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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:

We write on behalf of Plaintiff Personalized User Model, L.L.P. (“P.U.M.”) in response to Google Inc.’s (“Google”) August 17, 2012 letter requesting an earlier hearing date for Google’s motion to strike P.U.M.’s supplemental infringement expert report. (D.I. 374). Rather than simply addressing timing of the hearing, Google provides its arguments concerning the merits of the dispute. That is improper. To the extent the Court is inclined to consider Google’s merit-based arguments at this time, we address them below.

Google argues P.U.M.’s supplemental report does not relate “solely to ‘Portrait’ functionality,”¹

[REDACTED]

1 [REDACTED]

2 [REDACTED]

(Continued . . .)

Contrary to Google's assertion, there is no unfair prejudice here. Google has been on notice of P.U.M.'s intent to make "Portrait" a part of this case since March of 2012, when P.U.M. first requested discovery based on Google's recent press announcements. After some exchanges, the parties entered into a stipulated amendment to the Scheduling Order on July 13, 2012 (D.I. 367), which explicitly permitted P.U.M. to take additional discovery relating to Portrait, including the production of documents, source code and a Rule 30(b)(6) deposition. The stipulated Scheduling Order also included a due date for P.U.M.'s supplemental infringement expert report, August 10, 2012, and a revised due date for rebuttal expert reports, September 7, 2012. At Google's insistence, the revised date for rebuttal reports was scheduled a full four weeks after P.U.M.'s supplemental report, notwithstanding that Google has had P.U.M.'s initial report for months (since April 11, 2012).³ Google agreed to these dates knowing that Portrait and the products/services using Portrait were then at issue. Based upon the agreement on these dates, Google cannot credibly claim it is unfairly prejudiced by the supplemental report addressing these two Google offerings that use Portrait, which was timely served. Moreover, not only is the amount of relevant discovery, which Google itself produced, very limited, but the infringement theory related to the additional two products is essentially the same theory that P.U.M. has set forth since the beginning of this case. [REDACTED]

[REDACTED] This is simply another example of Google's ever-expanding use of P.U.M.'s patented technology.

Lastly, Google's alternative request -- that the due date for its rebuttal report be extended until four weeks after the Court's ruling on Google Plus and YouTube Videos, and to extend the remaining dates for expert depositions (now October 2), and case dispositive motions (now November 7) -- should be denied. P.U.M. previously requested that the Court set a trial date to keep this case on track and avoid further delay in the proceedings. (D.I. 369). Google's effort to push these dates even further ahead is just another attempt to further delay the ultimate resolution of this case. This case has been hard fought for over three years, and any additional delay would further prejudice P.U.M. who is entitled to its day in Court.

(. . . continued)

³ Also at Google's insistence, P.U.M. provided its supplemental report only days after the Rule 30(b)(6) deposition and source code production were completed. Although Google claims that its experts would have to undertake a "substantial investigation and analysis," (D.I. 374 at 2), its expert should already have been reviewing the same materials Google produced to P.U.M. Google offers no explanation of what "substantial investigation" its expert purportedly would have to undertake (or how he could consider materials not produced to P.U.M.) or why its expert is unable to do so in the four weeks Google has for rebuttal reports.

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P.U.M. reserves the right to further address Google's motion in accordance with the Court's upcoming Order setting a discovery conference.

Respectfully,

A handwritten signature in cursive script that reads "Karen Jacobs Loudon".

Karen Jacobs Louden (#2881)

KJL

cc: Clerk of the Court (*By E-filing and Hand Delivery*)
All counsel of record (*By E-mail*)

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