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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WITHROW NETWORKS, INC.,

Plaintiff,

v.

GOOGLE, LLC and YOUTUBE, LLC,

Defendants.

Case No. 5:24-CV-03203-PCP

**THE PARTIES' JOINT CASE
MANAGEMENT STATEMENT**

Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, Patent Local Rule 2-1(b), the Standing Order for All Judges of the Northern District of California, the Standing Order for Civil Cases Before Judge P. Casey Pitts, and this Court’s Order Regarding Case Management Conference (Dkt. No. 42) in light of this Court’s Order Denying Motion to Dismiss (Dkt. No. 44), Plaintiff Withrow Networks, Inc. (“Withrow” or “Plaintiff”) and Defendants Google, LLC (“Google”) and YouTube, LLC (“YouTube”) (collectively, “Defendants”) jointly submit this Joint Case Management Statement pertaining to Withrow’s patent infringement allegations of U.S. Patent No. 10,771,849 (the “’849 patent”).

I. Jurisdiction and Service

This action arises under the patent laws of the United States, Title 35 U.S.C. § 1 et seq. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a). The parties do not dispute personal jurisdiction or venue in this action. No parties identified in the Complaint remain to be served.

II. Facts

A. Brief Description of the Facts

Withrow filed its Complaint against Defendants on May 28, 2024, alleging infringement of the ’849 patent. Specifically, Withrow alleges that Defendants’ provision of streaming services to mobile devices that use YouTube player applications and web-based applets through implementations utilizing MPEG-DASH, HLS, or both, infringes the ’849 Patent. Dkt. No. 1 at ¶¶ 73-74.

On June 12, 2024, the Court issued an Order Reassigning this matter to the Honorable P. Casey Pitts. Dkt. No. 20. On July 9, 2024, the Case Management Conference (“CMC”) was reset for August 27, 2024. Dkt. No. 28. On August 1, 2024, Defendants filed an Administrative Motion to Continue the CMC, (Dkt. No. 31), which the Court granted, resetting the CMC for November 7, 2024. Dkt. No. 33. On August 8, 2024, Defendants filed a Motion to Dismiss. Dkt. No. 35. On October 16, 2024, the Court issued a stipulated order requiring the Parties to hold the conference required under Federal Rule of Civil Procedure 26(f) within five (5) business days of any order denying the Motion to Dismiss and resetting the deadline to submit a report under Rule 26(f) to 10

1 days after the conference, and requiring the Parties to request a CMC for 14 days after the
 2 submission of the Rule 26(f) report. On January 21, 2025, the Court issued an Order Denying the
 3 Motion to Dismiss.

4 **B. Principal Factual Issues Which the Parties Dispute**

5 The principal disputed factual issues are factual questions underlying the following:

- 6 1. Whether either Defendant infringed any asserted claim of the '849
 7 patent;
- 8 2. Whether the '849 patent is valid; and
- 9 3. If any Defendant is found to be liable in this action, the amount of
 10 damages owed to Withrow.

11 **III. Legal Issues**

12 The principal disputed legal issues are:

- 13 1. The proper construction of the asserted claims of the '849 patent;
- 14 2. Whether Defendants infringed any of the asserted claims of the '849
 15 patent under 35 U.S.C. § 271;
- 16 3. Whether the asserted claims of the '849 patent are invalid or
 17 unenforceable under any of the requirements of the Patent Act, including 35
 18 U.S.C. §§ 101, 102, 103, and 112;
- 19 4. If liability is established, whether Withrow is entitled to any damages
 20 under 35 U.S.C. § 284, and if so, the amount of damages including those
 21 pertaining to willful infringement;
- 22 5. Whether any damages are limited by 35 U.S.C. §§ 286, 287, and/or 288;
- 23 6. Whether this case is exceptional under 35 U.S.C. § 285, entitling the
 24 prevailing party to attorneys' fees; and
- 25 7. The parties reasonably anticipate other legal issues will be disputed as
 26 the litigation progresses.

28 **IV. Motions**

1 There presently are no pending motions. The parties anticipate moving for summary
2 judgment and may file other dispositive and non-dispositive motions as the case progresses.

3 **V. Amendment of Pleadings**

4 The parties agree that motions to amend the pleadings shall be due simultaneously with
5 the deadline for the Exchange of Preliminary Claim Constructions and Extrinsic Evidence.

