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February 7, 2014

The Honorable Leonard P. Stark  
United States District Court  
for the District of Delaware  
844 North King Street  
Wilmington, DE 19801

**VIA ELECTRONIC FILING**

Re: *Personalized User Model, L.L.P. v. Google, Inc.*  
C.A. No. 09-525 (LPS)

Dear Judge Stark,

I write on behalf of plaintiff Personalized User Model LLP (“PUM”) to request a conference with the Court at its earliest convenience to resolve disputes that have arisen between the parties as a result of Google’s submission of its sections of the Pretrial Order on January 31, 2014. Although many of the disputes can be addressed at the Pretrial Conference (to the extent not resolved by the parties prior to that date), in PUM’s view, Google has sought to introduce new theories and witnesses, and created unnecessary burdens in trial preparation, that cannot adequately be addressed in the time remaining between the February 26 pretrial conference and the March 10 trial. The parties have conferred over the course of nearly a week and have resolved certain issues (indeed, PUM delayed sending this letter in an attempt to further confer), but the parties have clearly reached impasse on certain critical issues. The issues that remain that PUM believes need immediate attention are:

1) Google’s attempt to rely on as prior art two references authored by PUM’s infringement expert, Dr. Pazzani, and to call Dr. Pazzani as a fact witness at trial, even though Google’s invalidity expert makes no mention of those references in his report, such that PUM’s invalidity expert did not address them in his rebuttal report, and Google never identified Dr. Pazzani as a fact witness on which Google might rely (notwithstanding having identified over 40 potential prior art witnesses in its disclosures).

2) Google’s listing on its witness list of Matthew Montebello, one of the more than 40 prior art witnesses Google had identified<sup>1</sup>, even though Mr. Montebello was not

<sup>1</sup> Google refused to respond to PUM’s questions as to whether Google intended to bring any of the 40 prior art witnesses to trial.

previously deposed and even though it is black letter law that the testimony of a prior art witness may not be used to expand the disclosure of a printed publication, which must be interpreted within the four corners of the document. *See, e.g., Continental Oil Co. v. Cole*, 634F.2d 188, 196 (5th Cir. 1981). Moreover, Google has refused to make Mr. Montebello available for a video deposition, such that the parties and the Court will have the benefit of his proposed testimony before the Pretrial Conference, and instead has only offered to make him available for deposition at some undisclosed time prior to the trial.

3) Google's sixth supplemental Rule 26(a) disclosure, served just last evening, naming two Google witnesses on additional topics as to which they neither had been previously designated or deposed. Google asserted that the disclosure was necessitated by the fact that its witness on those topics, Mr. Ventilla, is no longer employed by Google (a fact which Google noted in its fifth set of disclosures back in December). Google listed Mr. Ventilla on its live witness list only a week ago, however. Google also refused PUM's offer that Mr. Ventilla's deposition testimony may be introduced in lieu of live testimony.

4) Google's listing of over 21 live witnesses, including 14 Google witnesses, on its witness list. Google has refused to identify the actual Google witnesses it may bring to trial, unnecessarily requiring PUM to prepare for up to 21 cross examinations. (The parties are conferring on these issues to reduce the number of live and by deposition witnesses identified by each party, but PUM raises the issue here so that they may be resolved with the remaining issues in the event the parties cannot reach agreement.)

In light of the urgency of these issues, PUM appreciates that the typical letter briefing procedure may not be feasible. PUM is willing to submit letter briefing on an expedited schedule, to have the parties submit a single round of simultaneous letter briefing, or to forego briefing altogether, whatever is the Court's preference. We appreciate the Court's attention to these issues.

Respectfully,

*/s/ Karen Jacobs*

Karen Jacobs (#2881)

cc: Clerk of the Court (by hand)  
All Counsel of Record (by e-mail)