EXHIBIT B

Joshua Sohn

From: Bennett, Jennifer D. [jennifer.bennett@dentons.com]
Sent: Tuesday, September 24, 2013 10:31 PM
To: Andrea P Roberts
Cc: PUM; Google-PUM; Karen Jacobs; Regina Murphy; Horwitz, Richard L.; Moore, David E.
Subject: RE: Joint status report
Attachments: joint status report(80950733_4).DOC

Andrea,

I write in response to your email below. PUM does not think it is appropriate and will not agree to include Google's lengthy argument in the joint status report. In the attached, PUM has pared back its section and expects Google to do so as well. Lastly, when will Google provide its section on trial availability? Please do so immediately.

Thanks,

Jennifer D. Bennett
Senior Managing Associate

D +1 650 798 0325

Dentons US LLP

jennifer.bennett@dentons.com
dentons.com

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From: Andrea P Roberts [mailto:andreaproberts@quinnemanuel.com]
Sent: Tuesday, September 24, 2013 2:35 PM
To: Bennett, Jennifer D.
Cc: PUM; Google-PUM; Karen Jacobs; Regina Murphy; Horwitz, Richard L.; Moore, David E.
Subject: RE: Joint status report

Jennifer, pasted below is a draft of Google's response to PUM's request for a separate trial on interpretation of the word "conception" and the statute of limitations. Again, this is a draft and is subject to revision based on comments internally and from our client, but we wanted to get you a draft with our current positions for review.

PUM's Request for a Separate Trial on Contract Interpretation and Statute of Limitations Is Without Merit: PUM's suggested procedure for dealing with contract interpretation and the statute of limitations is unnecessary and legally flawed. Google respectfully submits that these issues can and should be resolved in the context of the summary judgment record already before the Court.

As detailed in Google's Motion for Reconsideration (D.I. 523), Google respectfully submits that the Court made a clear legal error in holding that the interpretation of the word "conception" in the Konig-SRI Agreement presents a question of fact. Under California law, contract interpretation is generally a question of law, even for ambiguous contracts, and presents a question of fact only when there is conflicting extrinsic evidence. (*Id.*, 1-4.) Here, even PUM admits that the parties did not present conflicting extrinsic evidence on the meaning of "conception." (*Id.*, 4; Hearing Tr. 125:12-20 ("There is no evidence of any negotiation. There is no evidence of any discussion . . . All we have at the moment is the agreement.")) Thus, interpreting "conception" is not a question of fact for the jury, nor is it a question of fact for the Court to resolve in a bench trial. It is instead a question of law that the Court can and should resolve on the summary judgment record. (D.I. 523, 3-4.)

PUM disputes none of this. Instead, PUM argues that Google's Motion for Reconsideration should be denied because, under the Delaware authority PUM cites, fact issues supposedly exist when a contract is ambiguous. Initially, as Google consistently argued and PUM never disputed, California law governs this contract. The Court's summary judgment order recognizes this too, citing a California Supreme Court case on the issue of contract interpretation. (D.I. 521 at 15.) PUM provides no reason for its apparent change in position, and it is unclear how PUM in good faith could assert that Delaware law applies to the Konig-SRI agreement.

But even if Delaware law did somehow apply, the very case cited by PUM acknowledges that Delaware law is no different than California law on the key point—namely, that even ambiguous contracts may be interpreted at summary judgment where there is no conflicting extrinsic evidence. *See GMG*, 36 A.3d at 783-84 ("when there is uncertainty in the meaning and application of contract language, the reviewing court must consider the evidence offered in order to arrive at a proper interpretation of contractual terms. This task may be accomplished by the summary judgment procedure in certain cases where the moving party's record is not *prima facie* rebutted so as to create issues of material fact.) (quoting *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232-33 (Del. 1997) (emphasis added). Here, as PUM admits, it has submitted no extrinsic evidence to rebut anything Google has already provided. Thus, a bench trial would be meaningless;

there are no issues on contract interpretation that could or should be "tried." Indeed, PUM does not explain what types of evidence would be presented at its hypothetical bench trial.[1]

PUM's statute of limitations defense also does not require a bench trial, but can instead be decided on the summary judgment record. When Google moved for summary judgment on its breach-of-contract claim, PUM asserted the statute of limitations as a defense to this claim and also cross-moved for summary judgment on this defense. The Court never reached the merits of this defense, as it denied Google's summary judgment motion due to alleged factual disputes on the meaning of "conception" and further denied PUM's cross-motion as untimely. If the Court grants Google's Motion for Reconsideration and withdraws its holding that there are fact disputes on the meaning of "conception," it can decide PUM's statute of limitations defense in deciding whether to grant Google's underlying summary judgment motion on the breach of contract claim in full.

