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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

WILDSEED MOBILE LLC,

Plaintiff,

v.

GOOGLE LLC and YOUTUBE, LLC,

Defendants.

Case No. 3:22-cv-04928-WHO

JOINT CASE MANAGEMENT STATEMENT

Judge: Hon. William H. Orrick
Date: November 29, 2022
Time: Time: 2:00 p.m.

Pursuant to the Court's Order Setting Initial Case Management Conference (Dkt. 72), the Standing Order for All Judges of the Northern District of California dated November 1, 2018, Federal Rule of Civil Procedure 26(f), and Civil Local Rule 16-9, Plaintiff Wildseed Mobile LLC ("Wildseed") and Defendants Google LLC ("Google") and YouTube, LLC ("YouTube") (collectively, "Defendants"), met and conferred regarding a discovery plan and schedule and submit the following Joint Case Management Statement.

1. Jurisdiction and Service

The parties agree that this is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 et seq. The parties further agree that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). The parties do not believe that any personal jurisdiction or venue issues exist at this time but reserve all rights. All parties have been served.

2. **Facts**

Wildseed filed this action in the U.S. District Court for the Western District of Texas on April 4, 2022, and filed its first amended complaint on May 9, 2022. Wildseed accused Defendants Google and YouTube of infringing U.S. Patent Nos. 7,376,414 (the "'414 patent"), 9,141,960 (the "'960 patent"), 10,251,021 (the "'021 patent"), 10,959,040 (the "'040 patent"), 10,869,169 (the "'169 patent") (collectively, "the patents-in-suit").

Wildseed contends that Defendants' infringement has been willful and seeks all available remedies. Defendants deny that they infringe any asserted claim of the Asserted Patents (much less willfully) and assert that the Asserted Patents are unenforceable, invalid, and/or constitute patent-ineligible subject matter under 35 U.S.C. § 101 et seq. Defendants have asserted additional affirmative defenses of failure to mark and inequitable conduct. Defendants assert that Plaintiff is not entitled to any damages for at least these reasons.

Pursuant to the Western District of Texas's Order Governing Proceedings and Scheduling Order, the parties exchanged preliminary infringement contentions and invalidity contentions on May 10, 2022 and July 12, 2022, respectively. Defendants filed a Motion to Transfer this case to this District on June 7, 2022 and the parties engaged in written discovery and depositions with

respect to venue. On August 24, 2022, Wildseed stipulated to the transfer of the case to this District.

3. **Legal Issues**

The key legal issues concern the following subjects:

a) Whether Defendants have infringed any valid and enforceable claim of the '414, '960, '021, '040, and '169 patents, directly or indirectly;

b) Whether the claims of the '414, '960, '021, '040, and '169 patents are valid and enforceable;

c) The proper construction of any disputed patent claim terms;

d) If Defendants are found to have infringed the '414, '960, '021, '040, or '169 patent, the appropriate damages from Defendants;

e) Whether this case is exceptional under 35 U.S.C. § 285;

f) Whether any other forms of relief are due;

g) The parties anticipate other significant legal issues will be disputed as the litigation progresses.

4. **Motions**

There are no prior or currently pending motions. The parties anticipate that each may move for summary judgment and may file other dispositive and non-dispositive motions as appropriate.

5. **Amendment of Pleadings**

Wildseed does not currently expect to add or dismiss parties, claims, or defenses. The parties reserve the right to amend pleadings in accordance with Fed. R. Civ. P. 15 and any order of this Court.

6. **Evidence Preservation**

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines") and have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps to take regarding evidence presentation. The

parties confirm that they have taken appropriate and reasonable measures to preserve evidence relevant to the issues reasonably evident in this action.

7. **Disclosures**

The parties have agreed to serve initial disclosures pursuant to Rule 26(a)(1)(A) by December 16, 2022.

