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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PERFECT 10, INC.,
Plaintiff(s),
v.
MICROSOFT, INC.,
Defendant(s).

CASE NO. CV 07-5156 AHM (SHx)
ORDER SETTING RULE 16(b)
SCHEDULING CONFERENCE

Date: February 11, 2008
Time: 1:30 p.m.

This case has been assigned to Judge A. Howard Matz. If plaintiff has not already served the complaint (or any amendment thereto) on all defendants, plaintiff shall promptly do so and shall file proofs of service within three days thereafter. Defendants also shall timely serve and file their responsive pleadings and file proofs of service within three days thereafter.

This matter is set for a scheduling conference on the above date. The conference will be held pursuant to Fed.R.Civ.P. 16(b). The parties are reminded of their obligations under Fed.R.Civ.P. 26(a)(1) to disclose information (without awaiting a discovery request) and under R. 26(f) to confer on a discovery plan not later than twenty-one (21) days prior to the scheduling conference and to file a

1 report with the Court entitled “Joint Rule 16(b) Report” not later than fourteen
2 (14) days after they confer. Failure to comply with the following requirements or
3 to cooperate in the preparation of the Joint Rule 16(b) Report may lead to the
4 imposition of sanctions.

5 **Unless there is a likelihood that upon motion by a party the Court**
6 **would order that any or all discovery is premature, it is advisable for counsel**
7 **to begin to conduct discovery actively before the Scheduling Conference. At**
8 **the very least, the parties shall comply fully with the letter and spirit of**
9 **Fed.R.Civ.P. 26(a) and thereby obtain and produce most of what would be**
10 **produced in the early stage of discovery, because at the Scheduling**
11 **Conference the Court will impose tight deadlines to complete discovery.**

12 **1. Joint Rule 16(b) Report.**

13 The Joint Rule 16(b) Report, which shall be filed not later than one week
14 before the scheduling conference, shall be drafted by plaintiff (unless the parties
15 agree otherwise), but shall be submitted and signed jointly. “Jointly” contemplates
16 a single report, regardless of how many separately-represented parties there are.
17 The Joint Rule 16(b) Report shall report on all matters enumerated below, which
18 include those required to be discussed by Rule 26(f) and Local Rule 26:

- 19 a. **a short synopsis** (not to exceed two pages) of the main claims,
20 counterclaims, and/or affirmative defenses.
- 21 b. a brief description of the **key legal issues**.
- 22 c. the realistic range of **provable damages**.
- 23 d. whether there is **insurance coverage**.
- 24 e. a statement of the **likelihood of motions** seeking to (i) add other
25 parties or claims or (ii) file amended pleadings or (iii) transfer venue.
- 26 f. **Discovery and Experts**. Pursuant to Rule 26(f), state what, if any,
27 changes in the disclosures under R. 26(a) should be made; the
28 subjects on which discovery may be needed and whether discovery

1 should be conducted in phases or otherwise be limited; what issues
2 exist or are likely to arise, and what agreements (if any) have been
3 reached concerning the identification maintenance and production of
4 electronically stored information; what discovery has been conducted
5 thus far; whether applicable limitations should be changed or other
6 limitations imposed; and whether the Court should enter other orders.
7 Please state how many depositions each side will conduct. Also
8 discuss the proposed time of **expert witness disclosures** under
9 F.R.Civ.P. 26(a)(2).

- 10 g. a description of the issues or claims that any party believes may be
11 determined by motion for **summary judgment or motion *in limine***.
- 12 h. a statement of what **settlement** discussions and/or written
13 communications have occurred (specifically excluding any statement
14 of the terms discussed) and a statement pursuant to the Local Rule 16-
15 14.4 selecting a settlement mechanism under that rule.
- 16 i. a realistic (not padded) **estimate of the time required for trial** and
17 whether trial will be by jury or by court. Each side should specify (by
18 number, not by name) how many witnesses it contemplates calling. If
19 the time estimate for trial given in the Rule 16(b) Joint Report
20 exceeds eight court days, counsel shall be prepared at the Scheduling
21 Conference to explain why a lengthier trial is estimated.
- 22 j. **Presumptive Schedule of Pretrial Dates.** The parties should fill in
23 the form attached as Exhibit A to this Order and attach it to the Rule
24 16(b) report. *The pre-printed entries in the “Weeks Before Trial”*
25 *column merely reflect what the Court believes are appropriate for*
26 *many, if not most, cases; those entries are not necessarily applicable*
27 *to this case. (Thus, in most cases there will be 14 weeks between the*
28 *non-expert discovery cutoff and trial.) You should use the form to*

1 *request the Court to set different last dates by which the key*
 2 *requirements must be completed.* Each side should write in the
 3 month, day and year it requests for each event. *E.g.*, for the expert
 4 discovery cut-off, it might be "10/7/06" for plaintiff and "10/28/06"
 5 for defendant, if they cannot agree. At the conference, the Court will
 6 review this form with counsel. Each entry proposing dates shall fall
 7 on a Monday, except the trial date which is a Tuesday. In appropriate
 8 cases the Court will order different dates after it hears from Counsel.

9 **The proposed non-expert and expert discovery cut-off date**

10 **means:** The last day by which all depositions must be completed and
 11 responses to all previously-served written discovery must be
 12 provided. **It does not mean** the last day to initiate discovery or to file
 13 a motion with the magistrate judge seeking to compel discovery. **The**
 14 **proposed cut-off date for motions means:** The last date on which
 15 motions may be heard, not noticed.