As Google has detailed (D.I. 486 at 1-8), there are two reasons why PUM's statute of limitations defense fails as a matter of law, such that the Court can and should grant summary judgment on Google's breach-of-contract claim in full. First, the statute of limitations must be tolled under 10 Del. C. § 8117 until Dr. Konig became subject to service of process in Delaware; and second, it must be tolled under the discovery rule until discovery began in this lawsuit and Google/SRI were able to discover the July 1999 conception date that gives rise to the breach-of-contract claim.[2] (*Id.*) The Court has never found a factual dispute regarding either of these tolling doctrines, and Google respectfully submits that no factual dispute exists. PUM apparently agrees, since PUM itself tried to seek summary judgment on the statute of limitations. Given the above, Google respectfully suggests that all the issues that PUM wishes to relegate to a separate bench trial can and should instead be decided on the summary judgment record in Google's favor.

On the other hand, if the Court disagrees with Google's Motion for Reconsideration and sends Google's breach-of-contract claim to the jury, then PUM can re-raise its statute of limitations defense in the usual course of the main trial. But there is no valid reason to bifurcate the statute of limitations from every other claim and defense in this case and subject it to a bench trial, entirely separate from the trial on the other issues, with its own round of pre-trial filings, trial deposition and exhibit designations, etc. It seems that PUM is simply trying

an end-run around the Court's denial of its untimely cross-motion for summary judgment on the statute of limitations issue. (D.I. 527 at 16-17.)

Moreover, PUM's request for a separate trial on the statute of limitations is grounded in either legal error or a misapprehension of Google's position. PUM suggests that this issue is qualitatively different from all the other issues in this case because "equitable tolling" of the statute of limitations is solely an issue for the Court. PUM's argument is a non-sequitur because Google does not assert equitable tolling. It instead asserts tolling based on Section 8117 and based on the discovery rule. Section 8117 tolling and discovery rule tolling are entirely separate doctrines from equitable tolling, which mainly applies in fiduciary situations not present here. *See In re Tyson Foods, Inc.*, 919 A.2d 563, 584-85 (Del. Ch. 2007) ("Under the doctrine of inherently unknowable injuries, the statute will not run where it would be practically impossible for a plaintiff to discover the existence of a cause of action . . . Similarly, the statute of limitations may be disregarded when a defendant has fraudulently concealed from a plaintiff the facts necessary to put him on notice of the truth . . . Finally, the doctrine of equitable tolling stops the statute from running while a plaintiff has reasonably relied upon the competence and good faith of a fiduciary.") (emphasis added).

Under the tolling doctrines that Google does assert, factual disputes would go to the jury were the Court to find that any factual disputes exist. *See, e.g., David B. Lilly Co., Inc. v. Fisher*, 810 F.Supp. 592, 594 (D. Del. 1992) (granting summary judgment on statute of limitations because "no reasonable jury could conclude" that plaintiff was blamelessly ignorant of its cause of action). In other words, while Google submits there are no factual disputes to be decided at all, to the extent there were, Google would be entitled to have them heard before a jury; they would not be decided by the Court.

For all these reasons, the Court should decline PUM's request for a separate bench trial on the issues of contract interpretation and statute of limitations.

Andrea Pallios Roberts
Of Counsel,
Quinn Emanuel Urquhart & Sullivan, LLP

555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065

+1 650-801-5023 Direct
650.801.5000 Main Office Number
650.801.5100 FAX
andreaproberts@quinnemanuel.com
www.quinnemanuel.com

-----Original Message-----
From: Bennett, Jennifer D. [mailto:jennifer.bennett@dentons.com]
Sent: Tuesday, September 24, 2013 9:43 AM
To: Andrea P Roberts
Cc: PUM; Google-PUM; Karen Jacobs; Regina Murphy
Subject: Joint status report

Andrea,
I follow-up to our call yesterday regarding Google's trial availability. Can you please let me know when today we will receive Google's write up on its availability and its response to Plaintiff's bench trial request on the SOL and "conception" issue?
Thanks,

Jennifer D. Bennett
Senior Managing Associate

D +1 650 798 0325

Dentons US LLP

jennifer.bennett@dentons.com
dentons.com

[1] As explained in Google's summary judgment papers, there also is no factual dispute about whether the invention was "conceived" in the ordinary lay sense by the time Dr. Konig left SRI or whether the invention is exempt under Section 2870 of the California Labor Code. The Court has not decided whether either of these issues raises a factual dispute, and Google respectfully stands on its papers.

[2] While the Konig-SRI contract must be interpreted under California law, Google does not object to PUM's position that Delaware law provides the appropriate statute of limitations. (*See* D.I. 452 at 8 fn. 11). The result would be no different under California law, as the discovery rule tolling doctrine is substantially identical in both jurisdictions. (D.I. 486 at 5.)