

1 Courtland L. Reichman (SBN 268873)
 creichman@mckoolsmithhennigan.com
 2 McKool Smith Hennigan, P.C.
 255 Shoreline Drive Suite 510
 3 Redwood Shores, CA 94065
 (650) 394-1400
 4 (650) 394-1422 (facsimile)

5 Attorneys for Defendants
 Rockstar Consortium US LP and
 6 MobileStar Technologies LLC

7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **OAKLAND**

11	Google, Inc.)	Case No. 13-cv-5933 (CW)
12)	
	Plaintiff,)	DECLARATION OF DONALD
13	vs.)	POWERS IN SUPPORT OF
)	DEFENDANTS' ROCKSTAR
14	Rockstar Consortium U.S. LP and MobileStar)	CONSORTIUM US LP AND
	Technologies LLC)	MOBILESTAR TECHNOLOGIES
15)	LLC'S §1404 MOTION TO
	Defendants.)	TRANSFER TO THE EASTERN
16)	DISTRICT OF TEXAS
17)	
18)	
19)	

20 **DECLARATION OF DONALD POWERS IN SUPPORT OF DEFENDANTS' ROCKSTAR**
 21 **CONSORTIUM US LP AND MOBILESTAR TECHNOLOGIES LLC'S**
 22 **§1404 MOTION TO TRANSFER TO THE EASTERN DISTRICT OF TEXAS**

23
 24
 25
 26
 27
 28

DECLARATION OF DONALD POWERS

I, Donald Powers, declare as follows:

1. I have been a member in good standing of the State Bar of Texas since 1986 and am Litigation Counsel for Rockstar Consortium US LP (“Rockstar”). I submit this declaration in support of Defendants’ Motion to Transfer to the Eastern District of Texas Under U.S.C. 28 § 1404(a) or, in the Alternative, to Stay in the case of *Google Inc. v. Rockstar Consortium US LP, et al*, Case No. 13-cv-5933 (CW).

2. Prior to my employment with Rockstar, I worked for Nortel for over 13 years as Senior Counsel in the Richardson, Texas, office. I began my employment with Nortel on February 2, 1998, and left the company in April 2011. I joined Rockstar in January 2012.

3. Based on my previous employment with Nortel and present employment with Rockstar, I have relevant knowledge regarding the instant suit, including knowledge of Nortel’s corporate organization and structure, Rockstar’s corporate organization and structure, documents investigated for purposes of this suit, locations of relevant documents and witnesses, and parties with first-hand knowledge about the patents-in-suit and activities related to those patents. I make this declaration based upon my own personal knowledge unless otherwise indicated herein, and if called as a witness, I could and would competently testify thereto.

4. I currently reside in Richardson, Texas, in the Eastern District of Texas, where I have lived for 17 years.

5. Rockstar and MobileStar Technologies LLC (“MobileStar”) are the assignee and the exclusive licensee, respectively, of the patents-in-suit, which were previously held by Nortel. Rockstar owns two of the patents-in-suit and previously owned the others, before assigning them to MobileStar.

1 15. Sony's United States headquarters is in New York City, New York. Its intellectual
2 property operations are run from offices in New Jersey.

3 16. Rockstar's limited partners do not direct or control Rockstar's licensing efforts.

4 17. The general partner of Rockstar is the Delaware limited liability corporation Rockstar
5 Consortium LLC.

6 18. Kasim Alfalahi is the Initial Manager and Vice President of Rockstar Consortium
7 LLC. Mr. Alfalahi is also a Rockstar Board member and Chief IP officer at Ericsson. Mr. Alfalahi
8 works at Ericsson's Plano, Texas, office in the Eastern District of Texas.

9 19. I understand that Lazard in New York and Global IP Law Group in Chicago advised
10 Nortel in the auction process. The lead Lazard employee working on the Nortel intellectual property
11 deal was David Descoteaux, who still works for Lazard in New York. Other advisory team members
12 were Justin Lux, who now works for Portfolio Advisors in the New York City area; Colin Keenan,
13 who now works for Brightwood Capital Advisors in New York City; Edouard Gueyffier, who now
14 lives in the United Kingdom and works for Estin & Co.; and Kshitij Bhatia, who now lives in India
15 and works for Warburg Pincus.

