

BY FAX

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13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA

WHA

15 CV 12 80 261 MISC  
 Case No. \_\_\_\_\_ -MISC

16 MOBILEMEDIA IDEAS LLC,

17 Plaintiff,

18 v.

19 GOOGLE INC.,

20 Defendant.

**DECLARATION OF LAURIE STEMPLER IN  
 SUPPORT OF MOBILEMEDIA IDEAS LLC'S  
 MOTION TO COMPEL GOOGLE INC. TO  
 COMPLY WITH THE JULY 20, 2012  
 SUBPOENA ISSUED TO GOOGLE INC. BY  
 MMI**

Date: To Be Determined  
 Time: To Be Determined  
 Courtroom: To Be Determined  
 Location: To Be Determined

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DECLARATION OF LAURIE STEMPLER IN SUPPORT OF MOBILEMEDIA IDEAS LLC'S MOTION TO COMPEL  
 GOOGLE INC. TO COMPLY WITH THE JULY 20, 2012 SUBPOENA ISSUED TO GOOGLE INC. BY MMI

1673/51020-001 current/32914896v1

FILED  
 OCT 23 2012  
 RICHARD W. WIKI  
 CLERK OF COURT  
 NORTHERN DISTRICT OF CALIFORNIA

1 I, Laurie Stempler, declare as follows:

2 I am an attorney with the law firm Desmarais LLP, counsel for MobileMedia Ideas LLC  
3 (“MMI”) with respect to *MobileMedia Ideas LLC v. HTC Corp.*, Civil Action No. 2:10-cv-00112  
4 (E.D. Tex.). I submit this declaration in support of MobileMedia Ideas LLC’s Motion to Compel  
5 Google Inc. to Comply with the July 20, 2012 Subpoena Issued to Google Inc. by MMI. I make  
6 this declaration of my own personal knowledge except where otherwise stated, and, if called as a  
7 witness, I could and would testify competently as set forth below.

8 1. MMI served Google with a subpoena for documents and materials relevant to its  
9 litigation against HTC on July 20, 2012. Attached hereto as Exhibit A is a true and accurate copy  
10 of July 20, 2012 Subpoena to Produce Documents Information, or Objects or to Permit Inspection  
11 of Premises in a Civil Action to Google Inc.

12 2. Google served its objections and responses to MMI’s subpoena on August 6, 2012.  
13 Attached hereto as Exhibit B is a true and accurate copy of Non-party Google’s Objections and  
14 Responses to Plaintiff MobileMedia Ideas LLC’s Subpoena to Produce Documents, Information,  
15 or Objects or to Permit Inspection of Premises in a Civil Action, dated August 6, 2012.

16 3. After meeting and conferring with Google on August 28, 2012 via telephone  
17 conference between John Gilmore and me, MMI provided Google with a list of exemplary  
18 documents to clarify the nature of the materials sought by the subpoena and assist Google in its  
19 search for responsive documents. Attached hereto as Exhibit C is a true and accurate copy of  
20 Letter from Laurie Stempler to John Gilmore, dated August 29, 2012.

21 4. After receiving MMI’s list of exemplary documents, Google maintained its  
22 objections to the subpoena and stated in a letter from John Gilmore to me that MMI should seek  
23 the requested materials from defendant HTC. Attached hereto as Exhibit D is a true and accurate  
24 copy of Letter from John Gilmore to Laurie Stempler, dated September 10, 2012.

25 5. MMI and Google met and conferred on September 27, 2012, when Google stated  
26 that it would produce public Android code documents in exchange for MMI’s agreement that such  
27 a production would satisfy Google’s obligations under the subpoena. Attached hereto as Exhibit E  
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1 is a true and accurate copy of Letter from John Gilmore to Laurie Stempler, dated October 8,  
2 2012.

3 6. MMI and Google met and conferred on October 11, 2012 MMI and Google met  
4 and conferred on October 11, 2012 in a telephone conversation between Sanjeet Dutta and me,  
5 during which MMI requested that Google confirm HTC's possession of specific documents.  
6 Attached hereto as Exhibit F is a true and accurate copy of Email from Laurie Stempler to Sanjeet  
7 Dutta, dated Oct. 11, 2012.

8 7. MMI and Google met and conferred again on October 19, 2012 in a telephone  
9 conversation between John Gilmore and me. Google stated that it was not willing to confirm in  
10 writing that HTC was in possession of any of the requested documents, nor was Google willing to  
11 search for any of the documents in MMI's October 11 email without MMI formally withdrawing  
12 its original subpoena.

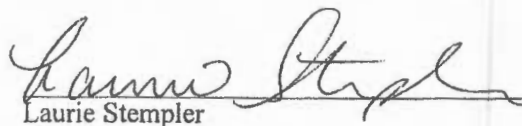
13 8. At the April 18, 2012 hearing addressing HTC's Motion to Transfer Venue, HTC  
14 identified Google as responsible for the design and implementations of phones that MMI has  
15 accused of infringing the patents-in-suit. Attached hereto as Exhibit G is a true and accurate copy  
16 of an excerpt of the transcript of the April 18, 2012 hearing for HTC's Motion to Transfer Venue.

17 9. MMI informed Google that it was attempting to help Google search for the  
18 materials requested under the subpoena, by both conferring with Google and narrowing the list of  
19 those materials. Attached hereto as Exhibit H is a true and accurate copy of Letter from Laurie  
20 Stempler to John Gilmore, dated September 21, 2012.

21 10. Fact discovery in *MobileMedia Ideas LLC v. HTC Corp.*, Civil Action No. 2:10-cv-  
22 00112 (E.D. Tex.) closes on November 30, 2012. Attached hereto as Exhibit I is a true and  
23 accurate copy of Docket Control Order, Civ. Action No. 2:10-cv-00112 (E.D. Tex.) (D.I. 55).

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Dated: October 26, 2012

  
Laurie Stempler

# EXHIBIT A

UNITED STATES DISTRICT COURT

for the

Northern District of California

MobileMedia Ideas LLC. )
Plaintiff )
v. ) Civil Action No. 2:10-cv-00112
HTC Corporation and HTC America, Inc. )
Defendant ) (If the action is pending in another district, state where:
Eastern District of Texas )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Google, Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attached Exhibit A.

Place: Regus
795 Folsom Street, 1st Floor
San Francisco, CA 94107
Date and Time: 08/15/2012 9:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/20/2012

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR [Handwritten Signature]
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) MobileMedia Ideas LLC, who issues or requests this subpoena, are:

Paul Bondor, Jonas McDavit, Laurie Stempler, Xinping Zhu, Desmarais LLP, 230 Park Avenue, New York, NY 10169, lstempler@desmaraisllp.com, (212) 351-3423

Civil Action No. 2:10-cv-00112

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

### Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

#### (c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

#### (2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

#### (3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

#### (d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **EXHIBIT A**

### **DEFINITIONS**

The following terms shall have the meanings set forth below whenever used in any Definition or Document Request.

1. “You” or “your” refers to Google, Inc. and all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on their behalf, collectively and individually.

2. “HTC” means HTC Corporation, HTC America, Inc., and all of their predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on their behalf, collectively and individually.

3. “Action” means this action (2:10-cv-112 (E.D. Tex.)).

4. “Communication” means any manner or means of disclosure, transfer, or exchange, and every disclosure, transfer, or exchange of information, whether orally, by document, or by other electronic means, and whether face-to-face, in person, by telephone, telecopy, mail, delivery service, personal delivery, e-mail, or otherwise, and includes correspondence, memoranda, reports and records of telephone calls, reports of meetings, and all accounts or summaries of oral conversations.

5. “Relating to” means discussing, referring to, describing, evidencing, constituting, concerning, or in any way relating to the referenced matter.

6. “Documents” shall have the broadest possible meaning accorded to it by Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, any writings, drawings,



graphs, charts, photographs, sound recordings, images, other data or data compilations, and any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer memory, electronic storage devices, disks, tapes, or databases, or otherwise stored or reproduced. A draft or non-identical copy is a separate document within the meaning of this term.

7. “MobileMedia” means Plaintiff MobileMedia Ideas LLC, including its officers, directors, employees, and/or all other persons acting or purporting to act on its behalf, collectively and individually.

8. “Tagivan” means Tagivan LLC, including its officers, directors, employees, and/or all other persons acting or purporting to act on its behalf, collectively and individually.

9. “MPEG LA” means MPEG LA LLC, including its officers, directors, employees, and/or all other persons acting or purporting to act on its behalf, collectively and individually.

10. “Patents-in-Suit” refers to any of United States Patent Nos. 5,915,239 (the “ ’239 Patent”); 5,977,887 (the “ ’887 Patent”); 6,043,760 (the “ ’760 Patent”); 6,049,796 (the “ ’796 Patent”); 6,253,075 (the “ ’075 Patent”); 6,427,078 (the “ ’078 Patent”); 5,490,170 (the “ ’170 Patent”); 5,841,979 (the “ ’979 Patent”); 6,070,068 (the “ ’068 Patent”); 6,871,048 (the “ ’048 Patent”); 7,349,012 (the “ ’012 Patent”), both individually and collectively.

11. “Person” means any natural person or any business, legal or governmental entity, or association in any form.

12. “Reflects,” “refers,” “relates,” “regards,” and their cognates mean directly or indirectly mentioning, concerning, constituting, identifying, discussing or describing, pertaining to, or being connected with a stated subject matter.

13. "Accused Product" means any accused product in this Action and any accused products that MobileMedia has moved to add to this Action, including the Nexus One, Droid Eris, Imagio, Ozone, Pure, Tilt 2, Touch Pro 2, G1, Dash 3G, XV6900, Fuze, Hero, Snap, Touch Cruise, Shadow, G2, Surround, HD7, EVO 4G, Ozone with TALKS, myTouch 4F, EVO Shift 4G, Aria, Desire, Wildfire, Droid Incredible, Thunderbolt, Amaze 4G, Arrive, EVO 3D, EVO 4G LTE, EVO Design 4G, IID7S, Hero S, Droid Incredible 2, Inspire 4G, Merge, myTouch 4G Slide, Radar 4G, Rezound, Rhyme, Status, Titan, Titan II, Trophy, Wildfire S, Freestyle, One S, One X, Sensation, Sensation 4G, and Vivid, that are made, used, or sold by HTC in the United States or imported into the United States from April 1, 2004 to the present.

14. "Product Feature" means any aspect of any Accused Product relating to:
- a. Data storage with display and a keypad where a key is associated with more than one character and characters are entered based on a number of presses on the key; "multitap" data entry and/or data retrieval mode; T9 data entry and/or data retrieval mode; and/or XT9 data entry and/or data retrieval mode;
  - b. "Multitap," T9, and/or XT9 text input with character input for different language or different character sets; the method for cycling through multiple characters associated with a single key by multiple presses of the key;
  - c. Database of records, contacts, or parties and information, including the ability to search for records and select one such record to initiate communication; contact or address lookup;
  - d. Playback device, including the ability to receive externally provided audio at a rate faster than playback speed, store such audio on a removable memory and playback stored audio;
  - e. Downloading of information, including audio information, to store in encrypted form on removable memory and reproduce;
  - f. Rejecting or ignoring incoming calls, including the processes and transmission that occur when sending a call to voice mail;
  - g. Use of a camera that can wirelessly transmit pictures or the wireless transfer of pictures taken;
  - h. Call reception and/or call processing (including through the "hold call in progress and answer," "end call in progress and answer," "send message," "add call," "new

call,” “flash,” “swap,” “conference,” “merge,” “hold,” “end call,” “end all calls,” “end active calls,” and “private” functions);

- i. Reducing the resolution of a captured image, compressing the reduced-size image, or increasing the resolution of an image; fitting images to a display size;
- j. Voice control, including voice dialing; speech recognition; and
- k. Playback of compressed audio, including MP3 files.

