

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  
28

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 STATUS REPORT**

INTERVAL LICENSING LLC,  
Plaintiff,

v.  
APPLE, INC.,

Defendant.

ORAL ARGUMENT REQUESTED  
Case No. 2:11-cv-00708 MJP  
Lead Case No. 2:10-cv-01385-MJP

INTERVAL LICENSING LLC,  
Plaintiff,

v.  
GOOGLE, INC.,

Defendant.

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

INTERVAL LICENSING LLC,  
Plaintiff,

v.  
YAHOO! INC.,

Defendant.

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

Pursuant to this Court’s June 25, 2012, Order Granting Motion to Lift Stay (Dkt. No. #269), the parties submit the following supplemental Joint Status Report.

1 **I. PROPOSED SCHEDULE**

2 **A. Court's Revised Scheduling Order**

3 Except as discussed below, the parties agree that the parameters set in the Court's Revised  
4 Scheduling Order (Dkt. # 248) should remain in place with respect to the '652 and '314 Patents  
5 track.

6 **B. Joint Proposed Schedule**

7 The parties submit the following proposed schedule for this case. With the exception of  
8 the one issue that is discussed below, the parties have reached agreement on a proposed schedule  
9 for this case. The deadlines in the parties' proposed schedule are based in large part on the  
10 deadlines in the Court's Revised Scheduling Order (Dkt. No. 248).<sup>1</sup>

Event	Date
Interval to provide defendants with list of open discovery issues	7/20/2012
Serve supplemental preliminary infringement contentions on any new claims added during reexamination and new accused products	7/20/2012
Source code for 652/314 products already accused made available for review and meet and confer to discuss making source code available for newly identified 652/314 products	8/1/2012
Defendants respond by this date to the items on Interval's list of open discovery issues, with any meet and confers soon after	8/4/2012
Serve supplemental preliminary non-infringement contentions	8/17/2012
Meet and confer as to whether supplemental claim construction expert reports are necessary	8/24/2012
Any New Terms Selected for Claim Construction	8/24/2012

25 <sup>1</sup> Defendants reserve the right to object to Interval's supplementation of its infringement  
26 contentions with respect to any claims that were not newly added during reexamination or with  
27 respect to any products that are not new products. Defendants also reserve the right to  
28 supplement Defendants' invalidity contentions. Interval likewise reserves the right to object to  
any supplemental invalidity contentions should Defendants seek a supplementation.

	Event	Date
1		
2	Preliminary Claim Chart	8/31/2012
3	Joint Claim Chart and Prehearing Statement	9/14/2012
4	Serve Supplemental Claim Construction Expert Report on any new issues (if necessary)	9/21/2012
5	Opening Briefs on Claim Construction	10/5/2012
6	Response Briefs on Claim Construction	10/26/2012
7	<i>Markman</i> Hearing	11/9/2012
8	Close of Fact Discovery	3/1/2013
9	Opening Expert Reports on All Issues	3/29/2013
10	Rebuttal Expert Reports Due	4/26/2013
11	Joint Status Report to Address Trial Issues	5/3/2013
12	Close of Expert Discovery	5/17/2013
13	Dispositive Motion Deadline	6/7/2013
14	Settlement Conference per Local Rule CR 39.1(c)(2) held no later than	7/19/2013
15	Mediation per Local Rule CR 39.1(c)(3) held no later than	8/16/2013
16	All Motions in Limine must be filed by and noted on the motion calendar no later than the second Friday thereafter	8/23/2013
17	Agreed Pretrial Order due	9/6/2013
18	Trial Briefs, Proposed Voir Dire Questions, Proposed Jury Instructions, and Trial Exhibits due	9/20/2013
19	Objections to demonstratives, trial exhibits, depositions designations.	10/4/2013
20	Pretrial Conference	10/8/2013
21	Trial Date	10/14/2013
22		
23		
24		
25		
26		
27		
28		



1 whether something is unobtrusive or distracts a user (from her primary interaction) depends upon  
2 a particular user's subjective views, what the user was engaged in and how easily a particular user  
3 might be distracted. Under Federal Circuit precedent, claims containing inherently subjective  
4 language are indefinite under 35 U.S.C. § 112, ¶ 2. For example, the Federal Circuit found  
5 similarly subjective language indefinite in *Datamize LLC v. Plumtree Software, Inc.*, 417 F.3d at  
6 1348-1356.

7 Resolution of this issue in Defendants favor will result in a substantial streamlining of this  
8 case, including discovery, claim construction and trial, because most of the claims at issue will  
9 have been held invalid.

