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U.S. LP and MobileStar Technologies LLC

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 GOOGLE INC.,

16 Plaintiff,

17 v.

18 ROCKSTAR CONSORTIUM US LP and
19 MOBILESTAR TECHNOLOGIES LLC,

20 Defendants.

CASE NO. 13-cv-5933-CW

**JOINT CASE MANAGEMENT
STATEMENT**

Date: Thursday, June 26, 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 Order of May 12, 2014 (Docket No. 68),
24 Plaintiff Google Inc. ("Google") and Defendants Rockstar Consortium US LP and MobileStar
25 Technologies LLC (collectively "Defendants") submit this 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 and in Defendants' Motion for § 1292(b) Certification for Interlocutory Review (Docket No. 66)
13 and subsequent reply (Docket No. 74), Defendants contend that the Court does not have personal
14 jurisdiction over Rockstar or MobileStar, and that venue is not proper in this District.

15 **2. Facts**

16 On December 23, 2013, Google filed this action in the Northern District of California
17 seeking a declaration that "Google's Android platform" and the Nexus 5, Nexus 7, and Nexus 10
18 devices do not directly or indirectly infringe United States Patent Nos. 5,838,551, 6,037,937,
19 6,128,298, 6,333,973, 6,463,131, 6,765,591, and 6,937,572 (collectively, the "patents-in-suit").
20 (Docket No. 1.) On January 23, 2014, Defendants filed Defendants' Motion to Dismiss under
21 Fed. R. Civ. P. 12(b)(2) and 12(b)(3) for Lack of Personal Jurisdiction and Improper Venue and to
22 Decline Exercising Jurisdiction under the Declaratory Judgment Act. On February 7, 2014,
23 Google filed an Opposition to Defendants' Motion to Dismiss or Transfer. (Docket No. 30,
24 Attachment 4.) On February 13, 2014, Defendants filed Defendants' Reply to Google's
25 Opposition to Defendants' Motion to Dismiss and to Decline Exercising Jurisdiction under the
26 Declaratory Judgment Act. (Docket No. 39, Attachment 4.) The Court held a hearing on
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1 Defendants' Motion on March 13, 2014. On April 17, 2014, the Court denied Defendants'
2 Motion. (Docket No. 58.)

3 On May 5, 2014, Defendants filed an Answer and Counterclaims to Complaint for
4 Declaratory Judgment of Non-Infringement. (Docket No. 61.)

5 On May 9, 2014, Defendants filed a Motion for § 1292(b) Certification for Interlocutory
6 Review. (Docket No. 66.) On May 23, 2014, Google filed an Opposition to Rockstar's Motion
7 for § 1292(b) Certification for Interlocutory Review. (Docket No. 71.) On May 30, 2014,
8 Defendants filed a Reply in Support of Motion for § 1292(b) Certification for Interlocutory
9 Review. (Docket No. 74.) The Court has not set a hearing on this motion.

10 On May 9, 2014, Defendants filed a Motion to Transfer under 28 USC § 1404(a) or, in the
11 Alternative, to Stay. (Docket No. 67.) On May 23, 2014, Google filed an Opposition to
12 Rockstar's Renewed Motion to Transfer or Stay This Action. (Docket No. 72.) On May 30, 2014,
13 Defendants filed a Reply to Google's Response to Defendants' Motion to Transfer Under 28
14 U.S.C. 1404(A) or, in the Alternative, to Stay. (Docket No. 78.) The Court set a hearing on this
15 motion for Thursday, June 26, 2014. (Docket No. 68.)

16 On May 27, 2014, Google filed an Answer to Counterclaims for Patent Infringement.
17 (Docket No. 73.)

18 Two motions are pending. (*See infra* § 4.)

19 **3. Legal Issues**

20 **a. Joint Statement**

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

- 22 • Construction of any disputed patent claim terms;
- 23 • Whether Google's Nexus 5, Nexus 7, and Nexus 10 directly or indirectly infringe
24 the patents-in-suit;
- 25 • Whether the patents-in-suit are valid and enforceable;
- 26 • Whether Rockstar is entitled to monetary damages (and if so, the amount) or the
27 entitlement of either party to other equitable relief; and
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- 1 • Whether this is an exceptional case under 35 U.S.C. § 285.

