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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: AMERANTH
CASES,

CASE NOS.

11cv1810 DMS (WVG)	12cv1643 DMS (WVG)
12cv0729 DMS (WVG)	12cv1644 DMS (WVG)
12cv0731 DMS (WVG)	12cv1646 DMS (WVG)
12cv0732 DMS (WVG)	12cv1648 DMS (WVG)
12cv0733 DMS (WVG)	12cv1649 DMS (WVG)
12cv0737 DMS (WVG)	12cv1650 DMS (WVG)
12cv0739 DMS (WVG)	12cv1651 DMS (WVG)
12cv0742 DMS (WVG)	12cv1652 DMS (WVG)
12cv0858 DMS (WVG)	12cv1653 DMS (WVG)
12cv1627 DMS (WVG)	12cv1654 DMS (WVG)
12cv1629 DMS (WVG)	12cv1655 DMS (WVG)
12cv1630 DMS (WVG)	12cv1656 DMS (WVG)
12cv1631 DMS (WVG)	13cv0350 DMS (WVG)
12cv1633 DMS (WVG)	13cv0352 DMS (WVG)
12cv1634 DMS (WVG)	13cv0353 DMS (WVG)
12cv1636 DMS (WVG)	13cv1072 DMS (WVG)
12cv1640 DMS (WVG)	14cv1303 DMS (WVG)
12cv1642 DMS (WVG)	12cv2350 DMS (WVG)

**AMENDED CASE MANAGEMENT
CONFERENCE ORDER REGULATING
DISCOVERY AND OTHER PRETRIAL
PROCEEDINGS**

On February 10, 2017, the Court held a telephonic status conference with counsel for the parties in these consolidated cases. After consulting with counsel and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1 1. Although Plaintiff's claims for infringement of the '850, '325 and '733 Patents
2 are no longer at issue in light of findings by the PTAB and the Federal Circuit that those
3 Patents are invalid, the Court declines to enter judgment on those claims at this time
4 pursuant to Federal Rule of Civil Procedure 54(b). Instead, the Court will enter one
5 final judgment after the claims concerning the '077 Patent are finally adjudicated. 2.

6 Pursuant to Plaintiff's representation during the status conference, Plaintiff is no
7 longer pursuing any claims of willful infringement against any of the Defendants,
8 including Ticketbiscuit, Fandango, Usablenet and Dominos. Accordingly, those claims
9 are no longer at issue.

10 3. Defendants shall withdraw any and all pending motions to dismiss and file
11 Answers to their respective operative Complaints on or before **February 24, 2017**. To
12 the extent any Defendants desire to file motions based on failure to state a claim for
13 direct or indirect infringement, they may raise those issues in a motion under Federal
14 Rule of Civil Procedure 12(c) within seven (7) calendar days after the service of
15 Plaintiff's amended infringement contentions.

16 4. The Magistrate Judge shall schedule ENE conferences for all parties to take place
17 as soon as possible after the Answers are filed.

18 5. Plaintiff shall file its motion to disqualify counsel on or before **February 24,**
19 **2017**. Any opposition to Plaintiff's motion to disqualify shall be filed on or before
20 **March 10, 2017**. Any reply briefs shall be filed on or before **March 17, 2017**. The
21 motion shall be heard on **April 7, 2017**, at **1:30 p.m.**

22 6. Plaintiff shall provide amended infringement contentions as to all Defendants on
23 or before **March 24, 2017**. Plaintiff is directed to select no more than five (5) claims
24 from the '077 Patent to assert against each Defendant. Plaintiff's amended infringement
25 contentions shall consist of one representative version of each Defendant's accused
26 system for the selected claims of the '077 Patent asserted against that Defendant. If
27 Plaintiff asserts indirect infringement (contributory or inducement) by a Defendant,
28 Plaintiff shall provide as part of its infringement contentions an example of how the

1 Defendant indirectly infringes, including the identity of the direct infringer and factual
2 basis for the Defendant's intent.

3 7. No later than **April 7, 2017**, Defendants shall provide Plaintiff with the source
4 codes for their respective representative system identified in Plaintiff's amended
5 infringement contentions.

