EXHIBIT C

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

NETFLIX'S NON-INFRINGEMENT CONTENTIONS

KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

Pursuant to Local Patent Rule 121(a), defendant Netflix, Inc. ("Netflix") submits these Non-Infringement Contentions in response to Interval Licensing's Infringement Contentions, served on December 28, 2010. Charts for each patent-in-suit are attached hereto as Appendices A-B. Pursuant to the Local Patent Rule 121(a), Netflix's Non-Infringement Contentions are limited to those claims asserted by Interval Licensing.

Interval Licensing's Infringement Contentions, in attempting to explain that Netflix technologies allegedly infringe the asserted claims, suggest erroneous and improper interpretations of the asserted claims. Netflix, by providing Non-Infringement Contentions in response to Interval Licensing's erroneous and improper claim interpretations, in no way agrees with, and in fact, squarely rejects aspects of Interval Licensing's proposed interpretations of the asserted claims.

Moreover, Interval Licensing's Infringement Contentions are deficient in multiple respects and do not provide Netflix with sufficient information to understand the complete bases for Plaintiff's infringement allegations. Given these deficiencies, Netflix has attempted to understand Plaintiff's construction of the asserted claims in order to identify its Non-Infringement Contentions. Accordingly, these Non-Infringement Contentions may reflect alternative positions as to claim construction and scope. By including contentions based on Plaintiff's apparent claim construction or any other particular claim construction, Netflix is not adopting Plaintiff's claim construction, nor is it admitting to the accuracy of any particular claim construction, or that any claims are valid and sufficiently definite. Nothing in these Non-Infringement Contentions should be understood or deemed to be an express or implied admission or contention with respect to the proper construction of any terms contained within the asserted claims.

In addition, Netflix contends that the asserted claims of the patents-in-suit are invalid for failing to comply with the written description, enablement, regards as the invention, and definiteness requirements pursuant to 35 U.S.C. § 112. As a result, Netflix's Non-Infringement

KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

Contentions are made in the alternative, and should in no way be seen as admissions (1) as to the proper construction or scope of the claims of the patents-in-suit, or (2) that any of the patents-in-suit meet the written description, enablement, regards as the invention, or definiteness requirements. Finally, as set forth in Netflix's invalidity contentions, Netflix contends that the asserted claims are invalid for failure to satisfy the conditions of patentability set forth in 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 102, 103 and 112. As a result, Netflix cannot infringe an invalid claim.

In the event that the asserted claims are construed by the Court, Netflix reserves the right to amend its Non-Infringement Contentions. Netflix further reserves its right to serve amended Non-Infringement Contentions for any other good cause, including but not limited to Interval Licensing amending its Infringement Contentions in any way and/or positions that Plaintiff or expert witness(es) take concerning claim construction and/or infringement.

Netflix bases these Non-Infringement Contentions on its current knowledge, understanding and belief as to the facts and information available as of the date of these contentions. Netflix has not yet completed its investigation, collection of information, discovery, or analysis relating to this action. Additional discovery may require Netflix to supplement or modify these contentions, as contemplated by Local Patent Rule 124. Furthermore, Netflix has not received all of the documents, including third-party documents, that may be relevant to its Non-Infringement Contentions, nor has Netflix had the opportunity to take the depositions of the named inventors of the asserted patents or other persons having potentially relevant information. Accordingly, Netflix reserves its right to further amend or supplement these contentions as it discovers new documents or information.

Interval Licensing's Infringement Contentions did not provide any contentions regarding indirect infringement or infringement under any provision other than Section 271(a) of the Patent Act. As such, there are no indirect infringement contentions to which Netflix could respond in these Non-Infringement Contentions. Furthermore, Interval Licensing has now waived any

KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

assertion of indirect infringement against Netflix and any infringement under any provision other than Section 271(a) of the Patent Act. To the extent that Interval Licensing were allowed to revive a claim of indirect infringement, Netflix reserves the right to provide responsive non-infringement contentions at that time.

Plaintiff did not serve any contentions to establish infringement under the doctrine of equivalents for any element of any asserted claim. There is no requirement for Netflix to disclose the grounds that would defeat such an allegation had it been asserted, nor is there anything to which Netflix can respond. Netflix also contends that no claim is infringed under the doctrine of equivalents. Furthermore, to the extent that Plaintiff later asserts infringement of any Netflix product under the doctrine of equivalents, Netflix reserves the right to amend its Non-Infringement Contentions to assert that Plaintiff is barred from asserting certain aspects of its theory of alleged infringement under the doctrine of equivalents (1) by virtue of the doctrine of prosecution history estoppel, on the basis of, among other things, narrowing amendments that the applicant made to the claims of any asserted patent during the original prosecution and/or in the reexamination of any asserted patent; (2) because certain of the elements asserted by Plaintiff to be infringed under the doctrine of equivalents were present in the prior art or otherwise encompass subject matter that could not have been patented by Plaintiff; and/or (3) because certain of the elements asserted by Plaintiff to be infringed under the doctrine of equivalents were disclosed in, but not claimed by, any asserted patent. Furthermore, Interval Licensing has now waived any assertion of infringement under the doctrine of equivalents against Netflix.