10 *Interval's Position:*

11 Defendants have asked to include in the proposed schedule a date of August 2, 2012 for a  
12 motion for summary judgment on indefiniteness. Interval believes that such an early deadline is  
13 inappropriate for at least three reasons.<sup>3</sup> First, the Court already has rejected a similar proposal  
14 by Defendants. Before the stay, Defendants told this Court that they planned to submit their  
15 summary judgment briefing on indefiniteness together with their claim construction briefing, and  
16 they requested five additional pages in their claim construction brief to address indefiniteness.  
17 04/25/2011 Hearing Transcript at 35-36 (Dkt. #231). The Court suggested that it would reject  
18 that request, requiring that Defendants' briefing on indefiniteness be confined to the existing page  
19 limitation on the Markman brief. *Id.* at 35 (THE COURT: "I am all for saving work. I am pretty  
20 much against adding pages."). Consistent with the Court's suggestion, Defendants appeared to  
21 agree that they would include any summary judgment issue on indefiniteness as part of their page  
22 limits on the claim construction briefing. *Id.* at 36. Defendants' new request for an early motion  
23 on indefiniteness appears to be nothing more than a second attempt to increase the page limitation  
24

25 \_\_\_\_\_  
26 <sup>3</sup> Defendants' statement that indefiniteness is a question of law is misleading at best. "Summary  
27 judgment on the issue of indefiniteness is inappropriate where there are issues of fact underlying  
28 the indefiniteness determination." *See Am. Med. Sys., Inc. v. Laser Peripherals, LLC*, 712 F.  
Supp. 2d 885, 910 (D. Minn. 2010) (emphasis added).

1 for its briefing—if Defendants cannot add pages to their claim construction brief, then they will  
2 attempt to file two separate briefs.

3 Second, the Court’s pre-stay schedule did not provide for an early indefiniteness motion.  
4 In fact, Defendants never requested an early deadline for filing of an indefiniteness motion even  
5 though the purported basis for Defendants’ motion existed before the stay. Defendants fail to  
6 explain why an early summary judgment motion is justified now when they were prepared to file  
7 the motion as part of their claim construction brief before the stay.

8 Third, as Defendants previously told the Court, the indefiniteness issue goes hand-in-hand  
9 with claim construction. *Id.* at 35. Now, however, Defendants request briefing on the  
10 indefiniteness issue months before the claim construction briefing—despite the fact that when  
11 Interval suggested starting claim construction briefing at the same time as Defendants suggest it  
12 file the motion for summary judgment on indefiniteness, Defendants objected. In compromise,  
13 Interval agreed to delay the opening claim construction briefs until October, but Defendants now  
14 want to keep an early date for summary judgment. Such a proposal makes no sense and is unfair.  
15 *See Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d 1357, 1371 (Fed. Cir. 2008) (“By  
16 finding claims indefinite only if reasonable efforts at claim construction prove futile, we accord  
17 respect to the statutory presumption of patent validity[.]” (citation omitted) (emphasis added)). If  
18 Defendants want the motion for summary judgment due in August, then Opening Claim  
19 Construction briefs should be due the same date and the entire schedule (including the claim  
20 construction hearing and the trial date) should be moved forward by two months.

21 Dated: July 10, 2012

Respectfully submitted,

22  
23 By: /s/ Mark P. Walters  
Mark P. Walters, WSBA No. 30819  
24 FROMMER LAWRENCE & HAUG LLP  
1191 Second Avenue, Suite. 2000  
25 Seattle, WA 98101  
Telephone: (206) 336-5690  
26 Email: mwalters@flhlaw.com

By: /s/ Justin A. Nelson  
Justin A. Nelson, WSBA No. 31864  
27 SUSMAN GODFREY LLP  
1201 Third Avenue, Suite 3800  
Seattle, WA 98101  
Telephone: (206) 516-3880  
28 Email: mberry@susmangodfrey.com

*As Whip for Defendants’ Counsel*

*As Whip for Plaintiff’s Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 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:

**Attorneys for AOL, Inc.**

Cortney Alexander	cortney.alexander@finnegan.com
Robert Burns	robert.burns@finnegan.com
Elliot Cook	elliott.cook@finnegan.com
Gerald Ivey	gerald.ivey@finnegan.com
Molly Terwilliger	mollyt@summitlaw.com

**Attorneys for Apple, Inc.**

David Almeling	dalmeling@omm.com
Brian Berliner	bberliner@omm.com
George Riley	griley@omm.com
Jeremy Roller	jroller@yarmuth.com
Scott Wilsdon	wilsdon@yarmuth.com
Neil Yang	nyang@omm.com
Xin-Yi Zhou	xzhou@omm.com

**Attorneys for Google, Inc.**

Aaron Chase	achase@whitecase.com
Dimitrios Drivas	ddrivas@whitecase.com
John Handy	jhandy@whitecase.com
Warren Heit	wheit@whitecase.com
Scott Johnson	scott.johnson@stokeslaw.com
Shannon Jost	shannon.jost@stokeslaw.com
Kevin McGann	kmcgann@whitecase.com
Wendi Schepler	wschepler@whitecase.com
Theresa Wang	theresa.wang@stokeslaw.com

**Attorneys for Yahoo! Inc.**

Francis Ho	fho@mofo.com
Richard S.J. Hung	rhung@mofo.com
Michael Jacobs	mjacobs@mofo.com
Matthew Kreeger	mkreeger@mofo.com
Dario Machleidt	dmachleidt@flhlaw.com
Eric Ow	eow@mofo.com
Mark Walters	mwalters@flhlaw.com
Gregory Wesner	gwesner@flhlaw.com

By: /s/ Jami Grounds  
Jami Grounds