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VIA ELECTRONIC FILING

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The Honorable Leonard P. Stark
United States District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

Re: *Personalized User Model, L.L.P. v. Google, Inc.*, C.A. No. 09-525 (LPS)

Dear Judge Stark:

Personalized User Model L.L.P. ("PUM") respectfully requests that the Court again deny Google Inc.'s ("Google") demand for the production of additional privileged documents. On June 29, 2011, the Court denied the very relief that Google now requests when the Court partially denied Google's Motion to Compel "communications regarding PUM's preparation of its Fourth Supplemental Response to Interrogatory No. 1." (June 29, 2011 Order, at 17:6-10, attached as Ex. 1 to Google's letter).

Google's June 23, 2011 letter brief sought three (3) categories of privileged documents: "(A) any written communications with Konig or Twersky regarding scheduling the January 19 and February 7 meetings, (B) the subject matters discussed at those meetings, and (C) PUM's preparation of its Fourth Supplemental Response to Interrogatory No. 1." (D.I. 288, at 3). At the June 29 conference, the Court granted-in-part and denied-in-part Google's requested relief:

> Specifically, the Court will permit and hereby orders that PUM produce the written communications between counsel and the inventors relating to the scheduling of the January 19th and the February 7th meetings and the subjects discussed at those meetings to the extent those subjects relate to conception and the changed testimony or changed interrogatory responses relating to the date of conception. The Court is denying defendant's request to further compel communications regarding PUM's preparation of its Fourth Supplemental Response to Interrogatory No. 1. [Ex. 1, June 29, 2011 Tr. At 16:10-11; 16:24-17:8].

PUM has produced (A) the written communications relating to the scheduling of the two meetings and (B) communications relating to discussions that occurred at those two meetings to the extent such communications related to conception, the changed testimony or the changed interrogatory responses. PUM also produced one e-mail dated the day after the second meeting that refers to conception and a document discussed during that meeting (*i.e.*, documents from overlapping Categories A and B). The remaining withheld communications (reflecting both attorney-client communications and work-product) relate to PUM's preparation of its Fourth Supplemental Response to Interrogatory No. 1 – the category of communications that the Court specifically denied Google. All eight emails are dated February 8, 2011 – after the meetings were completed.[1] The Court has already ruled that the waiver did not extend to preparation of the interrogatory responses apart from those meetings, and the Court should reject Google's attempt to extend the Court's ruling further.

Google's arguments to revisit this issue are not persuasive. Google's main argument seems to be that because the Court granted its Motion with respect to Category B (the subject matters discussed during the two meetings), PUM cannot withhold any documents outside of drafts of the supplemental interrogatory responses. *See* Google Letter, at 1 and 3. This interpretation, however, is directly contradicted by the Court's Order denying "communications regarding PUM's preparation of its Fourth Supplemental Response to Interrogatory No. 1. This simply goes too far in reaching into attorney work product." (Order, at 17:6-10).

Nor does the portion of the Order that Google quotes at the top of page 3 of its letter support Google's argument. That portion of the Order was related to communications containing drafts of the supplemental interrogatory response that occurred in connection with Category A (the scheduling of the meetings): "Well, certainly we did not discuss what to do about a communication that falls within Category A not C." (Order, at 18:22-24). Here, in contrast, the documents withheld relate to neither Category A nor Category B. Indeed, under Google's interpretation, only drafts of the interrogatory response could be withheld (see page 3), an outcome directly at odds with the Court's ruling. Google's letter appears, in fact, to be little more than an attempt to reargue the partial denial of its motion. As the Court already acknowledged, Google has the interrogatory response and an opportunity to take discovery about the meetings and communications about them. There is no reason to revisit the Court's rulings.[2]

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[1] Google argues on page 1 of its letter that a work product claim has not been made on the remaining eight documents. While the initial privilege log only identified the documents as attorney client privileged, during the June 29 hearing and in the subsequent meet and confer leading up to the present dispute, PUM made clear that it was claiming work product protection as well. *See, e.g.*, Order at 12:24-13:5.

(Continued . . .)

In sum, per the Court's Order, PUM has already produced the Category A and B documents to Google, including one e-mail that occurred after the meeting relating to conception that pertained to conception and a document discussed during the meeting. Now Google, in seeking all eight remaining e-mails – all of which are dated after the meetings – is simply seeking the final Category C that the Court previously denied. PUM requests that the Court deny Google this second bite at the apple.

Respectfully,

Jeremy A. Tigan (#5239)

JAT/dla
Enclosure
cc: Clerk of the Court (by hand, w/encl.)
All Counsel of Record (via e-filing and/or e-mail, w/encl.)

[redacted]

EXHIBIT 1

REDACTED

IN ITS

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