

**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**  
**PUBLIC VERSION**

**LETTER TO THE HONORABLE LEONARD P. STARK FROM DAVID E. MOORE**

Richard L. Horwitz (#2246)  
David E. Moore (#3983)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza, 6th Floor  
1313 N. Market Street  
Wilmington, DE 19801  
Tel: (302) 984-6000  
[rhorwitz@potteranderson.com](mailto:rhorwitz@potteranderson.com)  
[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)

*Attorneys for Defendant Google Inc.*

Enclosures  
cc: Clerk of the Court (By Hand Delivery)  
Counsel of Record (By Electronic Mail)

Dated: June 23, 2011  
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1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
302 984-6000

www.potteranderson.com

**David E. Moore**  
Partner  
Attorney at Law  
dmoore@potteranderson.com  
302 984-6147 Direct Phone  
302 658-1192 Fax

June 23, 2011; Public Version Dated: June 30, 2011

**VIA ELECTRONIC FILING**

The Honorable Leonard P. Stark  
United States District Court  
J. Caleb Boggs Federal Building  
844 King Street  
Wilmington, Delaware 19801

**PUBLIC VERSION-**

Re: Personalized User Model LLP v. Google Inc., C.A. No. 09-525-LPS

Dear Judge Stark:

Pursuant to the Court's June 13, 2011 Order, Defendant Google Inc. ("Google") respectfully files this letter brief, requesting that the Court order PUM to produce communications between and among PUM's counsel and named inventors Yochai Konig and Roy Twersky, subsequent to the inventors' December 2010 depositions, which relate to conception, the January and February 2011 meetings with the inventors regarding the same, and PUM's changed interrogatory response and Twersky's changed testimony regarding conception.

**PUM withholds communications relating to its change of conception date after the Court allows discovery as to similar and related communications.** In its Second and Third Supplemental Responses to Interrogatory No. 1, PUM stated that the patents-in-suit were conceived [REDACTED] (Ex. A.) At his December 3, 2010 deposition, Twersky stated he [REDACTED] this date was correct. (Ex. B, 108:7-25). On February 8, 2011, after Google asked PUM to stipulate to Google filing an early summary judgment motion on ownership and standing, PUM served its Fourth Supplemental Response to Interrogatory No. 1, stating "[REDACTED]" (Ex. C.) Twersky similarly recanted his testimony endorsing the "[REDACTED]" conception date at his May 5 deposition. (Ex. D, 353:25-354:6.)

[REDACTED]

(Ex. E.)

[REDACTED]

(Ex. F, 433:22-434:3, 436:1-23; Ex. D, 271:1-19, 282:6-283:12; 291:17-19).

At Konig's May 4 deposition, PUM's counsel instructed him not to answer questions about these meetings. (Ex. F, 433:22-434:14, 438:7-438:22.) PUM's counsel made the same instruction at Twersky's deposition the next day. (Ex. D, 282:14-283:16.) In a teleconference, however, the Court ruled that Google was entitled to inquire into these meetings:

I am going to require that the witness there today, Mr. Twersky, answer questions about the two meetings that were referred to, I believe January 19th and February 7th, *as clearly they are likely to lead to relevant and discoverable information related to the date of conception, which is an important issue in dispute here.*

(Ex. D, 294:23-295:16)(emphasis added). The Court further explained that it would not "limit Google's right to inquire into other areas." (*Id.*)

Although Twersky testified regarding these meetings with counsel, PUM's counsel instructed Twersky not to answer questions regarding any other communications between the inventors and with counsel concerning conception, including, for example, how the inconsistency in inventor testimony was framed to Twersky prior to the first meeting. (Ex. D, 298:8-300:21.) After the deposition, PUM refused to produce written communications subsequent to the December 2010 inventor depositions concerning conception, the meetings with the inventors, and/or PUM's and Twersky's about-face on conception. (Ex. G.) PUM provided a privilege log identifying some of these withheld communications (eighteen documents), but refused to log all of the requested, but withheld, written communications. (Ex. H-I.)

**The requested communications are discoverable.** Like its improper instructions at the inventor depositions, PUM is improperly using privilege as a sword and shield—relying on communications between the inventors and counsel as a basis for changing the conception date, but claiming privilege to preclude Google from taking discovery on those and related communications. Just as testimony regarding the January 19 and February 7 meetings was "likely to lead to relevant and discoverable information related to the date of conception" and appropriately discoverable, so too are written communications regarding conception between counsel and the inventors between their December 2010 depositions and PUM's change in its interrogatory response on conception.

Google is not being "opportunistic" in seeking these communications as PUM has claimed, but is appropriately seeking discovery into these communications that directly bear on PUM's interrogatory responses that rely on communications with counsel for PUM's purported explanation of its about-face on conception.

(Ex. E.)

(Ex. D, 316:25-317:7, 268:23-269:5.) Then, on redirect, Twersky recanted that testimony,

(*Id.*, 437:24-438:9.) The documents Google seeks bear directly to the "facts" asserted in PUM's response and Twersky's testimony related thereto.

[REDACTED] (Id., 447:17-449:10.) This demonstrates the clear influence counsel has on his recollection.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Ex. D, 451:1-20.) Given that PUM put communications with counsel squarely at issue through its explanation of its changed position on conception, Google should be permitted to fully explore all such communications, written and oral, that may have led to this about-face.

The documents are also relevant to test the inventor testimony, elicited by PUM's counsel, that SRI was not discussed with counsel in reference to the changed conception date:

[REDACTED]

[REDACTED]

[REDACTED]

(Ex. D, 442:20-24.) [REDACTED] (Id., 456:4-9). Based on such testimony, PUM will likely argue that its about-face on conception had nothing to do with SRI's rights to the patents, rather than, as Google argues, a sham crafted to avoid summary judgment on Google's ownership claim. The timing of when the inventors learned about Google's ownership claim, and what role it played in PUM's changed interrogatory response and Twersky's changed testimony, is critical to testing PUM's explanation thereof and provides further justification for compelling PUM to produce the requested withheld communications.

For the foregoing reasons, Google respectfully requests that PUM be ordered to produce any written communications with Konig or Twersky regarding scheduling the January 19 and February 7 meetings, the subject matters discussed at those meetings, and PUM's preparation of its Fourth Supplemental Response to Interrogatory No. 1, and to no longer instruct the named inventors not to answer questions regarding communications in this period on these subjects.

Respectfully,

*/s/ David E. Moore*

David E. Moore

DEM:nmt/1018534/34638

Enclosures

cc: Clerk of the Court (By Hand Delivery)  
Counsel of Record (By Electronic Mail)