

1 CHARLES S. BARQUIST (BAR NO. 133785)  
 CBarquist@mofocom  
 2 WENDY J. RAY (BAR NO. 226269)  
 WRay@mofocom  
 3 MORRISON & FOERSTER LLP  
 707 Wilshire Blvd., Suite 6000  
 4 Los Angeles, California 90017-3543  
 Telephone: 213.892.5200  
 5 Facsimile: 213.892.5454

6 KENNETH A. KUWAYTI (BAR NO. 145384)  
 KKuwayti@mofocom  
 7 MORRISON & FOERSTER LLP  
 755 Page Mill Road  
 8 Palo Alto, California 94304-1018  
 Telephone: 650.813.5600  
 9 Facsimile: 650.494.0792

10 Attorneys for Plaintiff BE IN INC.

11 COLLEEN BAL (BAR NO. 167637)  
 CBal@wsgr.com  
 12 CHARLES TAIT GRAVES (BAR NO. 197923)  
 TGraves@wsgr.com  
 13 WILSON SONSINI GOODRICH & ROSATI  
 One Market Plaza, Spear Tower, Suite 3300  
 14 San Francisco, California 94105-1126  
 Telephone: 415.947.2000  
 15 Facsimile: 415.947.2099

16 Attorneys for Defendants  
 GOOGLE INC., YOUTUBE, LLC, and GOOGLE UK LTD.

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN JOSE DIVISION

21 BE IN INC., a New York Corporation,  
 22 Plaintiff,

23 v.

24 GOOGLE INC., a California corporation;  
 25 YOUTUBE, LLC, a Delaware limited liability  
 26 company; and GOOGLE UK LTD., a private  
 27 limited company registered in England and  
 Wales,

28 Defendants.

Case No. 5:12-CV-03373-LHK

**JOINT CASE MANAGEMENT  
 CONFERENCE STATEMENT &  
 [PROPOSED] ORDER**

Judge: Hon. Lucy H. Koh

1 The parties to the above-entitled action jointly submit this Joint Case Management  
2 Statement & Proposed Order pursuant to the Court's Order of August 10, 2013 (ECF No. 66), the  
3 Standing Order for All Judges of the Northern District of California dated July 1, 2011, and Civil  
4 Local Rule 16-9.

5 Counsel for the parties met and conferred on May 15, 2013, and on May 29, 2013 filed an  
6 Initial Joint Case Management Statement & Proposed Order. The Court subsequently continued  
7 the Case Management Conference that had been set for June 5, 2013, to August 14, 2013. (ECF  
8 No. 51.)

9 **1. JURISDICTION & SERVICE**

10 Plaintiff's Statement:

11 The Court has subject matter jurisdiction over Be In's claims under the Copyright Act of  
12 1976, 17 U.S.C. § 101 et seq., pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) and (b), and  
13 supplemental jurisdiction over Be In's state law claims under 28 U.S.C. § 1367. This Court also  
14 has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332 based on the diversity of the  
15 parties, and because the amount in controversy exceeds \$75,000.00. Venue is proper in this Court  
16 pursuant to 28 U.S.C. § 1391(b), because Google Inc.'s principal place of business is Mountain  
17 View, California, in this judicial district, and Google transacts business in this district.

18 Be In filed a second amended complaint on April 30, 2013, pursuant to a stipulation and  
19 order dated June 10, 2013. (ECF No. 58.) Counsel for Defendants accepted service on behalf of  
20 all defendants. No issues exist as to personal jurisdiction.

21 Defendants' Statement:

22 Defendants do not contest jurisdiction.

23 **FACTS**

24 Plaintiff's Statement:

25 Starting in 2007, Be In created and developed CamUp, an award-winning social  
26 entertainment consumption platform. The platform allows up to eight users, such as groups of  
27 friends to simultaneously watch, listen, chat and collaborate around shared videos, music, and  
28 other media in a real-time, personal environment online as they see live streaming video of each

1 other—something no other platform provided. By March 2011, Be In had developed the unique  
2 technology, appearance and infrastructure for this social video sharing platform, CamUp, and had  
3 developed proprietary strategies for integrating that platform into established content, social and  
4 media platforms.

5 Be In publicly unveiled CamUp for the first time at SXSW Interactive, the industry-  
6 leading technology conference, in Austin, Texas in March 2011. CamUp’s demonstration booth  
7 was located steps away from Google’s booth, and Google personnel visited the booth and viewed  
8 the demonstration. Be In publicly launched the Cam Up website shortly thereafter. In  
9 April 2011, Be In won the “Early Stage” award from MIPTV Connected Creativity Ventures for  
10 the most innovative start-up of the year.

11 On May 12, 2011, Be In representatives met in London with Richard Robinson, a Google  
12 executive, to discuss Be In’s vision and strategy for the CamUp platform and a proposed business  
13 partnership. At the meeting, Be In disclosed proprietary and confidential business strategies in  
14 confidence, pursuant to a non-disclosure agreement. Among the information Be In disclosed was  
15 using the platform Be In had devised to transform Google’s (and YouTube’s) massive—but  
16 unstructured, and largely anonymous—user base into an organized social community that would  
17 foster shared social experiences around Google’s content products, including most immediately,  
18 YouTube. Part of this integration strategy was a button that could be used to invite YouTube  
19 users to “Watch With Your Friends,” allowing YouTube users to share content in a novel  
20 dynamic environment using CamUp. Mr. Robinson was enthusiastic about CamUp and asked Be  
21 In to send additional written information. Be In followed up the meeting by sending  
22 Mr. Robinson an eight-page memo the next day, marked “Confidential,” which described some  
23 key aspects of Be In’s confidential strategic plan.

