

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PERSONALIZED USER MODEL, L.L.P., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 GOOGLE INC., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )  
 GOOGLE, INC. )  
 )  
 Counterclaimant, )  
 )  
 v. )  
 )  
 PERSONALIZED USER MODEL, LLP and )  
 YOCHAI KONIG )  
 )  
 Counterdefendants. )

C.A. No. 09-525-LPS

**JURY TRIAL DEMANDED**

**NOTICE OF SUBPOENA**

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, defendant Google Inc., will serve the attached subpoena in the above-referenced action.

OF COUNSEL:

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Dated: May 26, 2011  
1014468 / 34638

POTTER ANDERSON & CORROON LLP

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*Attorneys for Defendant Google Inc.*

UNITED STATES DISTRICT COURT

for the Northern District of California

Personalized User Model, LLC )
Plaintiff )
v. ) Civil Action No. 1:09-cv-525 (LPS)
Google Inc. )
Defendant ) (If the action is pending in another district, state where:
District of Delaware

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Utopy Inc. 1550 Bryant St., Suite 400, San Francisco, CA 94103

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Attachment A

Table with 2 columns: Place (Quinn Emanuel Urquhart & Sullivan, 50 California Street, 22nd Floor, San Francisco, CA 94111) and Date and Time (06/09/2011 9:00 am)

The deposition will be recorded by this method: stenographic and videographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 5/26/11 CLERK OF COURT

Signature of Clerk or Deputy Clerk OR Andrea Pallios Roberts Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Google Inc.

Andrea Pallios Roberts, Quinn Emanuel Urquhart & Sullivan LLP, 555 Twin Dolphin Dr., 5th Floor, Redwood Shores, CA 94065, andreaproberts@quinnemanuel.com; 650-801-5000

Civil Action No. 1:09-cv-525 (LPS)

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

### Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

#### (c) Protecting a Person Subject to a Subpoena.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

#### **(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### **(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

#### (d) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### **(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **ATTACHMENT A**

### **DEFINITIONS**

As used in this notice of deposition, the following terms have the meaning indicated:

A. “Google” means Google Inc., including its present and former corporate parents, predecessors in interest, successors in interest, shareholders, divisions, departments, subsidiaries, branches, affiliates, and its present and former officers, directors, executives, employees, partners, agents, principals, attorneys, trustees, representatives, and other persons acting or purporting to act on its behalf.

B. “You” or “Utopy” shall mean Utopy, Inc., predecessor-in-interest to the Patents-in-Suit, and its agents, officers, employees, representatives and attorneys, and any and all of its predecessor or successor companies, corporations or business entities.

C. The “Patents-in-Suit” shall mean U.S. Patent No. 6,981,040 (“the ‘040 patent”) and U.S. Patent No. 7,685,276 (“the ‘276 patent”).

D. The term “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the Patents-in-Suit by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisional, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

E. “PUM” shall mean Plaintiff and Counterdefendant Personalized User Model, L.L.P.

F. The term “Document” is used in its broadest sense to include everything that is contemplated by Rules 26 and 34 of the Federal Rules of Civil Procedure, including without limitation any written, recorded or tangible graphic matter, or any other means of preserving

data, expression, facts, opinions, thought, images, or other information of any kind, including without limitation all non-identical copies, drafts, out takes, subsequent versions, worksheets and proofs, however created or recorded, including without limitation audio tapes, annotations, calendars, correspondence, data or information of any kind recorded on compact disks, digital video diskettes, or any other type or form of diskettes for use with computers or other electronic devices, or any hard drive, diary entries, electronic recordings of any kind, e-mail, memoranda, notes, photographs, reports, telephone slips and logs, video cartridges and videotapes, and sites, databases, or other means of information storage or retrieval on the Internet or the World Wide Web. The term “Document” also includes, but is not limited to, documents stored in electronic form, such as electronic mail, computer source code, object code and microcode, and documents stored on any media accessible by electronic means. A comment or notation appearing on any Document that is not part of the original text is to be considered a separate “Document.”

G. “Thing” means any tangible object other than a Document.

H. “Person” or “Entity” includes not only natural Persons, but also, without limitation, firms, partnerships, associations, corporations, and other legal entities, and divisions, departments, or other units thereof.