2 **b. Google’s Statement**

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

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

12 **c. Defendants’ Statement**

13 Defendants also anticipate that they will dispute the following legal issues:

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

15 **4. Motions**

16 **a. Joint Statement**

17 Two motions are pending. First, on May 9, 2014, Defendants filed a Motion for § 1292(b)
18 Certification for Interlocutory Review. (Docket No. 66.) On May 23, 2014, Google filed an
19 Opposition to Rockstar’s Motion for § 1292(b) Certification for Interlocutory Review. (Docket
20 No. 71.) On May 30, 2014, Defendants filed a Reply in Support of Motion for § 1292(b)
21 Certification for Interlocutory Review. (Docket No. 74.) The Court has not set a hearing on this
22 motion.

23 On May 9, 2014, Defendants filed a Motion to Transfer under 28 USC § 1404(a) or, in the
24 Alternative, to Stay. (Docket No. 67.) On May 23, 2014, Google filed an Opposition to
25 Rockstar’s Renewed Motion to Transfer or Stay This Action. (Docket No. 72.) On May 30, 2014,
26 Defendants filed a Reply to Google’s Response to Defendants’ Motion to Transfer Under 28

1 U.S.C. 1404(A) or, in the Alternative, to Stay. (Docket No. 78.) The Court set a hearing on this
2 motion for Thursday, June 26, 2014. (Docket No. 68.)

3 The parties anticipate that they are likely to file motions for summary judgment, as well as
4 other motions that may arise during the litigation.

5 **5. Amendment of Pleadings**

6 **a. Joint Statement**

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

10 **b. Google's Statement**

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

12 **c. Defendants' Statement**

13 Defendants contend that the deadline to amend pleadings should be controlled by the
14 default provisions of the Federal Rules and/or the Local Rules, and that Google's proposed
15 deadline of January 8, 2015 is too late.

16 **6. Preservation of Evidence**

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

21 **7. Disclosures**

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

24 **8. Discovery**

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

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1 **a. Interrogatories**

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

4 **b. Requests for Admission**

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

8 **c. Depositions**

9 **i. Google's Statement**

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

15 Rockstar's proposal to place additional limits on Google's ability to take depositions of
16 third parties is unsupported by the Rules, and is flatly unreasonable. In its disclosures under Rule
17 26(a)(1), Rockstar identified ten officers and employees as likely to have discoverable information
18 regarding its claims and defenses. Deposing these identified officers and employees alone will
19 occupy 50-70 hours. And, as the Court knows from prior cases, parties often take discovery
20 beyond the witnesses identified by their opponents. In light of Rockstar's fulsome identification
21 of its own officers and employees, 150 hours is a reasonable initial limit for party officers and
22 employees, but not for all depositions. There are fourteen inventors on the seven asserted patents
23 and at least ten prosecuting attorneys, none of whom are current Rockstar employees. Deposing
24 just these inventors and prosecuting attorneys will likely occupy the full 150 hours Rockstar
25 deems sufficient for all of Google's depositions. Should the Court adopt Rockstar's draconian
26 limit on overall deposition hours, Google would be forced to choose between deposing Rockstar's
27 employees and Rockstar's inventors. Rockstar itself would face no such choice: its counsel can
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1 speak to its officers and employees at any time, and its counsel also represents at least six of the
2 inventors. A limit on overall depositions would thus prejudice Google and benefit only Rockstar.

