

Honorable 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

UNITED STATES DISTRICT COURT  
FOR THE 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.

Civil Case No. 2:10-CV-01385-MJP

**DEFENDANT YAHOO! INC.'S  
NOTICE OF JOINDER IN MOTION  
TO DISMISS FOR FAILURE TO  
STATE A CLAIM UPON WHICH  
RELIEF CAN BE GRANTED  
PURSUANT TO FED. R. CIV. P.  
12(B)(6)**

**NOTED ON MOTION CALENDAR:  
NOVEMBER 12, 2010**

PLEASE TAKE NOTICE that defendant Yahoo! Inc. joins in defendants Google Inc. and YouTube, LLC's 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 Entry No. 64), for all the reasons therein.

Additionally, Yahoo! notes that Interval Licensing's infringement allegations are so vague that Yahoo! cannot implement an appropriate document hold notice. Based on Interval's complaint, Yahoo! cannot identify which of its products and services may be relevant to the lawsuit. (Declaration of Kevin Kramer in Support of Yahoo!'s Notice of Joinder in Motion

1 to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted Pursuant To  
2 Fed. R. Civ. P. 12(b)(6) (“Kramer Decl.”) ¶ 2-3.) Yahoo! has hundreds of products and  
3 services, the vast majority of which involve websites, hardware, and/or software. (Kramer  
4 Decl. ¶ 4.) The complaint’s lack of specificity leaves Yahoo! in the dark as to what activity  
5 allegedly infringes, and thus which documents need to be preserved. (*Id.*) Counsel for  
6 Yahoo! wrote a letter to counsel for Interval Licensing on October 6, 2010, asking for  
7 additional information as to which Yahoo! products and services are alleged to infringe the  
8 asserted patents, but has not yet received a response. (Kramer Decl. ¶¶ 6-7.) Thus, Yahoo!  
9 has been unable to issue an adequate litigation hold notice to ensure that its employees  
10 preserve the appropriate documents.

11 For this reason, and for all of the other reasons stated in Google Inc. and Youtube,  
12 LLC’s motion to dismiss, Yahoo! respectfully moves this court to dismiss for failure to state  
13 a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(B)(6).

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

Dated: October 21, 2010

Respectfully submitted,

By:           /s/ Mark P. Walters          

Mark P. Walters (WSBA #30819)  
Dario A. Machleidt (WSBA #41860)  
FROMMER LAWRENCE & HAUG LLP  
1191 Second Avenue Suite 2000  
Seattle, WA 98101  
Tel: 206-336-5684  
Fax: 212-588-0500  
[mwalters@flhlaw.com](mailto:mwalters@flhlaw.com)  
[dmachleidt@flhlaw.com](mailto:dmachleidt@flhlaw.com)

and

*Admitted Pro Hac Vice*

Michael A. Jacobs  
Matthew I. Kreeger  
Richard S.J. Hung  
Francis Ho  
Eric W. Ow  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Tel: 415-268-7000  
Fax: 415-268-7522

*Attorneys for Defendant YAHOO! INC.*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2010, I caused the foregoing **DEFENDANT YAHOO! INC.'S NOTICE OF JOINDER IN MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO FED. R. CIV. P. 12(B)(6)** to be served on the following parties as indicated below:

<p><b>Justin A. Nelson</b>  <b>Matthew R. Berry</b>  SUSMAN GODFREY  1201 Third Ave., Suite 3800  Seattle, WA 98101  <i>Attorneys for Plaintiff Interval Licensing LLC</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]  jnelson@susmangodfrey.com  mberry@susmangodfrey.com</p>
<p><b>Eric J. Enger</b>  <b>Michael F. Heim</b>  HEIM PAYNE &amp; CHORUSH, LLP  600 Travis Street, Suite 6710  Houston, TX 77002  <i>Attorneys for Plaintiff Interval Licensing LLC</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]  eenger@hpcllp.com  mheim@hpcllp.com</p>
<p><b>Max L. Tribble</b>  SUSMAN GODFREY  1000 Louisiana St., Suite 5100  Houston, TX 77002  <i>Attorneys for Plaintiff Interval Licensing LLC</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]  mtribble@susmangodfrey.com</p>

<p>1 <b>Michael F. Heim</b>  <b>Nathan J. Davis</b>                  HEIM PAYNE &amp; CHORUSH, LLP                  600 Travis Street, Suite 6710                  Houston, TX 77002  <i>Attorneys for Plaintiff Interval Licensing LLC</i></p>	<p>[ ] By United States Mail                  [ ] By Legal Messenger  <b>[X] By Electronic CM/ECF</b>                  [ ] By Overnight Express Mail                  [ ] By Facsimile                  [ ] By Email [by agreement of counsel]                  mheim@hpcllp.com                  ndavis@hpcllp.com</p>
<p>6 <b>Brian M. Berliner</b>  <b>Neil L. Yang</b>                  O'MELVENY &amp; MYERS LLP                  400 South Hope Street, Suite 1050                  Los Angeles, CA 90071  <i>Attorneys for Defendant Apple Inc.</i></p>	<p>[ ] By United States Mail                  [ ] By Legal Messenger  <b>[X] By Electronic CM/ECF</b>                  [ ] By Overnight Express Mail                  [ ] By Facsimile                  [ ] By Email [by agreement of counsel]                  bberliner@omm.com                  nyang@omm.com</p>
<p>11 <b>David S. Almeling</b>  <b>George A Riley</b>                  O'MELVENY &amp; MYERS (SF)                  Two Embarcadero Center, 28th Floor                  San Francisco, CA 94111-3823  <i>Attorneys for Defendant Apple Inc.</i></p>	<p>[ ] By United States Mail                  [ ] By Legal Messenger  <b>[X] By Electronic CM/ECF</b>                  [ ] By Overnight Express Mail                  [ ] By Facsimile                  [ ] By Email [by agreement of counsel]                  dalmeling@omm.com                  griley@omm.com</p>
<p>15 <b>Jeremy E. Roller</b>  <b>Scott T. Wilsdon</b>                  YARMUTH WILSDON CALFO PLLC                  818 Stewart Street, Suite 1400                  SEATTLE, WA 98101  <i>Attorneys for Defendant Apple Inc.</i></p>	<p>[ ] By United States Mail                  [ ] By Legal Messenger  <b>[X] By Electronic CM/ECF</b>                  [ ] By Overnight Express Mail                  [ ] By Facsimile                  [ ] By Email [by agreement of counsel]                  jroller@yarmuth.com                  swilsdon@yarmuth.com</p>
<p>19 <b>J. Christopher Carraway</b>  <b>John D. Vandenberg</b>                  KLARQUIST SPARKMAN (OR)                  121 SW Salmon Street, Suite 1600                  Portland, OR 97204-2988  <i>Attorneys for eBay, Inc., Netflix, Inc., Office Depot, Inc., and Staples, Inc.</i></p>	<p>[ ] By United States Mail                  [ ] By Legal Messenger  <b>[X] By Electronic CM/ECF</b>                  [ ] By Overnight Express Mail                  [ ] By Facsimile                  [ ] By Email [by agreement of counsel]                  chris.carraway@klarquist.com                  John.vandenberg@klarquist.com</p>