24 On or about June 28, 2011, Google launched an invitation-only field test of Google+, its  
25 then-most recent and ambitious attempt to create a social network to rival Facebook and other  
26 competitors. Included as part of Google+ is Google Hangouts, a social video platform that bears  
27 striking similarity to CamUp, and infringes Be In’s copyrights. It immediately was hailed by the  
28 media as the new social network’s “killer” feature. CNN called Hangouts “a key component of

1 Google+” and “Google’s sharpest edge over Facebook’s current product.” TechCrunch gushed  
2 that “nailing an intimate experience that supports two or more people in a video conference is no  
3 small feat, but Google knocked it out of the park with Hangouts .... It’s more than just one-on-  
4 one chat though, which is why Hangouts are so magical.”

5 Google claims that the development of Hangouts began “long before” the events giving  
6 rise to this lawsuit. But Google has acknowledged publicly that Hangouts was developed late in  
7 the process of Google+, and that the Hangouts group was the last group to join the development  
8 team for Google+. At least one news article based on an interview with the lead developer for  
9 Hangouts, Chee Chew, places the start of the development for Hangouts at only “several months”  
10 before July 28, 2011.

11 In addition, Mr. Chew has claimed in a video that the prototype for Google Hangouts  
12 purportedly only took “about an hour” to develop. The video, which pre-dates the filing of this  
13 lawsuit, can be found at [http://thenextweb.com/google/2012/03/31/hangouts-how-an-internal-  
14 video-link-between-seattle-and-stockholm-became-an-awesome-google-feature/](http://thenextweb.com/google/2012/03/31/hangouts-how-an-internal-video-link-between-seattle-and-stockholm-became-an-awesome-google-feature/). Google’s claim  
15 that Hangouts’ development started earlier is apparently based on the fact that what Mr. Chew  
16 describes in the video as a “permanent video link” between two Google engineering offices had  
17 previously existed. The video makes clear that this permanent link was simply a means of  
18 enabling Google developers in Seattle and Stockholm to collaborate. This is very different from  
19 the consumer-facing Google Hangouts, whose conception Mr. Chew places at a much later point  
20 in time. Moreover, the issue for trial will not be when Google first began development of some  
21 of the base elements it later incorporated into Hangouts, but whether it copied from Be In during  
22 the development process and used the Be In trade secrets that it provided in confidence.

23 Google points to the declaration of Mr. Robinson as evidence of Google’s lack of liability  
24 of Be In’s trade secret claim. Mr. Robinson’s recollection of the May 2011 meeting described in  
25 his declaration will be contradicted by the Be In representatives who attended the meeting.  
26 Notably, since at least March of 2012, three months prior to the filing of this lawsuit, Be In has  
27 been requesting documents evidencing Google’s purported independent development, but Google  
28 refused to provide them. It is only recently, well after receiving Be In’s document requests, that

1 Google has finally offered to provide any such documents, but even now Google is offering to  
2 produce only a limited subset of less than 1000 pages of development documents of its choosing,  
3 which it refuses to provide in compliance with Federal Rule of Civil Procedure 34. Google insists  
4 that its selected documents will be provided in hard copy only—without metadata and not in the  
5 electronic format already agreed to by the parties—and that the documents must be viewed in  
6 Wilson, Sonsini’s office only and may not be copied in any form. Google refers to this as an  
7 “early inspection” of documents, but it is not. These documents are responsive to Be In’s first set  
8 of document requests, which were served on May 24, 2013—over eleven weeks ago— and  
9 should simply be produced. Be In’s lead counsel, and half of its legal team is located in Los  
10 Angeles. Be In has told Google that it will review the 1000 pages if Google produces them in the  
11 parties’ agreed upon electronic format or even if Google for now just runs the paper copies  
12 through a copy machine and produces those, but Google is refusing to do either.

13 Google used and continues to use proprietary integration and business strategies disclosed  
14 by Be In at the May meeting in marketing and implementing Google Hangouts, including  
15 placement of a button underneath YouTube videos in August 2011 encouraging viewers to share  
16 the viewing experience with others. The button was labeled “Watch With Your Friends”—the  
17 language that was proposed by Be In—and was placed in the same position on the screen that Be  
18 In had described at the meeting. Google has acknowledged that the development of this button  
19 did not begin until July 2011, two months after Mr. Robinson’s meeting with Be In. Google  
20 subsequently modified the language of the button, but when a user placed the mouse over the  
21 button, the “Watch With Your Friends” language still appeared. It appears that Google has now  
22 removed the “Watch With Your Friends” language from YouTube entirely.

23 With this action, Be In seeks to stop defendants from their continued copying, use, and  
24 misappropriation of Be In’s valuable trade secrets and intellectual property.

25 Be In anticipates the following factual issues will need to be resolved:

- 26 • Did Google copy elements of the CamUp website that it first viewed at a  
27 demonstration in March 2011 at the SXSW Interactive conference?

