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U.S. LP and MobileStar Technologies LLC

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 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 OAKLAND DIVISION

13 GOOGLE INC.,
 14 Plaintiff,
 15 v.
 16 ROCKSTAR CONSORTIUM US LP and
 MOBILESTAR TECHNOLOGIES LLC,
 17 Defendants.

CASE NO. 13-cv-5933-CW

**JOINT CASE MANAGEMENT
STATEMENT**

Date: Wednesday, May 14, 2014
 Time: 2:00 p.m.
 Courtroom: Courtroom 2, Fourth Floor
 Judge: Hon. C.J. Claudia Wilken

21 Under Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, the Standing Order for
 22 All Judges of the Northern District of California for Contents of a Joint Case Management
 23 Statement effective July 1, 2011, and this Court’s Case Management Scheduling Order for
 24 Reassigned Civil Case (Docket No. 14), Plaintiff Google Inc. (“Google”) and Defendants Rockstar
 25 Consortium US LP and MobileStar Technologies LLC (collectively “Defendants”) submit this
 26 Joint Case Management Statement.

1 **1. Jurisdiction & Service**

2 **a. Joint Statement**

3 No parties remain to be served. The parties agree that this Court has subject matter
4 jurisdiction over this case under 28 U.S.C. §§ 1331, 1338(a), and 2201(a).

5 **b. Google's Statement**

6 This Court has personal jurisdiction over Rockstar, and venue is proper in this District, for
7 the reasons explained in the Court's Order of April 17, 2014, denying Rockstar's Motion to
8 Dismiss or, in the Alternative, to Transfer. (Docket No. 58.)

9 **c. Defendants' Statement**

10 For the reasons explained in Defendants' Motion to Dismiss (Docket No. 19, Attachment
11 4) and subsequent reply (Docket No. 39, Attachment 4), which the Court denied (Docket No. 58),
12 Defendants contend that the Court does not have personal jurisdiction over Rockstar or
13 MobileStar, and that venue is not proper in this District.

14 **2. Facts**

15 On December 23, 2013, Google filed this action in the Northern District of California
16 seeking a declaration that "Google's Android platform" and the Nexus 5, Nexus 7, and Nexus 10
17 devices do not directly or indirectly infringe United States Patent Nos. 5,838,551, 6,037,937,
18 6,128,298, 6,333,973, 6,463,131, 6,765,591, and 6,937,572 (collectively, the "patents-in-suit").
19 (Docket No. 1.) On January 23, 2014, Defendants filed a motion.¹ On February 7, 2014, Google
20 filed an Opposition to Defendants' Motion. (Docket No. 30, Attachment 4.) On February 13,
21 2014, Defendants filed a reply to Google's opposition to Defendants' Motion. (Docket No. 39,

22 _____
23 ¹ (Docket No. 19, Attachment 4.) Google and Defendants dispute the scope of Defendants'
24 motion. Google contends that Defendants moved to dismiss this action or, in the alternative, to
25 transfer it to the Eastern District of Texas, and that the Court ruled on both motions. (Docket No.
26 58 at 23-28.) Defendants contend that their motion only raised venue under 28 U.S.C. § 1391.
27 (See Docket No. 20 at 3, 16). Defendants contend they have not yet filed a motion to transfer
under 28 U.S.C. § 1404 and have not yet asked the Court to stay this action pending resolution of
Defendants' related Texas cases. To avoid repeating this dispute throughout this joint submission,
in joint portions of this statement the parties will refer to "Defendants' Motion."

28

1 Attachment 4.) The Court held a hearing on Defendants’ Motion on March 13, 2014. On April
2 17, 2014, the Court denied Defendants’ Motion. (Docket No. 58.)

3 **3. Legal Issues**

4 **a. Joint Statement**

5 The parties anticipate that they will dispute the following legal issues:

- 6 • Construction of any disputed patent claim terms;
- 7 • Whether Google’s Nexus 5, Nexus 7, and Nexus 10 directly or indirectly infringe
8 the patents-in-suit;
- 9 • Whether Rockstar is entitled to monetary damages (and if so, the amount) or the
10 entitlement of either party to other equitable relief; and
- 11 • Whether this is an exceptional case under 35 U.S.C. §285.

12 **b. Google’s Statement**

13 The first three issues Rockstar identifies below—whether Rockstar is subject to personal
14 jurisdiction, whether venue is proper, and whether the Court should stay this case—are already
15 resolved by the Court’s ruling on Rockstar’s Motion to Dismiss or Transfer. (Docket No. 58.)

