

1 [SEE SIGNATURE BLOCK FOR COUNSEL]

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

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**GOOGLE INC., AOL LLC, YAHOO!
INC., IAC SEARCH & MEDIA, INC., and
LYCOS, INC.**

Case No. CV08-03172RMW

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Plaintiffs

**DEFENDANTS' MOTION TO QUASH
PLAINTIFFS' 30(b)(6) NOTICE OF
DEPOSITION AND FOR PROTECTION**

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v.

Hearing Date: February 24, 2009

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**L. DANIEL EGGER, SOFTWARE
RIGHTS ARCHIVE, LLC, and SITE
TECHNOLOGIES, INC.**

Hearing Time: 10:00 am

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Defendants

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TO THE HONORABLE COURT:

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1. Defendants L. Daniel Egger and Software Rights Archive, LLC ("SRA") move to quash Plaintiffs' Notice of Deposition of SRA Pursuant to Rule 30(b)(6) and for protection. This motion is set for hearing on February 24, 2009 at 10:00 am.

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2. Egger and SRA request this Court to quash the proposed deposition of SRA because that deposition serves no discovery purpose whatsoever; all that Plaintiffs will "discover" is what Plaintiffs already know and have already admitted: that SRA had no contacts with California whatsoever prior to the litigation.

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3. At the outset, this case does not even belong in this Court. This action is

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1 duplicative of a first-filed case that Defendants filed in the Eastern District of Texas eight
2 months before Plaintiffs filed this case. *See Software Rights Archive, LLC v. Google, Inc., et al*,
3 Case No. 2:07-CV-511-TJW-CE, filed November 21, 2007. This case therefore should be
4 dismissed under the first-to-file rule. This Court also lacks subject matter jurisdiction over
5 Plaintiffs' claims against Site Technologies, Inc. and Daniel Egger, because neither of those
6 parties owns the patents-in-suit. Finally, this Court lacks personal jurisdiction over SRA and
7 Egger, because neither has established minimum contacts with California. Defendants have filed
8 a Motion to Dismiss, Transfer or Stay, which is set for hearing in this Court on February 27,
9 2009.

10 4. Plaintiffs' Rule 30(b)(6) notice also flies in the face of Rule 26. Rule 26 states:
11 "[T]he court must limit the . . . extent of discovery . . . if it determines that . . . the burden or
12 expense of the proposed discovery outweighs its likely benefit . . ." Fed. R. Civ. P. 26(b)(2)(C).
13 The proposed deposition falls squarely within this rule. There is simply no benefit to be gained
14 from the proposed deposition of SRA. The issue pending before this Court, to which Plaintiffs'
15 deposition is purportedly directed, is whether SRA possesses sufficient contacts with California
16 to give rise to personal jurisdiction in this Court. But Plaintiffs have already admitted the simple
17 truth, which is that SRA has no contacts with California whatsoever. Plaintiffs have admitted
18 that SRA is neither incorporated nor based in California. (Compl. ¶ 8.) And Plaintiffs have
19 admitted that SRA has no business activities in California: "As of November 21, 2007,
20 Defendant SRA's sole business activity has been to prosecute an action [in Texas] against
21 Plaintiffs for alleged infringement of the Patents-in-Suit." (Compl. ¶ 33.) In short, Plaintiffs'
22 own admissions reveal that their requested deposition will be useless—and that Plaintiffs know
23 it.¹ The simple truth is that SRA had no contacts with California before it filed suit in Texas, and
24 any subsequent contacts occurred only in the course of pursuing the Texas action, and then only
25 because some of the infringing parties have California domiciles. Plaintiffs know all this.

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27 ¹ By contrast, Defendants have not opposed Plaintiffs' request to depose Daniel Egger on his
28 contacts with California, although Defendants believe that deposition will confirm the lack of
minimum contacts sufficient to establish personal jurisdiction over him.

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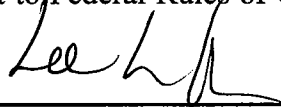
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record pursuant to Federal Rules of Civil Procedure on this the 20th day of January, 2009.



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