6 **VI. Evidence Preservation**

7 The parties have conferred pursuant to Federal Rule of Civil Procedure 26(f) regarding
8 reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably
9 evident in this action. The parties confirm that each has taken appropriate steps to preserve
10 documents, records, electronic data, and materials relevant to this lawsuit from modification or
11 loss.

12 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
13 Stored Information (“ESI Guidelines”).

14 **VII. Disclosures**

15 The parties will exchange initial disclosures on or before February 11, 2025.

16 **VIII. Discovery**

17 A. The parties anticipate serving discovery on or after the Rule 26(f) conference. No
18 discovery disputes are ripe for the Court’s review at this time.

19 B. The scope of anticipated discovery by each party is as follows:

20 Plaintiff Withrow anticipates needing discovery on at least the following infringement
21 issues: technical materials pertaining to media encoding, transcoding, and transmuxing;
22 streaming standards such as HLS, MPEG-DASH, H.264, VP9, and others; information
23 pertaining to Defendants’ media players, including their decoding and adaptive bitrate
24 technologies; source code. Withrow believes damages discovery may concern Defendants’
25 agreements with affiliates and third parties (e.g., Google Cloud partners such as Wowza,
26 ATEME, Harmonic, and Brightcove) to provide streaming services to mobile devices that use
27 YouTube player applications and web-based applets through implementations utilizing MPEG-
28 DASH, HLS, or both; the use of Google developed encoding, transcoding, and transmuxing

1 software and hardware, where such use is by Defendants or third parties; Defendants'
 2 marketing materials concerning such products and/or services; Defendants' licenses, litigation
 3 settlements, and agreements with third parties concerning analogous technologies to the '849
 4 patent; the development time for adaptive multibit rate technology (including that provided to
 5 Defendants by third parties such as Adobe) and non-infringing alternatives to the '849 patent;
 6 Defendants' participation in standards organizations pertaining to the technology in this
 7 litigation; Defendants and their corporate history and status; the business case for the accused
 8 products and/or services; the business case for, and acquisition of, analogous technologies; and
 9 Defendants' actual and projected revenues, profits, cost savings, and other financial
 10 information pertaining to Withrow's damages case and rebuttal to Defendants' damages
 11 allegations. Withrow may also require discovery concerning the meaning of disputed claim
 12 terms. Additional required discovery may include information relating to indirect infringement
 13 and willful infringement pending information learned during party discovery. Withrow also
 14 anticipates discovery concerning the factual bases for Defendants' claims and defenses.

15 Defendants anticipate needing discovery on at least the following issues:

- 16 1. The nature and extent of Withrow's alleged rights in the '849 patent;
- 17 2. The invalidity and/or unenforceability of the '849 patent; and
- 18 3. Any damages (or limitations on damages) related to Defendants' alleged
 19 infringement.

20 Defendants disagree with the scope of discovery described by Plaintiff and expect that
 21 it can be refined further following exchange of preliminary contentions.

22 C. Limitations or Modifications of the Discovery Rules

23 To the extent not limited below, and unless otherwise agreed to by the parties, the parties
 24 agree that discovery is subject to the limitations set forth in the Federal Rules of Civil
 25 Procedure, Local Rules of this Court, the ESI Order and Protective Order to be entered in this
 26 action. If a party requests discovery that exceeds any of the limitations set forth below, the
 27 parties agree to meet and confer in good faith to attempt to resolve the issue without intervention
 28

of the Court. If the parties are unable to reach agreement, a party may seek leave from the Court for the additional discovery.

1. Fact Witness Depositions.

Plaintiff Withrow's Proposal: Presently, with only limited publicly available documents, Withrow believes that flexibility is warranted in this case and proposes that fact witness depositions shall initially be limited to seventy (70) total hours per side; each individual deposition is limited to seven hours of record time.

The issues at stake are large. Around the time of Defendants initial development of potentially infringing technology (around 2009), YouTube asserted that “consumption [of video] on mobile devices has also grown considerably . . . [a]nd we’re excited to announce that YouTube Mobile now receives more than 100 million video playbacks a day.” Dkt. No. 1-5 at 1. Over fifteen years later, the scope of infringement is much greater.