- 1 • Did Google misappropriate the trade secrets that Be In disclosed at the May 2011
- 2 meeting and in the written documentation Be In provided after the meeting at
- 3 Mr. Robinson's request?
- 4 • Can Google establish independent development of Hangouts given the apparent
- 5 timing of the relevant development, the striking similarities of Hangouts to the
- 6 CamUp website unveiled in March 2011, and Google's apparent use of the same
- 7 proprietary strategies that Be In disclosed in May 2011?
- 8 • Did Google violate the contractual Terms of Service of the CamUp website?
- 9 • What amount can Google prove should be deducted from the profits it derived
- 10 from infringing the copyrights of the CamUp website?
- 11 • What harm did Be In suffer after potential investors pulled back and its momentum
- 12 stalled after Google launched Hangouts?
- 13 • To what extent has Google been unjustly enriched by its misappropriation of Be
- 14 In's trade secrets?

15 Defendants' Statement:

16 This is a lawsuit that never should have been filed. There are two core issues: (1)

17 whether Google independently conceived the user interface for its video chat product called

18 "Hangouts" or committed copyright infringement by copying the interface from Plaintiff's

19 "CamUp" product, and (2) whether YouTube independently added a link from its YouTube

20 player to the Hangouts product, or stole the idea of such a link from a conversation Plaintiff had

21 with a Google UK sales employee (Richard Robinson) in London in May 2011. As Defendants

22 have learned, the evidence in this case will irrefutably demonstrate independent conception by

23 Defendants in both instances and completely dispose of Plaintiff's claims:

- 24 • Google could not possibly have copied Plaintiff's CamUp product for Hangouts.
- 25 Hangouts was based on a video chat product acquired through Google's 2007 purchase
- 26 of a Swedish company called Marratech. The Hangouts integration with YouTube and
- 27 other features at issue were documented before Plaintiff contends it first publicly
- 28 disclosed its "CamUp" product in March or April 2011. The Hangouts user interface

1 therefore predates anything of Plaintiff's to which Defendants could have had access,  
2 and Defendants have the development documents to prove it.

- 3 • As set forth in his sworn declaration, which Defendants supplied to Plaintiff, Mr.  
4 Robinson did not disclose to anyone the substance of his May 2011 conversation with  
5 Plaintiff. He is a salesperson with no connection to any of the development at issue, did  
6 not work on Hangouts, and only met with Plaintiff as a favor to a business  
7 acquaintance.

8 Over the course of about a year, Plaintiff has been represented by five different law firms  
9 and has advanced four different complaints, repeatedly changing its allegations. In that time,  
10 Plaintiff dropped Mr. Robinson as a defendant after receiving his sworn declaration that he did  
11 not use or disclose Plaintiff's claimed trade secrets; amended its complaint to remove a faked  
12 graphic that Plaintiff originally claimed showed imitation by Defendants but which Defendants  
13 demonstrated was fabricated; and amended its complaint to remove allegations that Plaintiff had  
14 evidence that Defendants had accessed Plaintiff's CamUp website to copy it.

15 Over the course of the past two months, Defendants have run intensive and wide-ranging  
16 searches to confirm that none of the Hangouts or YouTube developers knew about Plaintiff or its  
17 CamUp product, and that as Mr. Robinson declared, he had no communications with any of  
18 those developers. Defendants have also gathered documents showing independent conception of  
19 the features and information Plaintiff claims to own. So that Plaintiff's counsel could review  
20 these documents as early as reasonably possible, we invited Plaintiff's counsel to our offices  
21 (literally across the street) to inspect the documents before we had completed internally  
22 processing, numbering and designating them, and before the parties had agreed upon a protective  
23 order. This afforded Plaintiff a mechanism to resolve and/or limit the case with very little  
24 additional cost. Plaintiff's counsel has refused to inspect the documents.

25 Defendants' evidence conclusively demonstrates that Google independently developed  
26 the Hangouts user interface and that Defendants did not steal any trade secrets from Plaintiff. To  
27 avoid, wasteful wide-ranging discovery that would costs hundreds of thousands or millions of  
28 dollars, Defendants propose a case management schedule that will focus discovery on certain

1 enumerated, case-dispositive issues in anticipation of an early summary judgment motion.  
2 Defendants request that the motion be scheduled for hearing on November 21, 2013, the same  
3 date already scheduled for Defendants' motion to dismiss. Both motions would be heard  
4 together. Defendants expect that the motions would completely dispose of the case. (See  
5 **Narrowing of Issues and Defendants' Proposed Case Management Schedule** below).

6 Defendants anticipate that the following factual issues will need to be resolved:

- 7 1. Did Google independently develop the user interface for the Hangouts product?
- 8 2. Did the development predate Plaintiff's earliest public disclosure of its CamUp  
9 product and Plaintiff's May 2011 London meeting with Google UK's Richard  
10 Robinson?
- 11 3. Did Defendants independently decide to link YouTube to Hangouts with a button and  
12 independently come up with the phrase "watch with your friends"?
- 13 4. Did Google UK's Richard Robinson disclose to anyone the substance of his London  
14 meeting with Plaintiff?
- 15 5. Did Plaintiff itself publicly disclose its claimed trade secrets before it met Richard  
16 Robinson in London?

## 17 **2. LEGAL ISSUES**

### 18 Plaintiff's Statement:

19 The legal issues in dispute are those raised in Be In's Second Amended Complaint,  
20 including the following:

- 21 • Defendants' misappropriation of Be In's trade secrets in violation of California  
22 Civil Code § 3426, *et seq.*;
- 23 • Defendants' infringement of Be In's copyright in violation of the Copyright Act,  
24 17 U.S.C. §§ 101, *et seq.*;
- 25 • Defendants' breach of an implied in fact contract to compensate Be In for use of  
26 Be In's proprietary business and integration strategies;
- 27 • Defendants' breach of contract in violation of Be In's terms of service prohibiting  
28 them from making unauthorized use of Be In's intellectual property rights;



1           • Be In's entitlement to injunctive relief and monetary damages.