15. The plural of any word herein includes the singular, and the singular includes the plural. Use of the singular shall also include the plural, and vice-versa.

16. “The” shall not be construed as limiting any topic herein.

17. The terms “or,” “and,” “and/or,” “any,” and “including” shall be construed inclusively rather than exclusively so as to bring within the scope of the request that which otherwise might be construed as being outside the scope of said request; and the terms “all” and “any” shall be interpreted inclusively so as to mean both “all” and “any” whenever either term is used.

### INSTRUCTIONS

1. All documents that respond, in whole or in part, to any portion of the requests below shall be produced, including all attachments and enclosures.

2. Identical copies of a document do not need to be produced.

3. Documents shall be produced as they are kept in the ordinary course of business, including by (a) providing information maintained in the ordinary course of business that indicates the source of the documents, (b) providing file folders, tabs, labels, directories, etc. maintained in the ordinary course of business along with their respective documents, and (c) providing attachments to documents as stored in the ordinary course of business.

4. To the extent documents requested herein contain confidential information, they may be produced in accordance with the Protective Order entered in *MobileMedia Ideas LLC v. HTC Corp. et al.*, Case No. 2:10-cv-00112-JRG, a copy of which is attached hereto as Exhibit B.

5. If an objection is made on the grounds that a request is overly broad and/or unduly burdensome, you must provide documents to the extent that the request is not overly broad or burdensome.

6. If a refusal to respond to a request is asserted on the grounds of burdensomeness, you should state in detail the reason(s) for your objection(s), including the nature of the inquiry and/or the number and nature of documents or records needed to be searched and/or produced, the location of the documents, the custodian of the documents, and/or the number of person hours and costs required to respond.

7. If any request is ambiguous or unclear to you, you are requested to contact MobileMedia's counsel as soon as possible so that the request can be clarified to avoid unnecessary delays in discovery.

8. If any responsive document is no longer in your possession or subject to your control, you should state what disposition was made of it, when such disposition was made, why such disposition was made, and by whom such disposition was made.

9. These document requests shall be deemed continuing so as to require timely supplementation between the time of any initial responses and the time of trial pursuant to Rule 26(e).

10. Where an objection is made to any document request or sub-part thereof, the objection shall specifically state all grounds for the objection and whether otherwise responsive information, documents, or things are being withheld on the basis of the asserted objection.

## DOCUMENT REQUESTS

1. All documents relating to any formal or informal agreement between You and HTC, or anyone working on HTC's behalf in connection with the Accused Products, relating to the Android operating system and the Android Software Development Kit.
2. All communication between You and HTC relating to HTC's use of the Android operating system in its products.
3. Documents sufficient to show instructions and/or technical support information explaining the installation, setup, use, and/or operation of the Product Features in the Accused Products.
4. Documents sufficient to show Your communications, or communications by or on behalf of HTC, with consumers, customers, purchasers, distributors, and/or retailers of the Accused Products regarding the installation, setup, use, and/or operation of any of the Product Features in the Accused Products.
5. All documents relating to the Patents-in-Suit.
6. All documents relating to any formal or informal agreement between You and HTC, or anyone working on HTC's behalf in connection with the Accused Products, relating to (a) indemnification with respect to any claims of patent infringement relating to the Accused Products or this Action; (b) joint or common defense of claims of patent infringement relating to the Accused Products or this Action; or (c) the sharing of costs relating to the defense of this Action or any claims of patent infringement relating to the Accused Products.
7. Documents sufficient to show marketing, advertising, promotion, or launch of HTC phones using the Android operating system in the United States, including (a) content for website and webpages used to market, advertise, promote, or launch the Accused Products in the United States; and (b) materials, videotapes, webcasts, or presentations for conferences, trade

shows, or expos used to market, advertise, promote, or launch the Accused Products in the United States.

8. All communications with IITC concerning MobileMedia, MPEG LA, and/or Tagivan.

9. Any non-publicly available source code for each version of the Android operating system since April 1, 2004 used in any of the Accused Products.

**EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MOBILEMEDIA IDEAS LLC,

Plaintiff

vs.

HTC CORPORATION and HTC  
AMERICA, INC.,

Defendants.

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NO. 2:10-cv-112-TJW

**AGREED PROTECTIVE ORDER**

WHEREAS, Plaintiff MobileMedia Ideas LLC and Defendants HTC Corporation and HTC America, Inc., hereafter referred to as “the Parties,” believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

1. “Discovery Material” means all items and information, including from any non-Party, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced, disclosed, derived or generated in connection with discovery or Rule 26(a) disclosures in this case. Confidential Discovery Material may be designated “Protected Materials.” Except as otherwise indicated below, all Discovery Material designated by the producing Party as “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” are Protected Materials and shall be treated as set forth herein. All copies, reproductions, extracts, digests and complete or partial summaries prepared



from any Protected Material shall also be considered Protected Material and treated as such under this Order.

2. Each Party shall have the right to designate materials as “CONFIDENTIAL” any Discovery Material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the designating Party or a third party to whom the Party reasonably believes it owes an obligation of confidentiality. The following information is not CONFIDENTIAL: (a) any information which at the time of disclosure to a receiving Party is in the public domain; (b) any information which after disclosure to a receiving Party becomes part of the public domain as a result of publication not involving a violation of this Order; (c) any information which a receiving Party received, whether before or after the disclosure, from a source who obtained the information lawfully and under no obligation of confidentiality to the producing Party; and (d) any information independently developed by the receiving Party. To the extent a producing Party believes that certain CONFIDENTIAL Discovery Materials are so sensitive that their dissemination requires even further limitation, the producing Party may designate such Discovery Materials “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” including, by way of example only, (i) sensitive non-public technical information such as non-public technical descriptions and/or depictions of the relevant technology that would reveal trade secrets; (ii) non-public sales and financial information; (iii) trade secrets; (iv) non-public customer lists; (v) non-public business and/or marketing plans; (vi) non-public price lists and/or pricing information or license terms; and (vii) information subject to a current Non-Disclosure Agreement (“NDA”), third-Party confidentiality agreement or order or that otherwise contains confidential non-Party information.

3. Any Discovery Material produced in this action before issuance of this Order with the designation “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” or the like shall receive the same treatment as if designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order, unless and until such Discovery Material is redesignated to have a different classification under this Order

4. Any Discovery Material made available for inspection by counsel for the receiving Party without being stamped for production will be considered as CONFIDENTIAL – ATTORNEYS’ EYES ONLY and treated accordingly under this Order. If such Discovery Material is later marked for production, the producing Party may designate it in accordance with this Order.

5. Deposition transcripts, or portions thereof, may be designated as subject to this Order either (a) at the time of such deposition, in which case the transcript of the designated testimony shall be marked by the reporter with the appropriate confidentiality designation as the designating Party may direct, or (b) within fifteen (15) days following the receipt of the transcript of the deposition by providing written notice to the reporter and all counsel of record. All deposition transcripts not previously designated shall be deemed to be and shall be treated as CONFIDENTIAL – ATTORNEYS’ EYES ONLY information until the expiration of the period set forth in this paragraph.

6. A designation of Protected Material (*i.e.*, CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE) may be made at any time. Inadvertent or unintentional production of confidential Discovery Material that has not been designated shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any Party that inadvertently or unintentionally produces

confidential Discovery Material without designating it may request destruction of that confidential Discovery Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then return or destroy all copies of the inadvertently or unintentionally produced Discovery Materials.

7. A Party shall designate Discovery Material as CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE only upon a good faith belief that the Discovery Material meet the requirements for such designations as set forth in paragraph 2 and elsewhere herein.

8. Nothing in this Order changes or alters the discovery provisions of the Federal Rules of Civil Procedure or the Local Rules or Rules of Practice for Patent Cases before the United States District Court for the Eastern District of Texas. Identification of any individual pursuant to this Order does not make that individual available for deposition or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules or Rules of Practice for Patent Cases before the United States District Court for the Eastern District of Texas, and the Court’s Deadlines for Docket Control Order and Discovery Order.

9. All Protected Materials are entitled to confidential treatment pursuant to the terms of this Order until and unless the parties formally agree in writing or on the record to the contrary or a contrary determination is made by the Court as to whether all or a portion of such Protected Material is entitled to a lesser or no confidential treatment.

10. Protected Materials shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to

Protected Materials or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such Protected Materials or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified as Protected Materials and subject to all of the terms and conditions of this Order.

11.1. Discovery Material designated CONFIDENTIAL shall not be disclosed to any person except:

- A. Outside counsel of record in this action;
- B. Employees or contractors employed by outside counsel of record in this action and copying, litigation support services and translators working under the direction of outside counsel of record;
- C. The Court, the Court's personnel, jurors and any court considering any appeal in this matter and its personnel;
- D. Technical advisors, consultants and testifying experts provided that (a) such person has agreed to be bound by the provisions of this Protective Order by signing a copy of Exhibit A, and (b) no unresolved objections to such disclosure exist after proper notice has been given in accordance with Paragraph 12 below;
- E. Not more than one (1) in-house counsel for the receiving Party who has responsibility for making decisions dealing directly with the litigation of this Action, or who is assisting outside counsel in the litigation of this Action, and the paralegals and/or clerical staff regularly employed to assist such in-house counsel, provided that the identity of such in-house counsel shall be disclosed in writing via e-mail to the producing Party at least five (5) days prior to the initial disclosure of the producing Party's Protected Material to such in-house counsel. The producing Party may object to such disclosure in writing in accordance with the procedures set forth in subparagraph 12(iii) below. If any such objection is made, it shall be resolved in accordance with the procedures set forth in subparagraph 12(iii);
- F. Not more than two (2) other representatives of the receiving Party who are substantively involved in the management or supervision of the litigation, provided that such representatives first agree to be bound by the terms of this Protective Order by executing the Confidentiality Undertaking in the form attached as Attachment A;

- G. Court reporters and videographers employed in connection with this action;
- H. Trial and hearing support personnel and their staffs (e.g., graphics operators, designers and animators), and jury consultants and their staffs, provided that such persons first agree to be bound by the terms of this Protective Order by executing a Confidentiality Undertaking in the form attached as Attachment A;
- I. Any person who appears on the face of the designated Discovery Material as an author, creator, addressee or recipient thereof.
- J. Any witness at deposition or trial who is an officer, director, corporate representative or employee of the designating Party or whose testimony or documentary evidence establishes has prior knowledge of the contents of the designated Discovery Material in accordance with the procedures set forth in paragraph 17 hereof.
- K. Any other person with the prior written or on-the-record consent of the designating Party.

11.2. Discovery Material designated CONFIDENTIAL – ATTORNEYS' EYES

ONLY shall only be disclosed to those categories of individuals listed in Paragraphs 11.1(A) through (E) and (G) through (K), subject to the restrictions therein.

11.3 Nothing in this Protective Order shall be construed to prevent counsel from advising their clients with respect to this case based in whole or in part upon Protected Material, provided that counsel does not disclose the Protected Material itself as provided in this Order.

11.4. Each party shall have the right to designate Discovery Material as "CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE" in the following categories: (i) highly confidential and/or trade secret computer source code; (ii) computer source code which constitutes or reveals any trade secret or (iii) source code which constitutes or reveals other highly confidential research or development information, the disclosure of which the disclosing party reasonably believes could cause competitive harm to the business operations of the disclosing party or provide improper business or commercial advantage to others.