<p>1 <b>Aneelah Afzali</b>                  2 <b>Scott A. W. Johnson</b>                  3 <b>Shannon M. Jost</b>                  STOKES LAWRENCE                  800 5<sup>th</sup> Ave, Suite 4000                  Seattle, WA 98104-3179                  4 <i>Attorneys for Defendants Google Inc., and</i>                  5 <i>YouTube LLC</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  aneelah.afzali@stokeslaw.com                  sawj@stokeslaw.com                  shannon.jose@stokeslaw.com</p>
<p>6 <b>Dimitrios T. Drivas</b>                  7 <b>John Handy</b>                  8 <b>Kevin X. McGann</b>                  9 <b>Aaron Chase</b>                  WHITE &amp; CASE                  1155 Avenue of the Americas                  New York, NY 10036                  10 <i>Attorneys for Defendants Google Inc., and</i>                  11 <i>YouTube LLC</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  ddrivas@whitecase.com                  jhandy@whitecase.com                  kmcgann@whitecase.com                  aaron.chase@whitecase.com</p>
<p>12 <b>Warren S. Heit</b>                  WHITE &amp; CASE                  3000 El Camino Real                  Bldg. 5, 9<sup>th</sup> Floor                  Palo Alto, CA 94306                  14 <i>Attorneys for Defendants Google Inc., and</i>                  15 <i>YouTube LLC</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  wheat@whitecase.com</p>
<p>16 <b>Edward J. Bennett</b>                  WILLIAMS &amp; CONNOLLY                  725 12<sup>th</sup> St. N.W.                  Washington, D.C. 20005-5901                  18 <i>Attorneys for Defendant Office Depot, Inc.</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  ebennett@wc.com</p>

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

<p><b>Michael D. Hunsinger</b>                  THE HUNSINGER LAW FIRM                  100 South King Street, Suite 400                  Seattle, WA 98104  <i>Attorneys for Defendant Office Depot, Inc.</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  mike_hunsingerlawyers@yahoo.com</p>
<p><b>Kevin C. Baumgardner</b>  <b>Steven W. Fogg</b>                  CORR CRONIN MICHELSON                  BAUMGARDNER &amp; PREECE                  1001 4<sup>th</sup> Ave., Suite 3900                  Seattle, WA 98154-1051  <i>Attorneys for Defendant OfficeMax Inc.</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  kbaumgardner@corrchronin.com  <a href="mailto:sfogg@corrchronin.com">sfogg@corrchronin.com</a></p>
<p><b>Jeffrey D. Neumeyer</b>                  OFFICEMAX INCORPORATED                  1111 West Jefferson Street                  PO Box 50                  Boise, ID 83728  <i>Attorneys for Defendant OfficeMax Inc.</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  JeffNeumeyer@officemax.com</p>
<p><b>Eric W. Ow</b>  <b>Francis Ho</b>  <b>Matthew I. Kreeger</b>  <b>Michael A. Jacobs</b>  <b>Richard S. J. Hung</b>                  MORRISON &amp; FORESTER                  425 Market Street                  San Francisco, CA 94105-2482  <i>Attorneys for Defendants Yahoo! Inc.</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]                  eow@mofo.com                  fho@mofo.com                  mkreeger@mofo.com                  mjacobs@mofo.com                  rhung@mofo.com</p>

<p>1 <b>Douglas S. Rupert</b>  <b>John S. Letchinger</b>  2 WILDMAN, HARROLD, ALLEN &amp; DIXON LLP  3 225 West Wacker Drive, Suite 2800  4 Chicago, ILL 60606  5 <i>Attorneys for Defendant OfficeMax Inc.</i></p>	<p><input type="checkbox"/> By United States Mail  <input type="checkbox"/> By Legal Messenger  <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b>  <input type="checkbox"/> By Overnight Express Mail  <input type="checkbox"/> By Facsimile  <input type="checkbox"/> By Email [by agreement of counsel]  rupert@wildman.com  letchinger@wildman.com</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6 DATED: October 21, 2010

7 /s/ Terri Downey  
8 for Mark P. Walters, WSBA No. 30819  
9 Dario A. Machleidt, WSBA No. 41860  
10 FROMMER LAWRENCE & HAUG LLP