidi Keefe, also with Cooley LLP.

MR. CARRAWAY: Your Honor, Chris Caraway of Klarquist Sparkman in Portland for defendants Netflix, Staples, Office Depot and eBay. With me is my partner, Kristin Cleveland.

MS. CLEVELAND: Good afternoon.

THE COURT: Good afternoon.

MR. IVEY: Your Honor, I'm Gerald Ivey from Finnegan, on behalf of AOL.

MR. NELSON: Good afternoon, your Honor. Justin Nelson from Susman Godfrey on behalf of Interval. With me is Edgar Sargent and Matt Berry from Susman Godfrey.

THE COURT: Well, my intent is for everybody to be able to hear. Please, if you can't, tell us to speak up, and we will make sure that everybody can hear. I would tell you to go sit in the soft seats over here, if that is more helpful. I don't know if you are further away or closer to me by doing that. If you can't hear, feel free to move around and get yourself a spot where you can hear.

All right. I threw the case out on Friday. I gave you a chance to do it again, however.

MR. NELSON: Yes, your Honor.

THE COURT: You told me that would be no problem.

MR. NELSON: Correct, your Honor.

THE COURT: I am expecting that will happen. So we are going to move forward today as if we are really going to have a case. I think that would be wasteful of us not to use our time waiting for something to be done.

You filed the case in August. This is December. We haven't moved very far. You filed a joint status report with me. You asked for an opportunity for a scheduling conference. Here I am. There are a couple of things that -- I am going to give anybody who wants to talk an opportunity to tell me what issues they want to bring up. I do want to tell you what I want to accomplish

this afternoon. Essentially, I want to talk about protocols for moving ourselves through this process. The protocols that I am talking about are how we are going to handle electronic discovery, how we are going to handle protective orders.

I am also going to ask you whether -- This goes particularly to the defense. Is there a common theme that you've got here? In other words, do you have a common enemy or common issues; without prejudice to your severance motions, I really need to know whether there is going to be a unified attack on these patents, whether there are unified procedures, whether I can appoint a whip, and have the whip help organize the sequencing of motions. Some of you have joint representation for a couple of different companies. So I am really asking you to tell me where you are aligned and where you are not aligned.

I understand and have read your severance motions, and understand that each of you believes you have a unique and different type of company. But I am asking you to talk with me about whether or not, even if you are a unique company, do you have a common attack on these patents.

I can't tell what these patents do. So part of the reason I would like to talk with you is have you, in basic terms, tell me how they are related, or if they are not, how they are different.

I also am going to spend some time talking with you about me, and what it is I need from you in order to do the best job possible. I am also going to try and talk with you about cost

savings.

So that's my plan to work through. I don't know whether you would like to start or you would like me to start.

MR. McGANN: I am happy to try to start. I am always interested to hear what we can do to help you manage the case. Please stop me if it doesn't make sense.

I would like to address, I think as what you put out as one of your first points, is there a unified approach, is there some way that the defendants may view it together.

As you may understand from the motion to dismiss that we filed, one of the problems defendants are facing is, it is very difficult for us to figure out whether there may in fact be a unified approach, whether there may be common ground, because we don't know what is accused yet, and I will confess, to some extent, what these patents are about. There are a lot of claims. There is some very -- what I would say is a lot of language that needs to be construed, potentially, and we have no insight into what is accused. So it is difficult for us as defendants to figure out -- There may be some common ground among some of us. We may be able to get much more information in that regard on December 28th when we see the amended complaint, or when we see infringement contentions.

As you rightly noted, we have the motions to sever pending, but we don't want to be completely closed-minded. Maybe there is some things we see in the amended complaint or infringement

contentions that suggest there are bases for efficiencies. And certainly we are not proposing that certain discovery or things like that can't be consolidated, but we are really at a loss to find that common ground so that we can say, okay, notwithstanding what Rule 20 and 21 say, these couple of defendants may be able to proceed together, because there is some common ground. These ones maybe don't, because they are differently situated.

