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Attorneys for Defendant
I2Z Technology, LLC

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13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 HIPMUNK, INC.,
18 Plaintiff,
19 v.
20 I2Z TECHNOLOGY, LLC,
21 Defendant.
22

Case No. 4:12-cv-03409-PJH
**JOINT CASE MANAGEMENT
STATEMENT AND FEDERAL RULE
OF CIVIL PROCEDURE 26(f) REPORT**
Date: November 15, 2012
Time: 2:00 p.m.
Location: Courtroom 3, Third Floor
Before: Hon. Phyllis J. Hamilton

23
24 Pursuant to the Court’s Standing Order for All Judges, the Civil Local Rules, the Patent
25 Local Rules, and the Supplemental Order Setting Case Management Conference (Dkt. No. 14),
26 Plaintiff and Counterclaim Defendant Hipmunk, Inc. (“Hipmunk”) and Defendant and
27 Counterclaim Plaintiff I2Z Technology, Inc. (“I2Z”) (collectively, the “Parties”) jointly submit
28 this Case Management Statement and Fed. R. Civ. P. 26(f) Report in anticipation of the Case

1 Management Conference scheduled for November 15, 2012, at 2:00 p.m. in Courtroom 3, Third
2 Floor, Federal Building, 1301 Clay Street, Oakland, California, before the Honorable Phyllis J.
3 Hamilton. Each party certifies that its lead trial counsel have met and conferred for the
4 preparation of this statement as required by Civil L.R. 16-3. The parties make the following
5 representations and proposals:

6 **1. Jurisdiction & Service**

7 This is an action for declaratory judgment of non-infringement and invalidity of U.S.
8 Patent No. 5,345,551 (“the ’551 patent”). Hipmunk’s declaratory judgment claims arise under the
9 United States Patent Laws, 35 U.S.C. §§ 101 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C.
10 §§ 2201 and 2202. I2Z alleges counterclaims for infringement of the ’551 patent. I2Z’s
11 infringement claims arise under the United States Patent Laws, 35 U.S.C. §§ 101 *et seq.* This
12 Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a)
13 with respect to claims arising under the Patent Act, 35 U.S.C. §§ 101 *et seq.*, and pursuant to the
14 Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*

15 The parties agree that no issues exist regarding service of process, jurisdiction, or venue.

16 **2. Facts**

17 This case is a declaratory judgment action brought by Hipmunk, seeking a declaration that
18 Hipmunk does not infringe the ’551 Patent and that the ’551 Patent is invalid. I2Z alleges that it is
19 the owner by assignment of the ’551 Patent. On June 21, 2012, I2Z sent Hipmunk a letter
20 notifying Hipmunk that I2Z believed that Hipmunk required a license to the ’551 Patent. On
21 July 2, 2012, Hipmunk filed its complaint for declaratory judgment, thereby initiating the present
22 lawsuit. I2Z has filed counterclaims against Hipmunk, alleging that Hipmunk has infringed and
23 continues to infringe the ’551 Patent. I2Z further alleges that on its information and belief, since
24 on or about June 21, 2012 when I2Z sent its letter to Hipmunk, Hipmunk’s infringement has been
25 and continues to be willful and deliberate.

26 **3. Legal Issues**

27 The principal issues requiring resolution will be the validity and enforceability of the ’551
28 patent and Hipmunk’s alleged infringement of the ’551 patent and any damages related thereto.

1 **4. Motions**

2 Currently there are no motions pending. Hipmunk anticipates filing motions for summary
3 judgment of noninfringement and invalidity at an appropriate time in this case.

4 **5. Amendment of Pleadings**

5 The Parties do not currently anticipate any amendment of pleadings, but may seek leave to
6 amend pleadings at a later time to add claims or defenses currently unknown that come to light
7 through the discovery process.

8 **6. Evidence Preservation**

9 The Parties have taken reasonable steps to preserve evidence relevant to the issues
10 reasonably evident in this action.

11 **7. Disclosures**

12 The Parties agree to exchange Initial Disclosures pursuant to Federal Rule of Civil
13 Procedure 26(a)(1) no later than November 29, 2012.