I. “Infringement” refers to any form of infringement actionable under United States law, including without limitation, direct infringement, contributory infringement, inducement to infringe, literal infringement, and infringement under the doctrine of equivalents.

J. “Accused Product” and/or “accused Google product” means Google Search, Google AdWords, Google AdSense for Content, Google News, and Google Reader.

K. “Asserted Claim” and/or “Asserted Claims” means Claims 1, 11, 21, 22, and 34 of the ‘040 patent and Claims 1, 3, 5, 6, 7, 14, 21, 22, 23, and 24 of the ‘276 patent.

L. “Relates to,” “Relating to” and “Related to” mean describing, discussing, evidencing, concerning, reflecting, comprising, illustrating, containing, embodying, constituting, analyzing, stating, identifying, referring to, commenting on, connected with, substantiating, establishing, memorializing, proving, disproving, contradicting, mentioning, regarding, reflecting, dealing with, in any way pertaining to, or supporting, directly or indirectly.

M. “Communication” means any occurrence whereby data, expression, facts, opinions, thought or other information of any kind is transmitted in any form, including without limitation any conversation, correspondence, discussion, e-mail, fax, meeting, memorandum, message, note, or posting or other display on the Internet or the World Wide Web.

N. “Inventor” and/or “Inventors” refers to any and/or all named inventors of Patents-in-Suit, including Yochai Konig, Roy Twersky, and Michael Berthold.

**Areas of Examination Pursuant to Rule 30(b)(6)**

In accordance with Rule 30(b)(6), Utopy is required to designate one or more of its officers, directors, managing agents, or other persons to testify on its behalf with respect to matters known or reasonably available to Utopy regarding the subjects described below:

1. All facts and circumstances relevant to the issues in this case about which David Konig has knowledge, including, but not limited to, his knowledge of the following:
  - a. The facts and circumstances regarding the conception, reduction to practice (actual or constructive), any alleged diligence in reduction to practice and/or cessation of attempted reduction to practice of each of the Asserted Claims of the patents-in-suit, on a claim-by-claim basis, including without limitation: (i) all corroborating evidence thereof, including without limitation the identity of the author and dates of creation, last modification, and printing of any documents



relating to the alleged conception and reduction to practice; and (ii) all persons who contributed in any way to the conception or reduction to practice of any of the Asserted Claims of the patents-in-suit.

- b. The content of the document titled patent.doc and attached to the email produced bearing document control number PUM 0086526, as well as the claimed corruption of said document.
- c. An explanation of how each document identified by PUM as relating to the date of conception of any Asserted Claim establishes the date and substance of each element and/or limitation of the Asserted Claims.
- d. The best mode contemplated by the named inventors for carrying out the alleged invention(s) of the Patents-in-Suit on or prior to June 20, 2000.
- e. The facts and circumstances regarding any search, analysis, investigation or opinion regarding the Patents-in-Suit and any Related Applications, including without limitation any search, analysis, investigation or opinion regarding patentability, unpatentability, enforceability, unenforceability, validity, invalidity, infringement, non-infringement, meaning, interpretation, construction or scope of the Patents-in-Suit or Related Applications.
- f. The facts and circumstances regarding any prior art investigation regarding the Patents-in-Suit and any Related Applications.
- g. The facts and circumstances regarding any challenges, whether formal or informal, to the validity or enforceability of the Patents-in-Suit and/or Related Applications.

- h. Any reaction by the industry and the public regarding the alleged invention(s) described in the Patents-in-Suit.
- i. The first public use, exhibition, sale, or offer for sale of any product embodying any alleged invention claimed in the Patents-in-Suit.
- j. The facts and circumstances relating to how and when Utopy, PUM, and/or the inventors first became aware of each Accused Product; any and all analyses, examinations or investigations of each such product conducted by or for Utopy, PUM, and/or the inventors; and an identification of documents (by Bates number) and persons with information relating to such analysis, examination or evaluation.
- k. Utopy, PUM, and/or the inventors' investigation or analysis of any Google product or service as to whether said product or service infringes the patents-in-suit prior to the filing of the Complaint in this action.
- l. Any notice (whether actual or constructive) given by Utopy, PUM, or the inventors to Google of any alleged infringement of the Patents-in-Suit, including any communications between Utopy, PUM, or the inventors and Google regarding the patents-in-suit or any alleged or potential infringement of the Patents-in-Suit.
- m. The facts and circumstances relating to any pre-litigation communications between Utopy, PUM, or the inventors and Google.
- n. The preparation and prosecution of the Patents-in-Suit and any Related Applications in the United States Patent and Trademark Office or any foreign patent office, including without limitation the identity and role of all persons involved in said preparation and prosecution and the content and location of all