THE COURT: Okay. Well, one of the things that I noticed in your motions to sever is that some of you -- I don't know how much you know about me, but I am willing to try just about anything to be creative in how to work these things.

There is lots of ways to sever. Not necessarily in the discovery mode, but severance in how it is we present cases to a jury, how it is that we move through the process of gathering information. I made myself a little chart. It looks like I have four that have been -- all four patents involved. I have got four that only involve -- I have seven that involve the 507, and I have eleven or twelve that involve the 682. Ten. Excuse me.

I have no idea if these patents are related or if they are a grouping of patents, whether they are completely different, whether each one of them is going to be subject to attack on prior art. I don't know. I can't tell.

But it does seem to me that there are various ways that you can line up your discovery, either patent by patent or groupings of patents.

There is also ways to deal with the liability issue. First, we have to figure out whether we have a legitimate patent, and then we move to has there been infringement, then we move to, okay, what is it worth. There are various ways to do that, one of which is you seat a jury and you present them with questions in serial, where everybody has their common day and then everybody has their individual day.

So when I read your motions to sever, I guess I find them deficient in the sense that I can't tell how else to slice up the pie. I am asking for some guidance on that. Am I making sense?

MR. IVEY: Yes, your Honor.

THE COURT: I will try just about anything. I can sever you and put you all on the same schedule for working up your discovery. Now, he is not going to like that because you can bury him. He could be facing eleven motions for summary judgment on the same day if you coordinated it properly.

If I keep you together for discovery, but sequence you on liability, or I keep you together on liability and I sequence damages, there is lots of different ways to do it. I only saw one request in your motions, and that was break this apart.

MR. CARRAWAY: In our joint status report, one of the things the defendants did suggest was bifurcation of liability from damages so that we can focus on the patents, the liability issues. Another possibility is to further bifurcate or maybe trifurcate in this way. By focusing on the issues that we do

have most in common, I think all of the defendants have in common the issue of whether these patents are even invalid or not, and whether there is prior art, whether there is written description issues, best mode issues or any other 112 issues. That is certainly something that we do all have in common and could proceed forward somewhat together, I think.

THE COURT: Well, that's what I am asking you for. Facebook is only worried about the 682. They don't necessarily want to be at the table on the 507 unless the 507 and the 682 are related. I have no way of knowing that.

We have to come up with a plan, in terms of how we are going to do this. You are going to get some form of separation. I just can't tell what that is.

On the other hand, even if I separated you out into eleven lawsuits, I am going to have to coordinate at some length or the plaintiffs are going to be buried.

So what I am asking you to do, particularly after you see what the new complaint looks like, is for the defendants to put together a plan for me as to how it is you think you are aligned and what issues you think you have in common.

If everybody is intending to attack the validity of the patents, maybe we want to do that in sequence as well. I've got four companies. They are in it on everything. I have one company that is only in it once. How am I fair to all of those folks and who has the laboring oar?

The next question is, who is my whip? There is lots of ways to look at that. Who is going to have to face the most issues along the line? It doesn't make any sense to have a lawyer be the whip who is going to drop out after the first round. In other words, Facebook is not going to be the whip. What I mean by "whip" is, that is who I talk to. That is who I talk to to muster and get notice out, that is who I talk to when we have our periodic conferences, that's who I talk to when we have problems.

M. McGANN: There are very capable lawyers here, and certainly there may be other volunteers, but representing Google and YouTube, based on your statement, it is unlikely we will be one of the first to depart. I am willing to take on that role to assist your Honor.

THE COURT: The others might have something to say about that. What I am saying is -- I am looking at what I have started to call the big four, the ones who are in here on those. I am asking you to have a conference to see who makes the most sense. Simply because you are on the hook for all four patents doesn't necessarily mean you have all the same interests, or the same at stake. I mean, I am looking at some big companies here. I don't know that that is necessarily the way you decide it, but I am really looking for the person who is going to be in it for the long haul, as opposed to the first person to get out. That's the next thing I need from you.