8. **Discovery**

A. Discovery taken to date

On May 10, 2022, Wildseed served preliminary infringement contentions and a document production. On July 12, 2022, Defendants served preliminary invalidity contentions, an invalidity document production, and a technical document production, which did not include source code. These productions cover some, but not all, of the discovery required by Local Patent Rule 3-2 and 3-4. From June to August 2022, the parties served and responded to discovery related to the issue of proper venue. Apart from the document productions described above, no merits discovery has occurred.

B. Scope of anticipated discovery

The parties anticipate that the scope of discovery will encompass the factual and legal issues identified in Sections 2 and 3 above and the requested relief discussed herein, including related and subsidiary factual and legal issues and matters. The parties' claims and defenses are anticipated to require both party and potentially third-party discovery on at least the following subjects: infringement and non-infringement, validity and invalidity, and damages.

C. Proposed discovery plan and proposed limitations or modifications of the discovery rules

1. Initial Disclosures

The parties have agreed to serve initial disclosures pursuant to Rule 26(a)(1)(A) by December 16, 2022. The parties do not propose any change to the form or requirement for the initial disclosures.

2. Depositions

Fact Depositions:

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Unless otherwise stipulated by the Court or as provided herein, the Federal Rules of Civil Procedure shall apply to deposition limits for each party. If any deposition is taken that requires translation, such deposition is counted as taking half of its actual length; *e.g.*, a 7 hour deposition with a translator will be considered to be a 3.5 hour deposition.

Each side may take up to seventy (70) hours of depositions of the other side (inclusive of both Rule 30(b)(1) and Rule 30(b)(6) depositions). Depositions taken for the purposes of venue discovery do not count toward this limit. No individual deposition of a 30(b)(1) or 30(b)(6) witness will count for less than three (3) hours against this total.

Each side may take up to an additional forty (40) hours of depositions of non-party, non-expert witnesses. No single deposition of a 30(b)(1) or 30(b)(6) witness will count for less than three (3) hours against this total.

Expert Depositions:

The parties shall meet and confer after the exchange of expert reports regarding limits on the length and number of days allotted for expert depositions.

3. Written Discovery

The parties agree that the Federal Rules of Civil Procedure should dictate the limits on interrogatories. The Federal Rules of Civil Procedure should dictate the limits on requests for production. No more than fifty (50) requests for admission should be served, except for requests for admission solely aimed at authenticating documents. Requests for admission directed to document authentication shall be clearly denoted as such and shall be served separately from any requests for admission subject to the numerical limitations.

4. Damages Contentions

The parties have conferred and agree that, given the circumstances and relative complexity of this case, it would reduce costs and be more efficient to not exchange the damages contentions and responsive damages contentions called for under Patent Local Rule 3-8 and 3-9. Accordingly, the parties respectfully request that the Court, pursuant to Patent Local Rule 1-3, permit the parties to dispense with the Patent Local Rules 3-8 and 3-9 requirements. Nothing in

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this request bars either party from propounding (or relieves the other party from its obligation to respond to) interrogatories aimed at seeking a parties' theories or evidence concerning damages.

5. Email Discovery

The parties acknowledge the burden of discovery involving emails and other forms of electronic communication and agree that, by default, emails and electronic communications need not be searched or produced in response to document requests pursuant to Rule 34. The parties further agree to meet and confer in the event that a party believes that discovery into emails and electronic communications is warranted and that the parties will work to limit the scope and burden of any such discovery that results.

6. Email Service

The parties consent to service by electronic means as set forth in Fed. R. Civ. P. 5(b)(2)(E). For calculating all deadlines, electronic service shall be equivalent to hand service. The parties also agree that courtesy copies of all papers served by other means shall also be sent via email to counsel of record for the parties. Such courtesy copy emails shall not shorten the date of any response triggered by service, including additional time to respond under Fed. R. Civ. P. 6(d).

The parties further agree that documents filed publicly through the Court's ECF system need not be separately served by email or otherwise and that ECF filing constitutes personal service as of the date and time such document was filed. The parties agree that documents filed under seal or manually must be served by email or other electronic means including FTP transfer immediately following a related ECF filing, and that the email service of such documents shall relate back to the time of the related ECF filing.