Discovery Material designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” shall be treated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the provisions of this Order and shall be provided with further protections in accordance with the following:

- A. “Source code” includes documents and human-readable programming language text that define software, firmware, or electronic hardware descriptions (hereinafter referred to as “source code”). Text files containing source code shall hereinafter be referred to as “source code files.” Source code files include, but are not limited to files containing text written in “C”, “C++”, assembly, VHDL, Verilog, and digital signal processor (“DSP”) programming languages. Source code files further include “.include files,” “make” files, link files, and other human-readable text files and documents used in the generation and/or building of software directly executed on a microprocessor, microcontroller, or DSP.
- B. To the extent that any party wishes to obtain access to Discovery Material designated CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE, the following procedures shall apply:
  - i. The producing party shall make all properly requested source code available for inspection on a stand-alone, non-networked personal computer or computers running a reasonably current version of the Microsoft Windows operating system (“Source Code Computer(s)”). Should it be necessary, the Source Code Computer(s) may be configured by the producing party to run on other mutually agreed upon operating systems, such as Linux.
  - ii. The producing party shall make the source code available in its native format in a secure room at a secure facility at a location agreed to by the producing and receiving parties or ordered by the Court. The producing party shall make the source code available in such a way that the produced source code reflects the file structure of the source code as it is maintained by the producing party at the time of production of the source code.
  - iii. From the time of the Pretrial Conference in this case and continuing through the end of trial the Source Code Computer(s) may be moved to a location agreed to by the producing and receiving parties or ordered by the Court in Marshall, Texas.
  - iv. The producing party may not videotape or otherwise monitor review of source code by the receiving Party.
  - v. The receiving party may use appropriate tool software on the Source Code Computer(s). The producing party shall be responsible for installing, at the producing parties’ expense, if any, basic utilities and tools that are sufficient for viewing and searching the code produced on the platform produced, if such tools exist and are presently used in the course of the producing

party's business. At a minimum, the utilities or tools should provide the ability to (a) view, search, and line-number any source file, (b) search for a given pattern of text through a number of files, and (c) compare two files and display their differences. The receiving party may also request that other commercially available utilities or tools be installed on the Source Code Computer(s), including but not limited to Understand C, Visual Slick Edit, Source-Navigator, PowerGrep, and ExamDiff Pro. In the event the receiving party seeks to use other commercially available utilities or tools, licensed copies of tool software shall be installed on the Source Code Computer(s) by the producing party at the receiving parties request. The receiving party shall either provide the tools on CD or DVD or undertake to pay for such requested tools downloaded and installed by the producing party.

vi. The Source Code Computer(s) shall be made available from 9 am to 5 pm local time, Monday through Friday (excluding holidays), and other days and/or times upon reasonable request and two business days advanced written notice (which may be via email) until the conclusion of the trial of this action.

vii. Discovery Material designated CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE may be disclosed only to the persons identified in paragraph 11.2, except such Discovery Material shall not be disclosed to those categories of individuals listed in Paragraphs 11.1(E). Discovery Material designated as CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE by a Defendant shall not be provided to any other Defendant or Defendant's counsel by any party or counsel absent explicit agreement from the Defendant designating the Discovery Material.

viii. No more than three (3) individuals, per producing Party, who qualify under Paragraph 11.1D, above, for each receiving Party, may have access to the Source Code Computer(s). For each day that counsel for the receiving Party requests a review of a Source Code Computer, it must give at least two business days (and at least 48 hours) notice to the counsel for the producing Party that it will be sending individual(s) authorized to review the source code made available on the Source Code Computer(s), and will identify the individuals.

ix. Proper identification of all authorized persons shall be provided prior to any access to the secure facility or the Source Code Computer(s). Proper identification is hereby defined as a photo identification card sanctioned by the government of a United States state, by the United States federal government, or by the nation state of the authorized person's current citizenship. Access to the secure facility or the Source Code Computer(s) may be denied, at the discretion of the producing party, to any individual who fails to provide proper identification.

x. The Source Code Computer(s) shall be equipped with a printer to print copies of the source code on yellow, pre-Bates numbered paper, which shall be provided by the producing Party upon request of the receiving Party. All printed source code shall be logged by the receiving Party to facilitate

destruction certification as described in paragraph xiii below. In addition to other reasonable steps to maintain the security and confidentiality of the producing Party's source code, all printed copies of the source code maintained by the receiving Party must be kept in a locked storage facility when not in use. No electronic copies of the source code shall be made by the receiving party except for electronic copies made for filing (under seal) in a proceeding with the Court, for inclusion in an expert report, or for use for presentation purposes at trial or in a hearing in this matter. The receiving party will limit its printing of paper copies of the source code to source code that is reasonably related to this case.

xi. Other than in connection with pleadings filed under seal and for use in connection with depositions (relevant portions of which may be designated CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE by the producing Party), the receiving Party may make no more than four (4) subsequent hard copies of the printed copies on yellow paper, and shall treat such copies in accordance with the terms of this Order applicable to originals, including maintaining such copies in a locked facility when not in use and shall maintain a log of such copies for record keeping purposes and to ensure proper destruction at the conclusion of this action in accordance with subparagraph (xiii) of this section, below. Hard copies of the source code also may not be converted into an electronic document, and may not be scanned using optical character recognition ("OCR") technology;

xii. No recordable media or storage devices, including without limitation any sound recorder, scanner, camera, CD, DVD, or external drive of any kind, shall be permitted into the Source Code Review Room, but outside counsel shall be permitted to bring their cellular phone or smartphone devices into the Source Code Review Room provided that they undertake not to use any impermissible function of such devices with respect to the source code (i.e., the devices may not be used to record or store the source code in any way). The receiving Party's outside counsel and/or 11.1(D) persons shall be entitled to take notes relating to the source code. All such notes shall be classified as Protected Materials and subject to all of the terms and conditions of this Order.

xiii. Within sixty (60) days after the issuance of a final, non-appealable decision resolving all issues in the case, the receiving party must either serve upon the producing party, or certify the destruction or redaction of, all paper copies of the producing party's CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE as well as documents, pleadings, reports, and notes containing such source code (or describing it in such detail as to be reasonably equivalent to a copy of a portion of the source code).

xiv. Access to and review of the source code shall be strictly for the purpose of investigating the claims and defenses at issue in the above-styled case. No person shall review or analyze any source code for purposes unrelated to this case.

xv. Nothing herein shall be deemed a waiver of a party's right to object to the production of source code. Absent a subsequent and specific court



order, nothing herein shall obligate a party to breach any third party license agreement relating to such source code.

xvi. The Parties further acknowledge source code may be owned by non-parties and outside a party's possession, custody or control. Nothing herein shall be deemed a waiver of any non-party's right to object to the production of source code or object to the manner of any such production.

12. Before counsel for a party receiving Protected Material may disclose the Protected Material to a proposed technical advisor, consultant, or testifying expert under Paragraph 11.1(D):

(i) Counsel shall provide a copy of this Protective Order to such person, who shall sign the Confidentiality Undertaking attached hereto as Attachment A; and

(ii) Before the first such disclosure to such person, counsel for the receiving party shall provide counsel for the producing party written notice via e-mail that includes: (a) the name and business address of the person; (b) the present employer and business title of the person; (c) an up-to-date curriculum vitae of the person; (d) an identification of the person's employment relationships for the past four years; (e) an identification of any previous or current relationship (personal or professional) with any of the parties; and (f) a listing of other cases in which the individual has testified (at trial or deposition), within the preceding four years.

(iii) If the producing party objects to its Protected Material being disclosed to such person identified in a receiving party's notice given pursuant to this paragraph, the producing party shall notify counsel for the receiving party in writing via e-mail of the producing party's objection(s) to such disclosure within five (5) business days of receiving notice. Any objection must be made for good cause, stating with particularity the reasons for the objection. Untimely objections or objections not stating their basis will be deemed ineffective. If the producing party serves an effective written objection in response to the receiving party's written notice given

pursuant to this paragraph, the parties must attempt in good faith to resolve the objection. If the parties are unable to resolve the objection, the producing party has five (5) days from the date of the written objection, to move the Court for an appropriate protective order. If the producing party serves an effective written objection and files a motion for protective order within the prescribed period, the receiving party may not disclose the producing party's Protected Material to such person before the objection has been resolved by agreement of the parties or the Court. If the producing party fails to make an effective objection or fails to move for a protective order within the prescribed period, any objection is waived and its Protected Material may be then be disclosed to such person provided that the person has signed the Confidentiality Undertaking appended as Attachment A to this Order. Such Confidentiality Undertaking must be retained by counsel for the party that retained such person, but need not be disclosed to any other party unless the Court so orders. Protected Material may not be disclosed to a person covered by this paragraph until after the objection period provided herein has expired except with the producing Party's written consent.

13. Consistent with Federal Rules of Evidence 502, if a Party notifies another Party that it has disclosed Discovery Material protected by the attorney-client privilege or work product doctrine and/or any other applicable privilege or immunity, the disclosure shall not be deemed a waiver in whole or in part of the of the applicable privilege or protection either as to the specific disclosed Discovery Material or as to any other material or information relating thereto on the same or related subject matter. Upon request, the receiving Party must immediately, but in no case later than ten (10) days from said request or discovery, return or certify the destruction or deletion of all such Discovery Material and any paper or electronic copies of such Discovery Material. After so doing, the receiving Party may challenge the

propriety of the asserted privilege or immunity by motion or application to the Court, but shall not assert as a ground for challenging such privilege the fact or circumstance of the production. Nothing herein shall prevent the receiving Party from preparing a record for its own use containing the date, author, addressees or recipients and topic of the inadvertently produced Discovery Material and such other information as is reasonably necessary to identify the Discovery Material and describe its nature to the Court.

14. A Party may request in writing to the other Party that the designation given to any Protected Material be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Any application to the Court shall be in accordance with the Federal Rules, Local Rules and Discovery Order in this Action. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.

15. Discovery Material designated CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS' EYES ONLY, or CONFIDENTIAL –ATTORNEYS' EYES ONLY – SOURCE CODE must be held in confidence by each person to whom it is disclosed, may be used only for purposes of this litigation, may not be used for any business purpose, and may not be disclosed to any person who is not permitted by this Order to receive such information. The receiving Party must use reasonable precautions to ensure that Discovery Material designated CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS' EYES ONLY, and CONFIDENTIAL –ATTORNEYS' EYES ONLY – SOURCE CODE is not accessed by persons who are not permitted to receive them. However, nothing in this Order prevents any court reporter,

videographer, mediator, or their employees, or the Court, any employee of the Court or any juror from reviewing any evidence in this case for the purpose of these proceedings. Further, nothing in this Order affects the admissibility of any Discovery Material or other evidence submitted on any motion or at any hearing or at trial.

16. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any Protected Material into evidence at the trial of this Action, or from using any information contained in Protected Material at the trial of this Action, subject to any pretrial order issued by this Court.

