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 **JURY TRIAL DEMANDED**
GOOGLE, INC. Counterclaimant, v. PERSONALIZED USER MODEL, LLP and YOCHAI KONIG Counterdefendants.	)	

LOCAL RULE 7.1.2(b) NOTICE OF SUPPLEMENTAL AUTHORITY FOR DEFENDANT GOOGLE INC.'S SUMMARY JUDGMENT BRIEFS

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On April 16, 2013, after summary judgment briefing was complete, the United States Court of Appeals for the Federal Circuit decided *Bayer Healthcare Pharmaceuticals, Inc. v. Watson Pharmaceuticals, Inc.*, Case Nos. 2012-1397, -1398, -1400. The *Bayer Pharmaceuticals* opinion is attached hereto as Exhibit 1. *See* Local Rule 7.1.2(b) (permitting citation to subsequent authorities after submission of reply briefs).

In *Bayer Pharmaceuticals*, the Federal Circuit reversed the judgment of the district court finding that two claims of the patent-in-suit were not invalid for obviousness, and concluded that the claims were invalid for obviousness as a matter of law in view of the cited references. (*See* Ex. 1, at 16.) The Federal Circuit held that there was no dispute that the cited prior art references disclosed each of the limitations of the claims at issue. (*Id.*, at 11.) The Federal Circuit explained

> [w]ith every limitation of the asserted claims thus disclosed in the cited references, the question, as the district court recognized, becomes whether a person of ordinary skill in the art would have been motivated to combine those teachings to derive the claimed subject matter with a reasonable expectation of success.

(*Id.*, at 11-12.) The Federal Circuit held that the prior art provided the motivation to combine. (*Id.*, at 12.) In addition to one of the prior art references expressly referencing another, several of the references described the problem intended to be addressed by the patent-in-suit. (*Id.*, at 12-13.) And, in addition to demonstrating the recognized problem, the prior art references expressly proposed the claimed solution, certain dosing regimens. (*Id.*, at 13.) Accordingly, the Federal Circuit held, the prior art's direct recommendations to use certain dosing regimens to solve the recognized problem would have motivated one of ordinary skill in the art to combine the elements in the prior art as recited by the asserted claim. (*Id.*)

Similarly, as explained in detail in Google's Motion for Summary Judgment of Invalidity and Reply Brief in support thereof, the prior art references cite to each other. And these references describe the problem intended to be addressed by the patents-in-suit: providing automatic,

personalized information services to a computer network user. ('040 Patent, 7:4-6.) The prior art references also expressly disclose the supposed "solution" to this problem claimed in the patents in suit—i.e. transparent monitoring of the user's interactions with data (*see* Dkt. No. 418, at 12-13 (citing Wasfi, Mladenic, and Montebello)), updating user-specific data files (*see id.*, at 13 (citing same)), using machine learning to develop a user model specific to the user (*see id.*, at 13-14 (citing same)), analyzing documents and identifying properties thereof (*see id.*, at 14-15 (citing Montebello and Wasfi)), and estimating probabilities of a user's interest in a document (*see id.*, at 16 (citing Mladenic, Pazzani, Wasfi, and Montebello). In rebuttal, PUM points to no solutions in the patents that did not already exist in the art. (*See generally* Dkt. No. 455.)[1] Accordingly, as in *Bayer Pharmaceuticals*, the prior art's direct recommendations to use these elements to solve a known problem would have motivated one of ordinary skill in the art to combine the elements of the prior art as recited by the asserted claims of the '040 and '276 patents. The asserted claims are therefore invalid as obvious as a matter of law.

[1] Instead, PUM seeks to exclude Dr. Jordan's opinions that the patents are obvious based on the entirely false contention that Dr. Jordan's opinions were not included in his report.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on April 23, 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 April 23, 2013, the attached document was Electronically Mailed to the following person(s):

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