

HON. MARSHA J. PECHMAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

**[PROPOSED] ORDER GRANTING
MOTION FOR CLARIFICATION,
RECONSIDERATION AND
MODIFICATION OF COURT’S
FEBRUARY 16, 2011, SCHEDULING
ORDER, BY DEFENDANTS eBAY,
INC.; NETFLIX, INC.; OFFICE
DEPOT, INC.; AND STAPLES, INC.**

**Note on Motion Calendar:
March 2, 2011**

After reviewing Defendants eBay, Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc.’s Motion For Clarification, Reconsideration And Modification Of Court’s February 16, 2011, Scheduling Order, Plaintiff’s Response and the pleadings and files of record, and after being fully advised, NOW THEREFORE,

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

2 Clarification:

3 In the Court's Scheduling Order, the cap on terms to be construed does not limit the
4 number of challenges to claim language as allegedly violating Section 112, ¶ 2 of the Patent Act,
5 or challenging a claim as violating Section 101, or challenging patent language as lacking
6 "patentable weight."

7 Under the Court's Scheduling Order, the parties are permitted to file multiple dispositive
8 motions, e.g., one or more early in the case and some later in the case, subject only to a
9 cumulative limit on the total number of pages of those motions.

10 Reconsideration and Modification:

11 The Court grants reconsideration, and modification, to the following extent.

12 The Court's Scheduling Order is modified to permit the parties to identify up to twenty
13 claim terms/phrases in the '682/'507 patent track for claim construction.

14 Movants may challenge as indefinite (and/or contrary to what the applicant "regards as
15 the invention") under 35 U.S.C. § 112, ¶ 2, up to five additional claim terms/phrases in the
16 '682/'507 patent track, without seeking constructions of those terms/phrases.

17 Movants may challenge claim language under Sec. 101 or Sec. 112, ¶ 2 or for lacking
18 patentable weight in a separate brief, complying with the Local Rules, simultaneous with the
19 Markman briefing, not counting toward the Markman-briefing (or dispositive-motion) page
20 limits.

21 [*Alternative, to the extent that the Court requires Movants to raise these issues in their*
22 *Markman brief*]: The parties are permitted in the '682/'507 track 60 and 30 pages rather than 40
23 and 20 pages for opening and responsive Markman briefs.

24 The parties are permitted a total of 60 pages, not 40 pages, collectively, for their joint
25 dispositive motions.

1 DATED this ____ day of March, 2011.

2
3 _____
4 JUDGE MARSHA J. PECHMAN

5 Presented by:

6 KLARQUIST SPARKMAN, LLP

7
8 By: /s/ John D. Vandenberg

9 J. Christopher Carraway, WSBA No. 37944

10 chris.carraway@klarquist.com

11 Klaus H. Hamm (*pro hac vice*)

12 klaus.hamm@klarquist.com

13 Kristin L. Cleveland (*pro hac vice*)

14 kristin.cleveland@klarquisit.com

15 John D. Vandenberg, WSBA No. 38445

16 john.vandenberg@klarquist.com

17 Derrick W. Toddy (*pro hac vice*)

18 derrick.toddy@klarquist.com

19 KLARQUIST SPARKMAN, LLP

20 121 S.W. Salmon Street, Suite 1600

21 Portland, Oregon 97204

22 Tel: (503) 595-5300

23 *Attorneys for Defendants eBay Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2011, 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/John D. Vandenberg
John D. Vandenberg, WSBA NO. 38445
KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301 E-mail:
john.vandenberg@klarquist.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27