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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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GOOGLE INC.,

CASE NO. 13-cv-5933-CW

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Plaintiff,

**OPPOSITION OF GOOGLE INC. TO
ROCKSTAR'S MOTION FOR § 1292(b)
CERTIFICATION FOR
INTERLOCUTORY REVIEW**

14

v.

15

ROCKSTAR CONSORTIUM US LP and
MOBILESTAR TECHNOLOGIES LLC,

16

Defendants.

Date: Thursday, June 19, 2014
Time: 2:00 p.m.
Courtroom: Courtroom 2, Fourth Floor
Judge: Hon. C.J. Claudia Wilken

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1 **INTRODUCTION**

2 Rockstar faces a heavy burden to obtain this Court’s certification for interlocutory appeal;
3 it has utterly failed to meet that burden, and the Court should deny its motion for that reason.
4 After significant briefing from both Google and Rockstar, this Court found that Google showed “a
5 direct link between Apple’s unique business interests, separate and apart from mere profitmaking,
6 and Defendants’ actions against Google and its customers.” The Court further found that
7 Rockstar’s “litigation strategy of suing Google’s customers in the Halloween actions is consistent
8 with Apple’s particular business interests.” In view of all of the evidence presented and after
9 hearing from Rockstar and Google, the Court concluded that Google “has shown that it is likely
10 that Defendants have created continuing obligations with a forum resident [Apple] to marshal the
11 asserted patents such that it would not be unreasonable to require Defendants [Rockstar] to submit
12 to the burdens of litigation in this forum.” In other words, the Court found that Rockstar
13 “purposefully directed activities to residents of this forum in a way which relates materially to the
14 enforcement or defense of the patent, which is sufficient to establish specific jurisdiction.” The
15 Court’s ruling was well-reasoned and detailed, and relied upon detailed evidence and argument.
16 But Rockstar did not like it. Instead of accepting the Court’s ruling, however, Rockstar now asks
17 to short-circuit the usual litigation procedure and head directly to the Court of Appeals for
18 interlocutory review. Tepidly arguing that “reasonable jurists might disagree over whether” this
19 Court is correct, Rockstar has utterly failed to show the required “substantial ground for difference
20 of opinion,” not to mention failing to show that certification will materially advance the litigation.
21 Rockstar raises the same arguments and authorities this Court already considered and rejected.
22 Rockstar may not use a motion for Section 1292(b) certification to seek a second bite. The Court
23 should deny Rockstar’s motion.

24 **BACKGROUND**

25 **A. To Clear the Air of the Halloween Actions, Google Filed This Action**

26 On October 31, 2013, Rockstar filed seven patent infringement suits in the Eastern District
27 of Texas against Google customers running Google’s Android operating system (the “Halloween
28 actions”), but did not sue Google itself. *Rockstar v. ASUS*, Case No. 13-894 (E.D. Tex.); *Rockstar*

1 v. *HTC*, Case No. 13-895 (E.D. Tex.); *Rockstar v. Huawei*, Case No. 13-896 (E.D. Tex.); *Rockstar*
2 v. *LG*, Case No. 13-898 (E.D. Tex.); *Rockstar v. Pantech*, Case No. 13-899 (E.D. Tex.); *Rockstar*
3 v. *Samsung*, Case No. 13-900 (E.D. Tex.); *Rockstar v. ZTE*, Case No. 13-901 (E.D. Tex.). On
4 December 23, Google filed an action in this Court for declaratory judgment of non-infringement
5 concerning the seven asserted patents. (Docket No. 1.) Eight days later, Rockstar added to one of
6 the Halloween actions allegations that Google infringed three of the seven patents, and then later
7 moved to add allegations that Google also infringed the other four. *Rockstar v. Samsung*, Case
8 No. 13-900 (E.D. Tex.), Docket Nos. 19, 45, 46.