16 20. The United States Nortel representative is now in New York and the Canadian Nortel
17 representative is in Ontario.

18 21. Rockstar Bidco LP, a separate entity from Rockstar, having separate management, is
19 also based in New York. When Nortel held an auction for its patents in 2011, Google made an initial
20 stalking horse bid of \$900 million. Google ultimately lost the auction to Rockstar Bidco LP, which
21 paid \$4.5 billion to acquire Nortel's patents, including the patents-in-suit. Rockstar Bidco LP—a
22 distinct entity from Rockstar—assigned over 1,100 of the Nortel patents directly to Apple, assigned
23
24
25
26
27
28

1 some of Nortel's other patents directly to Rockstar's other limited partners, and assigned most of the
2 remaining Nortel patents (including the patents-in-suit) to Rockstar.

3 22. When the sale of the patents-in-suit closed in 2011, many of the former Nortel
4 employees who worked in the IP group were hired by Rockstar. For example, Rockstar's CEO,
5 CFO, and CTO each previously worked for Nortel. Several of Nortel's Canadian employees
6 involved in intellectual property were hired by a Canadian entity, Rockstar Consortium Inc. The
7 Canadian entity entered into a services agreement to provide various intellectual-property-support
8 services to Rockstar.
9

10 23. Rockstar originally conducted its operations out of a portion of the former Nortel
11 complex at the Lakeside campus that used to house the Nortel IP group. Rockstar upgraded its
12 facilities in August 2012 when it signed a 7-year lease at its current offices at Legacy Town Center
13 in Plano, Texas, a short drive away from the Lakeside campus. In December 2012, Rockstar
14 finished the build-out of the new Plano, Texas, office and completed its move to the new facilities,
15 which are located in the Eastern District of Texas.
16

17 24. Rockstar's current offices are far more attractive and suitable than the former
18 location, and Rockstar selected them to serve as a fully functional headquarters facility that would
19 attract high-quality employees. The office contains 8,125 square feet with 10 assigned offices, two
20 guest offices, seven work areas, and four conference rooms, in addition to storage space.
21

22 25. Rockstar has 15 full-time employees; five employees work full-time from the Plano,
23 Texas, office, while the others spend significant time there.
24

25 26. Rockstar's Plano, Texas, office is the only office for the company, although some
26 employees work out of their homes in addition to working from offices in the Plano, Texas,
27 facilities. From the Plano, Texas, office, Rockstar employees engage in substantial licensing and
28

1 litigation support work. Rockstar's annual strategy sessions and quarterly operations reviews,
2 requiring the attendance of many Rockstar employees, including all of Rockstar and Rockstar
3 Consortium Inc.'s management, are also conducted in Plano, Texas.

4 27. Rockstar routinely sends licensing correspondence and executes contracts, including
5 Non-Disclosure Agreements, from its Plano, Texas, office. When Rockstar was initially formed, for
6 a transitional period of time Rockstar would send licensing correspondence using Rockstar
7 Consortium Inc.'s Ottawa address. Since Rockstar re-located to its current Plano, Texas, location, it
8 has sent licensing correspondence and entered into agreements from its Plano, Texas, office. For
9 example, since March 2012, Rockstar employees have signed non-disclosure and other agreements
10 with a number of companies from its Plano, Texas, offices.

12 28. Since MobileStar's formation, it has sent licensing correspondence and entered into
13 agreements from its Plano, Texas, office.

14 29. No employees of Rockstar or MobileStar live in California.

16 30. Of the eight Rockstar employees who likely have relevant information about this suit,
17 three work full-time in the Plano office, one lives in Pennsylvania (John Veschi), one lives in
18 Colorado (Chad Hilyard), one currently lives in North Carolina (Erik Fako), one lives in
19 Massachusetts (Bruce Schofield), and one currently lives in Florida (Gillian McColgan). The three
20 full-time employees in Plano who likely have relevant knowledge about this suit are myself, Mark
21 Hearn, and Bernard Tiegerman. Mr. Tiegerman has lived in the Eastern District of Texas since
22 2000, when he started working for Nortel's Richardson, Texas office. With the exception of Mr.
23 Hilyard, all of us formerly were employed by Nortel. I understand that Mr. Hearn, Mr. Veschi, Ms.
24 McColgan, and Mr. Tiegerman have submitted their own declarations discussing their knowledge of
25 facts and circumstances relevant to this suit. The other Rockstar employees with knowledge relevant
26