2 Be In reserves the right to add claims if discovery reveals additional wrongdoing by defendants,  
3 and to expand the legal issues in dispute accordingly.

4 Defendants' Statement:

5 Defendants anticipate the following legal issues will need to be resolved:

- 6 1. Whether Plaintiff can articulate valid "trade secrets" that were not publicly disclosed  
7 prior to the claimed misappropriation;
- 8 2. Whether Plaintiff can meet its burden to prove that Defendants did not independently  
9 develop the Hangouts product and the button linking the Hangouts product to the  
10 YouTube user interface;
- 11 3. Whether Plaintiff has any protectable copyright rights in the alleged similarities between  
12 Plaintiff's Cam Up website and Google's Hangouts product;
- 13 4. Whether there is a binding contract, express or implied, between Plaintiff and any  
14 Defendant and, if so, the terms of that contract(s);
- 15 5. The enforceability and terms of Plaintiff's Terms of Service, in general and with respect  
16 to any Defendant;
- 17 6. Whether Plaintiff acted in bad faith, within the meaning of California Civil Code section  
18 3426.4 with respect to its trade secret accusations; and
- 19 7. Whether Defendants are entitled to their costs and attorneys' fees from Plaintiff for  
20 defending against Plaintiff's copyright claim.

21 **3. MOTIONS**

22 Defendants' Motion to Dismiss Plaintiff's First, Third and Fourth Causes of Action of the  
23 Second Amended Complaint is pending. Briefing on this motion will be complete as of August  
24 15, 2013. The motion is set for hearing on November 21, 2013. Be In requests, however, that if  
25 possible the Court advance the hearing so that the issues raised by the motion may be resolved  
26 sooner.

27 Be In has filed the following motions:  
28

- 1 • (WITHDRAWN) Motion for Leave to File Second Amended Complaint on April  
2 30, 2013 (D.I. 37). Google filed a conditional opposition to the motion on May  
3 14, 2013 (D.I. 33). This motion was withdrawn, and the Second Amended  
4 Complaint was subsequently filed pursuant to stipulation and order.
- 5 • (PENDING) Notice of Substitution of Counsel on May 14, 2013 (D.I. 42).  
6 Morrison & Foerster has replaced Gibson Dunn & Crutcher, but an order relieving  
7 the Gibson Dunn lawyers has not yet been entered.
- 8 • Motion to continue hearing on Defendant’s Motion to Dismiss on March 25, 2013  
9 (D.I. 34), which the Court granted on March 26, 2013 (D.I. 35)
- 10 • Motion to withdraw counsel on February 19, 2013 (D.I. 28) and to substitute  
11 counsel on March 6, 2013 (D.I. 30), which the Court granted together March 7,  
12 2013 (D.I. 33)
- 13 • Administrative Motion to file under seal Opposition to Motion to Dismiss on  
14 September 25, 2012 (D.I. 22), which the Court found moot on March 26, 2013  
15 (D.I. 35)

16 Additionally, Be In anticipates that it may need to move to compel discovery from Defendants,  
17 including Google UK Ltd., because Google initially took the position during meet and confer that  
18 documents and information of Google UK are “not necessarily” in Google Inc.’s custody or  
19 control. Be In also anticipates that it may file a motion for partial summary judgment, depending  
20 on the facts revealed during discovery.

21 Defendants have filed the following motions:

- 22 • Motion to Dismiss Plaintiff’s First, Third and Fourth Causes of Action on July 11,  
23 2013 (D.I. 64);
- 24 • Motion to Dismiss Plaintiff’s Third and Fourth Causes of Action on September 4,  
25 2012 (D.I. 15), which the Court found moot on March 26, 2013 in light of Be In’s  
26 amended complaint (D.I. 35)
- 27 • Administrative Motion to file under seal on September 4, 2012 (D.I. 16), which the  
28 Court granted on September 12, 2012 (D.I. 20)

- 1           • Motion to remove incorrectly filed document on September 4, 2012 (D.I. 17),  
2           which the Court granted on September 12, 2012 (D.I. 21)

3           As noted above, Defendants seek to file an early summary judgment motion that would be  
4 case-dispositive. The motion would demonstrate that there is no genuine issue of fact that (a)  
5 Defendants independently conceived and developed the Hangouts features and elements in which  
6 Plaintiff claims a proprietary interest, and (b) many of the trade secrets claimed by Plaintiff were  
7 not secret at the time of the claimed misappropriation, including because Plaintiff had previously  
8 disclosed them. Defendants expect that this motion would dispose of all of Plaintiff's claims.

9           Defendants may also file motions to compel with respect to certain discovery disputes.  
10 Defendants also contemplate filing motions for attorneys' fees and costs and sanctions.

11           **4. AMENDMENT OF PLEADINGS**

12           Be In has filed its Second Amended Complaint. Be In does not presently anticipate  
13 seeking further leave to amend, but Be In reserves the right to so amend its pleading if necessary.  
14 Be In proposes that the deadline for such an amendment be set for one month before the close of  
15 fact discovery.

16           **5. EVIDENCE PRESERVATION**

17           The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
18 Stored Information, and met and conferred on May 15, 2013 pursuant to Fed. R. Civ. P. 26(f).