16 Rockstar also identifies below questions regarding whether the results of this action will
17 bind parties to Rockstar’s Halloween actions in the Eastern District of Texas. These questions are
18 not before this Court, although the Halloween defendants, including Google, have moved to
19 transfer those cases to this Court. (Docket Nos. 46, 48, 50, 51, 55.) Rockstar has opposed these
20 motions. (Docket No. 57.) Rockstar therefore incongruously asks this Court to decide issues it
21 has asked the Eastern District of Texas to prevent this Court from deciding.

22 **c. Defendants’ Statement**

23 Defendants also anticipate that they have or will dispute the following legal issues:

- 24 • Whether Rockstar Consortium and MobileStar are subject to personal jurisdiction
25 in this district (as set forth in Defendants’ Motion, which the Court denied, Docket
26 No. 58);

- 1 • Whether venue is proper in this district under either 28 U.S.C. §§ 1391 or 1404(a)
2 (Defendants’ Motion, which the Court denied (Docket No. 58), only raised venue
3 under 28 U.S.C. § 1391);
- 4 • Whether this case should be stayed pending the outcome of Rockstar’s related
5 Texas cases as Judge Alsup found under similar facts involving Google in
6 *ContentGuard* (See Defendants’ Statement of Recent Decision, Docket No. 56);
- 7 • Whether Google’s Complaint for Declaratory relief has sufficiently identified the
8 “Android Platform” so that the parties can determine whether there is a case or
9 controversy related to it (See e.g., Docket No. 61 at ¶¶ 30-31 (Defendants’ Answer
10 explaining that “Google has not defined ‘Google’s Android Platform,’ and its use
11 of that phrase is vague, as it fails to identify a specific instance of any product.”));
- 12 • Whether any defendant in any of the related Texas cases makes use of the “Android
13 Platform” as it is managed by Google, or whether each defendant in the related
14 Texas cases makes proprietary modifications to the open-source Android code that
15 Google manages (See e.g., Docket No. 61 at ¶¶ 30-31));
- 16 • Whether resolution of Google’s declaratory complaint of non-infringement as to
17 the Nexus 5, Nexus 7, Nexus 10, and the “Android Platform” as to each of the
18 patents-in-suit will be binding on any of the defendants (other than Google) in
19 Defendants’ related Texas cases, whether resolution of this question finding either
20 infringement or non-infringement will have any bearing on Defendants’
21 infringement assertions in the related Texas cases, and whether the Texas
22 defendants will be permitted to raise separate non-infringement arguments in the
23 parallel proceeding in Texas; and
- 24 • Assuming Google is permitted to assert invalidity of the patents-in-suit (since
25 validity was not raised in Google’s declaratory complaint), whether any validity
26 determination in this Court will be binding on any of the defendants (other than
27 Google) in Defendants’ related Texas cases, whether resolution of this question
28 finding either validity or invalidity will have any bearing on the invalidity

1 assertions being made in the related Texas cases and whether the defendants in the
2 related Texas cases will be permitted to raise separate validity arguments in the
3 parallel proceeding in Texas.

4 **4. Motions**

5 **a. Joint Statement**

6 There are no pending motions. The parties anticipate that they are likely to file motions for
7 summary judgment, as well as other motions that may arise during the litigation.

8 **b. Google's Statement**

9 Rockstar describes below potentially filing a motion seeking permission to certify for
10 interlocutory appeal the Court's denial of Rockstar's Motion to Dismiss or Transfer. Google will
11 oppose any such motion. Rockstar also describes below potentially filing a motion to transfer this
12 action to the Eastern District of Texas. The Court has already resolved this issue, and any such
13 motion would violate, among other things, Local Rule 7-9(a). (Docket No. 58 at 23-28.)

14 **c. Defendants' Statement**

15 Defendants anticipate that they will promptly file a motion asking for the Court's
16 permission to certify its denial of Defendants' Motion for interlocutory appeal. Because personal
17 jurisdiction is a threshold issue, and should the Federal Circuit decide the personal jurisdiction
18 issue differently, the work of the parties and the Court in litigating this case to conclusion here
19 will be nullified.

20 Defendants also anticipate that they will promptly file a Motion to Transfer Venue under
21 28 U.S.C. § 1404(a) or to stay this case pending the outcome of the related Texas cases, similar to
22 those filed by the parties and ruled upon by Judges Alsup and Gilstrap in the *ContentGuard* cases
23 (Rockstar's Statement of Recent Decision, Docket No. 56).

