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

PERSONALIZED USER MODEL, L.L.P.,	- - -	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
GOOGLE, INC.,	:	
Defendant.	:	NO. 09-525-LPS

Wilmington, Delaware
Wednesday, November 20, 2013
Telephone Conference

BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.

APPEARANCES:

MORRIS NICHOLS ARSHT & TUNNELL, LLP
BY: KAREN JACOBS, ESQ., and
REGINA S.E. MURPHY, ESQ.

and

DENTONS US, LLP
BY: MARK C. NELSON, ESQ.
(Dallas, Texas)

and

DENTONS US, LLP
BY: MARC S. FRIEDMAN, ESQ.
(New York, New York)

and

Brian P. Gaffigan
Registered Merit Reporter

1 APPEARANCES: (Continued)

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3 DENTONS US, LLP
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(Palo Alto, California)

5 Counsel for Personalized User Model, LLP

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7 POTTER ANDERSON & CORROON, LLP
8 BY: RICHARD L. HORWITZ, ESQ.

9 and

10 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
11 BY: CHARLES K. VERHOEVEN, ESQ., and
DAVID A. PERLSON, ESQ.
(San Francisco, California)

12 and

13 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
14 BY: ANDREA PALLIOS ROBERTS, ESQ.
(Redwood Shores, California)

15 Counsel for Google, Inc.

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21 P R O C E E D I N G S

22 (REPORTER'S NOTE: The following telephone
23 conference was held in chambers, beginning at 3:03 p.m.)

24 THE COURT: Good afternoon, everybody. This is
25 Judge Stark. Who is there, please?

1 MS. JACOBS: Good afternoon, Your Honor. For
2 Personalized User Model, this is Karen Jacobs and Regina
3 Murphy from Morris Nichols. I have on the line with me Marc
4 Friedman, Mark Nelson and Jennifer Bennett from Dentons U.S.

5 THE COURT: Okay.

6 MR. HORWITZ: Good afternoon, Your Honor. For
7 Google, it's Rich Horwitz at Potter Anderson; and with me on
8 the line from Quinn Emanuel are Charles Verhoeven, David
9 Perlson, and Andrea Roberts.

10 THE COURT: Okay. Thank you. I have my court
11 reporter here with me. For the record, it is our case of
12 Personalized User Model, LLP versus Google Inc., our Civil
13 Action No. 09-525-LPS.

14 I set this call after reviewing the latest round
15 of letters relating to the scheduling of trial, and I have
16 pending in front of me defendant's request that I reset the
17 trial date from the March 10th date. I thought that it would
18 probably be helpful in light of certain representations made
19 in the various letters that we have a conversation before I
20 decide whether to reset the trial date or not.

21 So let me hear first from Google.

22 MR. VERHOEVEN: Yes, Your Honor. This is
23 Charles Verhoeven.

24 I personally have two trials in March that were
25 previously set, and so from my personal perspective as lead

1 counsel for Google, I obviously cannot be two places at once
2 so I would request that it would be moved to a time where my
3 team and my witnesses would have more availability as well
4 as myself personally.

5 THE COURT: Now, Mr. Verhoeven, what has your
6 role been in this case to this point?

7 MR. VERHOEVEN: I've been working with David
8 Perlson, who is running the case day to day, Your Honor.
9 I've been working with him throughout the time that our firm
10 has been retained on the case on strategy, direction. I've
11 told my client that I would be lead counsel, and on that
12 basis we were retained. I haven't been involved day to day,
13 though.

14 THE COURT: How do I assess the prejudice to
15 your client if you're not available to be lead counsel at
16 trial and someone else has to be lead trial counsel?

17 MR. VERHOEVEN: Well, I think it's more than
18 just myself, Your Honor, as we detailed in the letter. We
19 have a number of other conflicts. Our whole team basically
20 going to be conflicted. So it will not just be prejudice of
21 losing lead counsel, but we would also have to basically
22 reach out the case, I think, Your Honor.

23 MR. PERLSON: Your Honor, this is David Perlson,
24 just to interject.

25 One of the other trials Mr. Verhoeven mentioned

1 is a case that I am also on and that several other members
2 of our team are also on. So I think that would essentially
3 require restaffing.