7. Limits on the Discovery of Expert Material

Without waiver of any rights provided under the Federal Rules of Civil Procedure, the Parties agree that the following categories of documents and things are excluded from expert discovery:

(a.) drafts of expert reports and expert declarations;

(b.) written or oral communications between a retained expert and the party or their attorneys or representatives of the party retaining the expert relating to the subject of the expert's retention in this case, including the preparation of expert reports, expert declarations, and in preparation for the expert's deposition or trial testimony;

(c) communications between an expert and others, including staff members, who work at the direction of the expert to support the expert,

(d) all notes, memoranda, and other writings prepared by an expert in connection with the expert witness's engagement in this case, including notes of a retained expert relating to communications to or from attorneys, except to the extent that the expert consults them while testifying at a deposition or at trial.

No party shall be obligated to log any information withheld under this section. Notwithstanding the above, the following shall not be excluded from discovery: (a) testimony pertaining to a testifying expert's compensation, including any contingent financial interest; and (b.) facts or data that the attorney or any other individual provided and the testifying expert relied upon in forming opinions in the case.

D. Protective Order

The parties anticipate entering into a Protective Order applicable to this case. The parties believe a protective order is necessary to protect sensitive and confidential information implicated by this action, and were in the process of negotiating a protective order when the Western District of Texas transferred the case. The parties will submit a proposed protective order to the Court as soon as possible.

E. Report on stipulated discovery order

The parties have reviewed the ESI Guidelines and met and conferred concerning ESI. The parties will jointly submit any proposed modifications to the Model Stipulation & Order re: Discovery of Electronically Stored Information available on the Court's website at https://www.cand.uscourts.gov/eDiscoveryGuidelines.

F. Identified discovery disputes

Wildseed's Position:

Defendants did not produce source code as part of their production of technical documents "sufficient to show the operation of the accused products" as required by the Scheduling Order entered by the United States District Court for the Western District of Texas. Production of Defendants' source code will be necessary in this case. Due to the fact that the case has been pending since April, 2022, and that the parties previously served infringement and invalidity contentions in the Western District of Texas, Wildseed believes it is appropriate for Defendants to produce additional technical documents and source code prior to the Patent L.R. 3-4(a) deadline in the proposed schedule.

Defendants' Position:

Defendants produced technical documentation when this matter was pending in the Western District of Texas and Defendants will comply with their obligations under Patent Local Rule 3-4(a). According to the parties' proposed schedule, this will take place on March 3, 2023 although Defendants will supplement their prior technical document production before this date if Wildseed confirms in writing that it is not revising the infringement contentions it previously served in the Western District of Texas.

9. **Class Actions**

This is not a class action.

10. **Related Cases**

There are currently no related cases.

11. **Relief**

Wildseed seeks an adjudication that Defendants have infringed the patents-in-suit; an award of damages to be paid by Defendants adequate to compensate Wildseed for Defendants' past infringement of the patents-in-suit, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to those acts not presented at trial; a declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Wildseed's reasonable attorneys' fees; and an award to Wildseed of such further relief at law or in equity as the Court deems just and proper.

Defendants seek an adjudication that they have not infringed and are not infringing any asserted claim of the Asserted Patents; an adjudication that the Asserted Patents are unenforceable and/or invalid; a declaration that this case is exceptional under 35 U.S.C. § 285; an adjudication that Wildseed is not entitled to any damages, interests, costs, and/or expenses; an award to Defendants of reasonable attorney's fees; an adjudication limiting or barring Wildseed's ability to enforce the Asserted Patents in equity; and an award to Defendants of such further relief at law or in equity as the Court deems just and proper. Wildseed has not identified the amount of damages sought or the bases on which the damages are calculated; therefore, Defendants are unable to provide a responsive statement regarding the bases on which damages should be calculated if liability is established.

12. **Settlement and ADR**

The parties have conferred and agree to monitor the case for if and when an appropriate time arises for mediation. The parties propose that they advise the Court when that time occurs, rather than having the Court set a process for mediation now.

13. **Consent to Magistrate Judge for All Purposes**

The parties do not consent to proceed before a magistrate judge for all proceedings.