The technology at issue in the litigation is complex. It involves multiple defendants (Google and YouTube) with streaming systems comprised of numerous parts (encoders, segmenters, content distribution networks, and multiple client media players) (*described schematically*, Dkt. No. 1, ¶ 63), developed and supported by likely distinct employee groups. Moreover, Defendants’ adoption of infringing adaptive multi-bitrate technology involves third parties, such as Adobe Inc. (Dkt. No. 1, ¶¶ 23-24.) Lastly, the infringing media standards in this litigation are based on two distinct formats, HLS and MPEG-DASH (Dkt. No. ¶¶ 61-74), which are coupled to distinct compression technologies, including at least VP9 (Dkt No. 1-2 at 7, 9) and AVC1 (Dkt. No. 1, ¶ 66).

For at least these reasons, more than ten (10) depositions will be necessary, but, at this time, Withrow does not believe more than seventy (70) hours of fact depositions will be necessary.

Defendants’ Proposal: Presently there is no basis to modify the limitations set forth in the Federal Rules of Civil Procedure, including that pursuant to Rule 30, unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours and a party must obtain leave of court if it seeks to take more than 10 depositions. This case is in its early stages

1 and involves a single patent. The number of views on YouTube has no bearing on the
2 appropriate scope of discovery in this case. Furthermore, Plaintiff may only seek recovery
3 based on alleged infringement going back six years prior to filing, not to 2009. *See* 35 U.S.
4 Code § 286. As the case progresses, should a party believe it requires more than 10 depositions,
5 the parties can meet and confer at that time, or, if the parties are unable to reach an agreement,
6 seek leave to take additional depositions.

7 2. Expert Witness Depositions.

8 Expert depositions will not count against each side's deposition limit. Each side is limited
9 to seven (7) total hours of deposition time for each expert report. For example, if an expert offers
10 an opinion on both noninfringement/infringement and invalidity/validity, such expert would be
11 subject to a 7-hour deposition on noninfringement/infringement and a separate 7-hour deposition
12 on invalidity/validity.

13 D. The parties shall file by February 28, 2025 a stipulated protective order to the Court
14 governing the disclosure of confidential information in this action, in accordance with this Court's
15 standing order.

16 E. The parties agree that a reasonable e-discovery order is necessary and will file a proposed
17 order by February 28, 2025.

18 F. The parties agree to the following procedure regarding claims of privilege or protection
19 as trial-preparation materials:

20 1. The parties will exchange logs of information that is privileged or protected as
21 trial-preparation material as set forth in Fed. R. Civ. P. 26(b)(5) on a date agreed upon by the
22 parties, prior to the taking of testimony (at a deposition or trial). The parties agree that information
23 created on or after May 28, 2024 need not be identified in their logs.

24 2. In accordance with Fed. R. Evid. 502 and Fed. R. Civ. P. 26(b)(5)(B), the
25 production of information that is privileged or protected as trial-preparation material will not be
26 deemed a waiver of any privilege or other basis to withhold the information.

27 G. In addition to any limits on discovery of expert witnesses provided for in Federal Rule
28 of Civil Procedure 26, no discovery can be taken from any non-testifying expert except to the

1 extent that such non-testifying expert has provided information, opinions, or other materials to a
 2 testifying expert relied upon by that testifying expert in forming his or her final report(s), trial,
 3 and/or deposition testimony or any opinion in this case. Reports and materials exempt from
 4 discovery under this paragraph shall be treated as attorney work product for the purposes of this
 5 case.

6 **IX. Class Actions**

7 This case is not a class action.

8 **X. Related Cases**

9 There are no related cases.

10 **XI. Relief**

11 Withrow requests that the Court grant relief as follows: (1) judgment that Defendants have
 12 infringed one or more claims of the '849 patent; (2) an award of damages pursuant to 35 U.S.C.
 13 § 284 in an amount sufficient to compensate Withrow for the harm caused by Defendants'
 14 infringement, not less than a reasonable royalty for the use made of the invention, along with pre-
 15 and post-judgment interest; (3) an order for an accounting of damages from Defendants'
 16 infringement; (4) an order declaring this case is exceptional and awarding Withrow its costs,
 17 expenses, and attorneys' fees pursuant to 35 U.S.C. § 285; and (5) and an order awarding to
 18 Withrow such other and further relief, whether at law or in equity, that this Court seems just,
 19 equitable, and proper.