4 THE COURT: That is the TracBeam case in Texas;
5 correct?

6 MR. PERLSON: Correct.

7 THE COURT: All right. Well, help me understand
8 how this happened. Because if I've got the timeline correct,
9 I denied the motions for summary judgment on September 9th
10 and ordered a status report by September 19th to tell me
11 when you would all be available for trial. But certainly by
12 September 9th or on September 9th, after issuing our opinion,
13 you knew that there was going to be a trial in this matter.
14 You knew that this matter is pretty old. It's an '09 action.
15 That is probably older than the TracBeam or the ViaSat case.
16 And then somehow between September 9th and September 30th
17 when, after a couple of stipulations, you got the joint status
18 report in, somehow in those couple of weeks, the TracBeam
19 case, which appears to be the primary issue, got scheduled for
20 March 10th.

21 So help me understand how it happened and why I
22 should put primary weight on this conflict when the conflict
23 only arose at a time that you clearly knew that we were
24 going to be scheduling trial.

25 MR. PERLSON: Your Honor, this is David Perlson.

1 I can address that.

2 What actually happened was, we were trying to
3 work with plaintiff to try to come up with something that
4 would work with both of us. And there were things that
5 happened with this TracBeam case that required the trial to
6 be moved from an earlier date, and we had made that request
7 earlier and were waiting on a ruling for the Court, which
8 is the reason for why we had extended the time for the joint
9 status report a few times.

10 The day before we submitted the joint status
11 report, we found out that the Court set the hearing in
12 March, on March 10th, which is why we proposed and plaintiff
13 did not object to a trial in May.

14 In actuality, what had happened is that both
15 plaintiff and defendant in this TracBeam case had actually
16 requested that the trial be moved to May. The Court granted
17 that in part but only moved it to March 10th. And then the
18 next day, jointly with plaintiff in this case, we proposed
19 May, which I understand by one of your recent orders didn't
20 work for the Court, so we actually proposed that May date
21 with this conflict in mind. Then we had the order setting
22 the date for March, and that is sort of how we got to where
23 we are.

24 THE COURT: But your proposal to the Texas judge
25 as I understand it was made on September 12th and ruled on

1 on September 26th; is that right?

2 MR. PERLSON: No. Let me see. That sounds --
3 I know that the Texas judge ruled on our request the day
4 before we submitted our joint request, which was
5 September 30th.

6 THE COURT: Right. I'm looking at Mr. Horwitz's
7 letter of November 7th which says at the bottom of page 1,
8 "Google explained that on September 12th, the parties and
9 TracBeam filed a motion to amend the case schedule to move
10 the trial date to May 2014. On September 26th, the TracBeam
11 Court issued an order setting trial for March 10th."

12 That's all accurate; correct, Mr. Perlson?

13 MR. PERLSON: That's --

14 THE COURT: I'm sorry. Did you answer that?

15 MR. PERLSON: Yes, it is.

16 THE COURT: Okay. So I guess what I'm struggling
17 with at least in part is clearly September is a busy time
18 for you and your trial team and you are juggling a number of
19 different actions, but it is a time in which you knew that
20 there was going to be trial in Delaware. You knew that was an
21 '09 case here in Delaware waiting to be tried as compared to
22 what looks like a 2013 case in the Eastern District of Texas,
23 and then, of course, the 2012 case pending in California. And
24 you were discussing various options with the plaintiff and I
25 guess getting agreement on putting off reporting back to me

1 as to when you would be available and now, because there is a
2 conflict, the plaintiff here who has been waiting a long time
3 for a trial date is being asked to wait even longer and I and
4 my court and my docket are being asked to re-examine things
5 and move things around.

6 So I'm not saying those are illegitimate
7 interests on your side, but I'm having a hard time figuring
8 out how to weigh them and put them ahead of the interest on
9 the other side.

10 MR. PERLSON: Well, Your Honor, if I could say
11 this. The reason why we had put it off a few times in, you
12 know, the joint status report, one of the reasons was in
13 relation to schedule. Another one was because we had some
14 issues regarding agreement and what was going to go in there.
15 But that is neither here nor there now.

16 But what we were trying to accomplish is to
17 reach agreement with plaintiff in something that they would
18 be comfortable with in which neither party would have a
19 conflict. What we did was, is that -- and part of the
20 reason we wanted to wait is that we didn't want to be in a
21 situation where we suggested May of 2014, knowing that the
22 Court in Texas was just about to rule and so we waited
23 until the Court ruled and then worked out an agreement with
24 plaintiff that would allow us both, that provided a date
25 that they would not object to and present that jointly to

1 the Court, and that was in May of 2014. So it was only two
2 months later than what you presently set.