14. **Other References**

The parties do not believe this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. **Narrowing of Issues**

The parties will work in good faith to address narrowing of any issues as discovery proceeds and the issues become clearer. Wildseed presently asserts 81 claims of 5 patents against numerous products. Defendants have currently charted 32 prior art references, and have identified more in their invalidity contentions cover pleading. The parties have conferred and agree that scheduled deadlines for claim narrowing and prior art narrowing are appropriate in this case, as set forth below.

16. **Expedited Trial Procedure**

The parties do not believe this is the type of case that can be handled under the Expedited

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Trial Procedure of General Order 64, Attachment A.

17. **Scheduling**

The parties propose the following schedule. Defendants believe it would be most practical and efficient at this stage to only set the schedule through Markman. However, should the Court prefer to set the schedule through trial, Defendants have provided a complete set of proposed dates.

Description	**Wildseed Deadline Proposed**	**Defendants Deadline Proposed**
Service of Initial Disclosures	Friday, December 16, 2022	Agree
Wildseed serves Infringement Contentions and Document Production (Patent L.R. 3-1, 3-2)[1]	Tuesday, January 3, 2023	Agree
Defendants serve Invalidity Contentions and Document Production (Patent L.R. 3-3, 3-4)	Agree	Friday March 3, 2023
Last day to amend pleadings and add parties	Monday, April 10, 2023	Agree
Exchange of proposed terms for claim Construction (Patent L.R. 4-1)	Agree	Friday, March 17, 2023
Exchange of proposed claim constructions and extrinsic evidence, including any expert reports for claim construction (Patent L.R. 4-2)	Agree	Friday April 7, 2023
Joint Claim Construction and Prehearing Statement and exchange of any expert rebuttal reports for claim construction (Patent L.R. 4-3)	Agree	Tuesday April 18, 2023
Completion of claim construction discovery (including depositions of any experts for claim construction)	Agree	Tuesday, May 18, 2023

[1] The infringement contentions may not assert any claims that were not previously asserted when this litigation was pending in Texas.

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Description	Wildseed Deadline Proposed	Defendants Deadline Proposed
(Patent L.R. 4-4)		
Wildseed files Opening Claim Construction Brief (Patent L.R. 4-5(a))	Agree	Friday, June 2, 2023
Defendants serve Responsive Claim Construction Brief (Patent L.R. 4-5(b))	Agree	Friday June 16, 2023
Wildseed files Reply Claim Construction Brief (Patent L.R. 4-5(c))	Agree	Friday June 23, 2023
Claim Construction hearing and tutorial (Patent L.R. 4-6) (subject to the Court's convenience)	Agree	Wednesday July 12, 2023
Advice of counsel disclosures (Patent L.R. 3-7)	30 days after claim construction order	
Close of fact discovery	Friday, November 10, 2023	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Opening expert reports	Wednesday, December 6, 2023	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Rebuttal expert reports	Friday, February 2, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed

Description	Wildseed Deadline Proposed	Defendants Deadline Proposed
Close of expert discovery	Friday, February 23, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Deadline for dispositive and *Daubert* motions	Friday, March 8, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Oppositions to dispositive and *Daubert* motions	Friday, March 29, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Replies to dispositive and *Daubert* oppositions	Friday, April 12, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Dispositive motion hearing (subject to the Court's convenience)	Wednesday, May 1, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Exchange papers described in Civil L.R. 16-10(b)(7), (8), (9), and (10), and any motions *in limine* (28 days prior to Pretrial Conference per Judge Orrick's Pretrial Order)	Monday, June 3, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed

Description	Wildseed Deadline Proposed	Defendants Deadline Proposed
Meet and confer with respect to joint pretrial conference statement, preparation and exchange of pretrial materials, and settlement (21 days prior to Pretrial Conference per Judge Orrick's Pretrial Order)	Monday, June 10, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
File joint pretrial conference statement; file jury instructions; file motions *in limine* (14 days prior to Pretrial Conference per Judge Orrick's Pretrial Order)	Monday, June 17, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Pretrial conference (subject to the Court's convenience)	Monday, July 1, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed
Trial (subject to the Court's convenience)	Monday, July 22, 2024	*Post-Markman deadlines should be set after the Markman order issues. If the Court is inclined to set a schedule now, then Defendants propose:* Agreed