20 Defendants' Position: Defendants seek (1) dismissal of Withrow's claims with prejudice
 21 and denial of each and every element of the prayer for relief sought by Withrow; (2) a judgment
 22 that the '849 patent, and every asserted claim thereof, are invalid, unenforceable, and not infringed
 23 by either Defendant; (3) a judgment that Withrow is not entitled to any damages, interests, costs,
 24 and/or expenses; (4) an order that Defendants are the "prevailing party" with respect to Withrow's
 25 patent claims and that this case is "exceptional" within the meaning of 35 U.S.C. § 285, and for an
 26 award granting Defendants their reasonable attorney's fees and costs, as permitted by law or
 27 equity; and (5) a judgment limiting or barring Withrow's ability to enforce the '849 patent.

XII. Settlement and ADR

The parties have met and conferred regarding ADR options. The parties intend to, within 60 days of the Court's ruling on claim construction, submit to either a private mediation or settlement conference. The parties will advise the Court within 30 days of a ruling on claim construction about which option they have selected and, if appropriate, request a referral from the Court to a settlement conference before a magistrate judge.

XIII. Other References

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

XIV. Narrowing of Issues

The parties do not anticipate any requests to bifurcate issues, claims, or defenses. The parties are currently unaware of any issues that can be narrowed by agreement. The parties agree to confer in good faith after the discovery period as to ways to expedite the presentation of evidence at trial.

XV. Expedited Trial Procedure

This case is not suitable for handling on an expedited basis with streamlined procedures.

XVI. Scheduling

The parties jointly propose the case schedule attached as Exhibit 1.

XVII. Trial

The parties have requested a jury trial. The parties anticipate that the trial will last 5-7 court days.

XVIII. Disclosure of Non-party Interested Entities or Persons

Each party has filed the Certification of Interested Entities or Persons required by Civil Local Rule 3-15. Withrow restates its previous disclosures. Pursuant to Civil L.R. 3-15, Withrow states there is no conflict or interest (other than the named parties) to report.

Defendants reaffirm that Google is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company; no publicly traded company holds more than 10% of Alphabet Inc.'s stock; YouTube is a subsidiary of Google. Pursuant to Civil L.R. 3-

15, Defendants certify 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 that subject matter or in a party that could be substantially affected by the outcome of this proceeding: (1) Google LLC; (2) YouTube LLC; (3) XXVI Holdings Inc., Holding Company of Google LLC; and (4) Alphabet Inc., Holding Company of XXVI Holdings Inc.

XIX. Professional Conduct

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

XX. Other

The parties consent to service by email pursuant to Fed. R. Civ. P. 5(b)(2)(e).

XXI. Patent Local Rule 2-1(b)

The parties met and conferred regarding the following topics listed in Patent L.R. 2-1(b):

Proposed Modification of Obligations or Deadlines Set Forth in the Patent Local Rules:

The parties' proposed schedule is set forth in attached Exhibit 1. The deadlines generally follow those set forth in the Patent Local Rules, with minor modifications.

Scope and Timing of Claim Construction Discovery:

The parties agree that the Patent Local Rules will apply to the scope and timing of claim construction discovery. The parties anticipate that they may use expert witness declarations in support of one or more of their claim construction positions.

Plaintiff's position: Depositions of claim construction experts should be completed before any claim construction briefs are filed, pursuant to the Patent Local Rule 4-4, and so that any party filing an opening claim construction brief has all of the information available to it. To the extent a deposition cannot be accommodated prior to a subsequent briefing deadline the parties will meet and confer about a reasonable extension of such deadline.

Defendants' position: Given that claim construction briefing falls in mid-August, Defendants believe it appropriate to include some additional time in the schedule to allow for any claim construction expert depositions during the briefing process as set forth in Defendants'

1 proposals for briefing below. Defendants believe that the expert deposition process will be more
2 efficient if the party taking the expert deposition has the expert's declaration and the brief that the
3 declaration supports prior to taking the deposition.

4 Format of Claim Construction Hearing: The parties anticipate the claim construction
5 hearing will take no more than 2-3 hours. The parties propose that the claim construction hearing
6 proceed claim term by claim term, with Withrow presenting its construction of each term first,
7 except that, should Defendants contend that a term is indefinite, Defendants shall proceed first.
8 The parties will meet and confer regarding any of the logistics associated with the claim
9 construction hearing as the case progresses.