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

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

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

20 No party personnel will be inconvenienced or even affected by *non-party* depositions in
21 this action. Should a non-party contend that any deposition subpoena is not appropriate, it can
22 defend its own rights by filing a motion to quash or a motion for protective order; Rockstar cannot
23 assert those rights for any other party. *See, e.g., Shi v. Cent. Arizona Coll.*, No. 08-80131, 2008
24 WL 4001795, at *1 (N.D. Cal. Aug. 27, 2008). Rockstar thus can assert only potential
25 inconvenience to Rockstar's *counsel*, which may or may not attend depositions scheduled by
26 Google. But convenience of counsel is "an irrelevant or improper factor" that is "not appropriate
27 to consider" in governing litigation. *Wilson v. Walgreen Co.*, No. 11-2930, 2011 WL 4345079, at
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1 *5 (N.D. Cal. Sept. 14, 2011); *Eli Lilly & Co. v. Genentech, Inc.*, No. 13-0919, 2013 WL
2 4396718, at *4 (N.D. Cal. Aug. 13, 2013). For these and other reasons, Courts routinely ignore
3 arguments based on convenience to counsel, and the Court should do so here as well.

4 **ii. Defendants' Statement**

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

11 **d. Expert Communications and Drafts**

12 The parties agree that attorney communications to and from a retained expert, draft reports,
13 and notes of retained experts relating to communication to or from attorneys are not discoverable.
14 Attorney communications with an expert in preparation for the expert's deposition or trial
15 testimony are not discoverable. Final expert reports and materials the experts relied on in their
16 reports are discoverable.

17 **e. Electronically Stored Information ("ESI") and Stipulated Protective Orders**

18 The parties discussed electronic discovery during the Federal Rule of Civil Procedure
19 26(f) conference and agreed to meet and confer for the purpose of entering a stipulated e-
20 discovery order and to try to develop a mutually agreeable list of search terms and protocols prior
21 to the production of documents. The parties also agree that the sensitive nature of the material at
22 issue in this case requires a protective order, and to meet and confer for the purpose of entering a
23 stipulated protective order. The parties agree to submit a proposed e-discovery order within 30
24 days of filing this document.

25 **9. Class Actions**

26 This case is not a class action.
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1 **10. Related Cases**

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

11 **11. Relief**

12 **a. Google's Statement**

13 Google seeks the following relief:

- 14 • A declaratory judgment against Rockstar that Google's Android platform and the
15 Nexus 5, Nexus 7, and Nexus 10 do not infringe any of the patents-in-suit;
- 16 • A finding that the patents-in-suit are invalid;
- 17 • A finding that this is an exceptional case under 35 U.S.C. § 285;
- 18 • Dismissing, with prejudice, Rockstar's claims against Google;
- 19 • Denying all relief that Rockstar seeks against Google;
- 20 • An award of Google's costs and attorney's fees in connection with this action; and
- 21 • Such further and additional relief as the Court deems just and proper.

22 **b. Defendants' Statement**

23 Defendants seek the following relief:

- 24 • Dismissal of this action, stay of this action, or transfer of this action to the Eastern
25 District of Texas pending resolution of Defendants' related Texas cases;
- 26 • A finding that Google's Nexus 5, Nexus 7, and Nexus 10 infringe each of the
27 patents-in-suit;

- 1 • A specific definition and identification of Google’s “Android Platform” so that
- 2 Defendants can determine what this is and whether or not it infringes each of the
- 3 patents-in-suit;
- 4 • A finding that this is an exceptional case under 35 U.S.C. § 285;
- 5 • An award of costs and attorney’s fees in connection with this action;
- 6 • Equitable relief that this Court deems just and proper (including an injunction
- 7 and/or a running royalty for ongoing infringement); and
- 8 • Such further and additional relief as the Court deems just and proper.

9 **12. Settlement and ADR**

10 The parties conferred regarding Alternative Dispute Resolution options under ADR Local
11 Rule 3-5. The parties agree to participate in private alternative dispute resolution. (Docket Nos.
12 62-64.)

