

Hon. Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC.,

Defendant.

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

**JOINT UPDATE REGARDING
STATUS OF REEXAMINATIONS
OF PATENTS-IN-SUIT**

INTERVAL LICENSING LLC,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No. 2:11-cv-00708 MJP

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

INTERVAL LICENSING LLC,

Plaintiff,

v.

EBAY, INC.,

Defendant.

Case No. 2:11-cv-00709 MJP

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

INTERVAL LICENSING LLC,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No. 2:11-cv-00710 MJP

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

1 INTERVAL LICENSING LLC,
2 Plaintiff,
3 v.
4 GOOGLE, INC.,
5 Defendant.

Case No. 2:11-cv-00711 MJP
Lead Case No. 2:10-cv-01385-MJP

6 INTERVAL LICENSING LLC,
7 Plaintiff,
8 v.
9 NETFLIX, INC.,
10 Defendant.

Case No. 2:11-cv-00712 MJP
Lead Case No. 2:10-cv-01385-MJP

11 INTERVAL LICENSING LLC,
12 Plaintiff,
13 v.
14 OFFICE DEPOT INC.,
15 Defendant.

Case No. 2:11-cv-00713 MJP
Lead Case No. 2:10-cv-01385-MJP

16 INTERVAL LICENSING LLC,
17 Plaintiff,
18 v.
19 OFFICEMAX INC.,
20 Defendant.

Case No. 2:11-cv-00714 MJP
Lead Case No. 2:10-cv-01385-MJP

21 INTERVAL LICENSING LLC,
22 Plaintiff,
23 v.
24 STAPLES INC.,
25 Defendant.

Case No. 2:11-cv-00715 MJP
Lead Case No. 2:10-cv-01385-MJP

1 INTERVAL LICENSING LLC,
2 Plaintiff,
3 v.
4 YAHOO! INC.,
5 Defendant.

Case No. 2:11-cv-00716 MJP
Lead Case No. 2:10-cv-01385-MJP

6 INTERVAL LICENSING LLC,
7 Plaintiff,
8 v.
9 YOUTUBE LLC,
10 Defendant.

Case No. 2:11-cv-00717 MJP
Lead Case No. 2:10-cv-01385-MJP

11
12 **JOINT UPDATE REGARDING THE**
13 **REEXAMINATIONS OF THE PATENTS-IN-SUIT**

14 Pursuant to the Court’s Order Granting Defendants’ Joint Request to Stay (Dkt. No. 253),
15 the parties respectfully submit the following status update regarding the progress of the
16 reexaminations at the United States Patent and Trademark Office (“PTO”). The parties last
17 submitted a status report to the Court on December 16, 2011 (Dkt. 260).

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20 **I. PROCEDURAL POSTURE**

21 Interval filed its complaint on August 27, 2010, and its amended complaint on December
22 28, 2010, alleging that Defendants infringed four patents owned by Interval: U.S. Patent No.
23 6,788,314; U.S. Patent No. 6,034,652; U.S. Patent No. 6,757,682; and U.S. Patent No. 6,263,507.
24 In response to the parties’ supplemental Joint Status Report, the Court split the patents into two
25 tracks, with the ‘314 and ‘652 patents assigned to one track and the ‘682 and ‘507 patents
26 assigned to the other track. Dkt. # 178. A separate trial was scheduled for each track.
27

1 Defendants filed requests for reexamination with the PTO on March 17, 2011. That same
2 day, Defendants moved to stay the case pending the reexaminations. Dkt. # 198. The Court
3 denied the motion without prejudice, concluding that it was premature given that the PTO had not
4 acted on the requests for reexamination. Dkt. # 229. After the PTO granted each of the requests
5 for reexamination, Defendants renewed their motion to stay on June 7, 2011, which Interval
6 opposed. Dkt. # 245, 246.
7

