

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.)	

**P.U.M.’S MOTION FOR LEAVE TO CROSS-MOVE FOR SUMMARY JUDGMENT IN
RESPONSE TO GOOGLE’S MOTION FOR SUMMARY JUDGMENT ON ITS
BREACH OF CONTRACT AND DECLARATION OF OWNERSHIP
COUNTERCLAIMS, AND AFFIRMATIVE DEFENSE OF LACK OF STANDING**

Personalized User Model, L.L.P. (“P.U.M.”) respectfully moves for entry of an order granting it leave, to the extent leave is required, to cross-move for summary judgment in response to Google, Inc.’s Motion for Summary Judgment on its Breach of Contract Counterclaim, Declaration of Ownership Counterclaim, and Affirmative Defense of Lack of Standing (D.I. 412; “Google’s Motion”). For the reasons that follow, P.U.M. seeks leave to cross-move for summary judgment dismissing these Counterclaims and related Affirmative Defense and proposes to include its arguments in its brief to be filed in opposition to Google’s Motion on January 14, 2013 (*see* D.I. 443):

1. A year and a half ago, Google sought leave to file an early summary judgment motion on these same issues relating to the alleged patent rights of SRI International, Inc. (“SRI”). The Court denied Google’s request, among other reasons, because “there is a dispute” on conception issues. (6/29/11 Tr. at 21:4-14.). The dispute on these conception issues continues and thus warrants denial of Google’s pending Motion for Summary Judgment.

2. Subsequently, Google moved to dismiss for lack of subject matter jurisdiction because P.U.M. allegedly did not exist as a legal entity at the time it was assigned the patents-in-suit. (D.I. 301.) The Court denied Google’s motion in a memorandum order dated September 13, 2012. (D.I. 396.)

3. Notwithstanding the Court’s rulings on these issues, Google has now filed another Motion for Summary Judgment based on alleged patent ownership issues. (D.I. 412.)

4. P.U.M. seeks leave to cross-move on narrow grounds. Regardless of the factual issues that exist with respect to the merits of Google’s Motion (*i.e.*, when conception occurred and whether the invention resulted from Dr. Konig’s work at SRI or was related to SRI’s business), there is no genuine dispute that Google’s Counterclaims for breach of contract and request for a declaration of ownership are time-barred under the applicable statute of limitations. The Court should also grant summary judgment dismissing Google’s affirmative defense of lack of standing, first, because it entirely depends on Google prevailing on its failed Counterclaims, and second, because, regardless of any disputes concerning the rights of Dr. Konig, P.U.M., as a successor-in-interest to the patent rights of co-inventors Roy Twersky and Michael Berthold, clearly has standing to bring this patent infringement action. The absence of any factual dispute on these narrow issues and their amenability to summary judgment became clear to P.U.M.’s counsel while preparing P.U.M.’s response to Google’s Motion.

5. P.U.M.'s cross-motion for summary judgment on these SRI ownership and standing issues serves the interests of justice. If the cross-motion is granted and these claims and this defense are dismissed, the issues for trial would be dramatically simplified. All that would remain for the upcoming trial will be P.U.M.'s infringement claim and Google's patent invalidity defense. The jury would no longer be distracted by ownership issues.

6. Google will not be unfairly prejudiced by a cross-motion. P.U.M. will be well within the page limits allotted to it, given that it did not file any opening motions and proposes to combine its opening brief on its cross-motion with its opposition to Google's Motion. Nor can Google complain of any delay given its repeated requests for extensions of time and the fact that no trial date has been set. Indeed, with oral argument scheduled for May 8, 2013 (D.I. 442), there is ample time in the schedule to accommodate this cross-motion.

For the foregoing reasons, P.U.M. therefore requests that, to the extent leave is required, the Court grant it leave to file a cross-motion for summary judgment in response to Google's Motion for Summary Judgment. A proposed form of order is attached.

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/s/ Jeremy A. Tigan

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RULE 7.1.1. CERTIFICATE

I hereby certify that the subject of the foregoing motion has been discussed with counsel for Google. Google opposes P.U.M.'s request.

/s/ Jeremy A. Tigan

Jeremy A. Tigan (#5239)