

technical requests

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Steer, Reginald

From: Steer, Reginald
Sent: Friday, January 30, 2009 4:23 PM
To: Steer, Reginald
Subject: FW: Preliminary Injunction Hearing Date

From: DiBoise, Jamie [mailto:JDiBoise@wsgr.com]
Sent: Saturday, January 10, 2009 8:23 PM
To: Lambert, Mark F.; DiBoise, Jamie; Singla, Rohit; Bal, Colleen; Berta, Michael
Cc: Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Aull, Ashley; Weinstein, Mark R.
Subject: RE: technical requests

Mark – I appreciate your viewpoint. However, at this time given the short time frame and enormous discovery demands placed on all of us in order to get ready for the PI hearing, we continue to believe that discovery of earlier Facet boxes is simply not warranted. Real intends to sell a Facet device that comports with the box that is available for your inspection. This is the device that will be the subject of the PI hearing and discovery of other devices would be too burdensome at this point in the case.

I have asked that we investigate your concerns with the wiki and will get back to you. However, I reiterate the burden involved in dealing with a “live” version of the wiki and our objection therefore to its production.

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From: Lambert, Mark F. [mailto:mlambert@paloalto.whitecase.com]
Sent: Friday, January 09, 2009 3:45 PM
To: DiBoise, Jamie; Singla, Rohit; Bal, Colleen; Berta, Michael
Cc: Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Aull, Ashley; Weinstein, Mark R.
Subject: RE: technical requests

Jaime,

I respect the fact that there is a discovery dispute going on, but want to make clear DVD CCA's position on what it is entitled to in discovery as an independent matter. From DVD CCA's point of view, the prototypes/proofs of concept/embodiments of the device ("Facet Devices") are legitimate discovery materials, and requests to produce them clearly satisfy Rule 26 relevancy. The fact that Facet has

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evolved into what it is today does not change the fact that examination of earlier "Facet Devices" constitutes legitimate discovery -- each of those devices is an implementation of CSS and they should be produced for inspection since they are predecessor devices used to develop Facet as it exists in the form that you have are going to reveal. You have produced documentation on the prior Facet Devices, including (grainy) pictures of them, and there is no basis to withhold the devices themselves. This is part of "what we want" that the Court described as due by January 9. As DVD CCA has provided volumes of old and superseded versions of the CSS contract documents in response to Real's requests, Real is obligated to produce at least one exemplar of each Facet Device for inspection. From the documents, and from what you say and what your clients have said in depositions, this would not be unduly burdensome. There doesn't appear to be a principled basis to your reasons for saying these materials are not relevant and for withholding them from DVD CCA.

We reiterate our request for the materials listed below, as Reg pointed out in a separate e-mail. I will observe that the Wiki, which obviously contains various links to other materials such as RealDVD specifications (some/most of which I imagine have been printed in the common bates range), is a disorganized pile of paper in the form you have produced it in, and producing it in its native form seems to us as the only way that we can really understand it fully and navigate it. There also appear to be missing sections. The portion referenced as "Buffalo Issues" on REAL 137483 does not appear in the pages that follow. That is but one example.

Mark