3 What we were trying to do is work out something
4 that worked for everybody. It wasn't really a matter of us
5 being too busy or to not having time to work something out
6 or address the issue. We were actively working on it and
7 trying to weigh the conflicts in the multiple cases, and
8 then additionally plaintiff's concern regarding getting a
9 date.

10 THE COURT: And either Mr. Perlson or Mr. Verhoeven,
11 there is about three and-a-half months until this trial is set
12 to begin.

13 If in fact I keep my trial date, you already
14 told me, it sounds like you decided to replace the whole
15 trial team here. Can that be done? Does your firm have the
16 folks who could come in and pick up this case?

17 MR. VERHOEVEN: This is Mr. Verhoeven.

18 I mean it would be substantially prejudicial and
19 create a huge expense to ramp up a whole other team, so I
20 think we would be prejudiced.

21 THE COURT: Okay. But it sounds like it could
22 be done.

23 MR. VERHOEVEN: We're a large firm, Your Honor.
24 I'm not going to say we don't have resources. That just
25 wouldn't be true. But there would be significant prejudice.

1 THE COURT: I'm sure I will have some more
2 questions for you, but let me give plaintiff a chance to
3 weigh in. Go ahead.

4 MS. JACOBS: Thank you, Your Honor. This is
5 Karen Jacobs from Morris Nichols. Let me respond on a few
6 points.

7 As Your Honor already noted, this case has been
8 pending since 2009 and we're only on the liability phase.
9 And we had asked Your Honor, we had a request over a year
10 ago to set a trial date and Your Honor had told the parties
11 that you were unwilling to set a trial date at that time but
12 that as soon as you had issued your summary judgment rulings
13 that a trial date would be promptly set.

14 So beyond having the notice of this year, I would
15 say over a year ago, Your Honor gave notice to be ready. And
16 although, the joint status report, we had stated that we were
17 willing to agree to May as a matter of compromise, we also
18 made it very clear to Google that we were available in March
19 and wanted to go forward in March.

20 When we were given Google's trial calendar, and
21 specifically counsel's trial calendar, we were very much
22 concerned that we would be put in just such a position that
23 counsel was very busy, and we have encountered that situation
24 over and over again in this case, and that is at least one
25 of the reasons why we're five years into the case. Counsel

1 is very busy, and we made it clear that if the Court were
2 unavailable, then we wanted to press for a March date.

3 What I haven't heard is counsel say that they
4 have even requested of these other courts to make this date
5 available. Certainly, the order that was attached to their
6 letter expresses a preference to go forward on March 18th,
7 but to the extent that Google wants to go forward with this
8 trial team, I don't see any evidence that they have made an
9 effort to at least attempt to move things around. My guess
10 is if Your Honor kept this date, that they would do so and
11 that these things have a way of working themselves out once,
12 if Your Honor does in fact keep this date.

13 As we say, we're five years into the case. Our
14 witnesses, our experts, our counsel, we all have conflicts as
15 well but have made every effort to make ourselves available
16 when Your Honor had time on the calendar. We would request
17 that those dates stay.

18 THE COURT: All right. Ms. Jacobs, as you would
19 expect, my calendar is always moving and changing so having
20 looked at it today, I see some potential other dates, and I
21 wanted to get your reflection on them and certainly if you
22 need time to look at whether there are any conflicts I under-
23 stand that. But I'm looking first for your view as to whether
24 or not I could find that there was significant prejudice to
25 your client if I were to move the date from March 10th.

1 First, we do now have available April 14th to
2 25th and there was certain reference in your letter about
3 the possibility of the Jewish holiday of Passover maybe
4 interfering with availability on your side. Can you
5 concretely tell me whether that April 14th to 25th period
6 would significantly prejudice your team?

7 MS. JACOBS: Yes, Your Honor. Unfortunately, it
8 really does. Believe me, we want to go forward at the first
9 available date that Your Honor has, but certainly certain
10 trial team members do observe Passover, not for the entire
11 period but for part of that time period. We have at least
12 one of our witnesses who does celebrate the entire holiday,
13 and our client representatives who very much want to be part
14 of the trial are unavailable during the entire, the entirety
15 of the ten days -- I'm sorry -- the eight day period. So,
16 unfortunately, that really is a great prejudice and the
17 clients and witnesses, of course need to be a part of the
18 trial and are just simply unavailable.