One of the things that I am expecting the whip to do is

essentially also bring the group together for protocols. And that means getting common orders of protection in place. One of the things I would alert you to, most of you are outside the district, but you have local counsel here, is we have a local order of protection rule. You are not going to get anything signed off unless I see 5(g) in there someplace. That's what you need your local counsel for, to say, are we going to have a problem here?

Patents are kind of unusual. I don't know how old they are or whether there is electronic discovery involved or not. Sometimes there are, sometimes there aren't. I am assuming since all of this is electronic that there probably is a fair amount of electronic stuff going back and forth. How are the defense going to share those materials, or are you expecting that plaintiffs are going to be turning over things all the time to eleven of you or twelve of you, or, depending upon those who doubled up, seven of you, on the issues? How are you going to make sure that each of you doesn't share damages issues?

Plaintiff is going to be asking each of you for that kind of material, but I assume some of you are competitors and some of you aren't. Some of you are selling pencils and some of you only exist in the ether. I am assuming you have different issues as to what it is you want to protect. Have you thought about those issues and how you are going to organize yourselves? Yes? No?

MR. IVEY: Yes, your Honor.

MR. CARRAWAY: Yes, your Honor.

THE COURT: Do you have answers for me on those?

MR. CARRAWAY: I think, yes, your Honor. For example, on competitor information, I think it is likely that the defendants will agree in a protective order that their own parties will not see each other's confidential information, which shouldn't impact -- shouldn't have an effect on the plaintiff. Many of these issues we fortunately have been through in other cases, and have crafted language that will meet what the court's concerns are, as well as our own.

THE COURT: I didn't expect that I was inventing the wheel here, but what I am asking is, do you have it in writing? Are you ready to sign off on it?

MR. CARRAWAY: Your Honor, I think the answer to that is, I think that both Justin and the defendants, we have talked and agreed to draft a protective order, and come to as many agreements as possible. We hope that there will be few, if any, disputes. There may be some disputes. I think the question would be how we present those disputes to the court. Our hope would be that we would be able to provide a short explanation of any disputed provisions and let the court decide.

THE COURT: Are you familiar with the unified format for discovery disputes in this district? Yes?

MR. CARRAWAY: Yes, your Honor.

THE COURT: I happen to like that rule. I wrote that

rule. Here is why I like it: It gives me everything in one place at one time. What it also does is that I have a ripe motion, meaning it is ready to be decided the moment that it lands in the office. So I can give you a faster turnaround. If I have to wait for each motion to ripen, it is almost a month before you get an answer. And that puts us behind in a case that I am interested in pushing on a fairly expedited schedule.

So any time that you can -- I am not saying you have to until I tell you you have to. You should get one free bite. But if you can all agree that is not a bad technique for getting your positions in front of me immediately, that's the format I would like to see you use.

The other thing I will tell you is, in some of the big cases that I have handled, we have agreed to forego the paper period. I simply bring you in and let you argue. You have to agree that what I say is what is going to happen. But many times you are not so concerned with which way it gets decided, you just want it decided. There are those issues where you are not intending to make new law on the topic, or you are not interested in binding precedent, but you want a decision. Think about doing it orally with me. We will set aside ten minutes, each side makes their pitch, and I will tell you what I think the answer is or what the formula is that I think you ought to go about using to solve the problem.

MR. WALTERS: May I ask a question? Is this something

we would bring up on telephonic motions? How would you like those issues brought to your attention?

THE COURT: This is the law clerk assigned, Ian Mensher. You call him and say, everybody agrees we should do this orally in front of the judge. I won't touch it unless everybody agrees. So you have to work cooperatively in order to make that happen. But if you all agree that it is one of those issues, call him and he will basically get you on the calendar so that you can either argue it telephonically or come in and argue it to me in person. And then we would simply write you a brief order memorializing what it is we did.