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

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

15 **14. Other References**

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

18 **15. Narrowing of Issues**

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

21 **16. Expedited Trial Procedure**

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

1 **17. Scheduling**

2 **a. Joint Statement**

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

- 6 **Parties Exchange Initial Disclosures under Federal Rule of Civil Procedure 26(a)(1) –**
7 **Wednesday, April 30, 2014;**
- 8 **Initial Case Management Conference (Docket No. 68) – Thursday, June 26, 2014;**
- 9 **Disclosure of Asserted Claims & Infringement Contentions and Accompanying**
10 **Document Disclosure under Patent Local Rules 3-1 and 3-2 – Thursday, July 10, 2014¹;**
- 11 **Invalidity Contentions and Accompanying Document Production under Patent Local**
12 **Rules 3-3 and 3-4 – Monday, August 25, 2014;**
- 13 **Exchange Lists of Proposed Terms for Constructions under Patent Rule Local 4-1 –**
14 **Monday, September 8, 2014;**
- 15 **Exchange Preliminary Claim Constructions and Extrinsic Evidence under Patent**
16 **Local Rule 4-2 – Monday, September 29, 2014;**
- 17 **Joint Claim Construction and Prehearing Statement Under Patent Local Rule 4-3 –**
18 **Friday, October 24, 2014;**
- 19 **End of Claim Construction Discovery under Patent Local Rule 4-4 – Monday,**
20 **November 24, 2014;**
- 21 **Rockstar’s Claim Construction Brief under Patent Local Rule 4-5(a) – Monday,**
22 **December 8, 2014;**
- 23 **Google’s Responsive Claim Construction Brief under Patent Local Rule 4-5(b) –**
24 **Monday, December 22, 2014;**

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27 ¹ The parties dispute this deadline. Google contends it should apply (see page 14), while
28 Rockstar contends it should not. (See page 16.)

1 **Rockstar’s Reply Claim Construction Brief under Patent Local Rule 4-5(c)** – Monday,
2 December 29, 2014;

3 **Claim Construction Hearing under Patent Local Rule 4-6** – Monday, January 12, 2015,
4 or as set by the Court;

5 **Last Day to Disclose Advice of Counsel under Patent Local Rule 3-7** – 50 Days after
6 service by the Court of its Claim Construction Ruling.

7 **b. Google’s Statement**

8 In order to ensure an expeditious resolution of this matter, Google is willing to shorten the
9 period of time Google has to prepare its invalidity contentions and accompanying document
10 production under the Patent Local Rules 3-3 and 3-4 from 45 days to 21 days. Further, Google
11 proposes advancing by one day the claim construction briefing schedule to accommodate the
12 Thanksgiving holiday. This would result in the following schedule:

13 **Invalidity Contentions and Accompanying Document Production under Patent Local**
14 **Rules 3-3 and 3-4** – Thursday, July 31, 2014;

15 **Exchange Lists of Proposed Terms for Constructions under Patent Rule Local 4-1** –
16 Thursday, August 14, 2014;

17 **Exchange Preliminary Claim Constructions and Extrinsic Evidence under Patent**
18 **Local Rule 4-2** – Thursday, September 4, 2014;

19 **Joint Claim Construction and Prehearing Statement Under Patent Local Rule 4-3** –
20 Monday, September 29, 2014;

21 **End of Claim Construction Discovery under Patent Local Rule 4-4** – Wednesday,
22 October 29, 2014;

23 **Rockstar’s Claim Construction Brief under Patent Local Rule 4-5(a)** – Wednesday,
24 November 12, 2014;

25 **Google’s Responsive Claim Construction Brief under Patent Local Rule 4-5(b)** –
26 Wednesday, November 26, 2014;

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

2 Wednesday, December 3, 2014;

3 **Claim Construction Hearing under Patent Local Rule 4-6 –** Wednesday, December 17,

4 2014, or as set by the Court;

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

6 service by the Court of its Claim Construction Ruling.