14 **8. Discovery**

15 No discovery has been served to date.

16 **Topics and Phasing of Discovery:**

17 The Parties believe that discovery is needed on the following topics:

- 18 (1) The '551 patent and the prosecution of the '551 patent;
- 19 (2) Conception and reduction to practice of the inventions of the '551
20 patent;
- 21 (3) Prior art;
- 22 (4) Assignment and ownership of the '551 patent;
- 23 (5) Construction of the claims of the '551 patent;
- 24 (6) I2Z's licensing and litigation efforts regarding the '551 patent;
- 25 (7) Operation of Hipmunk's products accused of infringement;
- 26 (8) Hipmunk's pre-suit knowledge of the patent-in-suit;
- 27 (8) Hipmunk's affirmative defenses to the claims of infringement and
28 willfulness as set forth in its reply to I2Z's counterclaims; and

1 (9) Potential damages.

2 The Parties do not believe phasing of discovery is necessary.

3 Interrogatories, Requests for Production, and Requests for Admission:

4 The Parties agree to serve discovery, including any and all interrogatories, document
5 requests, deposition notices, request for admissions, and responses thereto, via email (with
6 hardcopies to follow by mail). The Parties further agree that service of a complete copy of these
7 documents via email shall count as same day service.

8 The Parties do not propose any changes to the default rules for Interrogatories, Requests
9 for Production of Documents and Things, and Requests for Admission as provided by Rules 33,
10 34, and 36 of the Federal Rules of Civil Procedure.

11 Depositions:

12 Hipmunk's Position

13 Hipmunk requests that depositions pursuant to Federal Rule of Civil Procedure 30(b)(1)
14 shall be limited to five depositions per side in the absence of leave from the Court, not including
15 expert and third party witnesses. Depositions pursuant to Federal Rule of Civil Procedure
16 30(b)(6) shall be limited to 10 hours per side in absence of leave from the Court. Hipmunk
17 further proposes that each party reserves the right to seek leave from the Court to notice
18 additional depositions if the party seeking the additional depositions believes in good faith that
19 the sought after discovery is necessary for the preparation of its case.

20 I2Z's Position

21 I2Z requests that depositions pursuant to Federal Rule of Civil Procedure 30(b)(1) shall be
22 limited to ten depositions per side in the absence of leave from the Court, not including expert and
23 third party witnesses. Depositions pursuant to Federal Rule of Civil Procedure 30(b)(6) shall be
24 limited to 50 hours per side in absence of leave from the Court. I2Z further proposes that each
25 party reserves the right to seek leave from the Court to notice additional depositions if the party
26 seeking the additional depositions believes in good faith that the sought after discovery is
27 necessary for the preparation of its case.

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1 ESI:

2 At this time, the Parties do not anticipate any specific issues relating to disclosure or
3 discovery of ESI. The Parties agree to meet and confer to address any such issues in the event
4 they arise.

5 Protective Order:

6 The Parties believe that a Protective Order is needed, and will confer and submit a
7 proposed protective order.

8 **9. Class Actions**

9 This is not class action.

10 **10. Related Cases**

11 On September 13, 2011, I2Z filed suit in the District of Delaware (Case No. 11-cv-811)
12 against 16 defendants alleging infringement of the '551 patent. To date, 10 defendants have been
13 dismissed with prejudice, and one defendant has been dismissed without prejudice, leaving five:
14 CityGrid Media LLC.; Redfin Corporation; TripAdvisor LLC; Zagat Survey, LLC; and Google
15 Inc.

16 On September 15, 2011, I2Z filed suit in the Northern District of Texas (Case No. 11-cv-
17 2399) against Hotels.com, LP alleging infringement of the '551 patent. Hotels.com, LP has been
18 dismissed with prejudice, and the case is closed.

19 On September 24, 2011, I2Z filed suit in the District of Oregon (Case No. 11-cv-1103)
20 against Microsoft Corporation; Toeat.com LLC; and Zillow, Inc. alleging infringement of the
21 '551 patent. Microsoft Corp. and Zillow, Inc. have since been dismissed with prejudice;
22 Toeat.com LLC was dismissed without prejudice. The case is closed.

23 On July 18, 2012, I2Z filed suit in the Northern District of Illinois (Case No. 12-cv-5649)
24 against Orbitz Worldwide, Inc. alleging infringement of the '551 patent. That action is currently
25 pending.

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1 **11. Relief**

2 Hipmunk's Position

3 Hipmunk seeks declaratory judgments of non-infringement and invalidity of the '551
4 patent, an injunction enjoining I2Z from making any claims that Hipmunk infringes the patent and
5 from enforcing the '551 patent against Hipmunk, and Hipmunk's costs of suit, including
6 attorneys' fees.