24 **5. Amendment of Pleadings**

25 **a. Joint Statement**

26 At this time, the parties do not expect to add additional parties. The parties anticipate that
27 amendment of pleadings may occur under Federal Rule of Civil Procedure 15 in response to
28 answers or counterclaims that may be filed or discovery that may be produced.

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b. Google’s Statement

Google proposes the last day to amend pleadings be Thursday, January 8, 2015.

c. Defendants’ Statement

Defendants contend that the deadline to amend pleadings should be controlled by the default provisions of the Federal Rules and/or the Local Rules, and that Google’s proposed deadline of January 8, 2015 (after the December 2014 claim construction hearing jointly proposed below) is too late.

6. Preservation of Evidence

On March 19, 2014, the parties met and conferred under Rule 26(f) regarding steps to preserve evidence. The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information, and each confirmed during that meeting that they had instituted reasonable steps to retain any relevant documents until this dispute is resolved.

7. Disclosures

As required by Federal Rule of Civil Procedure 26(a)(1), the parties exchanged initial disclosures on Wednesday, April 30, 2014.

8. Discovery

Regarding merits discovery, the parties propose the following limitations and guidelines on discovery under the Federal Rules of Civil Procedure and the following limitations:

a. Interrogatories

Defendants and Google may each serve each other up to 50 written interrogatories, including all discrete subparts under Federal Rule of Civil Procedure 33(a)(1).

b. Requests for Admission

Defendants and Google may each serve each other up to 100 requests for admission, not counting requests for admission relating to authenticity of documents, for which there is no limitation.

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c. Depositions

i. Google’s Statement

Google proposes that Rockstar and Google may each take up to 150 hours of depositions of each others’ officers and employees. Each such deposition shall occupy at least four hours of this allotted deposition time. In addition, each party may depose the other party’s testifying expert witnesses and third parties. For all depositions, the 7-hour limit applies absent agreement or Court order. Defendants and Google will take depositions by agreement whenever possible.

Rockstar’s proposal to place additional limits on Google’s ability to take depositions of third parties is unsupported by the Rules, and is flatly unreasonable. In its disclosures under Rule 26(a)(1), Rockstar identified ten officers and employees as likely to have discoverable information regarding its claims and defenses. Deposing these identified officers and employees alone will occupy 50-70 hours. And, as the Court knows from prior cases, parties often take discovery beyond the witnesses identified by their opponents. In light of Rockstar’s fulsome identification of its own officers and employees, 150 hours is a reasonable initial limit for party officers and employees, but not for all depositions. There are fourteen inventors on the seven asserted patents and at least ten prosecuting attorneys, none of whom are current Rockstar employees. Deposing just these inventors and prosecuting attorneys will likely occupy the full 150 hours Rockstar deems sufficient for all of Google’s depositions. Should the Court adopt Rockstar’s Draconian limit on overall deposition hours, Google would be forced to choose between deposing Rockstar’s employees and Rockstar’s inventors. Rockstar itself would face no such choice: its counsel can speak to its officers and employees at any time, and its counsel also represents at least six of the inventors. A limit on overall depositions would thus prejudice Google and benefit only Rockstar.

Google will also be required to depose a large number of prior art witnesses, including depositions to find prior art, understand prior art, and authenticate prior art under the Rules of Evidence. The seven patents in this case have very little overlap, so prior art depositions must proceed on seven parallel tracks. It is common for one patent to require 5-10 prior art depositions; seven patents will require seven times as many.

1 In addition, Google must take depositions of other companies affiliated with Rockstar, but
2 not parties to this action. Rockstar admits as much, identifying in its 26(a)(1) disclosures four
3 companies with knowledge relevant to this action: Rockstar Consortium Inc., Rockstar
4 Consortium US LLC, Rockstar Consortium LLC, and Rockstar Bidco LP. Rockstar can talk to
5 each of these companies freely, but Google must depose them.

6 Finally, Google must take depositions of former Nortel employees and third parties
7 involved in the Nortel auction. Rockstar has already indicated it will argue that the auction price
8 for the entire Nortel portfolio reflects on the value of the patents-in-suit; to combat this allegation,
9 Google must obtain testimony from the witnesses actually involved in the auction process. In
10 particular, Apple was heavily involved in the bidding and acquisition of patents with Rockstar in
11 the Nortel auction, so Google will need to depose current and former Apple employees regarding
12 the Nortel auction. None of these witnesses work for Rockstar.