9 **B. Google Established That Rockstar Owes Continuing Obligations to Apple**

10 On January 23, 2014, Rockstar filed a motion in this Court to dismiss or, in the alternative,
11 to transfer the action to the Eastern District of Texas. (Docket No. 19-4.) Google opposed.
12 (Docket No. 30-4.) In its opposition, Google argued that Rockstar has continuing obligations to
13 Apple to enforce the patents-in-suit, and supported its argument with at least the following:

- 14 • “Media and industry observers immediately viewed Rockstar’s Halloween actions as an
15 attack, by Microsoft and Apple, on Android and Google.” (*Id.* at 4:12-13.)
- 16 • “Apple provided \$2.6 billion of the \$4.6 billion purchase price, or 58% of the total,” to
17 Rockstar’s predecessor, Rockstar Bidco. (*Id.* at 9:14-15.)
- 18 • “Apple is either the majority owner of Rockstar or a significant one.” (*Id.* at 9:27-28.)
- 19 • “Rockstar CEO [John] Veschi ‘schedules periodic calls and meetings’ with Apple and its
20 intellectual property division. (*Id.* at 10:2-4.)
- 21 • “The purpose of these meetings is to show that Rockstar is marshalling its owners’ patents
22 on their behalf: ‘I have to show them progress and that real work is being done.’” (*Id.* at
23 10:4-6.)
- 24 • “Rockstar’s litigation strategy of suing Android device makers . . . advances the interests
25 of its majority shareholders, including Apple.” (*Id.* at 11:9-11.)
- 26 • “As was widely reported at the time, the industry considered this to be an attack by Apple
27 on Android and Google.” (*Id.* at 11:7-9.)
- 28 • Rockstar “is silent regarding control, and with good reason: Rockstar is admittedly a
‘Delaware limited partnership’ . . . controlled by its general partner—about which Mr.
Dean’s declaration, and Rockstar’s motion, say precisely nothing.” (*Id.* at 11:26 to 12:1.)
- “Rockstar partners control Rockstar through the G.P. LLC,” but Rockstar has not
explained “how they do so, or how they allocate control among themselves.” (*Id.* at 12:9-
10.)

- 1 • “Apple, indeed, exerts control over Rockstar commensurate to its ownership interest—
2 unless Apple simply decided to give someone else \$2.6 billion without any means to
protect this massive investment.” (*Id.* at 12:13-15.)
- 3 • “Rockstar has focused on the technology industry, which is concentrated heavily in this
4 District and this State,” including warnings to the industry and to specific companies that
they infringe. (*Id.* at 15:16-18.)
- 5 • “Rockstar’s true intent is to interfere with Google’s Android platform by disrupting its
6 customer relationships.” (*Id.* at 17:13-17.)

7 **C. Rockstar Failed to Rebut Google’s Allegations and Evidence**

8 In deciding Rockstar’s motion to dismiss for lack of personal jurisdiction, the Court must
9 take as true Google’s uncontroverted allegations. (Order at 5 (citing *Elecs. for Imaging, Inc. v.*
10 *Coyle*, 340 F.3d 1344, 1349 (Fed. Cir. 2003)).) Google recited some facts in its complaint, and
11 many more in its opposition to Rockstar’s motion to dismiss and accompanying supporting
12 declarations. Under the law, Rockstar thus bore the burden of rebutting—or even controverting—
13 Google’s allegations and evidence. Rockstar did not even try to do so; instead, Rockstar argued
14 that Google’s allegations and evidence, *even if all true*, could not support personal jurisdiction:

15 Google is mistaken that Rockstar’s “relationship” with Apple gives rise to specific
16 jurisdiction. . . . Google simply invites a conflict with settled law. Its theories
17 suffer from legal and factual defects; no amount of discovery will cure the former,
and the factual record (including the scope and nature of Rockstar’s activities) is
uncontroverted.