6 8. No later than **May 23, 2017**, Defendants shall serve invalidity contentions
7 pursuant to Patent L.R. 3.3 and produce documents as required by Patent L.R. 3.4.
8 Defendants shall jointly provide a list of prior art they contend individually or in
9 combination invalidates the patent at issue. Defendants shall jointly serve one set of
10 initial invalidity contentions on Plaintiff in accordance with the format set forth in the
11 local rules. The contentions shall be directed at the claims Plaintiff selects for its
12 infringement contentions. Defendants' production of information pursuant to Local
13 Rule 3.4(a), setting forth the technical specifications and other information for their
14 accused system is limited to the system identified in Plaintiff's initial infringement
15 contentions. Defendants' contentions shall include all, if any, prior art they contend
16 invalidates a claim based on anticipation. Defendants shall include no more than five
17 separate prior art combinations they contend invalidate based on obviousness. For the
18 latter purpose, Defendants may assert additional prior art references or combinations
19 at this time only with leave of Court.

20 9. Counsel for all parties shall meet and confer and select no more than ten (10)
21 claim terms or phrases from the '077 Patent for construction.

22 10. On or before **June 6, 2017**, the parties shall exchange preliminary claim
23 constructions pursuant to Patent L.R. 4.1(a) and identify extrinsic evidence as required
24 by Patent L.R. 4.1(b). On or before **June 20, 2017**, the parties shall exchange
25 responsive claim constructions pursuant to Patent L.R. 4.1(c) and identify extrinsic
26 evidence as required by Patent L.R. 4.1(d). In the interests of efficiency and reducing
27 the cost of litigation, Defendants are encouraged to provide an omnibus preliminary
28 claim construction and an omnibus response to Plaintiff.

1 11. On or before **July 5, 2017**, the parties shall complete and file a joint claim
2 construction chart, joint claim construction worksheet, and joint hearing statement
3 pursuant to Patent L.R. 4.2.

4 12. All discovery intended for use in the claim construction hearing must be
5 completed no later than **August 16, 2017**. *See* Patent L.R. 4.3.

6 13. Defendants shall file one omnibus claim construction brief and response. To the
7 extent any Defendant wishes to present an argument specific to its position, it may do
8 so in a supplemental brief or response not to exceed five (5) pages. No later than
9 **September 20, 2017**, the parties shall simultaneously file their opening claim
10 construction briefs. *See* Patent L.R. 4.4(a). No later than **October 4, 2017**, the parties
11 shall simultaneously file their responsive claim construction briefs. *See* Patent L.R.
12 4.4(b).

13 14. On **October 6, 2017**, at **1:30 p.m.** the Court will hold a joint telephonic
14 conference to discuss the parties' intended presentations at the claim construction
15 hearing, including any tutorial and testimony.

16 15. The claim construction hearing will be held on **November 6, 2017**, at **9:00 a.m.**
17 *See* Patent L.R. 4.5. The Court shall hold a joint case management conference at the
18 end of the claim construction hearing. Counsel shall be prepared to discuss trial dates
19 and case management dates leading up to trial for all cases except the IPDEV case.

20 16. As to the IPDEV case only, the following additional schedule shall apply:

21 a. All fact discovery shall be completed on or before **August 16, 2017**. All
22 expert discovery shall be completed on or before **November 16, 2017**. "Completed"
23 means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and
24 discovery subpoenas under Rule 45, must be initiated a sufficient period of time in
25 advance of the cut-off date, so that it may be completed by the cut-off date, taking into
26 account the times for service, notice, and response as set forth in the Federal Rules of
27 Civil Procedure, and any motions and the resolution of any discovery disputes. All
28 disputes concerning discovery shall be brought to the attention of the Magistrate Judge

1 no later than thirty (30) days following the date upon which the event giving rise to the
2 discovery dispute occurred. Counsel shall meet and confer pursuant to the requirements
3 of Fed. R. Civ. P. 26 and Local Rule 26.1(a).