MR. WALTERS: One follow-up question. When you want a record, which I would assume would be in most cases, and this might be a question better directed to the court reporter, is the court able to take a record with this many parties on the line telephonically?

THE COURT: Yes. Now, I have handled ones where there are so many people on the conference call that the judge got voted off the island and I was the only one not able to get on. As long as we don't have 30 plus people, and you identify yourself, we can have a record. That's fine too. It is just another technique in terms of getting a fast decision.

Now, I am not inviting you to turn me into your mother. I am not inviting you to call me every time somebody has a problem in a deposition and you decide to grab the phone rather than work it

out. But I am talking about the kind of stuff that everybody, instead of going back to the office and churning out 40-, 50-, $60,000 worth of attorneys' fees to write a single motion, if the principle is simple enough that you simply need a decision. I am talking about motions that are in the judge's big toe, not ones that require extensive briefing, which is usually the way discovery matters are. It is usually me understanding what it is you want, why you want it, what it is going to cost and how is the best way to manage it.

Now, I have talked on a bit. What else? Anybody want to raise issues before I launch into some more of mine? Okay. I will keep on talking. Mr. McGann, did you want to say something?

MR. McGANN: No, your Honor.

THE COURT: Markman hearings. I have handled a fair number of patent cases. They are not my favorite, mostly because I am always feeling very inadequate to the job. When I feel inadequate to the job, I can't do a great job for you. I am your pupil; you are the teachers. I don't know anything about how these patents work. I can barely do e-mail. Although I have gotten a reputation for being a tech judge, that doesn't mean I physically know how to do it. I know how to order other people how to do it.

When you approach me, you need to treat me like your brighter-than-average middle schooler. In other words, I have the brain power to learn just about anything you want to teach

me, but what I don't have is the experience to know how to put that in context. Don't ever assume, oh, gee, everybody knows that, we don't need a tutorial. You probably do. I will feel more confident about the decisions that I give you if you will work with me from the basics up.

A couple of things about being a good teacher is that you have to basically start where your student is. Don't be teaching physics to Ph.D candidates when what you really need is seventh grade science. I will tell you when you get too basic. But for the most part, if we learn a common vocabulary and common principles, we will be on the same page.

The second thing I would tell you is, you are the teachers, I am the pupil. If you overwhelm me, in other words, if you drop the library on me rather than the best book available, I am likely to be discouraged. You need to pick out the best material that you want me to read in order to get ready.

If 12 of you decide you are going to teach me about a particular concept needed for the Markman, I am not going to be able to absorb twelve different points of view. By necessity, if you want me to understand, you have to come at it with a common teaching point.

I will work hard to understand what you try and tell me. I am not shy about speaking up when I don't understand. You shouldn't consider that a problem.

When I first started doing patents, there was a complicated

patent that involved the evolution of the internet itself, and the lawyers gave me a book to read, a single 180-page book and I read it, and then we started on the tutorial. I think the tutorial lasted for a day and a half. I said at the end of it, well, have you taught me everything that an average middle schooler might know about the internet? No, Judge, we got you beyond that. I said, well, have I gotten to high school yet? Well, Judge, we think we got you to high school. I said, did I get to college? The response was junior college, Judge, junior college. That's where we are.

Terms. You will notice in the local rules you get ten terms. The rules don't talk about whether or not that is ten terms per patent, ten terms per party. It says "ten terms." That's another thing I need your agreement upon. At least the way I read the rule, unless you ask otherwise, we are going to construe ten terms, at least in the first round.

So if you pick carefully, pick the ones that you think are going to make the most impact or give you the biggest bang for your buck in coming up with a solution to viewing whether or not there is, in fact, infringement.

Alternative dispute resolution. I don't care whether you do it or not. That's up to you. You are sophisticated counsel. If you want to go, hire a judge, go hire a judge. But I don't make you. I assume you know what you are doing. The rule requires you go. If you ask me not to go I usually say, yes, you don't

have to. But that is entirely up to you. I like trying cases. So I am happy to have you bring it on.