18 (Docket No. 39-4 at 8:4-21.) Indeed, when the Court initially indicated an inclination to allow
19 jurisdictional discovery, Rockstar insisted that any discovery into its relationship and business
20 dealings with Apple would be “an unnecessary exercise” and “futile” as a matter of law:

21 MR. CAWLEY: As I’m sure Your Honor recalls, Your Honor faced a very similar
22 situation five years ago in the *Smugmug* case. And Your Honor in that case
allowed limited jurisdiction [sic] on issues like whether there are licenses in
23 California, how much revenue is from California, whether there are negotiations in
California. But after that discovery, Your Honor entered an order which turned not
24 on the result of that discovery, but on Your Honor’s reading of the Federal Circuit
authority, principally in *Autogenesis* (sic) that said all of those factors are
25 insufficient. They can do discovery on how much licensing revenue the
Defendants have in this case, but the Federal Circuit says that licensing revenues
26 alone are not sufficient. They could do discovery on the one negotiation that has
occurred in California between the Defendants and Google, but the Federal Circuit
27 said in *Autogenesis* (sic) that is insufficient.

28

1 (Docket No. 47 at 5:20 to 6:12.) When Google noted that “there is no reason for MobileStar to
2 exist other than to evade this Court’s jurisdiction” (*id.* at 8:11-13), Rockstar again argued its
3 relationship with Apple could never have *any* bearing on the jurisdiction of this Court:

4 Again, Your Honor, whether Apple is a minority shareholder of a limited liability
5 shareholder duly organized under the State of Delaware with its principal place in Texas,
6 whether it is a minority limited partner or a majority limited partner is legally irrelevant.
7 That discovery will get nowhere as far as jurisdiction is concerned.

8 (*Id.* at 8:21 to 9:2.) Thus, although the law allowed Rockstar to respond to Google’s evidence of
9 strong ties to Apple, it simply chose not to do so.

10 **D. The Court Properly Found That It Has Specific Jurisdiction Over Rockstar**

11 On April 17, 2014, the Court denied Rockstar’s motion to dismiss or, in the alternative, to
12 transfer this action to the Eastern District of Texas. (Docket No. 58 (the “Order”).) The Court
13 found that Google’s evidence “demonstrates a direct link between Apple’s unique business
14 interests, separate and apart from mere profitmaking, and Defendants’ actions against Google and
15 its customers.” (*Id.* at 18:22-25.) Against the backdrop of “Google and Apple’s rivalry in the
16 smartphone industry” and statements by “Apple’s founder,” Steve Jobs, “that he viewed Android
17 as a ‘rip off’ of iPhone features and intended to ‘destroy’ Android by launching a ‘thermonuclear
18 war,’” the Court found that Rockstar’s “litigation strategy of suing Google’s customers in the
19 Halloween actions is consistent with Apple’s particular business interests.” (*Id.* at 18:24 to 19:7.)
20 The Court concluded that “Google has shown that it is likely that Defendants have created
21 continuing obligations with a forum resident [Apple] to marshal the asserted patents such that it
22 would not be unreasonable to require Defendants [Rockstar] to submit to the burdens of litigation
23 in this forum.” (*Id.* at 19:17 to 20:1.) In other words, “Defendants [Rockstar] have purposefully
24 directed activities to residents of this forum in a way which relates materially to the enforcement
25 or defense of the patent, which is sufficient to establish specific jurisdiction.” (*Id.* at 20:2-6.)

26 **ARGUMENT**

27 “Pursuant to 28 U.S.C. § 1292(b), a district court may certify an appeal of an interlocutory
28 order only if three factors are present. First, the issue to be certified must involve a ‘controlling
question of law.’” *Matsunoki Grp., Inc. v. Timberwork Oregon, Inc.*, Case No. 08-4078 CW, 2011

1 WL 940218, at *1 (N.D. Cal. Feb. 18, 2011) (quoting 28 U.S.C. § 1292(b)). “Second, there must
2 be ‘substantial ground for difference of opinion’ on the issue.” *Id.* at *2. “Third, it must be likely
3 that an interlocutory appeal will ‘materially advance the ultimate termination of the litigation.’”
4 *Id.* It is not enough to simply recite these three requirements. “Section 1292(b) is a departure
5 from the normal rule that only final judgments are appealable, and therefore must be construed
6 narrowly. Thus, the court should apply the statute’s requirements strictly, and should grant a
7 motion for certification only when exceptional circumstances warrant it.” *Mendez v. R&L*
8 *Carriers, Inc.*, Case No. 11-2478 CW, 2013 WL 1004293, at *1 (N.D. Cal. Mar. 13, 2013)
9 (citations omitted).