13 No party personnel will be inconvenienced or even affected by *non-party* depositions in
14 this action. Should a non-party contend that any deposition subpoena is not appropriate, it can
15 defend its own rights by filing a motion to quash or a motion for protective order; Rockstar cannot
16 assert those rights for any other party. *See, e.g., Shi v. Cent. Arizona Coll.*, No. 08-80131, 2008
17 WL 4001795, at *1 (N.D. Cal. Aug. 27, 2008). Rockstar thus can assert only potential
18 inconvenience to Rockstar's *counsel*, which may or may not attend depositions scheduled by
19 Google. But convenience of counsel is "an irrelevant or improper factor" that is "not appropriate
20 to consider" in governing litigation. *Wilson v. Walgreen Co.*, No. 11-2930, 2011 WL 4345079, at
21 *5 (N.D. Cal. Sept. 14, 2011); *Eli Lilly & Co. v. Genentech, Inc.*, No. 13-0919, 2013 WL
22 4396718, at *4 (N.D. Cal. Aug. 13, 2013). For these and other reasons, Courts routinely ignore
23 arguments based on convenience to counsel, and the Court should do so here as well.

24 **ii. Defendants' Statement**

25 Defendants propose Defendants and Google may each take up to 150 hours of fact
26 depositions, including officers and employees of each party and third-parties. Each such
27 deposition shall occupy at least four hours of this allotted deposition time. In addition, each party
28 may depose the other party's testifying expert witnesses. For all depositions, the 7-hour limit

1 applies absent agreement or Court order. Defendants and Google will take depositions by
2 agreement whenever possible.

3 **d. Expert Communications and Drafts**

4 The parties agree that attorney communications to and from a retained expert, draft reports,
5 and notes of retained experts relating to communication to or from attorneys are not discoverable.
6 Attorney communications with an expert in preparation for the expert’s deposition or trial
7 testimony are not discoverable. Final expert reports and materials the experts relied on in their
8 reports are discoverable.

9 **e. Electronically Stored Information (“ESI”) and Stipulated Protective Orders**

10 The parties discussed electronic discovery during the Federal Rule of Civil Procedure
11 26(f) conference and agreed to meet and confer for the purpose of entering a stipulated e-
12 discovery order and to try to develop a mutually agreeable list of search terms and protocols prior
13 to the production of documents. The parties also agree that the sensitive nature of the material at
14 issue in this case requires a protective order, and to meet and confer for the purpose of entering a
15 stipulated protective order. The parties agree to submit a proposed e-discovery order within 30
16 days of filing this document.

17 **9. Class Actions**

18 This case is not a class action.

19 **10. Related Cases**

20 Six cases pending in the Eastern District of Texas involve the patents-in-suit: *Rockstar*
21 *Consortium US LP v. ASUSTek Computer, Inc.*, No. 2:13-cv-894; *Rockstar Consortium US LP v.*
22 *HTC Corp.*, No. 2:13-cv-895; *Rockstar Consortium US LP v. Huawei Investment & Holding Co.*,
23 No. 2:13-cv-896; *Rockstar Consortium US LP v. LG Electronics Inc.*, No. 2:13-cv-898; *Rockstar*
24 *Consortium US LP v. Pantech Co.*, No. 2:13-cv-899; *Rockstar Consortium US LP v. Samsung*
25 *Electronics Co.*, No. 2:13-cv-900; and *Rockstar Consortium US LP v. ZTE Corp.*, No. 2:13-cv-
26 901. Two cases in the District of Delaware involve U.S. Patent No. 6,128,298, one of the patents-
27 in-suit: *Arris Group, Inc. v. Constellation Technologies LLC*, No. 14-cv-114; and *Bockstar*
28 *Technologies LLC v. Cisco Systems, Inc.*, No. 13-cv-2020.

1 **11. Relief**

2 **a. Google's Statement**

3 Google seeks the following relief:

- 4 • A declaratory judgment against Rockstar that Google's Android platform and the
- 5 Nexus 5, Nexus 7, and Nexus 10 do not infringe any of the patents-in-suit.
- 6 • A finding that this is an exceptional case under 35 U.S.C. § 285.
- 7 • An award of Google's costs and attorney's fees in connection with this action; and
- 8 • Such further and additional relief as the Court deems just and proper.