19 THE COURT: All right. I have had a June date
20 open up, June 2nd to 14th. Are you able to speak to that in
21 terms of either availability or prejudice to your client?

22 MS. JACOBS: I'm just taking a look at that,
23 Your Honor.

24 THE COURT: Take your time.

25 (Pause.)

1 MS. JACOBS: Your Honor, there is a Jewish
2 holiday on June 4th and 5th which again would affect some
3 of our clients. If we had to go forward, we could without
4 their presence on those two days, but that would certainly
5 be our preference to stay with March 10th.

6 THE COURT: Let me throw out another possibility
7 that I might be willing to consider. You referenced that
8 this case is bifurcated. I believe it was Judge Farnan that
9 bifurcated it way back early in the days of this case, near
10 when it was filed. It wasn't even my case, I don't believe.

11 In any event, what about the possibility that
12 we begin damages discovery immediately and have a trial on
13 liability as well as damages some time later in 2014? What
14 would your client think of that?

15 MS. JACOBS: Your Honor, I would have to consult
16 with the client on that. My suspicion is that we very much
17 want to go forward with liability at this time.

18 THE COURT: All right. Is there anything else,
19 Ms. Jacobs?

20 MS. JACOBS: That's all, Your Honor.

21 THE COURT: Let me hear further from Google,
22 whoever wishes to speak.

23 MR. VERHOEVEN: Your Honor, this is Mr. Verhoeven.

24 I believe that those April dates would work at
25 least for me personally. David Perlson, I'll let you

1 respond for the rest of the team; but just for your
2 information, I think that would work for me.

3 MR. PERLSON: I think -- I'm sorry to interrupt
4 but we could make the April dates work, I think.

5 MR. VERHOEVEN: I don't know if we put this in
6 our letter. We have one witness who has a conflict in June
7 but otherwise we're conflict free on the dates you said.

8 MR. PERLSON: Yes. Our invalidity expert is
9 contracted to do studies in Milan that month.

10 THE COURT: And you don't --

11 MR. VERHOEVEN: Finally, Your Honor, this is
12 Mr. Verhoeven again.

13 As to your third alternative, a very intriguing
14 suggestion, but we, too, would have to check with our client
15 on that. The putting the damages together with liability.

16 THE COURT: All right.

17 MR. FRIEDMAN: Your Honor, this is Marc Friedman
18 from Dentons.

19 What if we were to agree to try the whole kit
20 and caboodle together? Can you indicate more specifically
21 the time frame you are talking about?

22 THE COURT: Yes. And let me, in answering that,
23 let me give you guidance as to what I want you to do.
24 Because I am going to -- for now, I'm keeping my trial date
25 but I am going to direct you to meet and confer and get back

1 to me by the end of this week with a joint letter telling
2 me of any further developments that there may be in light of
3 the things that we've talked about today and the things I'm
4 about to say.

5 So for now, I'm not providing any relief. My
6 trial date is what it is. But I'm still willing to ponder
7 this motion to reschedule the trial; and, specifically, here
8 is the availability I have. And I want you all to think
9 about further confer with your clients, confer with one
10 another and get back to me with the joint submission at the
11 end of this week.

12 So we currently have trial set for March 10th,
13 let's say, through the 21st.

14 I'm available as of now; and I'll keep these
15 spots available until I hear from you all on Friday;
16 April 14th to 25th, June 2nd to 14th, July 7th to 18th,
17 August 4th to August 17th.

18 Then if we were to go forward with the damages
19 discovery and make this into a not necessarily longer but
20 certainly a trial that would involve more issues, I could
21 do that from September 9th to 24th. And I believe Rosh
22 Hashanah is not until after that date. I meant to look at
23 that, but I believe that is correct.

24 So to answer the specific question, if I were to
25 put this off and give you time to do the damages discovery,

1 any motions related to that, I would be willing to put it
2 off until September 9th if I was confident we were going to
3 get more than just liability done at a trial at the end of
4 the day.