In addition to the non-infringement grounds set forth in the accompanying charts, Netflix does not infringe any asserted claim on account of the reverse doctrine of equivalents. "[W]here a device is so far changed in principle from a patented article that it performs the same or similar function in a substantially different way, but nevertheless falls within the literal words of the claim, the [reverse] doctrine of equivalents may be used to restrict the claim and defeat the patentee's action for infringement." *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S.

KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

605, 608-609, 70 S.Ct. 854, 94 L.Ed. 1097 (1950). This is an alternative ground for non-infringement because, as explained in the accompanying charts, what is accused does not perform the same or similar function and does not fall within the literal words of any asserted claim. What is accused is so different in principle from the asserted claims that it falls outside the equitable scope of the claims. These fundamental differences are illustrated by the "field of the invention," "background," and "summary of the invention" sections of each asserted patent, whose descriptions and requirements are a far cry from what Plaintiff has accused in its infringement contentions, and demonstrate that what Plaintiff accuses is not even in the same "field" as the alleged "invention" and does not use its principles. ('682 Patent at 1:23 – 3:2; '507 Patent at 1:8 – 7:52). For example, what Plaintiff accuses is not described by any of the following descriptions in the '682 Patent:

> FIELD OF THE INVENTION
>
> The present invention relates generally to communications and computer networks. More specifically, alerting users to dynamic content accessible via a communications or computer network that is of interest at the time of the alert is disclosed.
>
> BACKGROUND OF THE INVENTION
>
> The use of the Internet, and in particular the World Wide Web, and other communication and computer networks has grown dramatically in recent years. The emergence of technologies for broader bandwidth communications, better compression technology, and new and less expensive digital recording and imaging technology, have all contributed to explosive growth in the volume and diversity of content available via communication and/or computer networks, such as the World Wide Web.
>
> However, this proliferation of content, such as audio, image, and video content, presents certain challenges from the perspective of users seeking content of current interest. First, the shear volume of content available makes it difficult for users to find the content in which they are most interested in accessing at any given time. Apart from having to sort through the enormous volume of content available, much of the content of potentially greatest interest, at least to many users, is dynamic. At certain times, a file or other electronic resource may be of great interest while at other times, or perhaps even most of the time, it is not of great interest or not interesting at all.
>
> For example, thousands of and perhaps in excess of a hundred thousand web cameras, or "webcams", are in use. Webcams are cameras used to provide

KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

images of a target of interest via a site on the World Wide Web. Images are updated in varying manners and at varying intervals, depending on the site. A webcam might be used, for example, to provide images of a watering hole in Africa. Typically, users would access a website associated with the webcam to view activity at the watering hole. However, there would be many periods during which nothing of particular interest (e.g., no animals, etc.) would be happening at the watering hole. Conversely, there would be occasional periods when activity of great interest would be occurring, such as the presence of a rare or endangered animal at the watering hole. Users would have no way of knowing when such activity would be occurring, and might miss the most interesting images if they did not happen to check the website at the right time. The same problems arise with respect to files or other electronic resources other than webcam content provided via the World Wide Web, including other media such as audio.

As a result, there is a need for a way to alert users to web content or other electronic resources available via a communications or computer network that are of interest at a particular time. To meet this latter need, there is a need to provide a way to become aware that dynamic web content or an electronic resource other than web content is of interest at a given time, and to quantify the degree or level of current interest. In addition, there is a need to consider the interests of a user when determining which web content or other electronic resources likely will be of the greatest interest to the user.

There is also a need to ensure that interested users receive alerts with respect to web content or other electronic resources that are of interest only to a relatively small community of users, or that are of interest on only relatively rare or infrequent occasions. There is a risk, otherwise, that indications of current interest regarding such files and other electronic resources would be masked by more voluminous or frequent activity with respect to more widely popular or pervasive resources or types of resources (such as pornography sites on the World Wide Web).

SUMMARY OF THE INVENTION

Accordingly, alerting users of items of current interest is disclosed. The level of current interest of a particular file or other electronic resource is determined based on indications received from alerting users. One or more users receive an alert that the item is of current interest. Normalization of the level of current interest of a file or other resource, such as to adjust for items of current interest to a small community or for items of current interest only infrequently, also is described.