1 to this case have information related to infringement, damages, and patent monetization, including
2 possible licensing or sale, of the patents-in-suit. At least Messrs. Veschi and Hilyard also have
3 relevant knowledge regarding Google's knowledge of the patents-in-suit. Randy Mishler, a Rockstar
4 Board member and Senior Director of IP Licensing at BlackBerry, works in nearby Irving, Texas.
5 Mr. Mishler is also a former Nortel patent attorney.

6 31. Rockstar's Plano, Texas, office contains hard drives from former Nortel and former
7 Rockstar employees as well as boxes of hard copy documents pertaining to Nortel's licensing of the
8 patents-in-suit, notes related to prior licensing meetings regarding the patents-in-suit, and internal
9 patent prosecution files for the patents-in-suit. Additionally, the Plano office is equipped to access
10 all electronic records at Rockstar Consortium Inc.'s Canada location.

11
12 32. Rockstar Consortium Inc. employs 21 employees in Canada – 19 in its office in
13 Ottawa and two in Toronto. Certain of these employees routinely travel for work to Plano.
14 Approximately four of these employees have relevant information about the lawsuit. It is
15 significantly easier for these employees to travel from Ontario to the Eastern District of Texas than it
16 is for them to travel to the Northern District of California, because the employees have support
17 facilities in Texas and they are familiar with the Eastern District of Texas region by virtue of their
18 routine travel there.

19
20 33. Third-party witnesses in this suit include former Nortel employees. The former
21 Nortel employees include: Art Fisher, who was Nortel's Vice President of Intellectual Property Law
22 from 1998-2004 and who currently resides in the Dallas area; and Richard Weiss, former Deputy
23 Intellectual Property Counsel for Nortel, who currently resides in the Eastern District of Texas. Mr.
24 Fisher and Mr. Weiss possess knowledge related to Nortel's licensing practices and policies during
25

1 the years of their employment. They can testify regarding what industries and technologies Nortel's
2 patents, including the patents-in-suit, implicate.

3 34. Rockstar's general partner is Rockstar Consortium LLC, a Delaware limited liability
4 corporation. Rockstar's limited partners, including Apple, neither direct nor control Rockstar's
5 specific decisions regarding when, where, or who Rockstar litigates against. Instead, Rockstar's
6 management directs Rockstar's litigation decisions.

7 35. Neither Apple nor any other limited partner of Rockstar has a majority stake of either
8 Rockstar or MobileStar.
9

10 36. Rockstar created MobileStar to serve as its mobile device licensing entity. Rockstar
11 created different subsidiary business entities to license its intellectual property in other areas, such
12 as: NetStar Technologies, which focuses on search engine technology; Bockstar Technologies,
13 which focuses on network/computer component technology; and Constellation Technologies, which
14 focuses on technology for telecommunications service providers to deliver cable,
15 telecommunications, and other multimedia services. These entities were created at the initiative of
16 Rockstar management, without direction or input from the Rockstar equity holders.
17

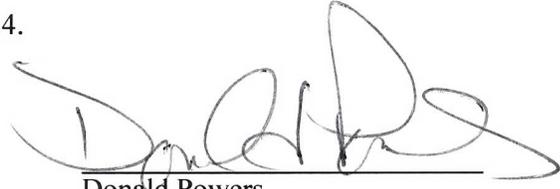
18 37. Mark Wilson formerly served as an independent contractor for Rockstar. Mark
19 Wilson is no longer consulting for Rockstar. His contract ended on March 31, 2014. Mr. Wilson
20 never had any substantive involvement with any of the patents-in-suit or any of the EDTX
21 Defendants. In addition, Mr. Wilson never had any contact whatsoever with any potential licensees
22 in California regarding Rockstar's patents.
23

24 38. Nortel Networks formerly maintained a small office in Santa Clara, California. This
25 office never served as Nortel's primary U.S. campus.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Executed the 5th day of May, 2014.



Donald Powers