17. Except as the Court otherwise orders, any person may be examined as a witness at a deposition, hearing or trial and may testify concerning all Protected Materials of which such person has prior personal knowledge. Specifically, but without limitation:

(a) A present director, officer, and/or employee of a producing Party may be examined and may testify concerning all Protected Materials which have been produced by that Party;

(b) A former director, officer, agent and/or employee of a producing Party may be interviewed, examined and may testify concerning all Protected Materials of which he or she has prior knowledge, including any Protected Material that refers to matters of which the witness has personal knowledge, which has been produced by that Party and which pertains to the period or periods of his or her employment; and

(c) Nonparties may be examined or testify concerning any Protected Material which appears on its face or from other documents or testimony to have been received from or communicated to the nonparty. Any person other than the witness, his or her attorney(s), and any person qualified to receive Protected Materials under this Order may be excluded, at the

request of the producing Party, from the portion of the examination concerning such Protected Materials, unless the producing Party consents to such persons being present at the examination. If the witness is represented by an attorney who is not permitted under this Order to receive such Protected Materials, then prior to the examination, the attorney may be requested to provide a Confidentiality Undertaking in the form of Attachment A to this Order. If such attorney refuses to sign such a Confidentiality Undertaking, any Party, may prior to the examination seek a protective Order from the Court prohibiting such attorney from disclosing such Protected Materials.

(d) In addition to the restrictions on the uses of all types of Protected Materials set forth in this Order, the following provisions apply to use of Discovery Materials that a Party has designated CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or CONFIDENTIAL –ATTORNEYS’ EYES ONLY – SOURCE CODE at a deposition:

- (i) A witness not presently employed or affiliated with a producing Party who previously had access to Protected Material, but who is not under a present non-disclosure agreement with the producing Party that covers that Protected Material, may be shown that Protected Material if the witness is provided with a copy of this Order and advised that it requires the parties to maintain the confidentiality of Protected Materials as set forth herein.
- (ii) The witness may not copy, take notes on or retain copies of any Protected Materials used or reviewed at the deposition. The witness may not take out of the deposition room any exhibit that is marked CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or CONFIDENTIAL –ATTORNEYS’ EYES ONLY – SOURCE CODE. The producing Party of any Protected Materials used at the deposition may also require that the transcript and exhibits not be copied by the witness or his counsel, and that the transcript and exhibits only be reviewed by the witness at the offices of counsel to one of the parties or at the offices of the witness’s counsel provided that the witness’s counsel has executed the Confidentiality Undertaking and undertakes to not copy or disseminate the transcript or exhibits provided for review and to return the same to counsel for the producing Party within 60 days of receipt thereof. In the event that such witness is subsequently scheduled to provide further deposition testimony in this case or is expected to testify at trial, the

witness's counsel may obtain a copy of the witness's prior testimony for review by the witness prior to such testimony and retain same without making copies for a period up to 60 days after such further testimony.

18. Any Protected Material that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing Party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER" above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court discloses or relies on Protected Material, such Protected Material shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

19. Nothing in this Order prohibits transmission or communication of Discovery Material designated CONFIDENTIAL and/or CONFIDENTIAL – ATTORNEYS' EYES ONLY between or among qualified recipients (i) by hand-delivery; (ii) in sealed envelopes or containers via the mails or an established freight, delivery or messenger service; or (iii) by telephone, telegraph, email, facsimile or other electronic transmission system; where, under the circumstances, the transmitting Party has no reason to believe that the transmission will be intercepted or misused by any person who is not a qualified recipient.

20. A qualified recipient may make working copies, abstracts, digests, analyses, etc. of Discovery Material designated CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS' EYES ONLY, and/or CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE according to the designation of the original documents upon which they are based. In addition, a qualified recipient may convert or translate Discovery Material designated CONFIDENTIAL

and/or CONFIDENTIAL – ATTORNEYS’ EYES ONLY into electronic form for incorporation into a data retrieval or storage system used in connection with this action.

21. Testifying experts are not subject to discovery about any draft report and such draft reports and notes or outlines for draft reports are also exempt from discovery.

22. Discovery of materials provided to testifying experts is limited to those materials, facts, consulting expert opinions, and other matters actually relied upon by the testifying expert in formulating his final report, trial or deposition testimony or any opinion in this action. No discovery may be taken from or about any consulting expert except to the extent that consulting expert has provided information, opinions or other materials that a testifying expert relied on in formulating his final report, trial or deposition testimony or any opinion in this action.

23. No conversations or communications between counsel and any testifying or consulting expert will be subject to discovery unless the conversations or communications are actually relied upon by a testifying expert in formulating his final report, trial or deposition testimony or any opinion in this action.

24. Materials, communications and other information exempt from discovery under the foregoing Paragraphs will be treated as attorney-work product for the purposes of this Order and this litigation, but need not be listed on any privileged document log(s).

25. A nonparty producing Discovery Material voluntarily or pursuant to a subpoena or a court order may designate such Discovery Material in the same manner and will enjoy the same level of protection under this Order as a producing Party under this Order and shall be treated in a manner analogous to a Producing Party under the terms hereof. The nonparty shall not obtain any rights to discovery from the Parties by virtue of this Order.

26. Any of the requirements provided in this Order may be waived, in whole or in part, but only by a writing signed (including electronically) by an attorney of record for the Party against whom such waiver is asserted or through a waiver on the record at a deposition or in proceedings before the Court.

27. Within sixty (60) days after the entry of a final non-appealable judgment or order, or the complete settlement and dismissal of all claims asserted against all parties in this action, each Party must, at its option, either return to the producing Party or destroy all Protected Materials received from the producing Party, and must destroy, delete or redact all other physical objects and documents, in whatever form stored or reproduced, including but not limited to, summaries, abstracts, digests, excerpts, marked copies, or extracts that contain CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS’ EYES ONLY, and/or CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE information of the producing Party. Notwithstanding the foregoing, outside counsel for the parties may maintain copies of all (a) legal memoranda and the like (but not any Protected Material attached or enclosed therewith or reproduced therein or marked copies of Protected Material); (b) correspondence (but not any Protected Materials attached or enclosed therewith), (b) pleadings, motions, correspondence with the Court and trial briefs (including all supporting and opposing papers and exhibits), (c) written discovery requests and responses (including exhibits), (d) deposition transcripts and exhibits, (e) expert reports and exhibits, (f) trial transcripts, and (g) exhibits offered or introduced into evidence at trial.

28. This Order is entered without prejudice to the right of any Party to apply to the Court at any time for additional protection, or to relax or rescind the restrictions of this Order, when convenience or necessity requires. The Court will determine what, if any, measures are



necessary to protect the confidentiality of Protected Materials used at trial upon application or motion of any Party.

29. If at any time Protected Material of a producing Party is subpoenaed or subject to other compulsory process in any other proceeding from a receiving Party, the receiving Party shall give prompt written notice of such subpoena or other legal process within three business days after receipt thereof to the producing Party to permit such the producing Party to take whatever action it deems appropriate with respect to its Protected Materials. The receiving Party shall refrain from producing such information until the earlier of (a) receipt of written notice from the producing Party that such Party does not object to the production of the material, (b) resolution of any objection asserted by the producing Party to the production of such material, provided that the producing Party timely objects or files an appropriate motion with respect to such Protected Material. Nothing herein shall be construed as requiring the receiving Party to challenge or appeal any order requiring production of material of a producing Party or to violate any court order. Production of Protected Material to a non-Party in accordance with this paragraph shall not affect the treatment of such Protected Material under this Order.

30. This Order has no effect upon, and shall not apply to, the parties' use of their own respective CONFIDENTIAL, CONFIDENTIAL – ATTORNEYS' EYES ONLY, or CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE material for any purpose. A Party may, but is not required, to file under seal its own protected material and the parties remain free to waive any confidentiality protection previously claimed. For greater certainty, nothing herein is intended to restrict the filing or prosecution of any request for reexamination or suit for declaratory judgment of any patent (other than that a receiving Party

may not use Protected Material of a producing Party in connection with such a request or proceeding).

31. The production or disclosure of Protected Material shall in no way constitute a waiver of each Party's right to object to the production or disclosure of other material in this action or any other action.

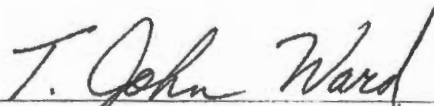
32. Production of Protected Materials by each of the Parties shall not be deemed a publication of the Protected Material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the Protected Material or its contents.

33. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.

34. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of Protected Materials to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of Protected Materials.

35. This Order shall survive and remain in effect after the termination of this action.

SIGNED this 13th day of June, 2011.

  
\_\_\_\_\_  
T. JOHN WARD  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MOBILEMEDIA IDEAS LLC,

Plaintiff

vs.

HTC CORPORATION and HTC  
AMERICA, INC.,

Defendants.

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§  
§

NO. 2:10-cv-112-TJW

ATTACHMENT A TO AGREED PROTECTIVE ORDER

I, \_\_\_\_\_, declare that:

1. My address is \_\_\_\_\_.  
My current employer is \_\_\_\_\_. My  
current occupation is \_\_\_\_\_.
2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as Protected Material under the Protective Order that is disclosed to me.
4. Promptly upon termination of these actions, I will return all documents and things designated as Protected Material that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the Party with whom I am associated in this action or who provided the Protected Material to me.
5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action. I declare under penalty of perjury that the foregoing is true and correct.

Signature \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MOBILEMEDIA IDEAS LLC

Plaintiff,

v.

HTC CORPORATION and  
HTC AMERICA, INC.

Defendants.

Civil Action No. 2:10-cv-00112 JRG

JURY TRIAL DEMANDED

**NON-PARTY GOOGLE INC.'S OBJECTIONS AND RESPONSES TO  
PLAINTIFF MOBILEMEDIA IDEAS LLC'S SUBPOENA TO PRODUCE  
DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF  
PREMISES IN A CIVIL ACTION**

Non-party Google Inc. ("Google") objects to Plaintiff MobileMedia Ideas LLC's ("MMI") *Subpoena To Produce Documents, Information, Or Objects Or To Permit Inspection Of Premises In a Civil Action* ("Subpoena"), with which MMI served Google on July 23, 2012.

**GENERAL OBJECTIONS AND RESPONSES**

Non-party Google objects to the Subpoena in its entirety. MMI sued HTC Corporation and HTC America, Inc. (collectively, "HTC") in the United States District Court for the Eastern District of Texas, Marshall Division. With no finding from the court in Texas as to a need for information from non-party Google, MMI nevertheless invokes the power of an ancillary court, the United States District Court for the Northern District of California, to command discovery to an extent comparable with party HTC's discovery obligations. Moreover, MMI commands production a mere twenty-three days after service of the Subpoena. Even HTC, from whom MMI could obtain the same discovery, is not under such onerous burdens.

The United States District Court for the Northern District of California has said "...non-parties should not be burdened in discovery to the same extent as the litigants themselves. Requests to non-parties should be narrowly drawn to meet specific needs for information. *Katz v. Batavia Marine & Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed. Cir. 1993)." *See Intermec Techs. Corp. v. Palm, Inc.*, Case No. C 09-80098 MISC WHA, "Order Quashing Subpoena Duces Tecum In Its Entirety And Granting Protective Order," Dkt. No. 9 (N.D. Cal. May 15, 2009). MMI's Document Requests fail this test. Consequently, Google objects to the requests.

Google is willing to meet and confer with counsel for MMI in order to narrow the scope of MMI's Document Requests and clarify terms. If agreement on any issue cannot be reached, however, Google does not waive any right to move the court to quash or modify the Subpoena, or move for a protective order.

#### General Objections

Google further asserts the following general objections and responses to the Subpoena:

1. Google objects to each and all Document Requests set forth in the Subpoena to the extent that any seeks information that is outside the scope of discovery because the information is not relevant to the subject matter involved in the action, or not relevant to any party's claim or defense in the Action, or does not appear reasonably calculated to lead to discovery of admissible evidence. *See* FED. R. CIV. P. 26(b)(1).