documents related to said preparation and prosecution, and including without limitation the preparation and prosecution of U.S. Patent Application No. 12/692,252, filed January 22, 2010.

- o. Utopy's corporate structure and status, including without limitation its organizational structure, ownership structure, shareholders, general partners, limited partners, investors, decision-makers, and past and present employees.
- p. Yochai Konig's work on Utopy or personalization while employed at SRI International, including any portions or elements of the asserted claims conceived or reduced to practice while employed at SRI International.
- q. The reasons for the formation of Utopy.
- r. Any transfer or assignment of the patents-in-suit, including the transfer or assignment of the patents-in-suit from Utopy Inc. to Levino Ltd., and the transfer or assignment of the patents-in-suit from Levino Ltd.
- s. Whether any consideration was paid for the transfers or assignments of the patents-in-suit referenced in Topic 1(r), including to what entity or individual any consideration was paid, and whether any of the transfers or assignments were gifts.
- t. How and by what entity or individual the transfers or assignments of the patents-in-suit referenced in Topic 1(r), including any proceeds or consideration therefrom, were recorded and/or accounted for tax and accounting purposes, and all documents reflecting that tax and accounting treatment.
- u. Any transaction between or among Utopy Inc., Levino Ltd., Skoulino Trading Co. Ltd., Blacksmith Ventures, Square1 Bank, and PUM.

- v. Any communications between Utopy or PUM and any third party regarding the Patents-in-Suit, including but not limited to, communications relating to licensing or purchasing the patents-in-suit, investing in Utopy or PUM, infringement of the patents-in-suit, the validity or invalidity of the patents-in-suit, prior art, and any secondary considerations of nonobviousness.
- w. The involvement of Jack Ben Quesus, Reuben Ben Quesus, Shimon Twersky, Levy Benaim, and Ari Gal in Utopy, PUM (including the management of PUM), and this litigation.
- x. The ownership, corporate structure and business operations of Levino Ltd. and Skoulino Trading Co. Ltd, including any involvement in Utopy, PUM (including the management of PUM), and this litigation.
- y. Any consulting or other agreements between Utopy and any of the inventors.
- z. Utopy's attempts to design, create, distribute or market any software that provided or was intended to provide personalization services, including any attempts to generate capital for that purpose.
- aa. Any products or software related to personalization that Utopy developed or proposed to develop for Cooley Godward & Kronish LLP, Lehman Bros., or any other clients.
- bb. Utopy's decision to cease development, distribution, marketing or sale of software that provided or was intended to provide personalization services.
- cc. All facts and circumstances regarding any use by Utopy or the inventors of any Google services as part of their attempts to create and market personalized search products or software, or any investigation regarding such use or potential use.

- dd. Any attempts by Utopy to design, create, distribute or market any software that provided or was intended to provide personalization services, including any attempts to generate capital for that purpose.
- ee. The procedures followed, steps taken, and persons involved in collecting and producing documents in response to Google's subpoena for production of documents served on Utopy, including the collection of documents in David Konig's custodial files.
- ff. Utopy's document retention policies, including without limitation any policies regarding the retention of e-mails and any modification of Utopy's document retention or e-mail retention policies in connection with this litigation, and David Konig's retention of documents in his custodial files.
- gg. The identification of any non-privileged categories of documents or specific documents in David Konig's custodial files that were responsive to Google's subpoena for production of documents but not produced by Utopy in response thereto, whether those documents were not produced because they have been lost or destroyed, and, if so, when such documents were lost or destroyed.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I, David E. Moore, hereby certify that on May 26, 2011, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on May 26, 2011, the attached document was Electronically Mailed to the following person(s):

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*/s/ David E. Moore* \_\_\_\_\_

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