To that vein, I am also very happy to work with you in how it is you keep the costs down. I am willing to try just about anything to encourage you to litigate in an economic fashion. I don't want you to go spend 18, 20 thousand bucks a day to have somebody mediate the case. I would rather try it. Think about how it is those presentations can be done. Constantly be thinking about how you can do your presentations in the most economical manner.

There are lots of ways to do that. Electronic presentation of your evidence to juries, summaries, don't pay for videographers to video the talking head. It is really boring. We can read sections of the depositions much more -- in a much more interesting way. Think about whether or not you want to present an issue at a time to a small jury, or a large one. But I am asking you to work with me creatively in that regard.

With a case this size, I will schedule a conference with you about every 90 days. I will ask that plaintiff's counsel and whoever is the whip to put together the agenda. I might have some things on my agenda. If everything is going smoothly, and nobody has any issues, I might say hello/good-bye, keep on keeping on. But I want you to know that every 90 days you are going to have to account for where you are on the schedule.

Schedules are important to me. Once I set them, I don't back

off of them. Once I set them, we are in collaboration. There is no such thing as a stipulated order of continuance. It takes all of you and me to agree. So please don't assume that simply because you all decide you want more time that I necessarily agree with that.

I also view that part of my job is to protect you from yourselves. You all have clients that can spend tremendous amounts of money. When you have clients that can spend that kind of money, it has been my experience that it takes longer and we spend more money. I am going to be asking that you stick to a schedule, because I want your clients to know when it is they can assume that certain milestones are going to be accomplished and they can determine economically where they are in the process. That's my plan. I will work with you in putting together a schedule, but once we set it, I expect you to keep it.

Now, I must have said something that somebody wants to comment on so far?

MS. DUBOIS: Your Honor, on the issue of terms -- I represent Facebook, and as you know, we are only accused on a single patent. The idea of having just ten terms for all patents, all parties, is concerning to us, because while somebody in what we are calling the big four may find that terms in patents, not including the one we have been accused on, are most important on their case and will be most effective in bringing it forward, obviously that won't be what is best for our case, as

far as bringing it to a swift resolution. I think, as far as we are concerned, something that goes to terms per patent or potentially per party would be most effective, as far as getting the most bang for our buck.

THE COURT: I bet you don't even know what those ten terms might be yet.

MS. DUBOIS: No.

THE COURT: You don't know whether your top ten terms will be the same ones as these guys. I am not going to leave you out in the cold without a seat at the table. On the other hand, don't bring me an issue I can't resolve for you yet. Talk to them. They will know, particularly if they have ten, if they cut you out of that, I will say, all right, you get five and she gets five. They don't want that to happen either. It is called horse trading. If you do feel cut out, come tell me and we will work it out.

Other issues?

MR. IVEY: How small are these small juries that you were suggesting you might try cases with?

THE COURT: I don't know. Some of you go out and spend money on hiring focus groups. I will give you a focus group. In other words, put six jurors in the box and decide that's what you are going to do. You can get some issues resolved if you basically say we will live with what they decide, we are not going to the Court of Appeals. You can decide that you want the

judge to decide certain issues. I don't know if you are going to have any equitable issues here in this case or not.

All I am asking is that you be creative. It is one of the things that is in our 391. In ten years here, I have never had anyone use it. Maybe there is a reason for that. I was kind of surprised to see it there. Maybe that would work on some of these cases.

Now, I am not against basically seating 18 people and having three different juries work on -- One set works on one patent, one set works on another patent, a third set works on the fourth patent. We can do that too, if that makes sense.

Does that answer your question?

MR. IVEY: Yes, it does, your Honor.