10 **I. Rockstar Has Failed to Show a “Substantial Ground for Difference of Opinion”**

11 “A substantial ground for difference of opinion is not established by a party’s strong
12 disagreement with the court’s ruling; the party seeking an appeal must make some greater
13 showing.” *Matsunoki Grp., Inc.*, 2011 WL 940218, at *2. At a minimum, Rockstar must
14 demonstrate an “established split of authority among the circuits” or “clearly conflicting decisions
15 by the Ninth Circuit” or other controlling circuit (here, the Federal Circuit), “which merit a
16 departure from the general rule that only final judgments are appealable.” *In re Static Random*
17 *Access Memory (SRAM) Antitrust Litig.*, Case No. 07-1819 CW, 2011 WL 250317, at *2 (N.D.
18 Cal. Jan. 25, 2011). Neither of the two arguments Rockstar offers demonstrates a jurisprudential
19 conflict warranting certification.

20 **A. Rockstar Misstates the Court’s Order Regarding Veil-Piercing and Alter Ego**

21 The Court can quickly dismiss Rockstar’s argument that “Google invited the Court to
22 effectively pierce the corporate veil or find alter ego without actually piercing the corporate veil or
23 finding alter ego.” (Motion at 3:7-8 (citing *3D Sys., Inc. v. Aarotech Labs., Inc.*, 160 F.3d 1373,
24 1380-81 (Fed. Cir. 1998)).) In *3D Systems*, plaintiff asked the Court to “pierce the corporate veil .
25 . . or treat these entities as alter egos, and impute” one defendant’s activities to two other
26 defendants that had “taken no actions directly in the state of California.” *3D Sys., Inc.*, 160 F.3d at
27 1376-1380. As the Court explained to Rockstar in the Order, that was not Google’s argument:
28

1 Defendants contend that Google has not proven that alter ego or agency theories
2 apply, and thus Apple’s contacts with the forum cannot be imputed to Defendants.
3 Defendants misunderstand Google’s argument. Google does not seek to impute to
4 Defendants Apple’s contacts with the forum state, but instead argues that
5 Defendants have undertaken a substantial obligation to Apple related to the asserted
6 patents that makes it reasonable to impose specific jurisdiction.

7 (Order at 17, n. 6 (citations omitted).) Addressing Google’s actual argument, this Court found that
8 “Google has shown that it is likely that Defendants have created continuing obligations with a
9 forum resident to marshal the asserted patents such that it would not be unreasonable to require
10 Defendants to submit to the burdens of litigation in this forum.” (*Id.* at 19:17 to 20:1.) Having
11 failed to persuade the Court that alter ego or agency theories are at issue, Rockstar again attempts
12 to mischaracterize Google’s arguments and now manufacture a controversy concerning the law of
13 corporations where none exists.

14 **B. Rockstar Misstates the Court’s Order Regarding Jurisdiction**

15 Rockstar misunderstands this Court’s Order yet again, arguing that it somehow imposes a
16 sweeping new standard subjecting a “limited partnership to personal jurisdiction in the limited
17 partner’s home forum.” (Motion at 7:16-18.) This Court’s Order imposed no such standard.
18 Instead, the Court merely applied existing black-letter law, holding that personal jurisdiction can
19 arise from an “undertaking which imposes enforcement obligations with a party residing or
20 regularly doing business in the forum.” (Order at 15:25 to 16:1 (citing *Avocent Huntsville Corp. v.*
21 *Aten Int’l Co., Ltd.*, 552 F.3d 1324, 1334 (Fed. Cir. 2008).) Again clinging to the formalities of
22 the corporate form, Rockstar asserts that the normal rule of *Avocent* and related cases cannot apply
23 to limited partners of limited partnerships because, if they did, “‘obligations’ owed by a limited
24 partnership to its limited partners” would somehow *always* subject “the limited partnership to
25 personal jurisdiction in the limited partner’s home forum.” (Motion at 7:13-18.) But Rockstar
26 misunderstands the import of this Court’s Order: it did not *require* jurisdiction to exist in every
27 limited partner’s home forum, but instead applied the *normal analysis* required by the Federal
28 Circuit to the facts of this case, in which Apple happens to be a limited partner of Rockstar.
(Order at 13-20.) By seeking a categorical rule barring obligations to limited partners from the
normal jurisdictional analysis, Rockstar argues for a new concept of immunity-by-partnership,