5 So that answers that question. I'm happy to try
6 to answer more questions. Go ahead.

7 MR. FRIEDMAN: Your Honor, this is Marc Friedman.
8 Rosh Hashanah begins the evening of September 24th.

9 THE COURT: Okay. And so I think -- so if you
10 started on the 9th, I think even a two week trial would be
11 over before the 24th. I think I added a few extra days in
12 there, I believe. But thank you for --

13 MS. JACOBS: Your Honor.

14 THE COURT: Yes. Go ahead, please.

15 MS. JACOBS: I'm sorry. Just in looking at the
16 schedule, we may have a conflict with the early part of that
17 time frame. I just wanted to explore whether with Rosh
18 Hashanah for the jury deliberation, it could go further in
19 the week, just to see if there is ...

20 THE COURT: Yes, I'm not sure if that is a
21 question to me. I believe if we started September 9th, the
22 expectation would be that even with jury deliberations, if
23 the case were to take two weeks -- let me pull my calendar
24 out. Hold on. September 9th.

25 A VOICE: Two weeks would be the 20th, Your Honor.

1 THE COURT: Two weeks would be the 20th. Then
2 there is a weekend there. Then there is Monday is the 22nd,
3 Tuesday is the 23rd, and I'm told I think that Rosh Hashanah
4 is the night of the 24th, Wednesday night, if I heard that
5 correctly.

6 A VOICE: That's correct.

7 THE COURT: Okay.

8 MR. NELSON: Your Honor, this is Mr. Nelson.

9 I think I speak for at least myself and Ms.
10 Bennett as well. We have a trial beginning on September 8th
11 of 2014 that will likely last two weeks. So I think while the
12 possibility of doing this combined is intriguing and I don't
13 think we can decide this today, the September 9th date I think
14 would be problematic at least for me and for Ms. Bennett.

15 THE COURT: Okay. Understood.

16 MS. JACOBS: Are there any openings on your
17 calendar in October, Your Honor?

18 THE COURT: I don't believe so, but if you all
19 come back to me and say everyone would be happy with a
20 consolidated trial in October, I'll do my very best to move
21 other things around to make that happen, but right now I
22 couldn't commit to that.

23 MR. NELSON: Or perhaps August because it looked
24 like Your Honor had the 8/4 through 8/17 date open as well.

25 THE COURT: True. True. That is a good point.

1 Other questions?

2 MR. HORWITZ: Your Honor, this is Rich Horwitz.

3 I just have a comment that perhaps counsel can
4 talk about it as we prepare the joint submission for you
5 towards the end of the week.

6 I have to admit that I am certainly not a
7 practicing Orthodox Jew but I know that some holidays, I and
8 others attend synagogue, and other holidays are holidays
9 where it's not as significant. There may be celebrations
10 at home. And I just want everybody to consider those kinds
11 of realistic factors as we deal with the Jewish holidays
12 obviously being sensitive to just how serious different
13 people practice their religion.

14 THE COURT: I think there is probably not much
15 more we can say at this point. You all need to meet and
16 confer, but obviously I'm hoping that I don't have to, at
17 the end of the day, make a decision between a choice of
18 preferred counsel having to put a whole new litigation team
19 together three and-a-half months before trial weighed
20 against religious beliefs and a right to get to a trial when
21 one has what had been found to be patent rights to assert.

22 So it's a complicated situation. I don't want
23 to unduly prejudice anyone. So I'm hoping, having said what
24 I have said, maybe there is a solution that we can all agree
25 on. If there isn't, I'm going to have to make a decision

1 weighing these various factors.

2 Does anybody else want to say anything before we
3 go?

4 MR. FRIEDMAN: This is Marc Friedman. One last
5 comment so we can be fully informed when we speak among
6 ourselves, Your Honor.

7 Do I understand that if we, and, of course, Google
8 agreed to try both parts of the case at the same time, that we
9 may be able to do it August 4th through August 17th?

10 THE COURT: I have that time frame open right now.

11 MR. FRIEDMAN: Okay.

12 THE COURT: So I would expect if you all agree
13 on that, that that is what we would do. Let's see where you
14 are.

15 Is there anybody else?

16 Okay. Well, thank you very much. We'll wait
17 for your submission by Friday of this week. Thank you very
18 much. Good-bye.

19 (The attorneys respond, "Thank You, Your Honor.")

20 (Telephone conference ends at 3:30 p.m.)

21

22 I hereby certify the foregoing is a true and accurate
23 transcript from my stenographic notes in the proceeding.

24

/s/ Brian P. Gaffigan
Official Court Reporter
U.S. District Court

25