19           Be In confirms that it has taken reasonable and proportionate steps taken to preserve  
20 evidence relevant to the issues reasonably evident in this action. Pursuant to the instructions of  
21 prior counsel, Be In notified relevant employees and contractors of Be In of their obligation to  
22 preserve evidence. Current counsel for Be In has reminded relevant employees and contractors of  
23 their obligations.

24           Defendants confirm that they have taken reasonable and proportionate steps to preserve  
25 evidence relevant to the issues reasonably evident in this action.

1     **6.     DISCLOSURES**

2             The parties exchanged initial disclosures under Fed. R. Civ. P. 26 on May 29, 2013  
3     (14 days after their conference, as provided in Fed. R. Civ. P. 26(a)(1)(C)).

4     **7.     DISCOVERY**

5             Discovery has begun. Be In has served a total of 17 Interrogatories, 90 Requests for  
6     Production, and 36 Requests for Admission on the defendants. Be In's first set of discovery  
7     requests were served on May 24, 2013. Defendants have served a total of 22 Interrogatories,  
8     85 Requests for Production, and 9 Requests for Admission on Be In.

9             Be In expects to begin producing documents to defendants during the week of August 12,  
10    2013.

11            The parties have met and conferred with respect to e-discovery. The parties have also met  
12    and conferred on a proposed stipulated protective order. With respect to the protective order, all  
13    terms have been agreed upon except for one provision concerning a prerequisite for the  
14    qualification of experts to access confidential information. With respect to the e-discovery order,  
15    all terms have been agreed upon except for one provision concerning the time period for which  
16    materials must be preserved.

17            If the parties are unable to reach agreement, they will present their disputes on a discrete  
18    set of issues to the Court.

19            The parties anticipate that the scope of discovery will encompass the factual and legal  
20    issues identified in Sections 2 and 3 above, and the requested relief discussed in Section 11  
21    below, including all related, ancillary, and subsidiary factual and legal issues and matters.

22            The parties propose the following modifications to the rules governing discovery:

23    Plaintiff's Position:

24            Google's proposal for bifurcation, limited discovery, and early summary judgment on a  
25    subset of issues was first presented to Plaintiff in an email at 3:52 p.m. on the day this filing was  
26    due to the Court. Google did not discuss the proposal with Be In's counsel or even indicate that a  
27    proposal of that type was forthcoming. Be In's counsel has had no time to consider the proposal,  
28    discuss it with their client, or confer with Google's counsel concerning the proposal. Be In

1 disagrees with Google’s characterization of Be In’s discovery requests, which ignores both the  
2 specifics of those requests and the parties’ discussions about narrowing and focusing the requests.  
3 Be In will be prepared to address Google’s proposal at the conference with the Court on August  
4 14.

5  
6 Plaintiff’s position on discovery limitations is as follows:

- 7
- 8 • **Interrogatories:** Each side may propound a maximum of 50 interrogatories.
  - 9 • **Depositions:** Each party may take up to 20 witness depositions (excluding expert  
10 witness depositions).

11 Plaintiff Be In is a much smaller company than Google, and intends to make every effort  
12 to handle discovery efficiently and to minimize discovery expense. However, Be In does not  
13 believe that ten depositions will be sufficient in this case. In its initial disclosures, Google has  
14 disclosed nine developers of Hangouts and the “Watch With Your Friends” button upon whom  
15 Google may rely at trial, and Be In believes that the development teams were much larger. Be In  
16 also needs to depose what is sure to be an entirely separate group of individuals regarding  
17 Google’s business strategy for Hangouts and the monetary and strategic significance of Hangouts  
18 and the integration strategy Google adopted for both YouTube and Google. Google’s indirect  
19 revenue model makes this discovery particularly challenging.

20 In addition, Be In needs to depose Mr. Robinson and the individuals with whom he  
21 communicated regarding the May 2011 meeting—which even Google admits is at least three  
22 additional people. Be In also needs to depose third party investors whose actions were impacted  
23 by the launch of Google Hangouts and is entitled to depose a corporate representative of Google  
24 Inc., YouTube and Google U.K. Some of the witnesses reside outside of the United States and  
25 they cannot be compelled to testify at trial, making depositions even more critical here than in the  
26 typical case.

27 Given the combined size of Google Inc., YouTube and Google UK, Be In seeks to  
28 increase the number of interrogatories to 50 to allow it to focus its discovery efforts more

1 effectively on the individuals who have relevant information and to tailor its discovery to the key  
2 issues of the case.

3 Defendants' Position:

4 **1. Proposed Limitation of Discovery Pending Resolution of Early Summary Judgment**  
5 **Motion**

6 Defendants propose that discovery be limited to issues relevant to Defendants'  
7 independent development of the accused features and elements (as detailed in "**Narrowing of**  
8 **Issues**" below), pending resolution of an early summary judgment motion, to try to avoid the cost  
9 and burden of the discovery campaign Plaintiff seems intent on launching. Plaintiff's discovery  
10 demands would potentially require Defendants to spend hundreds of thousands of dollars or more  
11 on issues that are irrelevant to the case, and would entangle the parties in needless discovery  
12 motions. Among other things, Plaintiff demands:

- 13 • Intensive and wide-ranging records, including email, from every person who  
14 participated in Hangouts development, from years before CamUp existed to the  
15 present. Defendants have agreed to produce documents sufficient to show conception  
16 and development of the elements and features at issue. But there is no basis to require  
17 Defendants to search for and produce all documents regarding conception and  
18 development that occurred before CamUp existed. Defendants could not possibly  
19 have copied something that did not yet exist.
- 20 • Documents and financial information about all of Google+ (Google's social  
21 networking initiative), not just the portion relating to Hangouts.
- 22 • Searches of each of Defendants' thousands of employees worldwide to try to  
23 determine whether any visited the CamUp website, which was not launched until *after*  
24 Defendants had already conceived and developed the Hangouts user interface.
- 25 • Searches of each of Defendants' employees who attended any part of the two-week  
26 long 2011 South by Southwest music festival and conference where Plaintiff  
27 demonstrated CamUp, after Defendants had already conceived and developed  
28 Hangouts;

- Richard Robinson’s daily activities and communications in his ordinary job responsibilities as a Google UK salesperson, having nothing to do with the information Plaintiff claims to have disclosed to him;
- Generalized communications between Google UK, Google Inc. and YouTube having nothing to do with the events in dispute.

Because this case can be resolved fairly and efficiently on the irrefutable evidence that Defendants developed Hangouts independent of Plaintiff, Defendants request that the Court adopt their case management proposal.

## 2. Other Limitations on Discovery

- **Interrogatories:** 25 per side
- **Depositions:** 70 hours per side

This is a simple case where limited discovery will quickly show that Plaintiff’s accusations are not true. There is no need to increase the number of interrogatories beyond the 25 permitted under the Federal Rules. Likewise, there is limited deposition questioning necessary to determine that Defendants independently developed Hangouts. Defendants propose a 70-hour time limit on depositions (rather than the 10 depositions x 7 hours each provided under the Federal Rules) to give the parties flexibility to use deposition time as they see fit. For instance, Defendants expect it would take Plaintiff only a short time to depose a Hangouts developer to confirm that Hangouts was not, and could not possibly have been, copied from CamUp. The actual numbers of hours consumed by Plaintiff for such a deposition would be counted against the 70-hour total.

There is no need to double the number of depositions and interrogatories at this point. Indeed, Plaintiff’s request to do so confirms Defendants’ concerns that Plaintiff seeks to create unnecessary and unjustifiable discovery burdens in the case.

## 8. CLASS ACTION

This case is not a class action.

1 **9. RELATED CASES**

2 There are no related cases pending at this time.

3 **10. RELIEF**

4 Plaintiff's Statement:

5 Be In seeks the following relief in its case against Google, Google UK, and YouTube:

- 6 • An order preliminarily and permanently enjoining defendants and any other  
7 persons or entities acting in concert with defendants from further misappropriation  
8 of Be In's trade secrets including its confidential business and marketing plans and  
9 strategies;
- 10 • An order preliminarily and permanently enjoining defendants and any other  
11 persons or entities acting in concert with defendants from engaging in future acts  
12 of infringement, contributory infringement and/or induced infringement of Be In's  
13 copyrights in its CamUp platform, including by prohibiting Google from offering  
14 or utilizing its Hangouts platform;
- 15 • Damages:
  - 16 ○ adequate to compensate Be In for defendants' acts of trade secret  
17 misappropriation, copyright infringement, breach of implied contract and  
18 breach of contract, including actual and exemplary damages, lost profits,  
19 infringer's profits and/or, at a minimum, damages based on reasonable  
20 royalty rates for Be In's technology, in amounts to be proven at trial;
  - 21 ○ for unjust enrichment based on profits of defendants attributable to their  
22 wrongful acts;
- 23 • An award of Be In's attorneys' fees, costs of suit herein incurred, and pre-  
24 judgment and post-judgment interest.

25 Defendants' Statement:

26 Defendants seek denial of Plaintiff's requested relief, an award of attorneys' fees and  
27 costs under the Uniform Trade Secrets Act, and costs and -- if they are the prevailing party--  
28



1 attorneys' fees under the Copyright Act. Defendants are considering other requests for  
2 relief/sanctions, and reserve the right to supplement this response.

3 **11. SETTLEMENT AND ADR**

4 The parties have agreed to submit to private mediation before a neutral at a time and date  
5 that is mutually acceptable to both parties.

6 **12. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

7 Be In is willing consent to having a magistrate judge conduct all further proceedings  
8 including trial and entry of judgment if that will enable the case to be set for trial more quickly.

9 Defendants do not consent to a magistrate judge.

10 **13. OTHER REFERENCES**

11 This case is not suitable for reference to binding arbitration, a special master, or the  
12 Judicial Panel on Multidistrict Litigation.

13 **14. NARROWING OF ISSUES**

14 Plaintiff's Position

15 Google's proposal for bifurcation, limited discovery, and early summary judgment on a  
16 subset of issues was first presented to Plaintiff in an email at 3:52 p.m. on the day this filing was  
17 due to the Court. Google did not discuss the proposal with Be In's counsel or even indicate that  
18 a proposal of that type was forthcoming. Until 3:52 p.m. today, Be In had no notice that Google  
19 was going to propose a different case schedule other than the one that the parties jointly  
20 presented to the court in May. Be In's counsel has had no time to consider the proposal, discuss  
21 it with their client, or confer with Google's counsel concerning the proposal. Google has not  
22 produced any of the evidence that it claims "conclusively demonstrates" its view of the merits of  
23 this lawsuit.