1 wherein the same obligations to the same party would *allow* jurisdiction if the party were
2 unrelated, but *bar* jurisdiction if the party happened also to be a limited partner of the defendant.
3 Such a rule would overturn “traditional notions of fair play and substantial justice,” so it is no
4 surprise that jurisdictional case law does not include it. *See Inamed Corp. v. Kuzmak*, 249 F.3d
5 1356, 1360 (Fed. Cir. 2001) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).
6 This Court followed the normal rules to find jurisdiction proper where one party enters into an
7 “undertaking which imposes enforcement obligations with a party residing or regularly doing
8 business in the forum.” (Order at 15:25 to 16:1 (citing *Avocent*, 552 F.3d at 1334).)

9 This Court properly found that the *actions* of Apple and Rockstar—not merely their chosen
10 corporate form or Apple’s status as a forum resident—establish specific jurisdiction over
11 Rockstar. (*Id.* at 18-20.) Indeed, the Court explained that, even “if Apple is a majority
12 shareholder of Rockstar,” Rockstar’s relationship with Apple “might not be sufficient to uphold
13 specific jurisdiction” if Rockstar “were able to demonstrate that Apple is a mere passive
14 shareholder and takes no part in patent assertion strategy.” (*Id.* at 18:3-8.) But Rockstar made no
15 such showing. Contrary to Rockstar’s current argument, the Court found jurisdiction based not on
16 the corporate form, but rather on Google’s specific allegations and evidence: “Google
17 demonstrates a direct link between Apple’s unique business interests, separate and apart from
18 mere profitmaking, and Defendants’ actions against Google and its customers. . . . Defendants’
19 litigation strategy of suing Google’s customers in the Halloween actions is consistent with Apple’s
20 particular business interests.” (*Id.* at 18:22 to 19:7.)

21 **C. Rockstar Presents No Controversy Concerning Delaware Law**

22 For similar reasons, the Court’s ruling did not, as Rockstar suggests, identify “Apple’s
23 ‘shareholder’ status with the alleged ability to control or influence” Rockstar. (Motion at 3:8-11.)
24 Although Google alleged that Apple must control Rockstar (Docket No. 30-4 at 12), the Court’s
25 ruling rested on Rockstar’s continuing obligations to Apple, not Apple’s shareholder status:

26 Google alleges that Apple’s role extends beyond the mere receipt of profits.
27 Rockstar’s CEO Veschi stated that he does not talk to its shareholders about
28 potential licensing partners or infringement suits, but admitted that he has to show
 them “progress and that real work is being done.” Veschi holds periodic calls and
 meetings with the owners, primarily with their intellectual property departments,

1 and Veschi acknowledges that they “work well together.” Although Veschi states
2 they avoid talking about details, it does appear at least telling that Veschi speaks
3 directly and periodically with the owners’ intellectual property departments to
4 demonstrate that “work is being done.”

4 (Order at 18:9-22 (citations omitted).) Rockstar ignores this holding, and argues instead that,
5 absent alter ego, this Court should not have found Apple to “control” Rockstar. (Motion at 7-9
6 (citing Del. Code Ann. tit.§ 17-303 (2014).) But that statute concerns the threshold for pass-
7 through liability, which bears no relation to the separate standard, grounded again in “traditional
8 notions of fair play and substantial justice,” governing whether Rockstar must face suit in this
9 Court. *Inamed*, 249 F.3d at 1360 (quoting *Int’l Shoe*, 326 U.S. at 316). These standards may
10 indeed be different, but that does not establish the “split of authority among the circuits” or
11 “clearly conflicting decisions” by the controlling circuit required for interlocutory certification. *In*
12 *re SRAM*, 2011 WL 250317, at *2. Delaware’s third-party liability statute thus does not
13 demonstrate substantial grounds for difference of opinion with Federal Circuit law on the exercise
14 of personal jurisdiction.