7 I2Z's Position

8 I2Z seeks damages resulting from Hipmunk's willful infringement of the '551 patent.
9 Because information concerning revenues generated from the accused website and iPad
10 application are in the sole possession and control of Hipmunk, I2Z cannot reasonably estimate its
11 damages at this time. I2Z further seeks a declaration that this case is exceptional under 35 U.S.C.
12 § 285 and an award of its attorneys' fees, as well as pre-judgment and post-judgment interest.

13 **12. Settlement and ADR**

14 The Parties have agreed to conduct an early settlement conference before a Magistrate
15 Judge and therefore have submitted a request for an ADR conference. I2Z is also willing to
16 participate in mediation under the Court's Panel assignment process or in private mediation. I2Z
17 believes that mediation should be ordered to take place within 30 days.

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

19 On August 2, 2012, Hipmunk consented to the assignment of this case to a U.S.
20 Magistrate Judge for all purposes. (See Dkt. No. 9.) On August 22, 2012, I2Z declined to
21 consent (Dkt. No. 10), and this case was assigned to this Court on August 24, 2012, for all
22 purposes. (See Dkt. No. 12.)

23 **14. Other References**

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

26 **15. Narrowing of Issues**

27 Currently, before the benefit of discovery, the Parties believe that it is premature to narrow
28 any other issues for resolution or presentation at trial.

1 **16. Expedited Trial Procedure**

2 The Parties do not believe that the expedited trial procedures would be appropriate for this
3 action.

4 **17. Scheduling**

5 The Parties proposed schedules are below.

Event	Jointly-Proposed Date
Initial Disclosures	November 29, 2012
Asserted Claims and Infringement Contentions (PLR 3-1) and Associated Document Production (PLR 3-2)	December 6, 2012
Last Date to Amend Pleadings/Add Parties	January 15, 2013
Invalidity Contentions (PLR 3-3) and Associated Document Production (PLR 3-4)	January 31, 2013
Exchange Proposed Terms for Construction (PLR 4-1)	February 14, 2013
Exchange Preliminary Claim Constructions and Extrinsic Evidence (PLR 4-2)	March 7, 2013
Joint Claim Construction and Prehearing Statement (PLR 4-3)	April 5, 2013
Completion of Claim Construction Discovery (PLR 4-4)	May 6, 2013
Opening Claim Construction Brief (PLR 4-5(a))	May 20, 2013
Responsive Claim Construction Brief (PLR 4-5(b))	June 7, 2013
Reply Claim Construction Brief (PLR 4-5(c))	June 21, 2013
Claim Construction Tutorial	Patent Standing Order, 2-4 weeks prior to claim construction hearing.
Claim Construction Hearing (PLR 4-6)	Subject to the Court's convenience.
Produce Advice of Counsel	50 days after Claim Construction Ruling
Non-Expert Discovery Cut-Off	90 days after Claim Construction Ruling
Last Day to Hear Non-Expert Discovery Motions	120 days after Claim Construction Ruling
Initial Expert Disclosure by Burden of Proof	150 days after Claim Construction Ruling

Event	Jointly-Proposed Date
Last Date to Hear Dispositive Motions	120 days Before Trial
Rebuttal Expert Disclosure by Burden of Proof	210 days after Claim Construction Ruling
Expert Discovery Cut-Off	240 days after Claim Construction Ruling
Last Day to Hear Motions on Expert Discovery (LR 37-3)	270 days after Claim Construction Ruling
Pretrial Disclosures	300 days after Claim Construction Ruling
Joint Proposed Final Pretrial Order	330 days after Claim Construction Ruling
Final Pretrial Conference	360 days after Claim Construction Ruling
Trial	Per the Court's Availability

Unless otherwise ordered, all pre-trial deadlines not addressed herein, shall be governed by the Pretrial Instructions of the Honorable Phyllis J. Hamilton.

18. Trial

Both Parties have demanded a trial by jury of all issues so triable. The Parties estimate that trial will last approximately 5 days.

19. Disclosure of Non-Party Interested Entities or Persons

Both Parties have filed their Certificate of Interested Entities or Persons as required by Civil Local Rule 3-16.

Hipmunk is a Delaware corporation and has no parent corporation or publicly held corporation that is the beneficial owner of more than 10% of its stock.

Defendant I2Z is a wholly-owned subsidiary of Unifi Scientific Advances, Inc., a Texas corporation. There is no publically-held corporation that owns 10% or more of either I2Z's corporate stock or that of I2Z's parent.

Both Parties identified the named Parties as having either (i) a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) any other kind of interest that