10 Technology Tutorial: The parties believe the Court will benefit from a tutorial on the
11 technology at issue in this case. Each side requests no more than 30 minutes to educate the Court
12 on the technology at issue.

13 Damages Estimate:

14 Withrow seeks damages in an amount commensurate with Defendants' infringement of the
15 '849 patent, no less than a reasonable royalty for Defendants' infringement. Several factors,
16 including but not limited to comparable video streaming royalties, the importance of the infringing
17 products and services to the business of a Defendant, internal business metrics and projections,
18 and the availability of non-infringing alternatives, can all to different degrees, contribute to patent
19 infringement damages. A non-binding estimate of damages attributed to Defendants is not possible
20 without discovery pertaining to, for example, video streaming metrics and projections, agreements
21 with Google affiliate and third parties, and other financial and technical data. Withrow anticipates
22 that it should be in a position to provide an estimate of Defendants' damages in Withrow's
23 Damages Contentions (Patent L.R. 3-8).

24 Withrow anticipates that additional confidential information from Defendants, such as
25 actual and projected financial data, streaming metrics, and other confidential business information
26 will inform Withrow's damages assessment. Withrow also seeks interest and costs fixed by the
27 Court, as well as an accounting of all infringing revenues by Defendants. Withrow also seeks an
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award of attorneys' fees and costs associated with the present action under 35 U.S.C. § 285. Such fees, costs, and expenses cannot be computed at the present time.

Having not yet engaged in any discovery in this matter, Defendants cannot at this time estimate a damages range.

Dated: February 7, 2025

VILLEGAS & CEFO LLP

By: /s/ Evan M. Rosenbaum
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Dated: February 7, 2025

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GOOGLE LLC and YOUTUBE LLC

EXHIBIT 1

EVENT	DATE
Initial Disclosures	Friday, Feb. 7, 2025
Case Management Statement	Friday, Feb. 7, 2025
Initial Case Management Conference	Friday, Feb. 21, 2025
Infringement Contentions and Accompanying Document Production	Friday, Mar. 7, 2025
Invalidity Contentions and Accompanying Document Production	Monday, Apr. 21, 2025
Exchange of Proposed Terms for Construction	Monday, May 5, 2025
Exchange of Preliminary Claim Constructions and Extrinsic Evidence / Deadline to Amend Pleadings	Tuesday, May 27, 2025
Damages Contentions And Accompanying Document Production	Tuesday, June 10, 2025
Joint Claim Construction and Prehearing Statement	Friday, June 20, 2025
Responsive Damages Contentions and Accompanying Document Production	Thursday, July 10, 2025
Completion of Claim Construction Discovery	Monday, July 21, 2025 ¹
Opening Claim Construction Brief	Monday, Aug. 4, 2025
Responsive Claim Construction Brief	Wednesday, Sep. 3, 2025
Reply Claim Construction Brief	Thursday, Sep. 18, 2025
Technology Synopsis of no more than 10 pages that provides, in plain and accessible language, background information about the technology and science to be discussed at the tutorial	7 Days before Tutorial
Tutorial	As scheduled by the Court
Claim Construction Hearing	As scheduled by the Court
Patent L.R. 3-7: Advice of Counsel	30 Days after Court's Claim Construction Ruling
Close of Fact Discovery	60 days after the Court's Claim Construction Ruling
Initial Expert Disclosure (by the Party with the Burden of Proof)	45 days after Close of Fact Discovery
Expert Disclosure (Rebuttal)	30 days after Initial Expert Disclosures
Close of Expert Discovery	30 days after Rebuttal Expert Disclosures
Deadline to File Daubert and Dispositive Motions	30 days after Close Of Expert Discovery and 20 weeks before pretrial conference
Oppositions to Daubert and Dispositive Motions	30 days after opening briefs

¹ As explained in Section XXI, Defendants believe that claim construction expert depositions should occur during the claim construction briefing process.

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Replies in Support of Daubert and Dispositive Motions	15 days after oppositions
Final Pretrial Conference	2 weeks before trial
Trial	TBD

ATTESTATION CLAUSE

I, Evan M. Rosenbaum, am the ECF user whose credentials were used in this filing. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all signatories have consented to the filing of this document.

Dated: February 7, 2025

By:/s/ Evan M. Rosenbaum
Evan M. Rosenbaum