15 **D. Rockstar’s Obligations to Apple Render Personal Jurisdiction Proper**

16 **1. Rockstar Misreads the Federal Circuit’s Jurisdictional Requirements**

17 As this Court explained in its Order, “to find specific jurisdiction, the Federal Circuit has
18 required that a showing that a defendant engaged in ‘other activities’ in the forum state related to
19 the action at hand.” (Order at 15:12-15.) One such “other activity,” among many examples, is
20 any “undertaking which imposes enforcement obligations with a party residing or regularly doing
21 business in the forum.” (*Id.* at 15:22 to 16:1 (citing *Avocent*, 552 F.3d at 1334).) Unable or
22 unwilling to dispute its enforcement obligations to Apple, Rockstar argues instead that the law
23 requires an additional element: to affect jurisdiction, its obligations to a forum resident must
24 additionally require in-forum enforcement. (Motion at 10.) Rockstar thus argues that it is not
25 subject to personal jurisdiction in California on the grounds that it chose to file suit against Google
26 and its customers in Texas. (*Id.*)

27 Rockstar’s position does not comport with “traditional notions of fair play and substantial
28 justice.” *Inamed*, 249 F.3d at 1360 (quoting *Int’l Shoe*, 326 U.S. at 316). In Rockstar’s view,

1 even if Rockstar were obliged to Apple to enforce its patents against companies headquartered in
2 California, and even if Rockstar met repeatedly with those companies in California, made public
3 statements regarding infringement by those California companies, and reported regularly to Apple
4 regarding its enforcement efforts in California—in Rockstar’s view it would be immune from
5 personal jurisdiction in California until and unless it *actually filed suit in California*. (Motion at
6 10-11.) Were Rockstar’s view correct, the law of personal jurisdiction would be much simpler,
7 because Courts could resolve any dispute by answering a single, simple question: has the
8 defendant filed any actions in the forum? As the Court knows well, however, the law requires a
9 more detailed analysis. In *Avocent*, the Federal Circuit explained that it has “consistently required
10 the defendant to have engaged in ‘other activities’ that relate to the *enforcement* or the *defense of*
11 *the validity* of the relevant patents.” 552 F.3d at 1334 (emphasis in original). “Examples of these
12 ‘other activities’ include initiating judicial or extra-judicial patent enforcement within the forum,
13 or entering into an exclusive license agreement or other undertaking which imposes enforcement
14 obligations with a party residing or regularly doing business in the forum.” *Id.* Here, as the Court
15 found in detail, Rockstar entered into a relationship with Apple, a forum resident, that concerns
16 enforcement of the patents at issue. Contrary to Rockstar’s assertions, while these “other
17 activities” must be directed towards a party “residing in or regularly doing business in the forum,”
18 there is no requirement that they result in cases occurring in the forum. As the Federal Circuit
19 itself explained in a later case.:

20 *Avocent* explained that the contacts material to the specific jurisdiction analysis in a
21 declaratory judgment action are not just any activities related to the patent-at-issue.
22 Rather, the relevant activities are those that the defendant “purposefully directs . . .
at the forum which relate in some material way to the enforcement or the defense of
the patent.”

23 *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1019-20 (Fed. Cir. 2009) (alteration
24 in original). As required by *Avocent* and *Autogenomics*, this Court properly found jurisdiction
25 over Rockstar because Rockstar “purposefully directed activities to residents of this forum in a
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1 way which relates materially to the enforcement or defense of the patent, which is sufficient to
2 establish specific jurisdiction.” (Order at 20:2-6.) No more is required.¹