- 16 k. a statement of any **other issues affecting the status or management**
 17 of the case (*e.g.*, unusually complicated technical or technological
 18 issues, disputes over protective orders, extraordinarily voluminous
 19 document production, non-English speaking witnesses, discovery in
 20 foreign jurisdictions, etc.).
- 21 l. **for conflict purposes**, corporate parties must identify all subsidiaries,
 22 parents and affiliates.
- 23 m. **Patent Cases:** Propose dates and methodology for claim construction
 24 and *Markman* hearings.
- 25 n. **Do the parties wish to have a Magistrate Judge preside?** Under 28
 26 U.S.C. § 636, the parties may consent to have a Magistrate Judge
 27 preside over all the proceedings, not just discovery. They may pick
 28 *any* Magistrate Judge (not just the one assigned to this case) from

1 among those Magistrate Judges who accept these designations. (They
2 are identified on the Central District’s website, which also contains
3 the consent form.)

4 The Joint Rule 16(b) Report should set forth the above enumerated
5 information under section headings corresponding to this Order.

6 **2. Scheduling Conference.** The Scheduling Conference will be held in
7 Courtroom 14 of the Federal Courthouse at 312 N. Spring Street. Counsel shall
8 comply with the following:

9 a. Participation. The lead trial attorney must attend the Scheduling
10 Conference, unless excused for good cause shown in advance of the
11 Scheduling Conference.

12 b. Continuance. A continuance of the Scheduling Conference will be
13 granted only for good cause.

14 c. Use of Conference Telephone. If one or more of the lead counsel has
15 his or her office outside of Los Angeles County, the Court is normally
16 willing, at counsel’s request, to conduct the status conference by
17 conference telephone call. Please contact the court clerk at (213) 894-
18 5283 to get approval. Opposing counsel who are outside of Los
19 Angeles County may also participate by telephone. The attorney who
20 has received approval to participate by telephone shall call (213) 894-
21 5290 at the time and date specified above for specific instructions,
22 which might include being required to remain available on the
23 telephone until the case is called. After the other participants are
24 assembled, that attorney will be notified that he or she must promptly
25 originate the conference call.

26 **3. Protective Orders.** If you seek a protective order, propose it to opposing
27 counsel before the Scheduling Conference, if at all possible. In a separate order,
28

1 the Court has enumerated precise requirements for protective orders and the
2 treatment of confidential information. In proposing a protective order for this case,
3 please comply with that order, which is available on the Court’s website.

4 **4. Notice to be Provided by Counsel.** Plaintiff’s counsel or, if plaintiff is
5 appearing *pro se*, defendant’s counsel, shall provide this Order to any parties who
6 first appear after the date of this Order and to parties who are known to exist but
7 have not yet entered appearances.

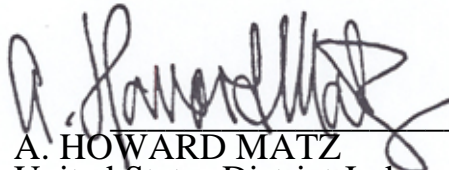
8 **5. Disclosures to Clients.** Counsel are ordered to deliver to their respective
9 clients a copy of this Order and of the Court’s Scheduling and Case Management
10 Order, which contains the schedule that the Court imposes at the Scheduling
11 Conference.

12 **6. Court’s Website.** Copies of this and all other orders of this Court that may
13 become applicable to this case are available on the Central District of California
14 website, at “www.cacd.uscourts.gov,” under “Judge’s Requirements.” Copies of
15 the Local Rules are available on the website.¹

16 The Court thanks the parties and their counsel for their anticipated
17 cooperation in carrying out these requirements.

18 IT IS SO ORDERED.

19 Dated: November 28, 2007


A. HOWARD MATZ
United States District Judge

21 Copies to:
22 All Counsel of Record

25 _____
26 ¹ They may also be purchased from one of the following:

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|---|---|---|
| 27 Los Angeles Daily Journal
28 915 East First Street
Los Angeles, CA 90012 | West Publishing Company
50 West Kellogg Blvd.
St. Paul, MN 55164-9979 | Metropolitan News
210 South Spring Street
Los Angeles, CA 90012 |
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**JUDGE A HOWARD MATZ
PRESUMPTIVE SCHEDULE OF PRETRIAL DATES**

Matter	Time	Weeks before trial	Plaintiff's Request	Defendant's Request	Court Order
Trial date (jury) (court) Estimated length: _____ days	8:00 a.m.				
[Court trial:] File Findings of Fact and Conclusions of Law and Summaries of Direct Testimony		- 1			
Final Pretrial Conference; Hearing on Motions in Limine; File Agreed Upon Set of Jury Instructions and Verdict Forms and Joint Statement re Disputed Instructions and Verdict Forms; File Proposed <i>Voir Dire</i> Qs and Agreed-to Statement of Case	11:00 a.m.	- 2			
Lodge Pretrial Conf. Order File Memo of Contentions of Fact and Law; Exhibit List; Witness List; Status Report re Settlement		- 4			
Last day for hand-serving Motions in Limine		- 6			
Last Day to Meet Before Final Pretrial Conference (L.R. 16-2)		- 8			
Last day for hearing motions	10:00 a.m.	- 8			
Last day for hand-serving motions and filing (other than Motions in Limine)		- 12			
Non-expert Discovery cut-off		- 14			

ADDITIONAL MATTERS TO BE DETERMINED AT SCHEDULING CONFERENCE

L.R. 16-14 Settlement Choice: (1) CT/USMJ (2) Atty (3) Outside ADR

Expert discovery cut-off		- 6			
Rebuttal Expert Witness Disclosure		- 9			
Opening Expert Witness Disclosure [See F.R.Civ.P. 26(a)(2)]		- 13			
Last day to conduct Settlement Conference					
Last Day to Amend Pleadings or Add Parties					

EXHIBIT A