

1 Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory discovery
2 tactics will be cost-shifting considerations.

3 3. A party's meaningful compliance with this Order and efforts to promote efficiency
4 and reduce costs will be considered in cost-shifting determinations.

5 4. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
6 shall not include metadata absent a showing of good cause or agreement of the parties. However,
7 fields showing the date and time that the document was sent and received, as well as the complete
8 distribution list, shall generally be included in the production.

9 5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
10 shall not include email or other forms of electronic correspondence (collectively "email"). To
11 obtain email parties must propound specific email production requests.

12 6. Email production requests, if any, shall only be propounded for specific issues,
13 rather than general discovery of a product or business.

14 7. By November 8, 2013, each party will provide to the other party a list of fifteen e-
15 mail custodians affiliated with the party (which may include current and/or former employees)
16 who the party believes to be relevant e-mail custodians in view of the pleaded claims and
17 defenses and discovery disclosures exchanged to date. The list of custodians shall include the
18 names and titles of each custodian, as well as dates of employment. Defendant's list of
19 custodians shall also include an identification of the portion(s) of Siri on which the custodian has
20 worked. Plaintiff's list of custodians shall also include each custodian's relationship to the
21 litigation. Email production requests, if any, shall be phased after November 29, 2013.

22 8. Email production requests, if any, shall identify the custodian, search terms, and
23 time frame. The parties shall cooperate to identify the proper custodians, proper search terms and
24 proper timeframe.

25 9. Each requesting party shall limit any email production requests to a total of seven
26 custodians per producing party for all such requests. The parties may jointly agree to modify this
27 limit without the Court's leave. The Court shall consider contested requests for up to five
28 additional custodians per producing party, upon showing a distinct need based on the size,

1 complexity, and issues of this specific case. Should a party serve email production requests for
2 additional custodians beyond the limits agreed to by the parties or granted by the Court pursuant
3 to this paragraph, the requesting party shall bear all reasonable costs caused by such additional
4 discovery.

5 10. Each requesting party shall limit its email production requests to a total of ten
6 search terms per custodian per party. The parties may jointly agree to modify this limit without
7 the Court's leave. The Court shall consider contested requests for up to five additional search
8 terms per custodian, upon showing a distinct need based on the size, complexity, and issues of
9 this specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate
10 terms, such as the producing company's name or its product name, are inappropriate unless
11 combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A
12 conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows
13 the search and shall count as a single search term. A disjunctive combination of multiple words or
14 phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall
15 count as a separate search term unless they are variants of the same word. Use of narrowing
16 search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be
17 considered when determining whether to shift costs for disproportionate discovery. Should a party
18 serve email production requests with search terms beyond the limits agreed to by the parties or
19 granted by the Court pursuant to this paragraph, the requesting party shall bear all reasonable
20 costs caused by such additional discovery.

21 11. The receiving party shall not use ESI that the producing party asserts is attorney-
22 client privileged or work product protected to challenge the privilege or protection.

23 12. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
24 privileged or work product protected ESI is not a waiver in the pending case or in any other
25 federal or state proceeding.

26 13. The mere production of ESI in a litigation as part of a mass production shall not
27 itself constitute a waiver for any purpose.

28 14. The parties will provide documents and ESI in one of the following formats: (1)

1 native format with appropriate accompanying Concordance or Summation load files; (2) in single
2 page TIFF format with appropriate accompanying Concordance or Summation load files and
3 extracted text or OCR text files; or (3) in PDFs. For documents which already exist in PDF
4 format prior to production (i.e., which the producing party receives from a client or third party in
5 PDF format), the producing party may provide them in that same PDF format, whether searchable
6 or non-searchable. For documents converted to PDF format prior to production, the producing
7 party shall make reasonable efforts to convert to searchable PDF. The parties, however, reserve
8 the right to request the production of any particular ESI document in its native format. The parties
9 agree to meet and confer to attempt to accommodate such requests. The Concordance or
10 Summation load files will contain the custodian of the document and the Bates number of the
11 document. If documents are produced as PDFs, the PDFs will be accompanied with Bates
12 numbers and identification of the custodian for each document. The load files will contain
13 beginning and ending Bates numbers, To/From/CC/ email fields, and any parent email to child
14 attachment relationship, to the extent the native file contains the email fields and parent/child
15 relationship.

16 15. To the extent either party believes, on a case-by-case basis, that documents should
17 be produced in an alternative format, the parties will meet and confer in good faith concerning
18 such alternative production arrangements. The parties will also meet and confer in good faith to
19 ensure that the format of each party's production is compatible with the technical requirements of
20 the receiving party's document management system and the parties agree to conduct additional
21 meet and confer conferences, as necessary, to attempt to reach further agreement on electronic
22 document production.

23 16. Locations That Will Not Be Searched for Responsive Documents. The following
24 locations will not be searched under any circumstances, and as such need not be preserved:
25 information stored on personal digital assistants, mobile phones, voicemail systems, instant
26 messaging systems, and automated disaster recovery backup systems and/or disaster recovery
27 backup tapes. In addition, the parties agree that only sent and received custodial emails will be
28 searched. Notwithstanding the foregoing, the parties agree that Responsive Documents that a

1 Custodian indicates are stored on an archival storage medium that the Custodian can readily
2 identify and locate, that cannot be located in any other repository of information, and that can
3 reasonably be searched, will be searched. In addition, nothing in this paragraph shall limit a
4 receiving party's right to request from a producing party more information about the nature of and
5 burden associated with obtaining documents from a particular location. The parties further
6 recognize their obligations to preserve any potentially relevant sources of data, whether live or in
7 archival form, for purposes of this litigation.

8 17. Excluded File Types and Extensions: In addition to email, as discussed above, a
9 party is generally not required to search, review, collect, or produce the following categories of
10 electronic files except when those files are relevant and attached or identified in a text file, or
11 specifically requested by a party (subject to any appropriate objections that may be lodged):

12 a. system or executable files (.exe, .dll, etc.);

13 b. audio, video, or audio-visual information, including telephonic recordings or
14 voicemail (e.g., .wav, .mp3, .avi, .swf, etc.), unless the responsiveness of specific files is made
15 known to counsel during search, review, collection, or production of other responsive
16 information;

17 c. unreadable or corrupt files;

18 d. data from BlackBerry™ or other smartphone devices where the producing party
19 believes based on its standard practices that the information contained therein is expected to be
20 duplicative of other sources (e.g., other email systems);

21 e. materials retained primarily for backup or disaster recovery purposes;

22 f. "embedded" materials (e.g., Microsoft Office files embedded within Microsoft
23 Office files such as Word and PowerPoint) not including e-mail attachments, subject to the
24 requesting party's right to request specific "embedded" material in specific produced documents;
25 and

26 g. any other file types subsequently agreed by the parties.
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1 Dated: October 30, 2013

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Attorneys for Defendant Apple Inc.

23 ATTESTATION: I, Timothy S. Teter, am the ECF User whose identification and
24 password are being used to file this Joint Proposed E-Discovery Order for Apple Inc. and Potter
25 Voice Technologies, Inc. I hereby attest that Jennifer C. Lu has concurred in this filing.

/s/ Timothy S. Teter

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IT IS SO ORDERED.

Dated: 10/30/2013


United States District Judge Wilken