4 b. On or before **June 16, 2017**, all parties shall exchange with all other parties
5 a list of all expert witnesses expected to be called at trial. The list shall include the
6 name, address, and telephone number of the expert and a brief statement identifying the
7 subject areas as to which the expert is expected to testify. The list shall also include the
8 normal rates the expert charges for deposition and trial testimony. On or before **July**
9 **7, 2017**, any party may supplement its designation in response to any other party's
10 designation so long as that party has not previously retained an expert to testify on that
11 subject.

12 c. Each expert witness designated by a party shall prepare a written report to
13 be provided to all other parties **no later than August 25, 2017**, containing the
14 information required by Fed. R. Civ. P. 26(a)(2)(A) and (B). **Except as provided in**
15 **paragraph 17 below, any party that fails to make these disclosures shall not, absent**
16 **substantial justification, be permitted to use evidence or testimony not disclosed**
17 **at any hearing or at the time of trial. In addition, the Court may impose sanctions**
18 **as permitted by Fed. R. Civ. P. 37.**

19 d. Any party, through any expert designated, shall in accordance with Fed.
20 R. Civ. P. 26(a)(2)(D) and Fed. R. Civ. P. 26(e)(2), supplement any of its expert reports
21 regarding evidence intended solely to contradict or rebut evidence on the same subject
22 matter identified in an expert report submitted by another party. Any such supplemental
23 reports are due on or before **September 22, 2017**.

24 e. The Court will set a filing deadline for dispositive motions in its claim
25 construction order.

26 f. Counsel shall serve on each other and file with the Clerk of the Court their
27 Memoranda of Contentions of Fact and Law in compliance with Local Rule 16.1(f)(2)
28 (and 16.1(f)(3), where applicable) on or before **February 19, 2018**.

1 g. Counsel shall confer and take the action required by Local Rule 16.1(f)(4)
2 on or before **February 26, 2018**. At this meeting, counsel shall discuss and attempt to
3 enter into stipulations and agreements resulting in simplification of the triable issues.
4 Counsel shall exchange copies and/or display all exhibits other than those to be used for
5 impeachment, lists of witnesses and their addresses including experts who will be called
6 to testify, and written contentions of applicable facts and law. The exhibits shall be
7 prepared in accordance with Local Rule 16.1(f)(2)(c). Counsel shall cooperate in the
8 preparation of the proposed final pretrial conference order.

9 h. The proposed final pretrial conference order, including written objections,
10 if any, to any party's Fed. R. Civ. P. 26(a)(3) pretrial disclosures, shall be served on
11 opposing counsel and lodged directly with chambers on or before **March 12, 2018**, and
12 shall be in the form prescribed in and in compliance with Local Rule 16.1(f)(6). **In**
13 **addition, the parties shall include in the proposed pretrial order a statement to be**
14 **read to the jury, not in excess of one page, of the nature of the case and the claims**
15 **and defenses.** Any objections to pretrial disclosures shall comply with the
16 requirements of Fed. R. Civ. P. 26(a)(3). **Please be advised that the failure to file**
17 **written objections to a party's pretrial disclosures may result in the waiver of such**
18 **objections, with the exception of those made pursuant to Rules 402 (relevance) and**
19 **403 (prejudice, confusion or waste of time) of the Federal Rules of Evidence.**

20 i. The parties shall file and serve their motions *in limine* on or before **April**
21 **6, 2018**. Each side shall be limited to five (5) motions, and each motion shall be no
22 more than five (5) pages. The parties are admonished, however, to meet and confer to
23 try and resolve their disputes before filing motions *in limine*. Oppositions to motions
24 *in limine* shall be filed on or before **April 13, 2018**. A hearing on the parties' motions
25 *in limine* shall be held on **April 20, 2018**, at 1:30 p.m.

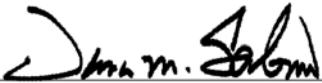
26 j. The final pretrial conference is scheduled on the calendar of the Honorable
27 Dana M. Sabraw on **March 23, 2018**, at **10:30 a.m.** The trial is scheduled to
28 commence on **April 23, 2018**, at **9:00 a.m.**

1 k. The dates and times set forth herein will not be modified except for good
2 cause shown.

3 **IT IS SO ORDERED.**

4 DATED: February 14, 2017

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HON. DANA M. SABRAW
United States District Judge