3 **2. Google Alleges Enforcement Obligations in California**

4 Even if the law required enforcement activities in the forum (which it does not), Google’s
5 allegations and evidence would still support personal jurisdiction. Rockstar argues that “at most,
6 Google has alleged, and the Court has found, that Apple resides in California, and may benefit
7 from Rockstar’s enforcement activities in other forums.” (Motion at 10:11-14.) But this is simply
8 untrue: Google explained that Rockstar “has focused on the technology industry” of California,
9 including companies such as Google, Facebook, and LinkedIn. (Docket No. 30-4 at 15:16-25.)
10 Further, Google argued that “Rockstar’s Halloween actions, and the enforcement campaign
11 underlying them, are directed exclusively and entirely” against Google, and that Rockstar’s “true
12 intent is to interfere with Google’s Android platform by disrupting its customer relationships.”
13 (*Id.* at 17:8-14.) Rockstar did not deign to rebut these points. (Docket No. 39-4.) This Court
14 found that Rockstar is “obliged to act on Apple’s behalf in a campaign to attack Google’s Android
15 platform,” and that Rockstar’s litigation tactic “advances Apple’s interest in interfering with
16 Google’s Android business.” (Order at 17:4-8, 19:11-14.) This Court did not find any Texas-
17 specific obligations, but instead found that Rockstar “purposefully directed activities to residents
18 of this forum in a way which relates materially to the enforcement or defense of the patent.” (*Id.*
19 at 20:2-4.) The Court should reject Rockstar’s after-the-fact mischaracterizations of both
20 Google’s evidence (that Rockstar did not try to rebut at the time), and the Court’s resulting Order.

21 **II. Certification Will Not Materially Advance the Litigation**

22 **A. Case-Dispositive Orders Do Not Automatically Meet This Element**

23 To establish exceptional circumstances warranting a departure from the normal rule that
24 only final judgments are appealable, Rockstar must further demonstrate that it is “likely that an

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26 ¹ Rockstar briefly argues that the Court’s Order would mean that “filing of a suit in a
27 particular state subjects that party to specific personal jurisdiction everywhere else.” (Motion at
28 10 n.7.) Again, Rockstar misunderstands the Court’s Order, which rests not on the Halloween
actions, but on Rockstar’s continuing obligations to Apple. (Order at 18-20.)

1 interlocutory appeal will ‘materially advance the ultimate termination of the litigation.’” *Getz v.*
2 *Boeing Co.*, Case No. 07-6396 CW, 2009 WL 3765506, at *2 (N.D. Cal. June 16, 2009).
3 Rockstar’s sole argument on this point is that the parties should not litigate this case “only to
4 discover upon final judgment that there was never jurisdiction in the first place” (Motion at 11:7-
5 9), and that “the disposition of all cases could be substantially affected or delayed if this case is
6 ultimately found to suffer from a fatal jurisdictional defect.” (*Id.* at 12:3-5.) But Courts routinely
7 reject this argument, precisely because it can be made “anytime a case-dispositive motion is
8 denied.” *Getz*, 2009 WL 3765506, at *2.

9 Rockstar’s own brief makes this point well. In a lengthy footnote, Rockstar lists a dozen
10 cases in which various courts, exercising their sound discretion, have granted motions for
11 interlocutory certification under § 1292(b). (Motion at 6 n.6.) But Rockstar does nothing to show
12 that the specific facts of those cases relate in any way to the facts of this action, or that the
13 discretion exercised by those Courts should affect this Court’s exercise of its discretion here.
14 Although Rockstar has submitted cases which granted interlocutory certification, there are many
15 other cases involving jurisdiction which denied such certification, precisely because the mere
16 existence of a jurisdiction issue does not make a motion “*per se* reviewable” on an interlocutory
17 basis. *Atmel Corp. v. Authentec, Inc.*, Case No. 06-2138 CW, 2007 WL 1880342, at *2 (N.D. Cal.
18 June 29, 2007) (citing *Things Remembered v. Petrarca*, 516 U.S. 124, 132 n. 1 (1995) (Ginsburg,
19 J., concurring)); *see also Thomas Weisel Partners LLC v. BNP Paribas*, Case No. 07-6198, 2009
20 WL 55946 (N.D. Cal. Jan. 7, 2009) (denying a motion to certify an order denying a motion to
21 dismiss for lack of specific jurisdiction over a foreign defendant); *Hanni v. Am. Airlines, Inc.*,
22 Case No. 08-0732 CW, 2008 WL 5000237 (N.D. Cal. Nov. 21, 2008) (denying a motion to certify
23 an order granting a motion to dismiss). Rockstar’s citation of a selection of unrelated cases that
24 grant certification is thus meaningless, and should not affect this Court’s exercise of its sound
25 discretion on this motion.