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

17 In addition to the dates set forth in the Local Rules with the few modifications Google
18 proposes, Google further proposes the following schedule for this action:

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

20 **End of Fact Discovery –** Thursday, January 15, 2015;

21 **Initial Expert Reports –** Thursday, January 29, 2015;

22 **Responsive Expert Reports –** Thursday, February 19, 2015;

23 **End of Expert Discovery –** Friday, March 6, 2015;

24 **Dispositive Motion Cut-Off Date –** Thursday, April 30, 2015;

25 **Pretrial Conference –** Wednesday, May 27, 2015, or as set by the Court;

26 **Trial to Commence –** Monday, June 29, 2015, or as set by the Court.

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

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

15 **c. Defendants’ Statement**

16 In addition to the dates set forth in the Local Rules, and because of the posture of this case
17 where Google seeks a declaration of non-infringement as to each of the patents-in-suit, Defendants
18 propose the following deadlines for this action. Google seeks a declaration of non-infringement
19 that its Nexus 5, Nexus 7, Nexus 10 devices and the “Android Platform” do not infringe any claim
20 of any of the patents-in-suit. (Docket No. 1). Google does not identify the specific claims of each
21 patent-in-suit that it seeks a declaration of non-infringement on. (*See id.*) Nor does Google
22 identify which specific products it contends comprise what it terms the “Android Platform.” (*See*
23 *also id.*) Defendants’ contend that Google’s use of the term “Android Platform” is vague,
24 ambiguous and divorced from any Google or third-party product (including the products at-issue
25 in the related Texas cases), requiring more specific identification. (*See e.g.*, Docket No. 61 at ¶
26 31). Without knowing which claims of each patent-in-suit are at-issue, and without knowing what
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1 products or things comprise the “Android Platform,” Defendants are unable to prepare
2 infringement contentions. In light of the foregoing, Defendants propose the following deadlines:

3 **Deadline for Google to identify each claim of each patent-in-suit that it seeks a**
4 **declaration of non-infringement on** – July 10, 2014;

5 **Deadline for Google to provide a specific definition of the “Android Platform”**
6 **together with a specific identification of any products it contends comprise the**
7 **“Android Platform”²** – July 10, 2014;

8 **Defendants’ Disclosure of Infringement Contentions and Accompanying Document**
9 **Production in response to Google’s Identification of Claims, Definition of “Android**
10 **Platform,” and Disclosure of Non-Infringement Contentions** – July 24, 2014³; and
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** – August 7, 2014⁴

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16 ² The parties’ dispute whether Google (as the declaratory plaintiff) has the burden to identify
17 the specific claims of each patent-in-suit that it seeks a declaration of non-infringement on and a
18 specific identification of what products Google contends comprise the “Android Platform”
19 sufficiently in advance of any deadline for Defendants to provide infringement contentions.
20 Accordingly, Defendants propose alternative deadlines in their statement, which Google disputes.
21 This deadline should also include an identification of whether or not each product accused of
22 infringement in the related Texas cases make use of the “Android Platform” in the manner
23 managed by Google, and if so, a specific identification of the “Android Platform” code used
24 within each product accused of infringement in the related Texas cases. In the related Texas cases,
25 Rockstar has provided infringement contentions, and because Google is a party to the related
26 Texas cases, Google, in addition to the Texas defendants, has received a disclosure of Rockstar’s
27 infringement contentions, which identify each product accused of infringing each of the patents-
28 in-suit in each of the related Texas cases.

24 ³ Defendants request that Google, as the declaratory plaintiff, be ordered to identify the
25 specific claims of each patent-in-suit that it seeks a declaration of non-infringement on and a
26 specific identification of what products Google contends comprise the “Android Platform”
27 sufficiently in advance of any deadline for Defendants to provide infringement contentions. Under
28 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 July
10, 2014.

