

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PERSONALIZED USER MODEL, L.L.P.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 09-525-LPS
)	
GOOGLE INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
<hr style="border: 0.5px solid black;"/>		
GOOGLE, INC.)	
)	
Counterclaimant,)	
)	
v.)	
)	
PERSONALIZED USER MODEL, LLP and)	
YOCHAI KONIG)	
)	
Counterdefendants.)	

**GOOGLE’S OPPOSITION TO PUM’S MOTION FOR LEAVE TO CROSS-MOVE FOR
SUMMARY JUDGMENT**

Pursuant to the November 29, 2012 Scheduling Order in this case, summary judgment motions were due by December 6, 2012. (*See* D.I. 411). In accordance with this Scheduling Order, Google filed three summary judgment motions on December 6, including a motion for summary judgment on its breach of contract and ownership counterclaims and its standing defense. (D.I. 412). PUM did not file any summary judgment motions on December 6. Instead, nearly a month later, PUM petitions the Court for leave to file a cross-motion for summary judgment on the breach of contract, ownership, and standing issues. PUM’s motion for leave to file this untimely summary judgment motion should be denied.

First, the scheduling orders in this case would be effectively rendered meaningless if parties could simply move to file motions that violate these scheduling orders. Here, the parties stipulated that summary judgment motions would be filed by December 6, 2012, and the Court

endorsed this stipulation. (D.I. 411). Google worked diligently to submit its summary judgment motions by this deadline. PUM should not be allowed to flout this deadline by seeking to file an untimely summary judgment motion nearly a month later. This is particularly true given that, in the Spring of 2011, PUM successfully opposed Google's request to file an early summary judgment motion on the breach-of-contract, ownership, and standing issues. (See D.I. 215). It is both ironic and unfair that PUM would seek to file a late summary judgment motion on these issues after preventing Google from filing an early summary judgment motion on these issues. The Court's scheduling deadlines should apply equally to both PUM and Google.

Second, there is no justification for PUM's untimely request. PUM states that its summary judgment motion would be based on the theory that Google's breach of contract and ownership claims are time-barred under the applicable statute of limitations, and that PUM has standing to assert the patents-in-suit as the successor-in-interest to co-inventors Roy Twersky and Michael Berthold. (Motion at 2). There is no reason why PUM could not have brought a summary judgment motion on these grounds on December 6.

As for PUM's statute of limitations argument, PUM had argued to the Court as early as March 10, 2011, that Google's breach of contract and ownership claims are barred by the statute of limitations. (See D.I. 215 at 6-7). Thus, by December 6, PUM had every ability to bring a timely summary judgment motion against Google's breach of contract and ownership counterclaims based on this statute of limitations argument.

Likewise, because Google's standing defense has always been based on co-inventor Yochai Konig's obligation to transfer his inventions to SRI International, PUM has always been free to argue that it has standing as successor-in-interest to the other co-inventors, Roy Twersky and Michael Berthold. While PUM's statute of limitations and standing arguments are wrong on

the merits, there is no reason why PUM could not have raised these arguments in a timely summary judgment motion on December 6. Thus, there is no reason why PUM should be granted leave to file an untimely cross-motion for summary judgment based on these arguments.

Third, PUM's request to file an untimely cross-motion for summary judgment would prejudice Google. While Google is confident that PUM's statute of limitations and standing arguments would be rejected regardless of their procedural posture, PUM should not be able to strategically wait for Google to make its summary judgment motion and then file its own cross-motion with the benefit of seeing Google's prior submission. Rather, simple fairness requires that the parties file their summary judgment motions at the same time, as other courts have ruled. *See, e.g., T.H.E. Ins. Co. v. Cochran Motor Speedway*, No. 09-118, 2010 WL 5351183, at *1-2 (M.D. Ga. Dec. 21, 2010) (striking, as untimely, defendant's cross-motion for summary judgment that was filed after the deadline for dispositive motions and concurrently with defendant's response to plaintiff's summary judgment motion); *Mushroom Assoc. v. Monterey Mushrooms, Inc.*, No. 91-1092, 1994 WL 508741, at *1 (N.D. Cal. Sept. 1, 1994) ("The parties shall file their cross-motions at the same time; a party may not file a cross-motion for summary judgment at the same time that party files its opposition brief to an existing summary judgment motion.")

PUM's request also has the strong potential to prejudice Google in terms of page limits. While PUM states that its cross-motion would be bundled with its opposition brief to Google's summary judgment motion, and thus would not exceed PUM's overall page limits (Motion at 3), Google would be forced to address both PUM's "opposition" arguments and PUM's "cross-motion" arguments in its reply brief. Given the strict page limits that apply to reply briefs, imposed at the urging of PUM, this could significantly prejudice Google. Also, PUM leaves

open the possibility that it might request a reply brief to its own cross-motion. This would give PUM far more overall pages to address the breach of contract, ownership, and standing issues, compared to the current situation in which PUM is limited to a single opposition brief on these issues. PUM should not be allowed to use an untimely cross-motion as a vehicle to greatly expand the number of pages that it may spend on the breach-of-contract, ownership, and standing issues.

For the foregoing reasons, PUM's Motion for Leave to Cross-Move for Summary Judgment should be denied.

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Charles K. Verhoeven
David A. Perlson
Joshua Lee Sohn
Antonio R. Sistos
Margaret Pirnir Kammerud
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
50 California St.
San Francisco, CA 94111
Tel.: (415) 875-6600

Andrea Pallios Roberts
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
Tel.: (650) 801-5000

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By: /s/ David E. Moore
Richard L. Horwitz (#2246)
David E. Moore (#3983)
Bindu A. Palapura (#5370)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
rhoorwitz@potteranderson.com
dmoore@potteranderson.com
bpalapura@potteranderson.com

Attorneys for Defendant Google Inc.

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FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on January 7, 2013, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on January 7, 2013, the attached document was Electronically

Mailed to the following person(s):

Karen Jacobs Louden
Jeremy A. Tigan
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, 18th Fl.
Wilmington, DE 19899-1347
klouden@mnat.com
jtigan@mnat.com

Marc S. Friedman
SNR Denton US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
marc.friedman@snrdenton.com

Jennifer D. Bennett
Matthew P. Larson
SNR Denton US LLP
1530 Page Mill Road, Ste. 200
Palo Alto, CA 94304-1125
jennifer.bennett@snrdenton.com
matthew.larson@snrdenton.com

Mark C. Nelson
Robert Needham
SNR Denton US LLP
2000 McKinney, Suite 1900
Dallas, TX 75201
mark.nelson@snrdenton.com
robert.needham@snrdenton.com

Christian E. Samay
SNR Denton US LLP
101 JFK Parkway
Short Hills, NJ 07078
christian.samay@snrdenton.com

/s/ David E. Moore

Richard L. Horwitz
David E. Moore
Bindu A. Palapura
POTTER ANDERSON & CORROON LLP
(302) 984-6000
rhowitz@potteranderson.com
dmoore@potteranderson.com
bpalapura@potteranderson.com