26 **B. Certification Does Not Present Efficiencies in This Case**

27 The Court should deny Rockstar’s motion for another reason as well: no matter what
28 happens in the Court of Appeals, the result would not accelerate or simplify any proceedings, but

1 merely move them between California and Texas. (*See* Motion at 11-12 (discussing Rockstar’s
2 “Halloween actions”).) As this Court has previously held, where “the parties would nevertheless
3 continue to litigate this action” even in the unlikely case of a successful interlocutory appeal, the
4 movants “fail to meet their burden to show the likelihood that immediate appeal would materially
5 advance the ultimate termination of the litigation.” *S.E.C. v. Sells*, Case No. 11-4941 CW, 2012
6 WL 4897385, at *2 (N.D. Cal. Oct. 15, 2012). Rockstar’s position presents no efficiencies
7 because “if the appeal were to fail, the termination of the litigation would be delayed, and the
8 Court of Appeals would be burdened with a second appeal.” *Getz*, 2009 WL 3765506, at *2.
9 Indeed, “the benefit to the district court of avoiding unnecessary trial must be weighed against the
10 inefficiency of having the Court of Appeals hear multiple appeals in the same case.” *S.E.C. v.*
11 *Credit Bancorp, Ltd.*, 103 F. Supp. 2d 223, 226-227 (S.D.N.Y. 2000).

12 Finally, Rockstar argues that “certification may be particularly appropriate in complex
13 litigation involving multiple coordinated actions,” but relies on authority that undercuts its own
14 argument. (Motion at 11:15-17 (citing *Fed. Hous. Fin. Agency v. UBS Americas, Inc.*, 858 F.
15 Supp. 2d 306, 338 (S.D.N.Y. 2012).) In *UBS*, an FHFA Securities Act suit concerning residential
16 mortgage-backed securities, the court granted certification not due to a multitude of parties—the
17 defendants were each affiliated with UBS—but because as between the parties at issue,
18 interlocutory appellate ruling on the applicable statute of limitations could remove from the
19 litigation 14 of the 22 mortgage-backed securities certificates at issue. *Fed. Hous. Fin. Agency*,
20 858 F. Supp. 2d at 338. Analyzing the specific facts before it, the court found an appeal could
21 “significantly narrow the scope of discovery in this case and the proof that the parties would be
22 able to present at trial, saving the parties and the public time and money.” *Id.* The opposite is true
23 here: Rockstar seeks to shift this action to another forum, and presents no “exceptional
24 circumstances” to “justify a departure from the basic policy of postponing appellate review until
25 after the entry of a final judgment.” *Id.* at 337.

26 **III. The Court Need Not Decide Whether There Is a Controlling Question of Law**

27 Rockstar claims that the Court’s ruling on personal jurisdiction involves a controlling
28 question of law. (Mot. at 5-6.) The Court need not decide this issue because, as set forth above in

1 Sections I and II, Rockstar has failed to establish the other elements required for certification,
2 including whether there is a substantial ground for difference of opinion, a likelihood that an
3 interlocutory appeal will materially advance the ultimate termination of the litigation, or any
4 exceptional circumstances warranting departure from the normal rule that only final judgments are
5 appealable. *See Matsunoki Grp., Inc.*, 2011 WL 940218, at *1-2; *Mendez*, 2013 WL 1004293, at
6 *1. Rockstar has failed to meet its burden and its motion should be denied.

7 **CONCLUSION**

8 For all of the foregoing reasons, this Court should exercise its discretion to deny
9 Rockstar's motion for certification.

10 DATED: May 23, 2014

Respectfully submitted,

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14 Attorneys for Google Inc.

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