1 Google’s complaint that “Rockstar thus asks this Court to order discovery regarding
2 Rockstar’s actions in Texas, even while simultaneously opposing transfer of those actions to this
3 Court. . . .” misses the mark. Google represented in its Complaint and in its Opposition to
4 Defendants’ Motion to Dismiss that its Declaratory Complaint was proper because Defendants
5 were suing its customers in Texas and that its Declaratory Complaint was first filed under the
6 “manufacturer-customer” exception to the first-to-file rule. (*See e.g.* Docket No. 1 at 1
7 (Defendants have “filed seven lawsuits claiming that Google’s customers infringe . . .”); Docket
8 No. 30, Attachment 4 at (Defendants have “sue[d] Google’s customers, the Android manufacturers
9 named in the Halloween actions”); *See also* Docket No. 58 at 24 (Court finding “the relationship
10 between Google and the Halloween defendants is one of manufacturer and customer.”). If this
11 case is truly a “manufacturer-customer lawsuit” then Google as the “manufacturer” should have
12 access to the code and other materials used by its “customers” that form the basis for the non-
13 infringement counterclaims before this Court—Google should have this information without
14 having to join those “customers” to this case.

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

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

23 **End of Fact Discovery** – Friday, September 4, 2015;

24 **Initial Expert Reports** – Friday, September 18, 2015;

25 **Responsive Expert Reports** – Friday, October 2, 2015;

26 **End of Expert Discovery** – Friday, October 16, 2015;

27 **Dispositive Motion Cut-Off Date** – Monday, November 2, 2015;

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1 **Pretrial Conference** – Monday, November 23, 2015, or as set by the Court;

2 **Trial to Commence** – Monday, December 14, 2015, or as set by the Court.

3 **18. Trial**

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

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

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

9 Under Civil L.R. 3-16, the undersigned certifies that the following listed persons,
10 associations of persons, firms, partnerships, corporations (including parent
11 corporations), or other entities (i) have a financial interest in the subject matter in
12 controversy or in a party to the proceeding, or (ii) have a non-financial interest in
13 that subject matter or in a party that could be substantially affected by the outcome
14 of this proceeding: ASUSTeK Computer, Inc.; ASUS Computer International, Inc;
15 Futurewei Technologies Inc.; HTC America, Inc.; HTC Corporation; Huawei
16 Device (Hong Kong) Co., Ltd.; Huawei Device USA Inc.; Huawei Investment &
17 Holding Co., Ltd.; Huawei Technologies Co., Ltd.; Huawei Technologies
18 USA, Inc.; Huawei Technologies Coöperatief U.A.; LG Electronics Inc.; LG
19 Electronics MobileComm U.S.A., Inc.; LG Electronics U.S.A., Inc.; Pantech Co.,
20 Ltd.; Pantech Wireless, Inc.; Samsung Electronics America, Inc.; Samsung
21 Electronics Co., Ltd.; Samsung Telecommunications America, LLC; ZTE
22 Corporation; ZTE (USA) Inc.; and ZTE Solutions. Defendants Rockstar
23 Consortium US LP and MobileStar Technologies LLC (“Rockstar”) have sued each
24 of these entities for alleged infringement of the patents that are the subject of this
25 action. Rockstar claims that each of these entities infringes alleged Rockstar
26 patents by making, using, selling, offering for sale, importing, exporting, supplying,

1 or distributing “certain mobile communication devices having a version (or an
2 adaption thereof) of [the] Android operating system” developed by Google.

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

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

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

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

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a. Discovery and Timing Under the Patent Local Rules

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

b. The Format of the Claim Construction Hearing

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

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: June 19, 2014

Respectfully submitted,
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By /s Matthew S. Warren
Matthew S. Warren
Attorneys for Google Inc.

McKOOL SMITH HENNIGAN,P.C.
By /s Joshua W. Budwin
Joshua W. 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 W. Budwin has concurred in this filing.

DATED: June 19, 2014

/s Matthew S. Warren
Matthew S. Warren