2. Google objects to each and all of the Document Requests for failing to avoid placing undue burden and expense on Google. *See* FED. R. CIV. P. 45(c)(1). Without limitation, each and all Document Requests seek information that is more conveniently, less expensively, or with less burden, obtainable from another source; such as, without limitation, Defendants or publicly available sources of information. *See also*, FED. R. CIV. P. 26(b)(2)(C). Google also

objects to each and all of the Document Requests for being overly broad, unreasonably cumulative, or duplicative. Google further objects to each and all of the Document Requests to the extent any is not limited by a time period.

3. Google objects to each and all Document Requests to the extent that any seeks information that is not discoverable because a privilege or immunity protects the information from disclosure; such as, without limitation, attorney-client privilege, and work-product doctrine. *See* FED. R. CIV. P. 26(b)(3) - 26(b)(5).

4. Google objects to each and all Document Requests to the extent that any seek documents, information and objects that no longer exist, or are not in Google's possession, custody, or control.

5. Google objects to the Subpoena for failing to allow a reasonable time to comply, and failing to set a convenient location of production. *See* FED. R. CIV. P. 45(c)(3).

6. Google objects to each and all Document Requests to the extent that the Protective Order entered in the Action does not provide adequate protection of Google's confidential information and/or trade secrets.

7. Google objects to each and all Document Requests to the extent that any is vague, ambiguous, or indefinite.

8. Google objects to MMI's Definitions to the extent that any purport to enlarge or alter in any way whatsoever the plain meaning and scope of any Document Request because such enlargement or alteration would render the Document Request vague, ambiguous, indefinite, or overly broad.

9. Google objects to MMI's definition of "you" and "your" as vague, overly broad, and unduly burdensome.

10. Google objects to MMI's definition of "HTC" as vague, overly broad, and unduly burdensome.

11. Google objects to MMI's definition of "relating to" as vague, overly broad, and unduly burdensome.

12. Google objects to MMI's definition of "reflects," "refers," "relates," "regards," and their cognates as vague, overly broad, and unduly burdensome.

13. Google objects to MMI's definition of "Accused Product" as vague, overly broad, and unduly burdensome.

14. Google objects to MMI's definition of "Product Feature" as vague, overly broad, and unduly burdensome.

15. Google objects to MMI's definition of the term "communication" on the grounds that it is unduly broad and purports to impose burdens or requirements upon Google that exceed or differ from the requirements of Federal Rules of Civil Procedure 26(b) and 45, particularly insofar as the definition purports to require the production of documents about products irrelevant to this action.

16. Google does not waive any objections set forth above by including further or more specific objections in responses below.

17. Google does not waive any right to revise or supplement its objections and responses to the Subpoena.

18. Any objection by Google does not constitute a representation or admission that such information does in fact exist or is known to Google.

#### **SPECIFIC OBJECTIONS AND RESPONSES**

Google specifically objects and responds to MMI's Document Requests as follows:



**DOCUMENT REQUEST NO. 1:**

*All documents relating to any formal or informal agreement between You and HTC, or anyone working on HTC's behalf in connection with the Accused Products, relating to the Android operating system and the Android Software Development Kit.*

**RESPONSE TO DOCUMENT REQUEST NO. 1:**

Google restates each and all of the General Objections and Responses, above. Google objects to this Document Request to the extent that it is vague and ambiguous as to the terms “formal or informal agreement,” and “anyone on HTC’s behalf in connection with the Accused Products.” Google further objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google’s possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI’s possession or available to MMI from some other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 2:**

*All communication between You and HTC relating to HTC's use of the Android operating system in its products.*

**RESPONSE TO DOCUMENT REQUEST NO. 2:**

Google restates each and all of the General Objections, above. Google objects to this Document Request to the extent that it is vague and ambiguous as to the term “HTC’s use of the Android operating system in its products.” Google further objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google’s possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI’s possession or available to MMI from some other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 3:**

*Documents sufficient to show instructions and/or technical support information explaining the installation, setup, use, and/or operation of the Product Features in the Accused Products.*

**RESPONSE TO DOCUMENT REQUEST NO. 3:**

Google restates each and all of the General Objections, above. Google objects to this Document Request to the extent that it is vague and ambiguous as to the term “sufficient to show.” Google further objects to this Document Request on the grounds that it seeks

information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google's possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI's possession or available to MMI from some other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 4:**

*Documents sufficient to show Your communications, or communications by or on behalf of HTC, with consumers, customers, purchasers, distributors, and/or retailers of the Accused Products regarding the installation, setup, use, and/or operation of any of the Product Features in the Accused Products.*

**RESPONSE TO DOCUMENT REQUEST NO. 4:**

Google restates each and all of the General Objections, above. Google objects to this Document Request to the extent that it is vague and ambiguous as to the terms "sufficient to show," and "on behalf of HTC." Google further objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on

the grounds that it seeks information not within Google's possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI's possession or available to MMI from some other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 5:**

*All documents relating to the Patents-in-Suit.*

**RESPONSE TO DOCUMENT REQUEST NO. 5:**

Google restates each and all of the General Objections, above. Google objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google's possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI's possession or available to MMI from some

other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 6:**

*All documents relating to any formal or informal agreement between You and HTC, or anyone working on HTC's behalf in connection with the Accused Products, relating to (a) indemnification with respect to any claims of patent infringement relating to the Accused Products or this Action; (b) joint or common defense of claims of patent infringement relating to the Accused Products or this Action; or (c) the sharing of costs relating to the defense of this Action or any claims of patent infringement relating to the Accused Products.*

**RESPONSE TO DOCUMENT REQUEST NO. 6:**

Google restates each and all of the General Objections, above. Google objects to this Document Request to the extent that it is vague and ambiguous as to the terms “formal or informal agreement,” and “anyone working on HTC’s behalf in connection with the Accused Products.” Google further objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google’s possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI’s possession or available to MMI from some other source that is more convenient, less

burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 7:**

*Documents sufficient to show marketing, advertising, promotion, or launch of HTC phones using the Android operating system in the United States, including (a) content for website and webpages used to market, advertise, promote, or launch the Accused Products in the United States; and (b) materials, videotapes, webcasts, or presentations for conferences, trade shows, or expos used to market, advertise, promote, or launch the Accused Products in the United States.*

**RESPONSE TO DOCUMENT REQUEST NO. 7:**

Google restates each and all of the General Objections, above. Google objects to this Document Request to the extent that it is vague and ambiguous as to the terms “sufficient to show,” and “launch.” Google further objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google’s possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI’s possession or available to MMI from some other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 8:**

*All communications with HTC concerning MobileMedia, MPEG LA, and/or Tagivan.*

**RESPONSE TO DOCUMENT REQUEST NO. 8:**

Google restates each and all of the General Objections, above. Google objects to this Document Request to the extent that it is vague and ambiguous as to the term “concerning.” Google further objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google’s possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI’s possession or available to MMI from some other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

**DOCUMENT REQUEST NO. 9:**

*Any non-publicly available source code for each version of the Android operating system since April 1, 2004 used in any of the Accused Products.*

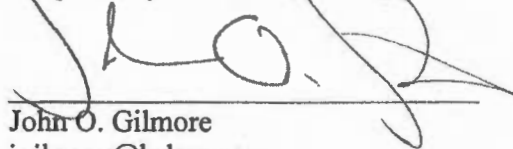
**RESPONSE TO DOCUMENT REQUEST NO. 9:**

Google restates each and all of the General Objections, above. Google objects to this Document Request to the extent it calls for the disclosure of proprietary or confidential source code. Google further objects to the extent that the Protective Order in the underlying action does

not adequately protect its source code. Google further objects to this Document Request on the grounds that it seeks information that is neither relevant to any claims or defenses in the underlying action nor reasonably calculated to lead to the discovery of admissible evidence. Google further objects to this Document Request on the grounds that it is overly broad, unduly burdensome, oppressive, and duplicative. Google further objects to this Document Request on the grounds that it seeks information not within Google's possession, custody or control. Google further objects to this Document Request on the grounds that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity, including but not limited to the common interest or joint defense privileges. Google further objects to this Document Request on the grounds that it seeks information already in MMI's possession or available to MMI from some other source that is more convenient, less burdensome or less expensive, including information available to MMI from HTC or from public sources.

Dated: August 6, 2012

Respectfully submitted,



John O. Gilmore  
jgilmore@kslaw.com  
King & Spalding LLP  
333 Twin Dolphin Drive, Suite 400  
Redwood Shores, CA 94065  
Telephone: (650) 590-0700  
Facsimile: (650) 590-1900

ATTORNEY FOR GOOGLE INC.



**CERTIFICATE OF SERVICE**

I, Roxane Pada, declare that I am at least 18 years of age, and not a party to the above-entitled action. My business address is 333 Twin Dolphin Drive, Suite 400, Redwood Shores, California 94065, Telephone: (650) 590-0700.

On August 6, 2012, I caused to be served the following document(s):

**NON-PARTY GOOGLE INC.'S OBJECTIONS AND RESPONSES TO  
PLAINTIFF MOBILEMEDIA IDEAS LLC'S SUBPOENA TO PRODUCE  
DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF  
PREMISES IN A CIVIL ACTION**

by enclosing a true copy of (each of) said document(s) in (an) envelope(s), addressed as follows:

<input type="checkbox"/>	BY HAND DELIVERY: I caused the referenced document(s) to be taken via courier service and hand delivered:
<input checked="" type="checkbox"/>	BY U.S. FIRST CLASS MAIL: I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed, and with postage thereon fully prepaid, placed for collection and mailing to the following addresses on this date, following ordinary business practices, in the United States mail at Redwood Shores, California:
<input type="checkbox"/>	BY FACSIMILE: By transmitting via facsimile the document(s) listed above to the fax number(s) set forth above on this date before 5:00 p.m.
<input type="checkbox"/>	BY OVERNIGHT DELIVERY SERVICE: I caused such envelope to be delivered to the office of the addressee(s) by overnight delivery via Federal Express/United Parcel Service or by a similar overnight service.
<input checked="" type="checkbox"/>	BY EMAIL: By transmitting via email, the document(s) listed above to the email address(es) set forth above on this date before 5:00 p.m.

*Attorneys for Plaintiff MobileMedia Ideas LLC*

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*Attorneys for Defendant HTC Corporation and HTC America, Inc.*

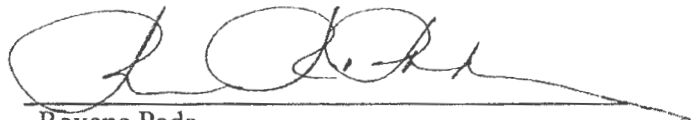
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Telephone: (409) 866-2800  
Facsimile: (409) 866-5789

I declare under penalty of perjury that the above is true and correct, and that this  
Certificate of Service was executed on August 6, 2012, at 333 Twin Dolphin Drive, Suite 400,  
Redwood Shores, CA 94065.

DATED this 6th, August 2012.

  
Roxane Pada

# EXHIBIT C

# DESMARAIS LLP

www.desmaraisllp.com

230 Park Avenue  
New York, NY 10169

Laurie N. Stempler  
Direct: 212-351-3423  
lstempler@desmaraisllp.com

P: 212-351-3400  
F: 212-351-3401

August 29, 2012

## VIA EMAIL

John O. Gilmore  
King & Spalding LLP  
333 Twin Dolphin Drive, Suite 400  
Redwood Shores, CA 94065

Re: *MobileMedia Ideas LLC v. HTC Corp. et al.*, 2:10-cv-112-JRG (E.D. Tex.)