9 **b. Defendants' Statement**

10 Defendants seek the following relief:

- 11 • Dismissal of this action, stay of this action, or transfer of this action to the Eastern
- 12 District of Texas pending resolution of Defendants' related Texas cases;
- 13 • A finding that Google's Nexus 5, Nexus 7, and Nexus 10 infringe each of the
- 14 patents-in-suit;
- 15 • A specific definition and identification of Google's "Android Platform" so that
- 16 Defendants can determine what this is and whether or not it infringes each of the
- 17 patents-in-suit;
- 18 • An award of monetary damages to compensate Defendants for Google's
- 19 infringement;
- 20 • A finding that this is an exceptional case under 35 U.S.C. § 285;
- 21 • An award of costs and attorney's fees in connection with this action;
- 22 • Equitable relief that this Court deems just and proper (including an injunction
- 23 and/or a running royalty for ongoing infringement); and
- 24 • Such further and additional relief as the Court deems just and proper.

25 **12. Settlement and ADR**

26 The parties conferred regarding Alternative Dispute Resolution options under ADR Local
27 Rule 3-5. The parties agree to participate in private alternative dispute resolution.

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1 **13. Consent to Magistrate Judge For All Purposes**

2 The parties do not consent to assignment to a Magistrate Judge for all purposes.

3 **14. Other References**

4 At this time, this case is not suitable for reference to binding arbitration, a special master,
5 or the Judicial Panel on Multidistrict Litigation.

6 **15. Narrowing of Issues**

7 At this time, the parties do not foresee narrowing any issues, claims, or defenses. The
8 parties may be able to narrow certain issues via stipulated facts once discovery has progressed.

9 **16. Expedited Trial Procedure**

10 At this time, the parties do not believe this case is appropriate for the Expedited Trial
11 Procedure of General Order 64.

12 **17. Scheduling**

13 **a. Joint Statement**

14 The Court, the Federal Rules of Civil Procedure, the Civil Local Rules, and the Patent
15 Local Rules currently provide the following schedule to which the parties separately propose
16 additions and modifications below:

17 **Parties Exchange Initial Disclosures under Federal Rule of Civil Procedure 26(a)(1) –**

18 Wednesday, April 30, 2014;

19 **Initial Case Management Conference (Docket No. 59) – Wednesday, May 14, 2014;**

20 **Disclosure of Asserted Claims & Infringement Contentions and Accompanying**

21 **Document Disclosure under Patent Local Rules 3-1 and 3-2 – Wednesday, May 28,**
22 **2014;**

23 **Invalidity Contentions and Accompanying Document Production under Patent Local**
24 **Rules 3-3 and 3-4 – Monday, July 14, 2014;**

25 **Exchange Lists of Proposed Terms for Constructions under Patent Rule Local 4-1 –**
26 **Monday, July 28, 2014;**

27 **Exchange Preliminary Claim Constructions and Extrinsic Evidence under Patent**
28 **Local Rule 4-2 – Monday, August 18, 2014;**

1 **Joint Claim Construction and Prehearing Statement Under Patent Local Rule 4-3 –**

2 Friday, September 12, 2014;

3 **End of Claim Construction Discovery under Patent Local Rule 4-4 –** Tuesday, October

4 14, 2014;

5 **Rockstar’s Claim Construction Brief under Patent Local Rule 4-5(a) –** Monday,

6 October 27, 2014;

7 **Google’s Responsive Claim Construction Brief under Patent Local Rule 4-5(b) –**

8 Monday, November 10, 2014;

9 **Rockstar’s Reply Claim Construction Brief under Patent Local Rule 4-5(c) –** Monday,

10 November 17, 2014;

11 **Claim Construction Hearing under Patent Local Rule 4-6 –** Monday, December 1,

12 2014, or as set by the Court;

13 **Last Day to Disclose Advice of Counsel under Patent Local Rule 3-7 –** 50 Days after

14 service by the Court of its Claim Construction Ruling.

15 **b. Google’s Statement**

16 There is no reason to modify the dates set forth in the Local Rules, which set forth a well-
17 tested procedure for resolution of patent claims. In its statement below, Rockstar argues that
18 because this action began with Google’s claim for declaratory relief, the Court should ignore the
19 careful order of the Local Rules and require Google to provide non-infringement contentions even
20 before Rockstar provides infringement contentions. Rockstar simply ignores that the Local Rules
21 explicitly “apply to all civil actions filed in or transferred to this Court which allege infringement
22 of a utility patent in a complaint, counterclaim, cross-claim or third party claim, *or which seek a*
23 *declaratory judgment* that a utility patent is not infringed, is invalid or is unenforceable,” Pat. Loc.
24 R. 1-2 (emphasis added), and in requiring infringement contentions refer not to plaintiffs claiming
25 infringement but to any “party claiming patent infringement.” Pat. Loc. R. 3-1.

