MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

302 658 9200
302 658 3989 FAX

August 29, 2012

KAREN JACOBS LOUDEN
302 351 9227
302 425 4681 FAX
klouden@mnat.com

PUBLIC VERSION

BY E-FILING

Confidential Version Filed: August 29, 2012
Public Version Filed: September 6, 2012

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:

We write on behalf of Plaintiff Personalized User Model, L.L.P. ("P.U.M.") to address the matters set forth in the Court's August 21, 2012 Oral Order setting the August 31, 2012 conference.

1. This Court Should Set a Trial Date

The Court should set a trial date now because this action has been pending for more than three years and needs to move forward to resolution without further delays. It will be years more before P.U.M. can obtain complete resolution because both discovery and trial on damages and willfulness were bifurcated for later proceedings. (D.I. 32). Assuming P.U.M. wins on its infringement claims in the first trial, damages and willfulness discovery will then begin culminating in a second trial even further down the road.

The Court entered its claim construction order on January 25, 2012, and opening expert reports were served on April 11, 2012. The remaining expert discovery was extended several times to accommodate Google and its expert. (D.I. 364 and 366). [redacted] On August 10, 2012, P.U.M. served a supplemental infringement expert report, and rebuttal reports are due on September 7, 2012 (now five months after service of opening reports). (D.I. 367). Google now seeks a further extension to an already stretched out schedule.

Contrary to Google's assertion, the pending reexamination proceedings provide no basis not to set a trial date. The reexamination proceedings are far from over and are likely to be just as hard fought as this litigation. For example, the Examiner's rulings on the reexaminations will

likely be appealed to the Board of Patent Appeals and Interferences and then to the Federal Circuit, regardless of which side prevails. Thus, it may be years before the matters are finally resolved. The Court should not delay setting a trial date based on a motion that Google has not yet filed. Should the Court grant such a motion to stay in the future, which we do not believe it should grant, the trial date of course could be vacated at that time.

As evidenced by Google's continuous requests to further delay the case (i.e., stating it would move to stay the case (D.I. 371), and requesting yet a further extension of time for rebuttal reports), setting a trial date for March 2013, or at the Court's convenience soon thereafter, will ensure that this long pending dispute will stay on track towards resolution and that P.U.M. will finally have its first day in court more than three and a half years after the Complaint was filed.

2. P.U.M.'s Supplemental Infringement Expert Report Should Not Be Stricken

[redacted] Indeed, Google does not explain why it agreed to this additional discovery if it could not be used to assert infringement.

Second, Google is not unfairly prejudiced. Google primarily argues that its experts would have to undertake a "substantial investigation and analysis…" (D.I. 374 at 2) to rebut the supplemental report. [redacted] Google began producing relevant documents in May of 2012 and made source code available starting in July of 2012. Additionally, the amount of discovery which Google produced is very limited. [redacted]

[1] P.U.M. reserves the right to assert in future litigation that other Google products using Portrait, not now involved in this case, also infringe P.U.M.'s patents.

[2] [redacted]

For the above reasons, P.U.M's supplemental infringement expert report should not be stricken.

3. Google Should Not Be Permitted Yet Another Extension of Time for Expert Discovery

Google's alternative request that the due date for its rebuttal report be extended until four weeks after the Court's ruling, and to extend the remaining dates for expert depositions (now set for October 2), and case dispositive motions (now set for November 7) should be denied (and emphasizes why a trial date is needed). After weeks of negotiation, the parties agreed upon the present schedule (D.I. 367), which required P.U.M. to serve its supplemental infringement report only ten days after the Rule 30(b)(6) deposition, which it did, and allowed Google four full weeks to respond to this limited supplemental report. In addition, Google will have had five months to respond to P.U.M.'s original infringement contentions. [redacted] As a result, Google cannot credibly claim unfair prejudice. For each of these reasons, the Court should not grant Google's request for an extension of time.

4. Summary Judgment Page Limitations

P.U.M. requests that the number of summary judgment motions that can be filed be limited to facilitate resolution of this matter and avoid an undue drain on the resources of the Court and the parties. In this hard fought litigation, it is highly unlikely that there will be any motions, let alone two, that are devoid of factual disputes. P.U.M. therefore proposes that each side be limited to two summary judgment motions, limited to twenty pages each. And in no event should the briefing exceed forty pages.

For these reasons, P.U.M. respectfully requests that the Court set both a Pretrial Conference and a trial date, that P.U.M.'s supplemental infringement report not be stricken, that Google not be permitted to extend the schedule yet again, and that summary judgment briefing be limited to two motions, twenty pages each.

Respectfully,

/s/ Karen Jacobs Louden

Karen Jacobs Louden (#2881)

cc: Clerk of the Court (*by e-filing and hand delivery*)
All Counsel of Record (*by e-mail*)