18. Claim and Prior Art Narrowing

Wildseed's Position

Deadline for the parties to meet and confer to discuss significantly narrowing the number of claims asserted and prior art references at issue. If the parties are unable to agree to the narrowing, they are ordered to contact the Court to resolve the disputed issues	September 28, 2023
Deadline for the parties to meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits	March 1, 2024

Defendants' Position

Preliminary Election of Asserted Claims,	30 days after claim construction order issues

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asserting no more than ten claims from each patent and not more than a total of 32 claims:	
Preliminary Election of Asserted Prior Art, asserting no more than twelve prior art references against each patent and not more than a total of 40 references	44 days after claim construction order issues
Final Election of Asserted Claims, identifying no more than five asserted claims per patent from among the ten previously identified claims and no more than a total of 16 claims	45 days prior to service of opening expert reports
Final Election of Asserted Prior Art, identifying no more than six asserted prior art references per patent from among the twelve prior art references previously identified for that particular patent and no more than a total of 20 references	30 days prior to service of opening expert reports

19. **Trial**

The parties request a trial by jury for all issues so triable. Wildseed expects a jury trial of the issues in this case to take approximately five court days. Assuming that Wildseed's asserted claims are limited as set forth above, Defendants estimate that the presentation of evidence will take approximately 5-7 days.

20. **Disclosure of Non-party Interested Entities or Persons**

Wildseed filed its Certificate of Interested Entities. Wildseed certifies, pursuant to Fed. R. Civ. P. 7.1, that it is a privately-held corporation with no parent corporation, and no publicly-held corporation owns 10% or more of its stock.

Google has filed its Certification of Interested Entities or Persons as required by Civil Local Rule 3-15. (Dkt. No. 100.) The undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in the subject matter or in a party that could be substantially affected by the outcome of this proceeding: (1) Google LLC; (2) XXVI Holdings Inc., Holding Company of Google LLC; and (3) Alphabet Inc., Holding Company of XXVI Holdings Inc.

21. **Professional Conduct**

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

22. **Other**

Patent L.R. 2-1(b)(1): The parties' proposed deadlines for disclosures required by the Patent Local Rules are set forth in Section 17 above.

Patent L.R. 2-1(b)(2): The timing of claim construction discovery is set above in Section 17 above.

Patent L.R. 2-1(b)(3): The parties anticipate that the claim construction hearing will last two to three hours, with each party presenting argument, evidence, demonstratives and/or testimony. Consistent with the Court's Patent Standing Order, the Parties do not believe that live testimony will be necessary. Nevertheless, the case is in a preliminary stage, and the Parties reserve the right to offer live testimony at the claim construction hearing. In addition, the Parties believe that the Claim Construction Hearing should be conducted on a claim term by claim term basis, with each side alternating as to who presents first. Should it become apparent that live testimony will be necessary, the Parties will submit a request at least 30 days before the hearing to seek the Court's approval for such a request. The parties intend to arrange a tutorial for the Court of the technology at issue in this matter.

Patent L.R. 2-1(b)(4): The parties do not believe that a technology tutorial is necessary but are willing to provide one should the Court so request one. Should a tutorial be necessary, the Parties are willing to permit counsel to present the tutorials.

Patent L.R. 2-1(b)(5): Wildseed is unable to provide an estimate of damages without discovery. Defendants contend that Wildseed cannot recover any damages at least because the Asserted Patents are invalid and not infringed. Defendants intend to seek an award of reasonable attorneys fees, costs, and expenses, and any other relief as the Court may deem just and proper.

Dated November 22, 2022

Respectfully submitted,

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ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in this document's content and have authorized the filing of this document with the use of their electronic signature.

/s/ *Robert F. Kramer*

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