26 In addition to the dates set forth in the Local Rules, Google further proposes the following
27 schedule for this action:

28 **Last Day to File Amended Pleadings –** Thursday, January 8, 2015;

1 **End of Fact Discovery** – Thursday, January 15, 2015;
2 **Initial Expert Reports** – Thursday, January 29, 2015;
3 **Responsive Expert Reports** – Thursday, February 19, 2015;
4 **End of Expert Discovery** – Friday, March 6, 2015;
5 **Dispositive Motion Cut-Off Date** – Thursday, April 30, 2015;
6 **Pretrial Conference** – Wednesday, May 27, 2015, or as set by the Court;
7 **Trial to Commence** – Monday, June 29, 2015, or as set by the Court.

8 Finally, Rockstar below submits dates that bear no relation to this Court’s Patent Local Rules or to
9 the normal course of patent litigation. Rockstar’s proposals would leapfrog the normal discovery
10 process, ignore the process of motions to compel, and result in compelled interrogatory responses
11 by Google on an extremely tight schedule. Simply put: litigation in this District does not work
12 this way. If parties could ask the Court to compel responses to as-yet-unserved interrogatories on
13 schedules differing from the Federal Rules, Google too would propose its own list of requests to
14 Rockstar. But of course the Rules and this Court’s practice do not allow such things, for Google
15 or for Rockstar. The Court should deny these requests for that reason alone.

16 In addition, Rockstar’s requests appear calculated to impose onerous burdens on Google
17 for reasons unrelated to this litigation. Tellingly, several of the deadlines suggested by Rockstar
18 reference products accused in the Halloween actions before the Eastern District of Texas.
19 Rockstar thus asks this Court to order discovery regarding Rockstar’s actions in Texas, even while
20 simultaneously opposing transfer of those actions to this Court. For this reason as well, the Court
21 should ignore Rockstar’s attempt to modify the normal rules of this Court.

22 **c. Defendants’ Statement**

23 In addition to the dates set forth in the Local Rules, and because of the posture of this case
24 where Google seeks a declaration of non-infringement as to each of the patents-in-suit, Defendants
25 propose the following deadlines for this action. Google seeks a declaration of non-infringement
26 that its Nexus 5, Nexus 7, Nexus 10 devices and the “Android Platform” do not infringe any claim
27 of any of the patents-in-suit. (Docket No. 1). Google does not identify the specific claims of each
28 patent-in-suit that it seeks a declaration of non-infringement on. (*See id.*) Nor does Google

1 identify which specific products it contends comprise what it terms the “Android Platform.” (*See*
2 *also id.*) Defendants’ contend that Google’s use of the term “Android Platform” is vague,
3 ambiguous and divorced from any Google or third-party product (including the products at-issue
4 in the related Texas cases), requiring more specific identification. (*See e.g.*, Docket No. 61 at ¶
5 31). In light of the foregoing, Defendants propose the following deadlines:

6 **Deadline for Google to identify each claim of each patent-in-suit that it seeks a**
7 **declaration of non-infringement on** – May 28, 2014;

8 **Deadline for Google to provide a specific definition of the “Android Platform”**
9 **together with a specific identification of any products it contends comprise the**
10 **“Android Platform”²** – May 28, 2014;

11 **Google’s Disclosure of Non-Infringement Contentions for the Nexus 5, Nexus 7, and**
12 **Nexus 10 products identified in Google’s complaint, together with Non-Infringement**
13 **Contentions for Google’s “Android Platform” and Accompanying Document**
14 **Production** – May 28, 2014³; and

19
20 ² This deadline should also include an identification of whether or not each product accused
21 of infringement in the related Texas cases make use of the “Android Platform” in the manner
22 managed by Google, and if so, a specific identification of the “Android Platform” code used
23 within each product accused of infringement in the related Texas cases. In the related Texas cases,
24 Rockstar has provided infringement contentions, and because Google is a party to the related
25 Texas cases, Google, in addition to the Texas defendants, has received a disclosure of Rockstar’s
26 infringement contentions, which identify each product accused of infringing each of the patents-
27 in-suit in each of the related Texas cases.