Dear John:

Yesterday we met and conferred regarding MMI's subpoena served on Google, Inc. In light of our discussion, I have set forth below a set of exemplary documents to assist Google in targeting its search for documents responsive to MMI's subpoena. Though MMI believes that the subpoena document requests are relevant to the issues in the litigation, MMI is providing the following list to aid Google in locating and producing responsive documents.

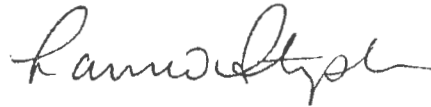
- Agreements governing the use of the Android Operating System ("Android OS") in HTC's products, such as Software Development Kit ("SDK") agreements, license agreements for use of Google's intellectual property, and agreements setting forth HTC's rights and restrictions in use or modification of the Android code.
- Documents sufficient to identify the primary persons responsible for negotiating agreements between Google and HTC governing the use of the Android OS in HTC's products, including records of meetings between Google and HTC regarding the use of the Android OS in HTC's phones.
- Documents sufficient to show instructions or technical support that Google provides to its customers, such as Android OS user manuals or other documents that accompany any agreements to license Android OS.
- Documents that Google provides to its commercial Android customers, like HTC, that accompany or support a license to the Android OS.
- Documents relating to any indemnification, joint or common defense, or cost-sharing agreements between Google and HTC relating to the accused products or claims of patent infringement in the above captioned litigation.

John O. Gilmore

- Marketing agreements between Google and HTC setting forth the terms for Google's use of HTC's phones in promoting its own products (i.e., the Android OS).
- Communications or documents concerning MMI, MPEG LA, and/or Tagivan, including any documents concerning litigation involving MMI.
- Non-public, proprietary Android OS code used in HTC's phones. Please indicate whether HTC is currently in possession of such non-public code.

MMI believes that the additional document requests in its subpoena require no further clarification. We are confident that the narrowed requests will reduce the burden on Google to search for and produce responsive documents. MMI reserves its rights under the subpoena to seek additional documents containing relevant, responsive information.

Best Regards,

A handwritten signature in black ink, appearing to read "Laurie N. Stempler". The signature is fluid and cursive, with a large initial "L" and "S".

Laurie N. Stempler

# **EXHIBIT D**

# KING & SPALDING

King & Spalding LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, CA 94065  
Tel: +1 650 590 0700  
Fax: +1 650 590 1900  
www.kslaw.com

John O. Gilmore  
Attorney  
Direct Dial: +1 650 590 0748  
jgilmore@kslaw.com

September 10, 2012

VIA E-MAIL

Laurie N. Stempler, Esq.  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169

**Re: MobileMedia Ideas LLC's subpoena to Google Inc.; *MobileMedia Ideas LLC v. HTC Corp. et al.*, U.S. District Court, E.D. Texas Case No. 2:10-cv-112-JRG**

Dear Laurie:

I write in reply to your August 29, 2012 letter, in which you set forth, on behalf of MobileMedia Ideas LLC ("MMI"), "a set of exemplary documents...to aid Google in locating and producing responsive documents."

Google Inc. ("Google") understands and takes seriously its obligations under a subpoena. But our concerns about MMI's subpoena remain. First and foremost, to date, MMI has not narrowed its original requests, which would have Google find, collect, review and produce swathes of documents from across its world-wide locations as if Google were a litigant. Rather than narrow the subpoena requests after our meet and confer on August 28, MMI provides examples within the unreasonably broad scope of the original requests. We also have concern that MMI has not explained in any detail the specific need for the requested documents; other than -- during our meet and confer -- making an omnibus reference to damages issues, and saying that HTC represents that their products are essentially Android-in-a-box. Nor has MMI satisfactorily explained why diligent discovery from HTC or public sources would not yield the same information. Accordingly, Google maintains each and all of its objections to MMI's subpoena.

Google maintains its objection to the subpoena in its entirety. During our meet and confer and in prior written objections, Google impressed on MMI what the U.S. District Court, N.D. Cal.

Laurie N. Stempler, Esq.  
Desmarais LLP  
Page 2

said in the case of another litigant channeling the Court's authority to subpoena non-party Google: "...non-parties should not be burdened in discovery to the same extent as the litigants themselves. Requests to non-parties should be narrowly drawn to meet specific needs for information. *Katz v. Batavia Marine & Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed. Cir. 1993)." *See Intermec Techs. Corp. v. Palm, Inc.*, Case No. C 09-80098 MISC WHA, "Order Quashing Subpoena Duces Tecum In Its Entirety And Granting Protective Order," Dkt. No. 9 (N.D. Cal. May 15, 2009). The Court also admonished counsel: "Counsel should not abuse that instrument [a subpoena] by subpoenaing unreasonably huge amounts of material and then using the unreasonable demand as leverage in follow-on negotiations." *Id.*

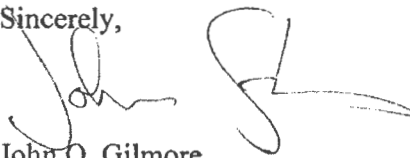
Passing an opportunity after our meet and confer to narrow the scope of the subpoena, and instead setting forth "exemplary documents" while keeping the onerous original requests in place, is just what the Court discouraged, above.

In addition to objecting to the subpoena in its entirety, Google objects, amongst other reasons, because MMI fails in its duty to avoid placing undue burden and expense on Google. *See* FED. R. CIV. P. 45(c)(1). As pointed out in the meet and confer and prior written objections, MMI's subpoena requests are for information that is available to MMI from party HTC or from public sources. Even the "exemplary documents" in your letter are largely available to MMI from party HTC or public sources. For example, MMI seeks agreements of various kinds between Google and HTC. These documents are available to MMI from party HTC. In another example, MMI seeks instructions/technical support/licensing documents that Google provides to Android customers. These documents are available to MMI from HTC or public sources: Android is a free, publically available, open-source product.

During our meet and confer, MMI did not provide any basis for belief that diligent effort on its part vis-à-vis HTC, or public sources, would not yield the information it seeks from non-party Google. MMI stated that it requested documents from HTC but provided no information that it sought relief from the Texas trial court to compel HTC to produce such documents, if HTC had not produced the documents already.

We continue to be available to discuss a narrower subpoena to Google. To advance discussion and arrive at a mutually satisfactory approach, we again point MMI to two of the Court's touchstone requirements for channeling its authority toward a non-party: subpoena requests should be narrowly drawn to specific needs, and avoid undue burden and expense on the non-party, Google.

Sincerely,



John O. Gilmore



# **EXHIBIT E**

# KING & SPALDING

King & Spalding LLP  
333 Twin Dolphin Drive  
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Tel: +1 650 590 0700  
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John O. Gilmore  
Attorney  
Direct Dial: +1 650 590 0748  
jgilmore@kslaw.com

October 8, 2012

VIA E-MAIL  
lstempler@desmaraisllp.com

Laurie N. Stempler, Esq.  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169

**Re: MobileMedia Ideas LLC's subpoena to Google Inc.; *MobileMedia Ideas LLC v. HTC Corp. et al.*, U.S. District Court, E.D. Texas Case No. 2:10-cv-112-JRG**

Dear Laurie:

On Thursday, September 27, 2012 we met-and-conferred twice regarding MMI's subpoena of non-party Google. I write to follow-up on our discussions.

Google offered to produce Android code documents that are publicly available if MMI agreed that this would satisfy Google's obligations under the subpoena. Google's offer was made in view of MMI's statement that "HTC has represented that Google's Android operating system contains the infringing capabilities and functions at issue in the action." MMI letter of September 21, 2012. Google's proposal would address MMI's request. Indeed, Google explained that the production would be what it produced in other Android-related patent litigations in which Google received a non-party subpoena. MMI did not agree to the offer.

Google therefore maintains its previously stated objections to the subpoena. MMI has neither narrowed the scope of its requests, nor explained why a burden is due on non-party Google to provide the same information that MMI has not sought to compel from party HTC.

Google's objections are grounded in law. Subpoena requests should be narrowly drawn to specific needs, and avoid undue burden. *Intermec Techs. Corp. v. Palm, Inc.*, Case No. C 09-80098 MISC WHA, "Order Quashing Subpoena Duces Tecum In Its Entirety And Granting Protective Order," Dkt. No. 9 at 5:1-4 (N.D. Cal. May 15, 2009). Moreover, under F.R.C.P. Rule 45(c)(1), MMI has a duty to avoid imposing undue burden or expense on a person subject to the subpoena. This especially applies where, as here, the subpoena respondent is a non-party. *Id*

Laurie N. Stempler, Esq.  
Desmarais LLP  
October 4, 2012  
Page 2

MMI has failed to articulate a specific need for more than Google's proposed production. And rather than narrow its subpoena requests, MMI's letter of August 29, 2012 instead set forth "a set of exemplary documents...to aid Google in locating and producing responsive documents." This does not change the breadth of the subpoena: MMI's original requests remain unaltered. The same letter states that "MMI reserves its rights under the subpoena to seek additional documents containing relevant, responsive information."

In *Intermec* the court states that it is the subpoena that channels the court's authority. *Id.* The court admonished counsel: "Counsel should not abuse that instrument by subpoenaing unreasonably huge amounts of material and then using their unreasonable demand as leverage in follow-on negotiations. *Id.*"

Indeed, MMI declined to formally withdraw its original subpoena requests and replace them with other narrower requests when asked during the meet and confer. MMI thus continues to expect non-party Google to collect, review, and produce documents from its world-wide operations, as if it were a litigant, when most if not all of the information is in the possession of party HTC. Compounding undue burden and expense on Google, MMI's overly broad requests would likely require production of confidential information, which would cause even more burden and expense because Google would have to first consult and seek approval from others.

If MMI believes that Google has relevant information that HTC has not provided in discovery, MMI has had many months to file a motion to compel HTC to produce the information. Yet, when asked, MMI has no explanation why it has not sought relief from the Texas court to obtain the sought-after information from HTC instead of Google.

In sum, Google's position is this: To be consistent with the law, MMI's subpoena requests should be narrowly drawn to specific needs, and avoid undue burden and expense on Google. *Id.* MMI's overly broad and burdensome requests have not been narrowed since they were served upon Google on July 23, 2012. And MMI has not in Texas moved to compel party HTC for the same information either before serving the subpoena upon Google, or since July 23. Unless MMI formally narrows its subpoena requests, Google will maintain its objections to the subpoena requests because the requests are unaltered.

Google nevertheless is willing to produce what it has produced in response to subpoenas in other Android-related litigations in which Google was a non-party but is unwilling to bear more burden and expense in MMI's case than in other cases related to the same Android technology. MMI has thus far failed to articulate a specific need for more than Google's proposed offer, and instead threatened to compel Google when it has not attempted to compel HTC to provide the same information.

Laurie N. Stempler, Esq.  
Desmarais LLP  
October 4, 2012  
Page 3

Google remains willing to discuss a mutually satisfactory approach. If, however, we are unable to reach agreement, Google is prepared to seek protection from the court. Google would seek lost monies and attorney's fees.

Sincerely,

A handwritten signature in black ink, appearing to read "JO Gilmore", written over a horizontal dashed line.