THE COURT: So all of those things can be put in the bag of tricks. I have a big courtroom upstairs. I can put 24 jurors in there if you wanted to run it and have jurors hear common issues and then divide them up and present different issues to different juries. I am really talking off the top of my head now, but I am being creative with you, saying, there is lots of ways to do this.

Other questions? All right. Let me talk to local counsel. Who is local counsel here? Here is my little pitch about being local counsel. We have a very cooperative bar in this district. I think, for the most part, we get along pretty well. I think, for the most part, we consistently try and enforce our rules. So

it is local counsel's job to make sure that people coming from outside understand what the culture is, understand what the local rules are, making sure that their pleadings are in the proper form, making sure that issues that have long since been not tolerated in the district don't happen. So I am expecting that you are not just a mail box drop, but I am expecting that you are a coach to these outside counsel who come from lots of different places and can't possibly be up on all the various local rules that are around. So it is your job to make sure that you coach them to run the race well. I will be holding you accountable if I find that somebody doesn't understand the rules or continually violates them. That is your job, to make sure that they don't.

Other questions? This is your shot at me. What else do you want to know? Anybody on the back benches have a question? No?

All right. This is what I need from you: You are going to get your new complaint and you are going to get your contentions. What I want from you after you see that complaint is to set out a plan for me of who it is you have decided is going to be your whip, how you see the sequencing of discovery, where you see your common attack. In other words, if all of you are going to challenge the validity of the patent, if all of you are going to do that for all of the patents, then I know you are all on one page.

If you decide that you want to carry through on certain patents first, lay out that proposal. Obviously, the plaintiffs

are going to have a chance to tell me what they think is fair. But I think you have to be realistic. You have to do some sequencing unless you are going to have everybody in your firm churning, because these law firms can keep you buried for a long time. Being a trial lawyer is tough enough without having to worry about how you are going to get your work done. So let's think about the sequencing of the issues.

The Markman hearing is the first thing that comes up. I want you to think about how it is you are going to put your common teaching proposal in front of me, whether you are going to have someone come in and teach me, whether you all are going to put people on yourselves, whether you are going to decide to teach it together. But you need to have a common approach on that.

I am going to suggest you need to make a plan for who that is going to be and what form it is going to take. I don't have any particular preferences as to how you do that. I am just telling you, you have to teach me the basics of what it is I need to know to be helpful to you.

You need to come up with a common set of terms, what are the ten best that are going to get you the furthest in the litigation.

After you do that, then I want you to pull out your severance motion. You can basically say, everything we wanted to say, judge, is in the motion. Or you basically say, here is an alternative; here is what we would like you to consider in

addition. So, in other words, I'm not ruling on it until I see some more information.

MR. NELSON: Justin Nelson for the plaintiff. We appreciate the court's comments, and largely agree with many of them. The one thing I would add, with respect to the sequencing, regardless of how it eventually gets put in front of a jury or otherwise resolved, we think that it is important to keep a schedule by which we can take discovery and have all the issues teed up so that, for example, if we try validity first, we don't then have another whole six months to a year to do discovery on infringement, and another six months to a year on damages or whatever. At least we can have a discovery schedule that sets it all so that we can have everything ready to go, and then at the appropriate point, after we see how many defendants are left at the trial, we can figure out the best way to try it or sever it or whatever else makes sense to the court.

THE COURT: That is something you are going to have to talk to your colleagues about. I don't think they are interested in running each segment against each patent. But, for example, I have Facebook here who is only in the game on one patent. Maybe you want to cut it by patents, that you basically tee up each patent, so that not all of you are seated at the table for every single set of depositions.

If these patents are all connected, maybe it is issue by issue. Maybe all of them are subject to being knocked out by

prior art. I am making this up. I have no idea. Maybe you want to divide it that way. But I don't have any way to help you. I am going to lay this at your feet. I can't tell from what you have written for me even what these patents do or how it is that these folks are supposed to have violated the patent. I am hoping we are going to be all more enlightened on that.

If anything that I have said doesn't make sense for your case, please speak up and tell me. I am just throwing out ideas here about how you might arrange these things. I made no sense?