It should be appreciated that the present invention can be implemented in numerous ways, including as a process, an apparatus, a system, a device, a method, or a computer readable medium such as a computer readable storage medium or a computer network wherein program instructions are sent over optical or electronic communication links. Several inventive embodiments of the present invention are described below.

Disseminating to a participant an indication that an item accessible by the participant via a network is of current interest is disclosed. In one embodiment, an indication that the item is of current interest is received in real time. The

KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

> indication is processed. The participant is informed that the item is of current interest.
>
> In one embodiment, a computer is configured to receive in real time an indication that an item is of current interest; process the indication; and inform a participant that the item is of current interest. A database, associated with the computer, is configured to store data relating to the item.
>
> In one embodiment, a computer program product for disseminating to a participant an indication that an item accessible by the participant via a network is of current interest comprises computer instructions for receiving in real time an indication that the item is of current interest; processing the indication; and informing the participant that the item is of current interest.
>
> These and other features and advantages of the present invention will be presented in more detail in the following detailed description and the accompanying figures, which illustrate by way of example the principles of the invention.

In providing these Non-Infringement Contentions, Netflix objects to Interval Licensing's identification of the "Accused Devices" in its Infringement Contentions. Local Patent Rule 120(b) defines an Accused Device as an "accused apparatus, product, device, process, method, act, or other instrumentality." Local Patent Rule 120(b) required Interval Licensing to identify the Accused Device "by name or model number, if known" and to provide a claim chart for each Accused Device. Interval Licensing has failed to follow Local Patent Rule 120(b) requiring it to specifically identify Accused Devices. It instead admits that it has provided only "exemplary (but not exhaustive) detailed infringement assertions" and it purports to accuse "the operation of all webpages that contain functionality that is substantially similar to the infringing functionality" identified in Interval Licensing' claim charts. Interval Licensing has not followed the rule that it provide a claim chart for each Accused Device. Plaintiff's Infringement Contentions also violate Local Patent Rule 120(b)-(c) to the extent they fail, with respect to method claims, to identify the party that allegedly performs all the recited steps of the method, or the alleged direct infringer that makes, uses, or sells a product or service that meets all the claim limitations. Netflix reserves the right to argue that the claim limitations are not performed by a single party and that there is no basis to assert that Netflix is liable under a joint infringement theory.

KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, OR 97204
Tel: (503) 595-5300; Fax: (503) 595-5301

While Netflix sets forth in these contentions many reasons why Plaintiff will be unable to show infringement, it remains Plaintiff's burden to show that every limitation is satisfied by each accused instrumentality. To the extent that Netflix's Non-Infringement Contentions do not specifically refute each and every contention by Plaintiff, this should not to be construed as an admission that the contention in any way suggests that an accused instrumentality satisfies any claim limitation, or that any claim limitation may be overlooked.

DATED this 28th day of February, 2011.

By: /s/ Klaus H. Hamm
Arthur W. Harrigan, Jr.
Christopher T. Wion
DANIELSON HARRIGAN LEYH & TOLLEFSON
999 Third Avenue, Ste. 4400
Seattle, Washington 98104
Telephone: (206) 623-1700
Facsimile: (206) 623-8717
Email: arthurh@dhlt.com
chrisw@dhlt.com
J. Christopher Carraway, WSBA NO. 37944
Kristin L. Cleveland *(pro hac vice)*
Klaus H. Hamm *(pro hac vice)*
Derrick W. Toddy *(pro hac vice)*
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: chris.carraway@klarquist.com
kristin.cleveland@klarquist.com
klaus.hamm@klarquist.com
derrick.toddy@klarquist.com
john.vandenberg@klarquist.com

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

CERTIFICATE OF SERVICE

I certify that, on this 28th day of February, 2011, I caused to be served via e-mail Netflix's Non-Infringement Contentions on all counsel who have appeared in this action.

Attorneys for Plaintiff Interval Licensing LLC

Justin A. Nelson (jnelson@susmangodfrey.com)
Edgar Guy Sargent (esargent@susmangodfrey.com)
Eric J. Enger (eenger@hpcllp.com)
Matthew R. Berry (mberry@susmangodfrey.com)
Max L. Tribble (mtribble@susmangodfrey.com)
Michael F. Heim (mheim@hpcllp.com)
Nathan J. Davis (ndavis@hpcllp.com)

By: /s/ Klaus H. Hamm

Klaus H. Hamm *(pro hac vice)*
KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301
E-mail: klaus.hamm@klarquist.com