

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|----------------------------------|---|-----------------------|
| PERSONALIZED USER MODEL, L.L.P., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| GOOGLE, INC., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | C.A. No. 09-525 (LPS) |
| GOOGLE, INC., |) | |
| |) | |
| Counterclaimant, |) | |
| |) | |
| v. |) | |
| |) | |
| PERSONALIZED USER MODEL, L.L.P. |) | |
| and YOCHAI KONIG, |) | |
| |) | |
| Counterclaim-Defendants. |) | |

**PUM’S OPPOSITION TO GOOGLE’S “EMERGENCY”
MOTION TO EXTEND TIME TO SERVE REBUTTAL EXPERT REPORT¹**

Defendant Google, Inc. (“Google”) has had more than five months to prepare its rebuttal expert report on infringement. Plaintiff Personalized User Model, LLP (“PUM”) served its first opening expert report on April 11, 2012 – more than five months ago. It then served a supplemental report on August 10, 2012 – more than a month and a half ago – to address the limited issue of the newly accused Portrait functionality. PUM has already agreed to multiple extensions for expert reports, including to accommodate a maternity leave, a honeymoon, a paternity leave, and Google’s expert’s health issue.

¹ Google’s motion is improper both because it violates the Court’s procedures for discovery disputes and because there is no “emergency.” The due date for rebuttal expert reports was set four weeks ago at the August 31, 2012 telephonic hearing. Yet Google waited until late in the evening on September 26 – only two days before the report was due – to request an extension. There are no new or unforeseen emergent circumstances.

There are no emergent reasons for a further extension. The Court rejected Google's request for additional time during the August 31, 2012 telephonic conference, instead expressly limiting Google to four weeks from that conference. (8/31/12 Tr. 22). During that hearing, the Court stated that four additional weeks to serve a rebuttal report was adequate time. (*Id.*). Having now had PUM's opening report for five months and its supplemental report for nearly two, as the Court stated, Google has had more than adequate time for "attorney and client review" of its rebuttal report. That Google is dealing with "multiple pre-trial filings" in another matter was also known at the time that the present schedule was set. And the trial in that matter is several weeks away.² Indeed, the expert schedule submitted to the Court on September 5, 2012 (D.I. 389) following the August 31 conference was already adjusted to accommodate the trial schedule of Google's counsel in that matter. There have been no new or unforeseen circumstances since then.

Contrary to Google's assertion, PUM will be prejudiced by additional delay. Google's multiple extensions have delayed the case and have been used for Google's tactical advantage. Indeed, Google has contended in its pending motion for a stay that discovery is ongoing and that the "early" stage of the case warrants a stay, notwithstanding Google's assurances that the multiple extensions to which PUM agreed would not be used to its detriment. In fact, the very day that Google requested a further extension of time for its expert report to accommodate a paternity leave, Google filed its motion to stay. Further, notwithstanding its claim here that its counsel has been occupied with pretrial filings in another matter, Google took the time to prepare and file this motion. It also apparently is taking the time to prepare its reply

² PUM was advised that the other trial in which Google's counsel is involved does not begin until October 16, 2012.

brief in support of its motion to stay, due on Monday, October 1, for which no extension of time has been sought.

More than three years into this case, and five months after opening expert reports, it is time to move this case forward without additional delays. Moreover, PUM needs time to review and analyze Google's rebuttal expert report and to prepare for depositions on the schedule to which the parties agreed, which already took into account Google's counsel's trial schedule.

For the foregoing reasons, PUM respectfully requests that the Google's "Emergency" Motion be denied.

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September 28, 2012
6489736.1

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2012, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered participants.

Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on September 28, 2012, upon the following individuals in the manner indicated:

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