MR. IVEY: You made perfect sense. I will try to come back --

THE COURT: You wanted to say something as well?

MR. ALMELINS: I have a question on the court's instructions on the document regarding determining who is the whip. Can that document also include a proposed schedule for the court?

THE COURT: Sure. I mean, that is really what all this is about. In this district we can try your cases pretty fast. Usually I can try them faster than you want to go. We usually operate on a 12- to 14-month schedule. Now, we have already burned through four or five months of that. I bet nobody has done anything about discovery yet, right?

Don't be coming back to me with a schedule that basically puts me in my dotage. I don't want this on my senior status schedule. I am looking for a rigorous schedule. If I let you

stretch it out, that is one of the things I am telling you, you will simply fill up the time and spend more money. That doesn't necessarily mean you will get a better piece of litigation. So I am much more interested up front in having you spend time about what you are going to leave on the cutting room floor, and which issues are really worth pursuing, so that you can stay inside the schedule.

MR. ALMELINS: If the complaint is filed on December 28th, and the infringement contention will be served on that day as well, when would the court like the submission?

THE COURT: Mid-January, the 15th.

MR. NELSON: Should that be something that the defendants coordinate among themselves?

THE COURT: You are going to have to coordinate with them. I am essentially asking to you redo your joint status report, is what I am asking you to do, with these other things in it. You keep looking at each one of those questions for the things I have in mind. And when you look at the discovery schedule, I am talking about a discovery schedule that looks fairly fleshed out. Are you going to run tracks? Are you going to run patents by patents? Are you going to run company by company? Are you going to run issue by issue? Just what plan makes sense?

I also want to plan for your protective order. Are you going to operate off a common depository for documents, that certain of

you don't have access to when you start putting your confidential documents in there, or are you intending to have multiple document dumps to each of you?

There is a little book called Managing Electronic Discovery that is written by the Federal Judicial Center. If you read that, you will know 99 percent of what 99 percent of the district court judges in this nation know about electronic discovery, which really isn't much. But it is a common vocabulary to operate off of. So when you start talking terms and putting together protocols, please make sure you are all talking with the same vocabulary.

The other thing is, if you want more frequent contact than 90 days, say so. If you want to have contact with me every 60, that's okay too. If you want a phone call every month, that is okay. Every week? Now you are making me your mother. Okay?

The 15th of January we will have our complaint, we will have our contentions, we will have a joint status report, we will get our orders out. I try really hard to stay inside of what we call the 30-day rule in this district. So, 30-day turnaround on your motions. I will usually write for you.

The rule on oral argument is, if I read your stuff and you have requested oral argument, and I think you are going to lose, you get oral argument. In other words, it is your one shot to turn me around again. If both sides ask for oral argument, you have to look at one another and say, whose side is she granting?

I will also usually put out questions before oral argument that aren't intended to be the exclusive thing that you respond to, but simply questions during the course of your arguments that I would like to hear you touch upon. You can usually count on those as being the things that are most concerning to me along the way.

MR. NELSON: One very procedural thing. I think the 15th is a Saturday. Can we say either Friday the 14th or Monday the 17th?

THE COURT: I am so easy. Monday the 17th.

MR. NELSON: Thank you.

THE COURT: What I should do is apply the associate protection rule, and make it Friday the 14th. Otherwise, somebody is going to be in the office. Friday the 14th, that way nobody will be there over the weekend trying to get it out.

Okay. Anything else? Going once, going twice.

Counsel, I look forward to working with you on your case. Don't be shy about bringing problems to my attention. I would rather try and work them out with you ahead of time than have somebody asking for forgiveness on the back end. Good travels. Good afternoon.

(Adjourned)

CERTIFICATE

I, Barry L. Fanning, Official Court Reporter, do hereby certify that the foregoing transcript is true and correct.

S/Barry L. Fanning

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Barry L. Fanning