28 ³ Under the Default Provisions of the Local Rules, infringement contentions would normally
be due 14 days after the Initial Case Management Conference, making the infringement contention
date May 28, 2014. Because Google is the Declaratory Plaintiff, seeking a declaration of non-
infringement on certain as-yet unidentified claims of the patents-in-suit and as to certain as-yet
unidentified products beyond the Nexus 5, Nexus 7, and Nexus 10 related to the “Android
Platform,” Defendants’ propose that May 28, 2014 be the due date for Google’s disclosure of non-
infringement contentions and accompanying document production.

1 **Defendants’ Disclosure of Infringement Contentions and Accompanying Document**
2 **Production in response to Google’s Identification of Claims, Definition of “Android**
3 **Platform,” and Disclosure of Non-Infringement Contentions – June 20, 2014.**⁴

4 Defendants note that Google has not yet pleaded the invalidity of any of the patents-in-suit.
5 Assuming Google later pleads invalidity in accordance with the Federal Rules, local rules and/or
6 permission of the Court, Defendants believe that the default deadline for invalidity contentions
7 reflected in the joint statement above is appropriate.

8 Google’s complaint that “Rockstar thus asks this Court to order discovery regarding
9 Rockstar’s actions in Texas, even while simultaneously opposing transfer of those actions to this
10 Court. . . .” misses the mark. Google represented in its Complaint and in its Opposition to
11 Defendants’ Motion to Dismiss that its Declaratory Complaint was proper because Defendants
12 were suing its customers in Texas and that its Declaratory Complaint was first filed under the
13 “manufacturer-customer” exception to the first-to-file rule. (*See e.g.* Docket No. 1 at 1
14 (Defendants have “filed seven lawsuits claiming that Google’s customers infringe . . .”); Docket
15 No. 30, Attachment 4 at (Defendants have “sue[d] Google’s customers, the Android manufacturers
16 named in the Halloween actions”); *See also* Docket No. 58 at 24 (Court finding “the relationship
17 between Google and the Halloween defendants is one of manufacturer and customer.”). If this
18 case is truly a “manufacturer-customer lawsuit” then Google as the “manufacturer” should have
19 access to the code and other materials used by its “customers” that form the basis for the non-

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22 ⁴ As set forth in the prior footnote, under the Default Provisions of the Local Rules,
23 infringement contentions would normally be due 14 days after the Initial Case Management
24 Conference, making the infringement contention date May 28, 2014. If the Court is not inclined to
25 order Google, as the Declaratory Plaintiff to provide non-infringement contentions on this date,
26 Defendants’ request that they be given until June 11, 2014 to provide infringement contentions as
27 to the Nexus 5, 7 and 10 devices identified in Google’s Complaint – an extension of two weeks.
28 Defendants also request that Google be ordered to identify the specific claims of each patent-in-
 suit that it seeks a declaration of non-infringement on and a specific identification of what
 products Google contends comprise the “Android Platform” sufficiently in advance of any
 deadline for Defendants to provide infringement contentions.

1 infringement counterclaims before this Court—Google should have this information without
2 having to join those “customers” to this case.

3 Defendants believe that the other dates Google requests, in addition to those mandated by
4 the Local Rules, are premature at this time. After the Court issues its claim construction order,
5 and depending upon the Court’s available trial settings, the parties can revisit deadlines for
6 amended pleadings, fact discovery, expert discovery, dispositive motions and trial. Although
7 Google’s request for these additional dates is premature, in the alternative, Defendants offer the
8 following, which will permit sufficient time for post-claim construction discovery, expert reports
9 and trial:

10 **Last Day to File Amended Pleadings** – *See* paragraph 5, above;

11 **End of Fact Discovery** – Friday, July 24, 2015;

12 **Initial Expert Reports** – Friday, August 7, 2015;

13 **Responsive Expert Reports** – Friday, August 28, 2015;

14 **End of Expert Discovery** – Friday, September 11, 2015;

15 **Dispositive Motion Cut-Off Date** – Monday, September 28, 2015;

16 **Pretrial Conference** – Monday, October 19, 2015, or as set by the Court;

17 **Trial to Commence** – Monday, November 9, 2015, or as set by the Court.

18 **18. Trial**

19 The parties have demanded that the case be tried by jury. Google expects that the trial will
20 last 20 court days. Defendants expect that the trial will last 10 court days.