24 Defendants' Proposal to Narrow Issues

25 Because Defendants' evidence conclusively demonstrates the pre-existing development  
26 of Hangouts and that Defendants did not misappropriate trade secrets from Plaintiff, rather than  
27 have this case proceed into wasteful wide-ranging discovery that would costs hundreds of  
28 thousands or more, Defendants respectfully request that the Court enter a revised proposed case

1 management schedule that would:

2 (1) Permit Defendants to schedule a summary judgment motion to be heard on November  
3 21, 2013, the hearing date already set for Defendants' pending motion to dismiss, or as soon  
4 thereafter as it can reasonably be heard. The summary judgment motion would be case-  
5 dispositive. It would show that there is no triable issue that: (a) Defendants independently  
6 conceived and developed the Hangouts features and elements in which Plaintiff claims a  
7 proprietary interest, and (b) many of the trade secrets claimed by Plaintiff were not secret at the  
8 time of the claimed misappropriation, including because Plaintiff had previously disclosed them.  
9 Defendants expect that the summary judgment motion would dispose of all of Plaintiff's claims;  
10 and

11 (2) Limit the scope of discovery to those two case-dispositive issues until the summary  
12 judgment motion is resolved, as follows:

13 **Plaintiff would produce:** (1) evidence demonstrating its public launch and disclosure of  
14 the CamUp product, (2) identification of each alleged secret or copyrighted element it claims  
15 Defendants misused; (3) any evidence that would show the alleged secrecy of trade secrets at  
16 issue, (4) any evidence that would show knowledge or copying of Plaintiff's CamUp product by  
17 Defendants' employees who conceived the Hangouts elements at issue, at the time of such  
18 conception, (5) any evidence that would show knowledge or awareness of information Plaintiff  
19 disclosed to Richard Robinson by Defendants' employees who conceived the Hangouts user  
20 interface or YouTube features or elements at issue, at the time of such conception, and (5) any  
21 outstanding responses to written requests directed to these issues.

22 **Defendants would produce:** (1) documents demonstrating independent development of  
23 the Hangouts user interface, YouTube link, and any other features claimed by Plaintiff, (2) all  
24 documents concerning the May 2011 London meeting and Richard Robinson's communication  
25 and actions regarding the same, and (3) any outstanding responses to written requests directed to  
26 these issues. Defendants would also confirm their completion, and the results, of the searches  
27 addressing knowledge or awareness of Plaintiff or its CamUp website among or by all employees  
28 who conceived the Hangouts and YouTube elements at issue, and would produce any documents

1 showing such knowledge or awareness (though it has located none to date after intensive  
2 searches).

3 Defendants expect they can produce the documents (already offered to Plaintiff)  
4 demonstrating their independent development of Hangouts and the other website features at issue  
5 within three weeks, and the remaining documents within the suggested categories within two  
6 additional weeks. Because these documents are tailored to address narrow issues, Defendants  
7 anticipate that they would produce a very manageable set of documents for Plaintiff's review.  
8 Plaintiffs should have more than sufficient time to take depositions and other discovery to  
9 investigate Defendants' evidence before Plaintiff's opposition to the motion would be due on  
10 November 1, 2013.

11 This proposal provides a means of resolving what Defendants have said from the start is a  
12 frivolous case. The schedule would not prejudice Plaintiff. There is no cause, much less an  
13 urgent need, for the massive discovery campaign that Plaintiff now seeks. Plaintiff waited nine  
14 months to file suit after sending its first letter to Defendants, never sought a preliminary  
15 injunction, and has requested scheduling delays in the litigation over several months as it cycled  
16 through law firms. If the motion to dismiss and the summary judgment motion do not  
17 completely dispose of the case as Defendants expect they will, Plaintiff can proceed with  
18 remaining discovery (with the case presumably narrowed and focused by the decision on the  
19 dispositive motions).

20 **15. EXPEDITED TRIAL PROCEDURE**

21 This case should not be handled under the Expedited Trial Procedure of General Order  
22 No. 64.

23 **16. SCHEDULING**

24 Plaintiff's Proposed Schedule: The schedule below is the schedule jointly presented by all  
25 parties to the Court in the Initial Case Management Conference Statement, dated May 29, 2013.  
26 Plaintiff stands by its prior agreement with defendants as follows:  
27  
28

<b>Event</b>	<b>Proposed Date</b>
Last day to file and serve amendments to the pleadings	01/24/2014
Designate experts	02/11/2014
Complete fact discovery	02/21/2014
Exchange opening expert reports (on issues on which the producing party would bear the burden of proof at trial)	03/14/2014
Exchange rebuttal expert reports (on issues on which the rebutting party would not bear the burden of proof at trial)	04/15/2014
Complete expert discovery	05/5/2014
Last date to file dispositive motions	06/02/2014
Motions in Limine (filing)	21 days before trial
Opposition to Motions in Limine (filing)	14 days before trial
Pretrial Statement	07/14/2014
Pretrial Conference	07/21/2014
Trial	07/28/2014 (or Court's earliest convenience)

Defendants' Proposed Schedule:

<b>Event</b>	<b>Proposed Deadline</b>
Defendants to produce discovery limited to (1) documents demonstrating independent development of Hangouts user interface, YouTube link, and any other features claimed by Plaintiff, (2) documents concerning May 2011 London meeting and Richard Robinson's communication and actions regarding the same, and (3) any outstanding responses to written requests directed to these issues. Defendants also to confirm completion of searches demonstrating no knowledge or awareness of Plaintiff or its CamUp website among or by those who conceived the Hangouts and YouTube elements at issue, and produce any documents showing such knowledge or awareness, if any.	September 20, 2013
Plaintiff to produce discovery limited to (1) evidence demonstrating public launch and disclosure of CamUp	September 20, 2013