8 On June 16, 2011, the Court granted the motion to stay the case pending reexamination.
9 Dkt. # 253. In granting the motion to stay, the Court directed the parties to submit a status update
10 on the reexaminations every six months and made clear that the Court “expects to be notified
11 immediately upon resolution of the reexamination process of each individual patent, not just at
12 the conclusion of all four reexaminations.” *Id.*

13
14 The parties submitted a joint status report on the reexaminations on December 16, 2011,
15 which was six months from the date of the stay. (Dkt. # 260) On April 17, 2012, Interval filed a
16 Notice of Completion of Reexamination regarding the ‘652 patent (Dkt. # 262) and a Motion to
17 Lift the Stay with respect to the ‘652 and ‘314 patents. (Dkt. # 261) Defendants filed an
18 opposition on May 7, 2012 (Dkt. # 263), and Interval filed its reply on May 11, 2012 (Dkt. #
19 265). The Motion to Lift the Stay is now fully briefed, and the parties refer to their respective
20 briefs concerning the pending motion.
21

22 **II. STATUS OF REEXAMINATIONS**

23 The current status of the reexaminations for each of the patents-in-suit is provided below.
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Patents Asserted Only In Case Numbers C10-1385 MJP, C11-708-MJP,**C11-711-MJP and C11-716-MJP:**

Patent No.	Request for Reexamination Filed (Control. No.)	Status
6,034,652 (track 1)	March 16, 2011 (90/011,576) (ex parte)	The reexamination on the '652 patent is complete. On June 5, 2012, the PTO issued the reexamination certificate on the '652 patent. The PTO confirmed the original asserted claims without amendment and allowed new claims added during reexamination. Because the '652 reexamination is <i>ex parte</i> , Requestors have no right to appeal.
6,788,314 (track 1)	March 16, 2011 (95/001,577) (inter partes)	An Appeal is currently pending before the USPTO Board. The Examiner confirmed all asserted claims without amendment and allowed new claims added during reexamination. Right of Appeal Notice ("RAN") issued on December 10, after an Action Closing Prosecution. The Requestor, Apple Inc., timely appealed from Action Closing Prosecution. Patentee responded, and the Examiner filed an "Examiner's Answer" on May 17, 2012, maintaining the position that the claims are allowable. The Requestor's Rebuttal Brief is due June 18, 2012.

Patents Asserted In All Case Numbers Listed Above:

Patent No.	Request for Reexamination Filed (Control. No.)	Status
6,263,507 (track 2)	1st Reexamination: March 17, 2011 (90/011,577) (ex parte) 2nd Reexamination: December 28, 2011 (90/012,074) (ex parte)	1st Reexamination: First Office Action issued rejecting all asserted claims. Interval has filed a response that included responsive arguments, cancelled asserted claims 39, 40, 43, 82, 83, and 86, and added 45 new claims. Interval is awaiting a further office action from the Examiner. Interval requested that this reexamination be merged with Defendants' second request for reexamination on May 21, 2012. 2nd Reexamination: Reexamination was ordered on March 5, 2012. On May 21, 2012, Interval filed a petition to merge the proceeding with the first reexamination. Waiting

Patent No.	Request for Reexamination Filed (Control. No.)	Status
		for first Office Action or merger with first reexamination.
6,757,682 (track 2)	March 16, 2011 (95/001,576) (inter partes)	<p>An appeal is currently pending before the USPTO Board.</p> <p>The Examiner confirmed all asserted claims without amendment and allowed 20 of 24 new dependent claims added during reexamination. Right of Appeal Notice (“RAN”) issued on December 14, 2011 after an Action Closing Prosecution.</p> <p>Requestors timely appealed from Action Closing Prosecution. Patentee also timely appealed. Requestors and Patentee each filed Respondent’s Briefs, and the Examiner filed an “Examiner’s Answer” on May 17, 2012, maintaining her positions on which claims are allowable and which are not allowable. The Rebuttal Briefs are due June 18, 2012.</p>

If the Court would like to discuss the status of the reexaminations in person or telephonically, the parties are available at the Court’s convenience.

Dated: June 18, 2012

Respectfully submitted,

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As Whip for Defendants’ Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

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