21 **19. Disclosure of Non-party Interested Entities or Persons**

22 Each party filed its disclosure of interested entities under Civil Local Rule 3-16. Google’s
23 Certification of Interested Entities or Persons (Docket No. 4) reads:

24 Under Civil L.R. 3-16, the undersigned certifies that the following listed persons,
25 associations of persons, firms, partnerships, corporations (including parent
26 corporations), or other entities (i) have a financial interest in the subject matter in
27 controversy or in a party to the proceeding, or (ii) have a non-financial interest in
28 that subject matter or in a party that could be substantially affected by the outcome
of this proceeding: ASUSTeK Computer, Inc.; ASUS Computer International, Inc;
Futurewei Technologies Inc.; HTC America, Inc.; HTC Corporation; Huawei
Device (Hong Kong) Co., Ltd.; Huawei Device USA Inc.; Huawei Investment &
Holding Co., Ltd.; Huawei Technologies Co., Ltd.; Huawei Technologies

1 USA, Inc.; Huawei Technologies Coöperatief U.A.; LG Electronics Inc.; LG
2 Electronics MobileComm U.S.A., Inc.; LG Electronics U.S.A., Inc.; Pantech Co.,
3 Ltd.; Pantech Wireless, Inc.; Samsung Electronics America, Inc.; Samsung
4 Electronics Co., Ltd.; Samsung Telecommunications America, LLC; ZTE
5 Corporation; ZTE (USA) Inc.; and ZTE Solutions. Defendants Rockstar
6 Consortium US LP and MobileStar Technologies LLC (“Rockstar”) have sued each
of these entities for alleged infringement of the patents that are the subject of this
action. Rockstar claims that each of these entities infringes alleged Rockstar
patents by making, using, selling, offering for sale, importing, exporting, supplying,
or distributing “certain mobile communication devices having a version (or an
adaption thereof) of [the] Android operating system” developed by Google.

7 Rockstar Consortium’s Certification of Interested Entities or Persons (Docket No. 22) reads:

8 Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed
9 persons, associations of persons, firms, partnerships, corporations (including parent
10 corporations) or other entities (i) have a financial interest in the subject matter
controversy or in a party that could be substantially affected by the outcome of this
11 proceeding, or (ii) have a non-financial interest in the subject matter or in a party
that could be substantially affected by the outcome of this proceeding: Apple Inc.,
12 Blackberry Limited, Telefonaktiebolaget LM Ericsson (publ), Microsoft
Corporation, ICA IPLA Holdings Inc. (Sony). Each of these entities is a limited
partner of Rockstar Consortium U.S. LP.

13 MobileStar’s Corporate Certification of Interested Entities or Persons (Docket No. 21) reads:

14 Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed
15 persons, associations of persons, firms, partnerships, corporations (including parent
16 corporations) or other entities (i) have a financial interest in the subject matter
controversy or in a party that could be substantially affected by the outcome of this
17 proceeding, or (ii) have a non-financial interest in the subject matter or in a party
that could be substantially affected by the outcome of this proceeding: Apple Inc.;
18 Blackberry Limited; Telefonaktiebolaget LM Ericsson (publ); Microsoft
Corporation; ICA IPLA Holdings Inc. (Sony). Each of these entities is a limited
partner of Rockstar Consortium U.S. LP., the parent entity of MobileStar.

19 **20. Other Matters: Patent Local Rule 2-1**

20 The parties discussed and addressed the topics required by Patent Local Rule 2-1 during
21 the Federal Rule of Civil Procedure 26(f) conference and agree to the following:

22 **a. Discovery and Timing Under the Patent Local Rules**

23 Paragraphs 8 and 17 above reflect the parties’ agreed and disputed proposed modifications
24 to the terms of the Patent Local Rules regarding claim construction discovery and deadlines.

25 **b. The Format of the Claim Construction Hearing**

26 To avoid distraction from the issues, the parties agree that no experts should participate in
27 the hearing or provide expert reports regarding claim construction, and that the hearing should not
28 include live testimony.

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c. Educating the Court on The Technology At Issue

The parties agree that a tutorial would be appropriate for educating the Court about the technology at issue in this case.

DATED: May 7, 2014

Respectfully submitted,
QUINN EMANUEL URQUHART & SULLIVAN, LLP
By /s Matthew S. Warren
Matthew S. Warren
Attorneys for Google Inc.

McKOOL SMITH HENNIGAN,P.C.

By /s Joshua S. Budwin
Joshua S. Budwin
*Attorneys for Rockstar Consortium US LP and
MobileStar Technologies LLC*

ATTESTATION

I, Matthew S. Warren, am the ECF user whose userid and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that Joshua S. Budwin has concurred in this filing.

DATED: May 7, 2014

/s Matthew S. Warren
Matthew S. Warren