1 2 3 4 5 6 7	product, (2) identification of each alleged secret or copyrighted element it claims Defendants misused; (3) alleged secrecy of trade secrets at issue, (4) any evidence that would show knowledge or copying of Plaintiff's CamUp product by Defendants' employees who conceived the Hangouts elements at issue, at the time of such conception, (5) any evidence that would show knowledge or awareness of information Plaintiff disclosed to Richard Robinson by Defendants' employees who conceived the Hangouts user interface or YouTube features or elements at issue, at the time of such conception, and (6) any outstanding responses to written requests directed to these issues.	
8 9	Defendants file opening summary judgment papers on the issues of independent creation/development of protectable elements and features; and trade secrecy.	October 4, 2013
10	Plaintiff files opposition papers.	November 1, 2013
11	Defendant files reply papers	November 14, 2013
12	Hearing on Defendants' summary judgment motion (and motion to dismiss)	November 21, 2013
13 14 15 16	Discovery on all other issues is stayed pending resolution of Defendants' summary judgment motion.  After resolution of Defendants' summary judgment motion, the parties will appear at a further status conference to discuss litigation of remaining issues, if any.	

17 **17. TRIAL**

18 Be In, Inc. has requested a jury trial. The parties expect trial will last seven to ten court  
19 days.

20 **18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

21 Be In filed its "Certificate of Interested Entities or Persons" under Civil Local Rule 3-16  
22 on April 30, 2013 (D.I. 36) identifying the following entities known by Plaintiff to have either:

- 23 (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or  
24 (ii) any other kind of interest that could be substantially affected by the outcome of the  
25 proceeding:

- 26 a) Dreamore, Inc. (63% shareholder)  
27 b) Zeus Corporation (15% shareholder)  
28

1 c) Joseph Jordan D'Anna (11% shareholder)

2 d) Elia D'Anna (11% shareholder).

3 Defendant Google Inc. filed its Certificate of Interested Entities Persons on May 29, 2013  
4 (D.I. 49), certifying that, other than the named parties, there is no interest to report. Pursuant to  
5 Federal Rule of Civil Procedure 7.1, Defendant Google Inc. has no parent corporation, and no  
6 publicly held corporation owns 10% or more of its stock.

7 Defendant Google UK filed its Certificate of Interested Entities of Parties on June 17,  
8 2013 (D.I. 62), certifying that the following listed persons, associations of persons, firms,  
9 partnerships, corporations (including parent corporations) or other entities (i) have a financial  
10 interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-  
11 financial interest in that subject matter or in a party that could be substantially affected by the  
12 outcome of this proceeding:

- 13 1. Google Inc.
- 14 2. Google International LLC
- 15 3. YouTube, LLC

16 Pursuant to Federal Rule of Civil Procedure 7.1, the following listed corporations are  
17 Google UK Ltd.'s parent corporations:

- 18 1. Google Inc.
- 19 2. Google International LLC
- 20 3. YouTube, LLC

21 Defendant YouTube, LLC filed its Certificate of Interested Entities of Parties on June 17,  
22 2013 (D.I. 61), certifying that the following listed persons, associations of persons, firms,  
23 partnerships, corporations (including parent corporations) or other entities (i) have a financial  
24 interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-  
25 financial interest in that subject matter or in a party that could be substantially affected by the  
26 outcome of this proceeding: Google Inc.

27 Pursuant to Federal Rule of Civil Procedure 7.1, the following listed corporation is  
28 YouTube, LLC's parent: Google Inc.

1     **19.    OTHER**

2             **PDF Email Service:** The parties agree that they may serve discovery and objections  
3 and/or responses to discovery by electronic mail and that, if sent by 5:30 p.m. Pacific time on a  
4 business day, they shall be deemed served as of that business day as though they had been  
5 personally served. The parties further agree that electronic mail shall be the sole required method  
6 for such service. Additional service by hard copy is optional, and does not affect calculation of  
7 due dates. Separately, and for purposes of production of documents and things, the parties further  
8 agree that production through secure file transfer or FTP via electronic mail shall be the preferred  
9 method for such production, except in instances of voluminous productions that cannot practically  
10 be sent in this manner. Each Party may specify to opposing counsel a list of attorneys, assistants,  
11 and paralegals to be included on an electronic mail service list for purposes of this paragraph.

12             In addition, the parties agree that they may serve documents filed with the Court under  
13 seal by electronic mail and that the documents shall be deemed served as of the time and date of  
14 the accompanying ECF documents filed with the Court provided that they are sent promptly after  
15 the filing.

16             The parties do not anticipate raising any other issues at the Case Management Conference.

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Dated: August 12, 2013

MORRISON & FOERSTER LLP

By:           /s/ Charles S. Barquist            
CHARLES S. BARQUIST

Attorneys for Plaintiff BE IN INC.

Dated: August 12, 2013

WILSON SONSINI GOODRICH ROSATI

By:           /s/ Colleen Bal            
COLLEEN BAL

Attorneys for Defendants  
GOOGLE INC., YOUTUBE, LLC, and  
GOOGLE UK LTD.



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**CASE MANAGEMENT ORDER**

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Honorable LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

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**LOCAL RULE 5-1(I)(3) ATTESTATION**

I, Charles S. Barquist, am the ECF User whose ID and password are being used to file the Joint Proposed Case Management Schedule. In compliance with Local Rule 5-1(i)(3), I hereby attest that Colleen Bal has concurred in this filing.

          /s/ Charles S. Barquist            
Charles S. Barquist