John O. Gilmore

# **EXHIBIT F**

## Laurie Stempler

---

**From:** Laurie Stempler  
**Sent:** Thursday, October 11, 2012 12:51 PM  
**To:** Dutta, Sanjeet (SDutta@KSLAW.com)  
**Subject:** MMI subpoena to Google

Dear Sanjeet,

Pursuant to our conversation, below is the list of documents that MMI seeks from Google:

- Product Development and License Agreements between Google and HTC since July 14, 2006
- Android Software Development Kit provided by Google to HTC since July 14, 2006
- Android Compatibility Test Suite (“CTS”) specifications from May 28, 2008 to present
- Android OS technical support or user manuals provided by Google to HTC (for versions 2.1 through 4.0.3)
- Documents sufficient to identify the person(s) responsible for marketing the Android OS operating system to mobile phone OEMs, such as HTC
- Joint defense agreement between HTC and Google
- Cost-sharing agreement between HTC and Google
- Indemnification agreement between HTC and Google
- Communications or documents concerning MMI, MPEG LA, or Tagivan
- HTC’s modifications and derivative works of the Android UI resource file that Google provides to HTC to develop its products

As I stated on the call, MMI is pursuing discovery related to the above documents from HTC in parallel with its subpoena of Google. MMI believes that the above list identifies the documents that it seeks with sufficient specificity such that Google can easily search its files and make a production to MMI. However, as an initial step to resolving this issue, we agreed that Google will review the above list and will confirm whether HTC is in possession of the requested documents. In the event that Google cannot confirm that one or more of the above documents or document categories are in HTC’s possession, please let us know when MMI can expect a production of those documents from Google.

I am of course available for further discussion as necessary. A prompt response is much appreciated.

Laurie

Laurie Stempler  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
P: (212) 351-3423  
F: (212) 351-3401  
[lstempler@desmaraisllp.com](mailto:lstempler@desmaraisllp.com)

# **EXHIBIT G**

# **EXHIBIT N**



Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION  
MOBILEMEDIA IDEAS, LLC, )(  
)( CIVIL DOCKET NO.  
)( 2:10-CV-112-JRG  
VS. )( MARSHALL, TEXAS  
)(  
)( APRIL 18, 2012  
HTC CORPORATION, ET AL. )( 9:30 A.M.  
MOTION TO TRANSFER VENUE HEARING  
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: (See Attorney Sign-In Sheet)

FOR THE DEFENDANTS: (See Attorney Sign-In Sheet)

COURT REPORTER: MS. SHELLY HOLMES, CSR  
Deputy Official Court Reporter  
2593 Myrtle Road  
Diana, Texas 75640  
(903) 663-5082

(Proceedings recorded by mechanical stenography,  
transcript produced on a CAT system.)

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Page 3

1 COURT SECURITY OFFICER: All rise.  
2 THE COURT: Please be seated.  
3 All right. This is the time set for oral  
4 argument on a motion to transfer venue in the  
5 MobileMedia Ideas, LLC, versus HTC and HTC America, Case  
6 2:10-CV-112.  
7 For the record, MobileMedia Ideas, which I  
8 may call MMI, filed this motion originally in March of  
9 2010. In October of 2010 -- filed the case in March of  
10 2010, filed the motion in October of 2010, and in  
11 September 2011, Judge Ward denied the motion indicating  
12 that he didn't have enough information to make a  
13 complete decision, particularly asking why HTC ended its  
14 operation in Houston after the action was filed and why  
15 HTC America moved its incorporation from Texas to  
16 Washington while the motion was pending and why he was  
17 not authorized to consider HTC's presence in Texas at  
18 the beginning of the lawsuit as a part of the transfer  
19 issue.  
20 He dismissed or denied, rather, the motion  
21 to transfer without prejudice. The renewed motion  
22 that's before the Court today was filed in December of  
23 2011 urging the Court to transfer the case to the  
24 Northern District of California.  
25 Claim construction is set for July the 10th

Page 4

1 of this year with jury selection and trial on the merits  
2 approximately 12 months or so thereafter.  
3 With that background, the Court will call  
4 for announcements at this time. Announcements from the  
5 movant, first, please.  
6 MR. HEARTFIELD: Good morning, Your Honor,  
7 Thad Heartfield. I'm here for HTC Defendants, that's  
8 HTC Corporation and HTC America, Inc., and we generally  
9 refer to them both as HTC.  
10 With me is Yar Chaikovsky. He'll be making  
11 the presentation on behalf of HTC, and also with us is  
12 David Beckwith, and we are ready.  
13 THE COURT: Thank you, Mr. Heartfield.  
14 For the respondent?  
15 MS. TRULOVE: Yes, Your Honor, Jennifer  
16 Truelove with McKool Smith for Plaintiff MMI in this  
17 case. With me today is Paul Bondor.  
18 MR. BONDOR: Good morning, Your Honor.  
19 MS. TRULOVE: And also Jonas McDavit.  
20 MR. MCDAVIT: Good morning, Your Honor.  
21 MS. TRULOVE: Mr. Bondor will be providing  
22 the Court a response to HTC's motion.  
23 THE COURT: All right. If there's not  
24 anything further, we'll hear from the movant at this  
25 time.

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1 correct?

2 MR. CHAIKOVSKY: That is correct.

3 THE COURT: And nine of them are in Finland,

4 one of them is in the U. K., and nine in Japan. So when

5 we talk about those three, those are the three that are

6 in California, but those are not the only three?

7 MR. CHAIKOVSKY: That's correct.

8 THE COURT: Okay.

9 MR. CHAIKOVSKY: Your Honor, I will -- I

10 will address the other ones in a few slides later.

11 THE COURT: Okay. That's fine.

12 MR. CHAIKOVSKY: But, you're right, these

13 are the three that we've identified so far that are in

14 the Northern District -- not in California, in the

15 Northern District of California. There are others

16 actually in California. These are three that are in the

17 Northern District.

18 THE COURT: Understood.

19 MR. CHAIKOVSKY: Prosecuting attorneys, we

20 identify two in the Northern District of California.

21 That's Ian Hardcastle and John Schipper that are in the

22 Northern District of California.

23 We've already discussed Google, who

24 developed the Android operating system, and, in fact, I

25 can show Your Honor if you wanted to the code

Page 18

1 development of the Google Nexus One, one of the 14

2 accused products that they have accused. They cannot

3 say that we developed that product by ourselves. You

4 know, as is shown in our materials that we've provided

5 to the Court, you know, these are products that were

6 co-developed by HTC and Google.

7 If we can go to the ELMO, please.

8 So this is for the Google Nexus One, as you

9 can see right here, Your Honor, and, again, we have HTC

10 and Google are proud to present the Nexus One featuring

11 the latest incarnation of Android. And down here,

12 overview, HTC is excited to have worked with Google in

13 the development of the Nexus One.

14 And, again, that's one of the 14 products.

15 I could go on with respect to some of the other

16 products, but that's just addressing one -- one of those

17 products.

18 In addition, our declarant is John Maron,

19 who as I said, is the only person who they've decided to

20 depose in this case, has stated or declared, excuse me,

21 Your Honor, that in Paragraph 5 of his declaration that

22 was submitted to the Court in January of 2011, that MMI

23 incorrectly suggests that the Google Android operating

24 system, used with the Nexus One, Hero, Droid, T-Mobile,

25 and they've added other products to this, T-Mobile G1,

Page 19

1 is not relevant to the dispute. HTC markets and

2 advertises the fact that these phones utilize

3 Google-developed operating system feature because they

4 are desired by users. And so it goes on to talk about

5 the Android operating system, the Android development

6 community, and the advertised develop features like

7 Gmail, Google Talk, and Google Calendar all contribute

8 to the desirability of the phones in question and also

9 relate to the issues that -- of infringement that they

10 have accused on the various devices, which I -- I can go

11 after, you know, one-by-one here.

12 I will show one other declaration on the

13 ELMO before we move on on this issue of Google since

14 Your Honor showed some interest, and we wonder ourselves

15 why they haven't sought information from Google, is this

16 is a declaration of Brock Wilson in support of our

17 motion to transfer. This was provided to the Court in

18 June of 2011. The date is up here. And in this, we

19 point out in their infringement charts, which -- which

20 are pretty cursory infringement charts if Your Honor

21 were to take a look at them, they're an exhibit to our

22 motion, but even in these cursory infringement charts

23 that they provided to the Court, they point out that for

24 infringement of the '796 patent one takes a look at a

25 screenshot of the Nexus One, Google, and by gosh, we got

Page 20

1 to look at the Google user guide for the myTouch 3G

2 product. We must look at the Google user guide, not the

3 HTC user guide.

4 With respect to the '075 patent that they've

5 accused, the myTouch 3G, similar, look at the Google

6 user guide on each instance of their infringement

7 contentions on Page 5, 7, and 10.

8 On the '078 patent, the myTouch 3G again, we

9 have the Google user guide, and, again, citations to

10 Nexus One Google, Nexus One -- and I showed you the

11 joint development of the Nexus One Google. This is very

12 different than the RIM or Apple situations.

13 Again, continuing -- going on here, we -- we

14 have additional Google citations. For the '170 patent,

15 they also cite to the Google user guide, and also for

16 the '012 patent, they talk about having myTouch 3G

17 running Android Version 2.2 or higher can save images.

18 So the point here is with respect to using

19 these features that are accused, these features don't

20 exist without the Android operating system, the

21 Google-developed operating system and technology. We

22 may have, that is, HTC may have some information about

23 the operating system. We do not have all information

24 with respect to the operating system unlike the other

25 two entities they've sued, RIM and Apple, who do have

Page 21

1 all of that in their possession, custody, or control.  
 2 And so I ask -- they should be seeking some  
 3 information from Google themselves to prove up their  
 4 case. Beyond that, we may be defending, with respect to  
 5 having witnesses from Google come, such as Mr. Rubin and  
 6 Mr. Ong to trial, as to why our products do not infringe  
 7 these patents.  
 8 If we could go back to the PowerPoint, I  
 9 apologize.  
 10 So this slide, Slide 7, is further detail on  
 11 how Google's witnesses and physical evidence are located  
 12 in the Northern District of California. We have the 14  
 13 accused devices that run Android OS. There's 14 --  
 14 there's others that run Windows Mobile or WinMo, which  
 15 is made by Microsoft, but there are 14 devices they now  
 16 accused that run on Android.  
 17 As -- as provided in the declarations of Ong  
 18 and Rubin, the Android OS was researched, designed, and  
 19 tested in the Northern District of California. We've  
 20 identified Google as having relevant knowledge in our  
 21 initial disclosures. Those were provided, you know,  
 22 quite some time ago in two thousand and probably 10,  
 23 soon after the case got off to actually a start --  
 24 excuse me, 2011.  
 25 Obviously, the Northern District of

Page 22

1 California is home to Google's primary business  
 2 documents and records relating to smartphones that use  
 3 the Android operating system. It's home to its  
 4 employees and team leaders responsible, and that's all  
 5 in the declarations we've provided with our motion, and  
 6 they contribute to the desirability and are unmodified,  
 7 the HTC, in some accused devices.  
 8 So we don't even -- they may come up here,  
 9 Your Honor, and talk about we have HTC Sense. It's a  
 10 software user interface that we put on top of the Google  
 11 operating system, on some devices, not all devices.  
 12 For example, the Google Nexus One, we do not. The  
 13 myTouch 3G that I just showed you, many of their  
 14 infringement contentions, we do not put the HTC Sense on  
 15 there. So they've accused devices that don't even have  
 16 our user interface modifications, you know, where we  
 17 might make some changes to how it looks and feels on the  
 18 screen for the user.  
 19 We have some devices where we do that, but  
 20 most of their patents don't go to the user interface.  
 21 They go to the core of how the software runs on these  
 22 devices behind them. There might be a user interface  
 23 action between the user and the input, but then the  
 24 actual action that transpires by the device is done by  
 25 the operating system that runs this handset. You know,

Page 23

1 just like a Microsoft Windows operating system runs many  
 2 computers, it's the operating system that's deciding to  
 3 do this then with the chips behind this, which are  
 4 Qualcomm chips that are actually running it. Again,  
 5 it's very different.  
 6 Where RIM makes their own operating system,  
 7 and that case was transferred, by the way, to the  
 8 Northern District of Texas, again, Apple makes their own  
 9 operating system. We do not. And they've accused  
 10 devices where we have unmodified products, because I  
 11 know they're going to get up here and say, oh, they make  
 12 the HTC Sense. That's all important. And even with  
 13 those products where we make HTC Sense, it's just a user  
 14 interface, and it does not go to the heart of their  
 15 patents. Their patents aren't sitting here and going  
 16 we're just covering a user interface in and of itself.  
 17 Besides the ease of access to proof on  
 18 Google, the ease of access to proof clearly favors  
 19 transfer. Where is HTC's evidence? Were are the  
 20 9 million pages of documents we've produced so far?  
 21 They were from Taiwan, Washington State, Seattle, where  
 22 our U.S. headquarters is located, and Northern  
 23 California. Our design, industrial design, actually the  
 24 look and feel of our devices is in San Francisco,  
 25 California. Those are all more convenient to the

Page 24

1 Northern District of Texas -- the Northern District of  
 2 California than the Eastern District of Texas.  
 3 We have not shown -- seen anything, and we  
 4 have two rounds of briefing, discovery, depositions of  
 5 our -- our -- our witness twice, interrogatories  
 6 verified that have been responded to that we have  
 7 maintained any physical evidence in the Eastern District  
 8 of Texas.  
 9 Microsoft physical evidence is located in  
 10 the state of Washington, also actually in the Northern  
 11 District of California. They have a facility in  
 12 Mountain View themselves, but that is more convenient  
 13 than the Northern District of California -- than the  
 14 Eastern District of Texas.  
 15 Microsoft's important -- just like I've been  
 16 pointing out, Google makes the OS. On other accused  
 17 devices, Microsoft makes the operating system for our  
 18 other devices. HTC does not make an operating system.  
 19 So we have the two major operating system manufacturers.  
 20 Most of our devices are Android, so, therefore, Google,  
 21 but we also have Microsoft there in Seattle or Bellevue,  
 22 Washington.  
 23 And the chips that run almost all of our  
 24 products, Qualcomm processors, that physical evidence is  
 25 in San Diego where Qualcomm is headquartered. They also

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1 ruling out to the parties as quickly as possible.  
2 Thank you, counsel.  
3 MR. BONDOR: Thank you.  
4 MR. CHAIKOVSKY: Thank you.  
5 COURT SECURITY OFFICER: All rise.  
6 (Recess.)  
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1 CERTIFICATION  
2  
3 I HEREBY CERTIFY that the foregoing is a  
4 true and correct transcript from the stenographic notes  
5 of the proceedings in the above-entitled matter to the  
6 best of my ability.  
7  
8  
9  
10 SHELLY HOLMES Date  
11 Deputy Official Reporter  
12 State of Texas No.: 7804  
13 Expiration Date: 12/31/12  
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# EXHIBIT H

# DESMARAIS<sup>LLP</sup>

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New York, NY 10169

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P: 212-351-3400  
F: 212-351-3401

September 21, 2012

## VIA EMAIL

John O. Gilmore  
King & Spalding LLP  
333 Twin Dolphin Drive, Suite 400  
Redwood Shores, CA 94065

Re: *MobileMedia Ideas LLC v. HTC Corp. et al.*, 2:10-cv-112-JRG (E.D. Tex.)

Dear John:

I write in response to your letter of September 10 regarding Google's objections to the document requests set forth in MMI's subpoena. We disagree with your assertions and with your characterization of MMI's attempts to reduce the burden on Google to comply with the July 20 subpoena.

MMI has made significant effort to narrow the requests in its July 20 subpoena. We met and conferred on August 28 to convey to Google the nature of the documents that MMI seeks and followed our conversation with a letter setting forth a list of those documents. Our conference was intended to help Google locate responsive documents and confirm whether HTC is in possession of any non-public Android OS code used in the accused products. We thus fail to understand your September 10 letter in light of those narrowed requests.

That HTC may also possess materials responsive to the subpoena does not absolve Google of its responsibility under the Federal Rules to produce responsive documents. MMI has accused several products running Google's Android OS of infringement. Indeed, HTC has represented that Google's Android operating system contains the infringing capabilities and functions at issue in this action. The documents that MMI has requested are relevant to how the accused products infringe the patents-in-suit and the value associated with the relevant features of the accused products.

We are hopeful that we can reach an understanding without moving to compel discovery from Google. That being said, we are prepared to seek relief from the court if Google maintains its objections despite MMI's efforts to provide specific examples of responsive documents in Google's possession, custody, and control.

Please confirm your availability to meet and confer next Tuesday at 2:00 PM EST to further discuss and attempt to resolve the issues related to the subpoena.

John O. Gilmore

Regards,

*/s/Laurie Stempler*  
Laurie Stempler

# **EXHIBIT I**



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MOBILEMEDIA IDEAS LLC,

Plaintiff,

v.

HTC CORPORATION and  
HTC AMERICA, INC.,

Defendants.

§  
§  
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§  
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§  
§  
§  
§

CIVIL ACTION NO. 2:10-cv-112(TJW)

DOCKET CONTROL ORDER

In accordance with the case status conference held herein on the 16th day of February, 2011, it is hereby

**ORDERED** that the following schedule of deadlines is in effect until further order of this court:

- May 6, 2013 Jury Selection - 9:00 a.m. in **Marshall, Texas**
- April 22, 2013 Pretrial Conference 9:00 a.m. in **Marshall, Texas**
- April 15, 2013 Responses to Motions in Limine
- April 1, 2013 Joint Pretrial Order, Joint Proposed Jury Instructions and Form of the Verdict.
- April 1, 2013 **Motions in *Limine* Due**

The parties are ordered to **meet and confer** on their respective motions in limine and advise the court of any agreements in this regard by 1:00 p.m. three (3) business days before the pretrial conference. The parties shall limit their motions in limine to those issues which, if improperly introduced into the trial of the case would be so prejudicial that the court could not alleviate the prejudice with appropriate instruction(s).

- April 1, 2013 **Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings.** If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a

notice with the Court and e-mail the Court Reporter, Susan Simmons, at [lssimmons@yahoo.com](mailto:lssimmons@yahoo.com) .

March 29, 2013	Objections to Deposition Designations and Exhibits
March 18, 2013	Response to Dispositive Motions (including <i>Daubert</i> motions) <sup>1</sup> <b>Responses to dispositive motions filed prior to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV-7(e). Motions for Summary Judgment shall comply with Local Rule CV56.</b>
March 15, 2013	Rebuttal or counter deposition designations
March 1, 2013	Pre-Trial Disclosures (deposition designations and exhibits)
March 1, 2013	Identify rebuttal trial witnesses
February 15, 2013	For Filing Dispositive Motions and any other motions that may require a hearing (including <i>Daubert</i> motions)
February 1, 2013	Identify trial witnesses
January 31, 2013	Second mediation to be completed
November 30, 2012	Discovery Deadline
October 15, 2012 or 60 days after claim construction ruling (provisional or final), whichever later	Designate Rebuttal Expert Witnesses other than claims construction Expert witness report due Refer to Discovery Order for required information.
September 14, 2012 or 30 days after claim construction ruling, (provisional or final), whichever later	Party with the burden of proof to designate Expert Witnesses other than claims construction Expert witness report due Refer to Discovery Order for required information.
September 14, 2012	Comply with P.R. 3-7.

---

<sup>1</sup> The parties are directed to Local Rule CV-7(d), which provides in part that “[i]n the event a party fails to oppose a motion in the manner prescribed herein the court will assume that the party has no opposition.” Local Rule CV-7(e) provides that a party opposing a motion has **14 days, in addition to any added time permitted under Fed. R. Civ. P. 6(e)**, in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision.

July 10, 2012	Claim construction hearing 9:00 a.m., Marshall, Texas.
June 29, 2012	Comply with P.R. 4-5(d).
June 19, 2012	Comply with P.R. 4-5(c).
May 29, 2012	Comply with P.R. 4-5(b).
May 1, 2012	Comply with P.R. 4-5(a).
April 16, 2012	Discovery deadline—claims construction issues
March 19, 2012	Comply with P.R. 4-3.
February 24, 2012	Comply with P.R. 4-2.
January 20, 2012	Comply with P.R. 4-1.
December 2, 2011	Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).
November 30, 2011	First mediation to be completed. A mediator will be appointed in this cause. The parties are to submit the name and address of an agreed mediator within 30 days from the entry of this Order. Mediation shall be conducted in accordance with the Court-Annexed Mediation Plan. See Appendix H to Local Rules.
November 15, 2011	Respond to Amended Pleadings
November 1, 2011	Amend Pleadings <b>(It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings except to the extent the amendment seeks to add a new patent in suit. It is necessary to file a Motion for Leave to Amend after the amended pleadings date set forth herein.)</b>
July 1, 2011	Join Additional Parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.  Defendant shall assert any counterclaims. After this deadline, leave of Court must be obtained to assert any counterclaims.  Add any inequitable conduct allegations to the pleadings. It is not necessary to file a motion for leave to add

inequitable conduct allegations to the pleadings prior to this date. Thereafter, it is necessary to obtain leave of Court to add inequitable conduct allegations to the pleadings.

July 1, 2011

Comply with P.R. 3-3 and 3-4.

May 4, 2011

Comply with P.R. 3-1 and 3-2.

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next business day.

#### **LIMITATIONS ON MOTIONS PRACTICE**

**Summary Judgment Motions:** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief in each of those matters shall be no longer than five (5) pages and shall be filed with the Court no later than sixty (60) days before the deadline for filing summary judgment motions. Answering letter briefs in each of those matters shall be no longer than five (5) pages and filed with the Court no later than fourteen (14) days thereafter. Reply briefs in each of those matters shall be no longer than three (3) pages and filed with the Court no later than five (5) days thereafter. The Court may decide the question on the submissions or hold a hearing or telephone conference to hear arguments and to determine whether the filing of any motion will be permitted.

**Motions to Strike Expert Testimony/Daubert Motions:** Prior to filing any Motions to Strike or Daubert Motions, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief in each of those matters shall be no longer than three (3) pages and shall be filed with the Court no later than sixty (60) days before the deadline for filing Motions to Strike or Daubert Motions. Answering letter briefs in each of those matters shall be no longer than three (3) pages and filed with the Court no later than fourteen (14) days thereafter. Reply briefs in each of those matters shall be no longer than two (2) pages and filed with the Court no later than five (5) days thereafter. The Court may hold a hearing or telephone conference to hear arguments and to determine whether the filing of any motion will be permitted.

For all of the above mentioned motions, the letter briefs shall be filed without exhibits. Any requests to submit letter briefs after the deadlines outlined above must show good cause.

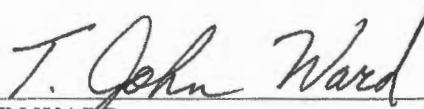
#### **OTHER LIMITATIONS**

1. All depositions to be read into evidence as part of the parties' case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence.

2. The Court will refuse to entertain any motion to compel discovery filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Eastern District of Texas Local Rule CV-7(h).
3. The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:
  - (a) The fact that there are motions for summary judgment or motions to dismiss pending;
  - (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**IT IS SO ORDERED.**

SIGNED this 17th day of March, 2011.



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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE