

EXHIBIT 1

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JOINT STATEMENT OF FACTS THAT ARE ADMITTED AND REQUIRE NO PROOF AT TRIAL

1. Plaintiff and Counterclaim-Defendant Personalized User Model, L.L.P. (“PUM”) is a Texas limited liability partnership, with its principal place of business located in New York.
2. Defendant, Counterclaimant, and Third Party Plaintiff Google, Inc. (“Google”) is a Delaware corporation, with its principal place of business located at 1600 Amphitheatre Parkway, Mountain View, CA 94043.
3. Third Party Defendant Dr. Yochai Konig is an individual residing at 2312 Castro Street, San Francisco, CA 94131.
4. United States Patent No. 6,981,040 (“the ’040 Patent”), entitled “Automatic, Personalized Online Information and Product Services,” was issued by the United States Patent and Trademark Office (“PTO”) on December 27, 2005.
5. The named inventors of the ’040 Patent are Yochai Konig, Roy Twersky, and Michael Berthold.
6. The ’040 Patent claims priority to provisional application No. 60/173,392, filed on Dec. 28, 1999.
7. United States Patent No. 7,685,276 (“the ’276 Patent”), entitled “Automatic, Personalized Online Information and Product Services,” was issued by the PTO on March 23, 2010.
8. The named inventors of the ’276 Patent are Yochai Konig, Roy Twersky, and Michael Berthold.

9. The '276 Patent is a continuation of application No. 11/316,785, filed on Dec. 22, 2005, now U.S. Patent No. 7,320,031, which is a continuation of application No. 09/587,975, filed on June 20, 2000, now the '040 Patent.

10. "Personal WebWatcher: design and implementation" is a paper by Dunja Mladenic which was published in 1996.

11. "Collecting User Access Patterns for Building User Profiles and Collaborative Filtering" is a paper by Ahmad M. Ahmad Wasfi which was published in January 1999.

12. "A Personal Evolvable Advisor for WWW Knowledge-Based Systems" is a paper by M. Montebello, W.A. Gray, and S. Hurley, which was published in March 1998.

13. United States Patent No. 7,631,032 ("the '032 Patent"), entitled "Personalized Internet Interaction by Adapting a Page Format to a User Record," was issued by the PTO on December 8, 2009.

14. United States Patent No. 6,182,068 ("the '068 Patent"), entitled "Personalized Search Methods," was issued January 30, 2001.

EXHIBIT 2

EXHIBIT 2

PLAINTIFFS' STATEMENT OF CONTESTED FACTS THAT REMAIN TO BE LITIGATED AND STATEMENT OF INTENDED PROOFS¹

PUM's identification of the contested facts that remain to be litigated is based on the pleadings and discovery in the action to date and on PUM's current understanding of Google's claims and defenses. To the extent that Google intends or attempts to introduce different or additional facts, PUM reserves the right to supplement this statement and contest those facts and to present any and all rebuttal evidence in response to those facts.

PUM contends that the issues of fact that remain to be litigated at trial are as follows:

I. INFRINGEMENT

1. Whether PUM proves by a preponderance of the evidence that Google Search infringes claims 1, 11, 22, or 34 of the '040 patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

2. Whether PUM proves by a preponderance of the evidence that Google Search infringes, directly or indirectly, claims 1, 3, 6, 21, or 22 of the '276 patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

3. Whether PUM proves by a preponderance of the evidence that Google's Search Ads System (Adwords) infringes, directly or indirectly, claims 1, 11, 22, or 34 of the '040 patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

4. Whether PUM proves by a preponderance of the evidence that Google's Search Ads System (Adwords) infringes, directly or indirectly, claims 1, 3, 5, 6, 7, or 21 of the '276 patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

¹ To the extent that any issues of law set forth in Exhibit 4 of the Joint Pretrial Order may be considered issues of fact, PUM incorporates those portions of Exhibit 4 herein by reference.

5. Whether PUM proves by a preponderance of the evidence that Google's Content Ads System (AdSense, including advertising on YouTube) infringes, directly or indirectly, claims 1, 11, 22, or 34 of the '040 patent, literally or under the doctrine of equivalents, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

6. Whether PUM proves by a preponderance of the evidence that Google's Content Ads System (AdSense, including advertising on YouTube) infringes, directly or indirectly, claims 1, 3, 6, 7, or 22 of the '276 patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

7. Whether PUM proves by a preponderance of the evidence that Google's YouTube Video Recommendations literally infringes, directly or indirectly, claims 1, 22, or 34 of the '040 Patent, pursuant to 35 U.S.C. § 271.

II. VALIDITY

8. Whether Google proves by clear and convincing evidence that claims 1, 11, 22, and 34 of the '040 Patent are anticipated under 35 U.S.C. § 102.

9. Whether Google proves by clear and convincing evidence that claims 1, 3, 5, 6, 7, 21, and 22 of the '276 patent are anticipated under 35 U.S.C. § 102.

10. Whether Google proves by clear and convincing evidence that claims 1, 11, 22, and 34 of the '040 Patent are invalid as obvious to a person of ordinary skill in the art at the time of the invention under 35 U.S.C. § 103(a).²

² In Ex. 3 to the Joint Pretrial Order, Google states that it "believes that obviousness is a question of law for the Court." PUM disagrees. "Obviousness is a legal determination that may be submitted to a jury with proper instruction." *In re Hayes Microcomputer Prods., Inc. Patent Litig.*, 982 F.2d 1527, 1539 (Fed. Cir. 1992); *accord Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1547 (Fed. Cir. 1983); *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1247-48 (Fed. Cir. 2010) (Linn, J., *concurring*).

11. Whether Google proves by clear and convincing evidence that claims 1, 3, 5, 6, 7, 21, and 22 of the '276 patent are invalid as obvious to a person of ordinary skill in the art at the time of the invention under 35 U.S.C. § 103(a).

III. OWNERSHIP AND STANDING³

12. Whether Google's state law claims are time-barred and/or barred by laches.

13. Whether Google has standing to assert a breach of contract claim against Dr. Konig.

14. Whether Google proves by a preponderance of the evidence that Dr. Konig breached his employment agreement with SRI.

15. Whether Dr. Konig conceived of the inventions while employed by SRI and, if so, whether the inventions related to SRI's then existing business or actual or demonstrably anticipated research, or resulted from Dr. Konig's work at SRI.

16. Whether Google proves by a preponderance of the evidence its claims for constructive trust and for conversion.

17. Whether Google proves by a preponderance of the evidence that it is entitled to co-ownership rights to the '040 and '276 patents and whether those rights are retroactive such that PUM lacks standing to bring this lawsuit.

18. Whether PUM and its predecessors-in-interest purchased their ownership rights in the patents-in-suit for valuable consideration and without notice of any prior assignment to SRI or SRI's assignment of purported rights to Google.

³ As set forth in PUM's Motion *in limine* (Ex. 12 to the pretrial order), PUM believes that Google's claims for a declaration of co-ownership of the patents-in-suit, lack of standing, constructive trust and conversion are legal or equitable issues to be decided by the Court following trial.

IV. RELIEF

19. PUM seeks damages and enhanced damages because this is an “exceptional case.” This relief will be addressed in connection with the trial on damages and willfulness to be scheduled after the completion of the March 10, 2014 trial.

V. STATEMENT OF INTENDED PROOFS

20. PUM intends to prove that Google Search infringes, directly or indirectly, claims 1, 11, 22, and 34 of the '040 patent, and claims 1, 3, 6, 21, and 22 of the '276 patent literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

21. PUM intends to prove that Google's Search Ads System (Adwords) infringes, directly or indirectly, claims 1, 11, 22, and 34 of the '040 patent, and claims 1, 3, 5, 6, 7, and 21 of the '276 patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

22. PUM intends to prove that Google's Content Ads System (Adsense including YouTube Advertising System) infringes, directly or indirectly, claims 1, 11, 22, or 34 of the '040 patent, and claims 1, 3, 6, 7, and 22 of the '276 patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

23. PUM intends to prove that Google's YouTube Video Recommendations literally infringes, directly or indirectly, claims 1, 22, and 34 of the '040 Patent, pursuant to 35 U.S.C. § 271.

24. To the extent Google introduces sufficient evidence of invalidity, PUM intends to introduce evidence sufficient to rebut that claims 1, 11, 22, and 34 of the '040 Patent are invalid under 35 U.S.C. §§ 102 or 103.

25. To the extent Google introduces sufficient evidence of invalidity, PUM intends to introduce evidence sufficient to rebut that claims 1, 3, 5, 6, 7, 21, and 22 of the '276 are invalid under 35 U.S.C. §§ 102 or 103.

26. To the extent Google's state law claims are found not to be untimely, and to the extent Google introduces sufficient evidence relating to these claims, PUM intends to introduce evidence that the statute of limitations bars Google's claims. In addition, PUM intends to prove that Google unreasonably delayed in bringing its ownership and state law counterclaims to the prejudice of PUM and Dr. Konig.

27. To the extent Google's ownership and related state law claims are found not to be untimely, and to the extent Google introduces sufficient evidence relating to these claims, PUM intends to introduce evidence sufficient to show that Google lacks standing to assert a breach of contract claim.

28. To the extent Google's ownership and related state law claims are found not to be untimely, and to the extent Google introduces sufficient evidence relating to these claims, PUM also intends to introduce evidence sufficient to show that Dr. Konig did not breach his employment agreement with SRI, did not conceive the inventions while employed at SRI, and, that the inventions are covered by section 2870 of the California Labor Code.

29. To the extent Google's co-ownership and related state law claims are found not to be untimely, and to the extent Google introduces sufficient evidence of lack of standing, PUM intends to introduce evidence sufficient to show that that SRI did not have any ownership rights to the '040 and '276 patents to convey to Google, that Dr. Konig does not have any rights to the '040 and '276 patents to convey to Google, that PUM and its predecessors-in-interest were good faith purchasers of Dr. Konig's rights in the patents-in-suit, that PUM is the lawful owner of the

'040 and '276 Patents, and that PUM has standing to bring this lawsuit because Google cannot establish that SRI or Google ever held legal title to the '040 and '276 Patents that could deprive PUM of standing.

EXHIBIT 3

EXHIBIT 3 TO PRETRIAL ORDER
GOOGLE'S STATEMENT OF CONTESTED FACTS
THAT REMAIN TO BE LITIGATED AND STATEMENT OF INTENDED PROOFS

Google submits the following issues of fact that remain to be litigated. Further details of these proofs have been explained at length in Google's pleadings and discovery responses, including its contentions, interrogatory responses, expert reports and by experts at their depositions, which Google incorporates by reference. Should the Court determine that any issue identified in this list is most properly considered an issue of law, it shall be so considered and Google incorporates it by reference into its Statement of Issues of Law to be Litigated at Trial. Google reserves the right to revise, modify, supplement, or change the issues of fact to be litigated in light of any pretrial rulings by the Court and/or in light of any further identification of issues of law and fact by PUM and/or to address any additional issues, arguments, evidence or other developments in the case, including pending and anticipated motions, and similar developments.

1. Whether Google Search directly infringes¹ claims 1, 11, 22, or 34 of the '040 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
2. Whether Google Search directly infringes claims 1, 3, 6, 21, and 22 of the '276 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
3. Whether Google's Search Ads System (AdWords) directly infringes claims 1, 11, 22, or 34 of the '040 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
4. Whether Google's Search Ads System (AdWords) directly infringes claims 1, 3, 5, 6, 7, or 21 of the '276 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
5. Whether Google's Content Ads System (AdSense, including advertising on YouTube) directly infringes claims 1, 11, 22, or 34 of the '040 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

¹ PUM includes in Exhibit 2 allegations regarding indirect infringement. PUM did not disclose in discovery that it contends Google indirectly infringes, or any facts to support such a claim. Thus, it should be precluded from pursuing a claim of indirect infringement at trial.

6. Whether Google's Content Ads System (AdSense, including advertising on YouTube) directly infringes claims 1, 3, 6, 7, or 22 of the '276 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
7. Whether Google's YouTube Video Recommendations directly and literally infringes claims 11, 22, or 34 of the '040 Patent pursuant to 35 U.S.C. § 271.
8. Whether claims 1, 11, 22, and 34 of the '040 patent are anticipated under 35 U.S.C. § 102 in light of the prior art.
9. Whether claims 1, 3, 5, 6, 7, 21 and 22 of the '276 patent are anticipated under 35 U.S.C. § 102 in light of the prior art.
10. Whether claims 1, 11, 22, and 34 of the '040 Patent are invalid as obvious under 35 U.S.C. § 103(a). the prior art.²
11. Whether claims 1, 3, 5, 6, 7, 21, and 22 of the '276 Patent are invalid as obvious under 35 U.S.C. § 103(a)).³
12. Whether Yochai Konig breached his employment agreement with SRI.
13. Whether Yochai Konig conceived of the inventions disclosed in the patents-in-suit while employed by SRI.
14. Whether the inventions disclosed in the patents-in-suit resulted from Yochai Konig's work for SRI.

² The list of prior art references and "combinations" for obviousness ordered by the Court is set forth in Exhibit 20.

³ Google believes that obviousness is a question of law for the Court (*In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) (Obviousness is a question of law, based on underlying facts.)), but because PUM identified it as a contested fact that remains to be litigated in Exhibit 2, Google includes them herein. The list of prior art references and "combinations" for obviousness ordered by the Court is set forth in Exhibit 20.

15. Whether the inventions disclosed in the patents-in-suit related to SRI's business and/or its actual or demonstrably anticipated research or development.
16. Whether PUM lacks ownership rights to the '040 and '276 Patents.
17. Whether SRI could discover its cause of action against Yochai Konig before discovery began in this lawsuit.
18. Whether any delay in Google bringing its ownership and state law counterclaims was unreasonable and whether such delay prejudiced PUM or Yochia Konig in any manner.
Whether PUM lacks standing to bring this lawsuit.
19. Whether PUM and its predecessors-in-interest purchased its ownership rights in the patents-in-suit for valuable consideration.
20. Whether PUM and its predecessors-in-interest had notice of SRI's ownership interest in the patents-in-suit.
21. Whether PUM and its predecessors-in-interest had notice of SRI's assignment of rights to Google of rights in the patents-in-suit.

RELIEF

22. Google seeks declaratory judgment that Google has not infringed and does not infringe any valid and enforceable claim the '040 patent or the '276 patent and that the '040 and '276 patents are invalid and/or unenforceable.
23. Google seeks declaratory judgment that Google is a rightful co-owner of the Patents-in-Suit, the return of all rights and interest in the patents-in-suit which Yochai Konig and PUM wrongfully converted, and imposition of constructive trust against PUM and Yochai Konig for Google with a duty to convey the same to Google.

STATEMENT OF INTENDED PROOFS

24. Google intends to offer proof to rebut PUM's allegations that Google Search directly infringes claims 1, 11, 22, or 34 of the '040 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
25. Google intends to offer proof to rebut PUM's allegations that Google Search directly infringes claims 1, 3, 6, 21, and 22 of the '276 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
26. Google intends to offer proof to rebut PUM's allegations that Google's Search Ads System (AdWords) directly infringes claims 1, 11, 22, or 34 of the '040 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
27. Google intends to offer proof to rebut PUM's allegations that Google's Search Ads System (AdWords) directly infringes claims 1, 3, 5, 6, 7, or 21 of the '276 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
28. Google intends to offer proof to rebut PUM's allegations that Google's Content Ads System (AdSense, including advertising on YouTube) directly infringes claims 1, 11, 22, or 34 of the '040 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.
29. Google intends to offer proof to rebut PUM's allegations that Google's Content Ads System (AdSense, including advertising on YouTube) directly infringes claims 1, 3, 6, 7, or 22 of the '276 Patent, literally or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271.

30. Google intends to offer proof to rebut PUM's allegations that Google's YouTube Video Recommendations literally and directly infringes claims 11, 22, or 34 of the '040 Patent pursuant to 35 U.S.C. § 271.
31. Google intends to prove that the prior art anticipates claims 1, 11, 22, and 34 of the '040 patent under 35 U.S.C. § 102.
32. Google intends to prove that the prior art anticipates claims 1, 3, 5-7, 21 and 22 of the '276 patent under 35 U.S.C. § 102.
33. Google intends to prove that claims 1, 11, 22, and 34 of the '040 Patent are invalid as obvious under 35 U.S.C. § 103(a) in light the prior art.⁴
34. Google intends to prove that claims 1, 3, 5, 6, 7, 21, and 22 of the '276 Patent are invalid as obvious under 35 U.S.C. § 103(a)) in light of the prior art.⁵
35. Google intends to prove that PUM lacks the standing necessary to assert any claims of the '040 Patent or '276 Patent against Google pursuant to 35 U.S.C. § 262.
36. Google intends to offer proof to rebut PUM's allegation that Google unreasonably delayed bringing these claims or that any delay prejudiced PUM or Yochai Konig.
37. Google intends to offer proof to rebut PUM's allegations that PUM and its predecessors-in-interest purchased their ownership rights in the patents-in-suit for valuable consideration and did not have actual or constructive notice of SRI's ownership interest or SRI's assignment of rights to Google.

⁴ The list of prior art references and "combinations" for obviousness ordered by the Court is set forth in Exhibit 20.

⁵ The list of prior art references and "combinations" for obviousness ordered by the Court is set forth in Exhibit 20.

EXHIBIT 4

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PUM'S STATEMENT OF ISSUES OF LAW TO BE LITIGATED AT TRIAL¹

PUM asserts that Google infringes U.S. Patent No. 6,981,040 B1 (“the ’040 patent”) and U.S. Patent No. 7,685,276 (“the ’276 Patent”), directly and indirectly, literally and/or under the doctrine of equivalents.

PUM’s statement of the legal issues that remain to be litigated is based on the arguments it expects to make to establish infringement as well as its understanding of the arguments that Google is likely to make in an attempt to prove its claims and defenses. To the extent that Google intends or attempts to introduce different or additional legal arguments, PUM reserves its right to supplement this statement and contest those legal arguments and to present any and all rebuttal evidence in response to those arguments.

Based on PUM’s infringement contentions and PUM’s current understanding of Google’s claims, the following issues of law remain to be litigated:

¹ To the extent any of the issues of fact set forth in Exhibit 2 may be considered issues of law, PUM incorporates them herein by reference. To the extent any issues of law here may be considered issues of fact PUM incorporates them in Exhibit 2.

I. ISSUES ON WHICH PUM BEARS THE BURDEN OF PROOF

PUM must prove by a preponderance of the evidence that Google's making, using, offering to sell, selling, or importing the Accused Products directly or indirectly infringes, literally and/or under the doctrine of equivalents, claims 1, 11, 22, or 34 of the '040 Patent and claims 1, 3, 5, 6, 7, 21, or 22 of the '276 Patent.

A. DIRECT INFRINGEMENT

PUM bears the burden of proving patent infringement by a preponderance of the evidence. *Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 261 F.3d 1329, 1336 (Fed. Cir. 2001). PUM must show that it is more likely than not that Google infringes the '040 and '276 Patents. *Warner-Lambert Co. v. Teva Pharm., USA, Inc.*, 418 F.3d 1326, 1341 (Fed. Cir. 2005).

The infringement analysis involves two steps. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). The first step is to define the disputed terms of the patent consistent with how those terms would be understood by a person of ordinary skill in the art. *Id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). This Court construed the disputed terms in a decision dated January 25, 2012. (D.I. 347.) The second step is to determine whether the accused product infringes the patent, which is done by comparing the accused product with the properly construed claims. *Markman*, 52 F.3d at 976.

"Infringement under the doctrine of equivalents is an equitable doctrine devised for 'situations where there is no literal infringement but [where] liability is nevertheless appropriate to prevent what is in essence a pirating of the patentee's invention.'" *Insta-Foam Prods., Inc. v. Universal Foam Sys., Inc.*, 906 F.2d 698, 702 (Fed. Cir. 1990) (quoting *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 870 (Fed. Cir. 1985)). Under the doctrine of equivalents, an

accused product infringes if a person of ordinary skill in the art would consider the elements in the accused product to be insubstantially different from the limitations of the asserted claims. *Overhead Door Corp. v. Chamberlain Grp., Inc.*, 194 F.3d 1261, 1269 (Fed. Cir. 1999); *see also Zygo Corp. v. Wyko Corp.*, 79 F.3d 1563, 1568 (Fed. Cir. 1996) (“Infringement under the doctrine of equivalents may be found where those limitations of a claim not found exactly in the accused device are met equivalently.”).

One way that infringement under the doctrine of equivalents can be demonstrated is by the function-way-result test, which permits a finding of infringement if a claim limitation and the corresponding element of the accused product (1) perform substantially the same function, (2) in substantially the same way, (3) to produce substantially the same result. *Atlas Powder Co. v. E.I. DuPont de Nemours & Co.*, 750 F.2d 1569, 1579 (Fed. Cir. 1984) (citation omitted).²

Although the doctrine of equivalents is applied on a limitation-by-limitation basis, one-to-one correspondence is not required. *Eagle Comtronics v. Arrow Commc’n Labs.*, 305 F.3d 1303, 1317 (Fed. Cir. 2002). For example, an accused product may infringe even if “separate claim limitations are combined into a single element.” *Id.* at 1317.

B. INDIRECT INFRINGEMENT

Inducement of Infringement

“Whoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271(b). A party is liable for inducement of infringement if it: (1) knew about the patent; (2) intentionally encouraged acts that constitute direct infringement; and (3) knew or

² Evidence that a person of ordinary skill in the art would consider the element of the accused product to be interchangeable with the claim limitation is also evidence supporting a finding of infringement under the doctrine of equivalents. *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 36-37 (1997) (citing *Graver Tank*, 339 U.S. at 857)).

should have known that its actions will cause direct infringement or is willfully blind to the fact; and (4) another party directly infringes the claim. *Id.*; *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2070-71 (2011).

Evidence of specific intent to induce infringement “may be inferred from circumstantial evidence.” *Ricoh Co., Ltd. v. Quanta Computer Inc.*, 550 F.3d 1325, 134 2 (Fed. Cir. 2008) (citation omitted). Evidence of active steps taken to induce infringement, such as advertising an infringing use, or instructing how to engage in an infringing use, may support a finding of an intention for the product to be used in an infringing manner. *Id.* at 1341 (citation omitted).

II. ISSUES ON WHICH DEFENDANT BEARS THE BURDEN OF PROOF

A. INVALIDITY

Google must prove by clear and convincing evidence that claims 1, 11, 22, and 34 of the '040 patent and claims 1, 3, 5, 6, 7, 21, and 22 of the '276 Patent are invalid under 35 U.S.C. §§ 102 or 103. *See Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1352 (Fed. Cir. 2002).

The '040 and '276 Patents are presumed to be valid. 35 U.S.C. § 282. To overcome this presumption of validity, the party challenging a patent must prove facts supporting a determination of invalidity by “clear and convincing evidence.” *Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242 (2011); *see also Kao Corp. v. Unilever United States, Inc.*, 441 F.3d 963, 968 (Fed. Cir. 2006) (citation omitted) (“Because patents are presumed to be valid, *see* 35 U.S.C. § 282, an alleged infringer seeking to invalidate a patent on obviousness grounds must establish its obviousness by facts supported by clear and convincing evidence.”). “Clear and convincing evidence has been described as evidence which proves in the mind of the trier of fact ‘an abiding conviction that the truth of [the] factual contentions are [sic] highly probable.’” *Intel*

Corp. v. U.S. Int'l Trade Comm'n, 946 F.2d 821, 830 (Fed. Cir. 1991) (alterations in original) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

“[T]he burden of persuasion is and remains always upon the party asserting invalidity.” *Am. Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1358 (Fed. Cir. 1984) (citation and emphasis omitted). “It is not necessary that the court hold a patent valid; it is only necessary that it hold that the patent challenger has failed to carry its burden.” *Ajinomoto Co. v. Archer-Daniels-Midland Co.*, No. 95-218-SLR, 1996 WL 621830, at *5 (D. Del. Oct. 21, 1996) (citing *Jones v. Hardy*, 727 F.2d 1524, 1529 n.3 (Fed. Cir. 1984)), *aff'd*, 228 F.3d 1338 (Fed. Cir. 2000). “[W]here the challenger fails to identify any persuasive evidence of invalidity, the very existence of the patent satisfies the patentee’s burden on the validity issue.” *Canon Computer Sys., Inc. v. Nu-Kote Int’l, Inc.*, 134 F.3d 1085, 1088 (Fed. Cir. 1998).

1. Anticipation

Section 102 of Title 35 of the United States Code provides in relevant part, that:

A person shall be entitled to a patent unless - (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

35 U.S.C. § 102. Invalidity for anticipation “requires that the four corners of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation.” *Advanced Display Sys. Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000) (citations omitted).

Anticipation requires that the reference must disclose the invention “without *any* need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *In re Arkley*, 455 F.2d 586, 587-88 (C.C.P.A 1972) (“Such picking and choosing may be entirely proper in the making of a 103, obviousness rejection, where the applicant must be afforded an opportunity to rebut with objective evidence any inference of obviousness which may arise from the *similarity* of the subject matter which he claims to the prior art, but it has no place in the making of a 102, anticipation rejection.”).

2. Obviousness³

Section 103 of Title 35 of the United States Code provides, in relevant part, that:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

35 U.S.C. § 103(a). *See also Wyers v. Master Lock Co.*, 616 F.3d 1231, 1237 (Fed. Cir. 2010); *cert. denied* 131 S. Ct. 1531 (2011).

“Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give

³ In Ex. 5 to the Joint Pretrial Order, Google contends that obviousness is an issue of law to be “decided by the Court.” PUM disagrees. “Obviousness is a legal determination that may be submitted to a jury with proper instruction.” *In re Hayes Microcomputer Prods., Inc. Patent Litig.*, 982 F.2d 1527, 1539 (Fed. Cir. 1992); *accord Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1547 (Fed. Cir. 1983); *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1247-48 (Fed. Cir. 2010) (Linn, J., *concurring*).

light to the circumstances surrounding the origin of the subject matter sought to be patented.”

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406, 127 S. Ct. 1727, 1734 (2007) (quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966)). Before finding a patent claim as invalid for obviousness, a court must consider all of these factors. *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 663 (Fed. Cir. 2000).

(a) Obviousness Determinations Proceed In Two Stages

First, the patent challenger must establish by clear and convincing evidence that the claimed invention would have been *prima facie* obvious. *Kaufman Co. v. Lantech, Inc.*, 807 F.2d 970, 974-75 (Fed. Cir. 1986). Failure to show *prima facie* obviousness means the claims are not invalid for obviousness, ending the inquiry. *Yamanouchi*, 231 F.3d at 1345.

Second, assuming the challenger sets forth clear and convincing evidence of *prima facie* obviousness, the patentee may come forward with evidence to demonstrate that the invention was not obvious. *Prima facie* obviousness may be rebutted with objective indicia of non-obviousness (“secondary considerations”) such as commercial success, failure of others to solve the problem, copying or other attempts to patent the same invention, satisfaction of a long-felt need by the invention, and acclaim for the invention. Sometimes, objective factors are the most important evidence in evaluating obviousness, and “must” always be considered as part of the original determination of obviousness. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1380, 1382-84 (Fed. Cir. 1986).

Once sufficient rebuttal evidence has been presented, “the *prima facie* case dissolves, and the decision is made on the entirety of the evidence.” *In re Kumar*, 418 F.3d 1361, 1366 (Fed. Cir. 2005). Moreover, when the patentee comes forward with evidence of secondary considerations, the burden of proof that the claims were obvious in light of *all* the evidence

remains on the defendant by clear and convincing evidence. *See Hybritech Inc.*, 802 F.2d at 1375, 1383.

(b) The Test For *Prima Facie* Obviousness

“[A] patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). “Inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” *Id.* at 418-19.

Where a challenger seeks to invalidate a patent based on obviousness, it must demonstrate “by clear and convincing evidence” that a “skilled artisan would have had reason to combine the teaching of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success from doing so.” *In re Cyclobenzapine Hydrochloride Extended Release Capsule Patent Litig.*, 676 F.3d 1063, 1068-69 (Fed. Cir. 2012) (citing *Proctor & Gamble Co. v. Teva Pharm. USA, Inc.*, 566 F.3d 989, 994 (Fed. Cir. 2009)); *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1360 (Fed. Cir. 2007).

(c) Evidence of Non-Obviousness May Rebut a Case of *Prima Facie* Obviousness

A court must also consider evidence of nonobviousness, or “secondary considerations,” before ruling on the question of validity of a patent claim. *Ruiz*, 234 F.3d at 667. “[C]ommercial success, long-felt but unresolved need, failure of others, copying and unexpected results” are secondary considerations that may be evidence of nonobviousness. *Ruiz*, 234 F.3d at 662-63.

“[T]hroughout the obviousness determination, a patent retains its statutory presumption of validity, *see* 35 U.S.C. § 282, and the movant retains the burden to show the invalidity of the claims by clear and convincing evidence as to underlying facts.” *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1349 (Fed. Cir. 2001) (citation and internal quotation marks omitted); *see also Sanofi-Synthelabo*, 550 F.3d at 1086 (a party challenging a patent claim as invalid for obviousness must prove that the *Graham* factors establish obviousness by clear and convincing evidence).

(d) The Challenger Cannot Use Hindsight or Rely On the Path of the Inventor

The obviousness analysis takes place at the time of the invention, and focuses on evidence existing before the time of the invention. The use of hindsight is prohibited in the obviousness analysis. *KSR Int’l*, 550 U.S. at 421 (“A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.”); *accord Innogenetics, N. V. v. Abbott Labs.*, 512 F.3d 1363, 1374 n.3 (Fed. Cir. 2008) (hindsight should not be relied upon to post-hoc create a reason for combining references when such reason would not have been known before the claimed invention); *Yamanouchi*, 231 F.3d at 1343 (using “the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention” is impermissible hindsight reasoning) (citation omitted); *Janssen Pharmaceutica N.V. v. Mylan Pharm., Inc.*, 456 F. Supp. 2d at 663 (discrediting expert testimony that was clearly based on hindsight).

An obviousness determination is made “from the viewpoint of a person of ordinary skill [not the inventor] in the field of the invention.” *Arkie Lures*, 119 F.3d at 956 . The obviousness analysis must avoid using the teachings of the patent-in-suit because “[th]e invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the

time.” *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138 (Fed. Cir. 1985). Therefore, “[i]t is critical that the question of obviousness not be viewed in the light of the accomplished result.” *BOC Health Care, Inc. v. Nellcor Inc.*, 892 F. Supp. 598, 603 (D. Del. 1995) (internal quotation marks and citation omitted), *appeal deactivated*, No. 95-1494, 1995 WL 810959 (Fed. Cir. Oct. 27, 1995), *aff’d*, No. 95-1494, 96-1072., 1996 WL 518067 (Fed. Cir. Sept. 13, 1996). Evidence must be provided that a “skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998).

As Google bears the burden of proof on these issues, PUM reserves the right to amend its statement of issues of law as further information becomes available.

B. OWNERSHIP/STANDING COUNTERCLAIMS AND DEFENSES

Google must demonstrate that it has standing to assert its breach of contract claim. If so, Google must prove by a preponderance of the evidence that Dr. Konig breached his employment agreement with SRI, that Dr. Konig’s assignment of his rights in the patents-in-suit to Utopy did not cut off Dr. Konig’s ability to assign his rights to SRI, and that PUM lacks ownership rights to the ’040 and ’276 Patents-in-suit or standing to bring this lawsuit.

A plaintiff must bring an action for breach of contract, recovery of monetary damages, or recovery of property, within three years “from the accruing of the cause of such action.” 10 Del. C. § 8106 Under 10 Del. C. § 8121, “[w]here a cause of action arises outside of this State, an action cannot be brought in a court of this State to enforce such cause of action after the expiration of whichever is shorter, the time limited by the law of this State, or the time limited by the law of the state or country where the cause of action arose, for bringing an action upon such cause of action.” *See also Medtronic Vascular, Inc. v. Advanced Cardiovascular Sys., Inc.*,

No. Civ. 98-80-SLR, 2005 WL 46553, at *4 D. Del. 2005) (finding the borrowing statute applicable to claims of breach of contract, actual fraud, unjust enrichment and unfair competition in patent action). “Delaware’s borrowing statute is designed to prevent shopping for the most favorable forum.” See *Grynberg v. Total Compagnie Francaise des Petroles*, 891 F. Supp. 2d 663, (D. Del. 2012) (internal quotation marks and citation omitted), *overruled on other grounds by*, Civ. A. No. 10-1088-LPS, 2013 WL 5459913 (D. Del. Sept. 30, 2013); *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co., Inc.*, 866 A.2d 1, 16 (Del. 2005) (noting that borrowing statutes “are typically designed to address a specific kind of forum shopping scenario—cases where a plaintiff brings a claim in a Delaware court that (i) arises under the law of a jurisdiction other than Delaware and (ii) is barred by that jurisdiction's statute of limitations but would not be time-barred in Delaware, which has a longer statute of limitations”). The purpose of § 8117 is to “allow reasonably diligent plaintiffs the statutory period within which to obtain service upon an absent or once absent and later elusive defendant.” *Hurwitch v. Adams*, 151 A.2d 286, 288 (Del. Super. Ct.), *aff’d*, 155 A.2d 591 (Del. 1959); *see also Hurwitch v. Adams*, 155 A.2d 591, 593-94 (Del. 1959) (“[I]t is said that 10 *Del. C.* § 8116 [now § 8117] is plain on its face and that it applies in any action in which the defendant is a non-resident. We think this argument, if accepted, would result in the abolition of the defense of statutes of limitation in actions involving non-residents.”).

The statute of limitations begins to run at the time of the alleged wrongful act, even if the Plaintiff is ignorant of the cause of action. See *Medtronic Vascular, Inc. v. Advanced Cardiovascular Sys., Inc.*, No. Civ. 98-80-SLR, 2005 WL 46553, at *4 (D. Del. Jan. 5, 2005), *aff’d*, 182 F. App’x 994 (Fed. Cir. May 26, 2006). There are only two exceptions to this rule that may toll the statute:

- when the injury is “inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of.” *Wal-Mart Stores, Inc. v. AIG Life Inc. Co.*, 860 A.2d 312, 319 (Del. 2004); or
- when a cause of action is fraudulently concealed. *Wright v. Dumizio*, No. 08-292, 2002 WL 31357891, at *3 (Del. Super. Ct. Oct. 31, 2002).

Neither of these exceptions is lightly invoked, because equitable exceptions to statutes of limitations are narrow and designed to prevent injustice. *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 2012 WL 3201139, at *23 (Del.Ch. August 07, 2012).

To prevail on its claim that its cause of action was inherently unknowable, Google must show that there were no facts that would put a reasonably diligent plaintiff on inquiry notice, for example, when a surgeon leaves an object in a person’s body but there are no symptoms for years. *Layton v. Allen*, 246 A.2d 794 (Del. 1968). Similarly, facts are inherently unknowable when an auto manufacturer issues a recall for a manufacturing defect but the recall is limited in scope and not widely disseminated to the public, and the car owners themselves have experienced no malfunction and could take no steps to determine whether one existed. *Dalton v. Ford Motor Co.*, 2002 WL 338081, at *3 (Del. Super. Ct. Feb. 28, 2002):

Facts are not inherently unknowable if the plaintiff could have obtained access to information that would have alerted it the defendant’s alleged breach of contract, and just because a review is laborious “does not make it practically impossible for purposes of the inherently unknowable injury rule.” *Central Mortg.*, 2012 WL 3201139, at *22-23 & n.185.

For fraudulent concealment to toll the statute of limitations, Google must show: “(1) the defendant's knowledge of the alleged wrong, and (2) an affirmative act of concealment by the defendant thereby preventing the nonbreaching party from discovering and pursuing a cause of action.” *Wright*, 2002 WL 31357891, at *3 (citing *Lecates v. Hertich Pontiac Buick Co.*, 515 A.2d 163, 176 (Del. Super. 1986); see also *Medtronic*, 2005 WL 46553, at * 4 (“exception

requires that a plaintiff show that a defendant actively concealed information with the intent to ‘prevent inquiry or knowledge of the injury’”).

Equity aids only the vigilant, *Central Mortg.*, 2012 WL 3201139, at *23. The statute is thus tolled only until the plaintiff’s rights are discovered by the exercise of reasonable diligence. *Wright*, 2022 WL 31357891, at *2 (citing *Giordano v. Czerwinski*, 216 A.2d 874, 876 (Del. 1966)); *Wal-Mart*, 860 A. 2d at 319. The statute begins to run “upon discovery of facts constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence on inquiry, which if pursued, would lead to discovery of such facts.” *Wal-Mart*, 860 A.2d at 319; *Medtronic Vascular, Inc. v. Advanced Cardiovascular Sys., Inc.*, No. Civ. 98-80-SLR , 2005 WL 388592, at *1 n.4 (D. Del. Feb. 2, 2005), *aff’d*, 182 F. App’x 994 (Fed. Cir. May 26, 2006); *Raza v. Siemens Med. Solutions USA Inc.*, 607 F. Supp. 2d 689, 693 (D. Del. 2009). “Patents serve to put the world on notice with respect to what the patentee claims to own,” and starts the limitations period running. *Medtronic*, 2005 WL 388592, at *1 n.4.

An assignee stands in shoes of assignor. *Madison Fund, Inc. v. Midland Glass Co.*, No. 394-1974, 1980 WL 332958 (Del. Super. Ct. Aug. 11, 1980).

Contract language agreeing to assign effects no immediate transfer of interest. *See Bd. Of Trustees of Leland Stanford v. Roche*, 583 F.3d 832, 841-42 (Fed. Cir. 2009); *DDB Techs., L.L.C. v. MLB Advanced Media L.P.*, 517 F.3d 1284, 1290 (Fed. Cir. 2008) (same). An agreement calling for future assignment of intellectual property rights “must be implemented by [subsequent] written assignment,” and the assignee acquires rights only on the date of the subsequent conveyance. *IpVenture, Inc. v. Prostar Computer, Inc.*, 503 F.3d 1324, 1327 (Fed. Cir. 2007). An inventor’s first assignment of patent rights cuts off his ability to assign those rights a second time, voiding any subsequent assignment. *See Roche*, 583 F.3d at 841-42.

Even if Google's claims were not time-barred by the statute of limitation, the factfinder must also consider whether Google unreasonably delayed in bringing its counterclaims, which delay unfairly prejudiced PUM and Dr. Konig, and whether Section 2870 of the California Labor Code applies if Dr. Konig conceived of the inventions, within the meaning of his employment agreement, while at SRI.

The doctrine of laches is founded on "the principle that equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." *Russell v. Todd*, 309 U.S. 280, 287 (1940); *see also In re Marriage of Fogarty & Rasbeary*, 93 Cal. Rptr. 2d 653, 657 (Cal. App. 2000) ("Laches is an equitable defense to the enforcement of stale claims."). "[W]here the question of laches is in issue, the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known by him were such as to put upon a man of ordinary intelligence the duty of inquiry." *Johnston v. Standard Mining Co.*, 148 U.S. 360, 370 (1893) (noting that "where property has been developed by the courage and energy and at the expense of the defendants, courts will look with disfavor upon the claims of those who have lain idle while awaiting the results of this development, and will require, not only clear proof of fraud, but prompt assertion of plaintiff's rights").

California Labor Code "§ 2870 does not confer any rights on employers – it protects employees by rendering assignment agreements unenforceable to the extent they exceed permissible limits." *Applera Corp.-Applied Biosys. Grp.*, 375 F. App'x 12, 17 (Fed. Cir. 2010). Provisions in an employment agreement are void and unenforceable as against the public policy of the State of California if they "purport[] to require an employee to assign an invention" that an inventor created on his own "time without using the employer's equipment, supplies, facilities, or trade secret information," and the invention does not either:

(1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) result from any work performed by the employee for the employer.

Cal. Labor Code § 2870. The terms "related to" and "result from" are "inherently ambiguous," and California law allows the introduction of extrinsic evidence on the meaning of these terms, including evidence of the nature of the employer's business, the employee's work for the employer, and "the conduct of the parties, i.e., evidence probative of whether or not they regarded the invention as falling within the agreement." *SiRF Tech., Inc. v. U.S. Int'l trade Comm'n*, 601 F.3d 1318, 1326-27 (Fed. Cir. 2010).

Conception "is established when the invention is made sufficiently clear to enable one skilled in the art to reduce it to practice without the exercise of extensive experimentation or the exercise of inventive skill." *Hiatt v. Ziegler*, 179 USPQ 757, 763 (Bd. Pat. Inter. 1973). "Conception is complete only when the [idea] is so clearly defined in the inventor's mind that only ordinary skill would be necessary to reduce the invention to practice, without extensive research or experimentation." *Burroughs Wellcome Co. v. Barr Labs., Inc.*, 40 F. 3d 1223, 1228 (Fed. Cir. 1994). The rules of patent law conception "ensure that patent rights attach only when an idea is so far developed that the inventor can point to a definite, particular invention," and only when those rights attach can an inventor assign those rights to another. *Id.*; *see also, e.g., Board of Trustees of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 487 F. Supp. 2d 1099, 1115 (N.D. Cal 2007), *aff'd in part and rev'd in part on other grounds*, 583 F.3d 832 (Fed. Cir. 2009) (applying patent law definition of conception to an employment agreement and holding that the invention was conceived in the patent sense while employee worked there); *Accord Andreaggi v. Relis*, 171, N.J. Super. 203, 408 A.2d 455, 464 (N.J. Super. Ct. Ch. Div.

1979) (“[T]his court concludes that where an inventor or inventors have conceived the basic ideas, have drawn the schematics for the electrical circuitry, have assembled the hardware to do the work, and have documented the means of executing the idea, there is invention.”).

A contract must be interpreted to give effect to “the parties’ objective intent when they entered into it.” *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal. App. 4th 516, 524-25 (Cal. Ct. App. 2003). In determining the intent of the parties to a contract, the inquiry under Cal. Civ. Code § 1649 “considers not the subjective belief of the promisor but, rather the ‘objectively reasonable’ expectation of the promisee.” *Buckley v. Terhune*, 441 F.3d 688, 695 (9th Cir. 2006). Under California law, “[u]ndisclosed communications and understandings are not credible extrinsic evidence and may not be used by the Court to determine the parties’ mutual intent.” *SCC Alameda Point LLC v. City of Alameda*, 897 F. Supp. 2d 886, 897 (N.D. Cal. 2012) (internal quotation marks and citations omitted).

Rules of contract construction are only applied if a contract is ambiguous. Cal Civ. Code § 1637 (“For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this Chapter are to be applied.”); *Edwards v. Arthur Andersen*, 44 Cal. 4th 937, 954 (Cal. 2008) (“Where the language of a contract is clear and not absurd, it will be followed. But if the meaning is uncertain, the general rules of interpretation are to be applied.”). The “interpretation of an ambiguous clause in a contract must be made in reference to the entire contract.” *Med. Ops. Mgmt., Inc. v. Nat’l Heath Labs., Inc.*, 176 Cal. App. 3d 886, 893 (Cal. Ct. App. 1986). Contractual ambiguity is strictly construed against the drafter, particularly in employment contracts to assign intellectual property. *See, e.g., Applera*, 375 F. App’x at 17 (holding that Cal. Civil Code § 1654 required construing contractual obligations in an employee invention agreement “most strongly against the party who caused the uncertainty

to exist [i.e. the employer]’”); *Hercules Glue Co. v. Littooy*, 25 Cal. App. 2d 182, 186 (Cal. Ct. App. 1938) (noting that “[a]n employee’s agreement in the contract of employment to assign patents to his employer is specifically enforceable as to patents, clearly within its terms, as strictly construed against the employer”). Under California law, when parties use a contract term in a technical sense, or when special meaning is given to a term by usage, then a court interpreting the contract term must apply the technical or special meaning. California Civil Code § 1644.

“An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.” 35 U.S.C. § 261. “It is well established that when a legal title holder of a patent transfers his or her title to a third party purchaser for value without notice of an outstanding equitable claim or title, the purchaser takes the entire ownership of the patent, free of any prior equitable encumbrance.” *Filmtec Corp. v. Allied-Signal Inc.*, 939 F.2d 1568, 1573 (Fed. Cir. 1991) (citation omitted). “This is an application of the common law bona fide purchaser for value rule.” *Id.*

The sole issue in determining whether a plaintiff has standing to bring a patent infringement suit is whether the plaintiff possesses legal title ownership of the patent. *Arachnid, Inc. v. Merit Indus., Inc.*, 939 F.2d 1574, 1579 (Fed. Cir. 1991). The right to seek the equitable relief of declaration of ownership cannot retroactively divest a legal title holder of title to the patent. *See id.* at 1579. Where an employee does not assign patent right pursuant to an employment agreement which does not automatically assign rights in an invention, the employer has at most an equitable claim “not sufficient to make the employer an indispensable party to the

suit.” *Filmtec*, 939 F.2d at 1578; *see also Sigma Eng’g. Svc., Inc. v. Halm Instrument Co., Inc.*, 33 F.R.D. 129 (E.D.N.Y. 1963) (legal title of patent could institute suit without joining holder of an equitable interest in patent); *Dill Mfg. Co. v. Goff*, 125 F.2d 676, 679 (6th Cir. 1942) (party claiming equitable title cannot bring infringement suit until it acquires legal title).

To establish the elements of conversion, Google must first show that it is an owner. *Fremont Indem. Co. v. Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 119 (Cal Ct. App. 2007) (“basic elements of the tort are (1) the plaintiff’s ownership or right to possession of personal property; (2) the defendant’s disposition of the property in a manner that is inconsistent with the plaintiff’s property rights; and (3) resulting damages”). To establish ownership, a party needs to show either that it has legal title or was entitled to immediate possession at the time of the alleged conversion; a mere right to payment under a contract is not sufficient. *Plummer v. Day/Eisenberg, LLP*, 184 Cal. App. 4th 38, 45 (Cal. Ct. App. 2010); *Farmers Ins. Exch. v. Zerin*, 53 Cal. App. 4th 445, 451-52, (Cal. Ct. App. 1997).

An agreement must actually “create an equitable assignment” of “a property interest” to establish equitable ownership for conversion. *See McCafferty v. Gilbank*, 249 Cal. App. 2d 569, 574–76 (Cal. Ct. App. 1967); *Clifford v. Concord Music Grp., Inc.*, 2012 WL 380744, at *3 (N.D. Cal. Feb. 6, 2012) (“mere contractual obligation” does not create property interest). A “possessory interest [that is] dependent on future events” is insufficient for conversion claim. *United States v. Bailey*, 288 F. Supp. 2d 1261, 1270 (M.D. Fla. 2003). “The tort of conversion does not apply to ideas.” *Melchior v. New Line Productions, Inc.*, 106 Cal. App. 4th 779, 793 (Cal. Ct. App. 2003) (Citation omitted). “A constructive trust . . . is an equitable remedy, not a substantive claim for relief.” *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP*, 150 Cal. App. 4th 384, 398 (Cal. Ct. App. 2007). “A constructive trust is an

involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner.” *Id.*

EXHIBIT 5

EXHIBIT 5 TO PRETRIAL ORDER
GOOGLE’S STATEMENT OF ISSUES OF LAW TO BE LITIGATED AT TRIAL

Google submits the issues of law that remain to be litigated based upon Google’s current understanding of each parties’ claims and defenses. Google believes that some of these issues are issues of law that must be resolved by the Court. Accordingly, below Google first lists issues of law that must be resolved by the Court, then lists all other issues that remain to be litigated at trial. Should the Court determine that any issue identified is more properly considered an issue of fact, it shall be so considered and Google incorporates it by reference into its list of contested facts to be litigated. Google reserves the right to revise, modify, supplement, or change the issues of law to be litigated in light of any pretrial rulings by the Court and/or in light of any further identification of issues of law and fact by PUM and/or to address any additional issues, arguments, evidence or other developments in the case, including pending and anticipated motions, and similar developments.

Issues of Law to Be Litigated at Trial and Decided by the Court

A. Invalidity

Whether the Asserted Claims of the patents-in-suit are invalid as obvious.

- (a) Authorities: 35 U.S.C. § 103 ; *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007); *Perfect Web Technologies, Inc. v. InfoUSA, Inc.*, 587 F.3d 1324 (Fed. Cir. 2009). *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) (Obviousness is a question of law, based on underlying facts.). *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966) (To determine obviousness, a court must consider: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art; and (4) any relevant secondary considerations, such as commercial success, long felt but unsolved needs, and the failure of others.)

B. Standing

Whether PUM lacks standing to sue because it failed to join as plaintiffs all co-owners of the patents-in-suit, including Google.

- (a) Authorities: 35 U.S.C. § 262; *Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1467 (Fed. Cir. 1998) (“an action for [patent] infringement must join as plaintiffs all co-owners.”).

C. Contract Interpretation

Google understands that the Court has ruled that the issue of contract interpretation is an issue of fact for the jury. (*See* D.I. 521; D.I. 537.) In particular, Google understands that the Court has found that the issue of interpretation of the word “conceived” is an issue of fact to be decided by the jury. Google does not agree that PUM has introduced any conflicting extrinsic evidence or that the jury should decide this issue, but Google seeks confirmation that the Court has ruled on this matter. (*See also* Exhibit 19.)

- (a) Authorities: *Winet v. Price*, 4 Cal. App. 4th 1159, 1166 (4th Dist. 1992) (“[W]hen the competent parol evidence is not conflicting, construction of the instrument is a question of law”); *Scheenstra v. Cal. Dairies, Inc.*, 213 Cal. App. 4th 370, 390 (5th Dist. 2013) (“Even where uncontroverted evidence allows for conflicting inferences to be drawn, our Supreme Court treats the interpretation of the written contract as solely a judicial function.”); *Tautges v. Global Datacenter Mgmt., Inc.*, No. 09-785, 2010 WL 3384980, *3 (S.D. Cal. Aug. 26, 2010) (“If no parol evidence is introduced to interpret the contract, or if the evidence is not contradictory, the trial court’s resolution of the ambiguity is a question of law.”); Cal. Civ. Code §§ 1636, 1643, 1644, and 1649; *Elec. Electronic Control, Inc. v. L.A. Unified School Dist.*, 126 Cal. App. 4th 601, 612 (2d Dist. 2005) (construing contracts requires “examining the words the parties have chosen [,] giving effect to the ordinary meaning of those words.”); *AT&T v. Integrated Network Corp.*, 972 F.2d 1321, 1324 (Fed. Cir. 1992) (“We disagree with the district court that conception of inventions, as used in the employment agreement, is solely a technical question of patent law . . . the contract may have used conception in its generic, broadest sense.”).

D. Laches

Whether the relief Google seeks for its counterclaims for a declaration of Google’s rights as co-owner, breach of contract, conversion, and constructive trust, is barred by the doctrine of laches. Any factual or legal determinations relevant to laches should be determined by the Court.

- (a) Authorities: *Whittington v. Dragon Group, L.L.C.*, 991 A.2d 1, 8 (Del. 2009) (“laches generally requires proof of three elements: first, knowledge by the claimant; second, unreasonable delay in bringing the claim; and third, resulting prejudice to the defendant.”) (internal quotation marks omitted).

E. Remedies

1. Whether Google is entitled to a declaration that it is a rightful co-owner of the '040 or '276 patents.

- (a) Authorities: 28 U.S.C. §§ 2201-2202.

2. Whether a constructive trust should be imposed against Yochai Konig and PUM, to compel transfer of '040 and '276 patent title from its wrongful holder (PUM) to its rightful holder (Google).

- (a) Authorities: *Campbell v. Superior Court*, 132 Cal. App. 4th 904, 920 (4th Dist. 2005) (“A constructive trust is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner.”); *Grove v. Grove Valve & Regulator Co.*, 4 Cal. App. 3d 299 (1970); *In re Bake-Line Group, LLC*, 359 B.R. 566, 574 (Bkrtcy D. Del. 2007) (“Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises.”); *U.S. v. Dubilier Condenser Corp.*, 289 U.S. 178 (1933) (“A patent is property, and title to it can pass only by assignment. If not yet issued, an agreement to assign when issued, if valid as a contract, will be specifically enforced.”)

Additional Issues to be Litigated at Trial

A. Infringement

1. Whether Google’s Accused Products literally infringe any of the asserted claims of the '040 or '276 patents.

- (a) Authorities: 35 U.S.C. § 271; *Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683, 696 (Fed. Cir. 2008) (jury must examine the evidence to determine whether the accused product infringes the properly construed claims); *Warner-Lambert Co. v. Teva Pharms. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005) (infringement must be proven by a preponderance of the evidence); *Seal-Flex, Inc. v. Athletic Track & Court Constr.*, 172 F.3d 836, 842 (Fed. Cir. 1999) (a patentee must “prove that the accused product or process contains, either literally or under the doctrine of equivalents, every limitation of the properly construed claim”); *Morton Int’l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1468-69 (Fed. Cir. 1993) (upholding lower court’s finding of noninfringement based on plaintiff’s failure to prove that the accused product met all of the claimed requirements); *Kim v. ConAgra Foods, Inc.*, 465 F.3d 1312, 1316, n.1 (Fed. Cir. 2006) (dependent claims not infringed when independent claim not infringed); *MicroStrategy Inc. v. Bus. Objects, S.A.*, 429 F.3d 1344, 1352-53 (Fed. Cir. 2005) (no literal infringement where accused product did not contain every element of the claim); *Cross Med. Prods. v. Medtronic Sofamor Danek*, 424 F.3d 1293, 1309-11 (Fed. Cir. 2005) (no direct infringement where accused product did not include each claim limitation); *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1353-54 (Fed. Cir. 2001) (no literal infringement where all of the elements of the claim not present in the accused system); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1550 (Fed. Cir. 1983) (no infringement of an invalid patent).

2. Whether Google’s Accused Products infringe any of the asserted claims of the '040 or '276 patents under the doctrine of equivalents.

- (a) Authorities: Equivalence to a claim limitation depends on "whether the substitute element matches the function, way, and result of the claimed element, or whether the substitute element plays a role substantially different from the claimed element." *Warner-Jenkinson v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997). *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1160 (Fed. Cir. 1998) ("If a theory of equivalence would vitiate a claim limitation, however, then there can be no infringement under the doctrine of equivalents as a matter of law."); *Overhead Door Corp. v. Chamberlain Group, Inc.*, 194 F.3d 1261 (Fed. Cir. 1999) (infringement by equivalents is only appropriate where the accused structure “performs substantially the same function in substantially the same way to achieve substantially the same result as does the” missing element); *Dolly, Inc. v. Spalding & Evenflo Cos.*, 16 F.3d 394, 398 (Fed. Cir. 1994) (doctrine of equivalents cannot be used as a pretext to extend or enlarge claim scope or to ignore claim

limitations; “[i]n short, the concept of equivalency cannot embrace a structure that is specifically excluded from the scope of the claims.”); *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1331-34 (Fed. Cir. 2001) (“The question of insubstantiality of the differences is inapplicable if a claim limitation is totally missing from the accused device.”). *Zygo Corp. v. Wyko Corp.*, 79 F.3d 1563, 1569 (Fed. Cir. 1996) (“A finding of equivalency just because the same result is achieved is a flagrant abuse of the term ‘equivalent.’”); *Zodiac Pool Care, Inc. v. Hoffinger Indus.*, 206 F.3d 1408, 1417 (Fed. Cir. 2000) (not proper to “reduce the claims to nothing more than ‘functional abstracts, devoid of meaningful structural limitations on which the public could rely.’”) (citations omitted); *Planet Bingo, LLC v. GameTech Int’l, Inc.*, 472 F.3d 1338, 1345 (Fed. Cir. 2006) (application of doctrine of equivalents not appropriate “where the accused device contain[s] the antithesis of the claimed structure.”); *Freedman Seating Co. v. Am. Seating Co.*, 420 F.3d 1350, 1358 (Fed. Cir. 2005) (“[A]n element ... is not, as a matter of law, equivalent ... if such a finding would entirely vitiate [a] limitation.”); *The Johns Hopkins Univ. v. Datascope Corp.*, 543 F.3d 1342, 1348, n3 (Fed. Cir. 2008) (“FDA equivalence is irrelevant to patent law because it involves fundamentally different inquiries”); *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.* (doctrine of equivalents cannot recapture subject matter “specifically identified, criticized, and disclaimed”); *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 734 (2002) (presence of amendment triggers presumption that application of the doctrine of equivalents is precluded, because when patentee responds to “[a] rejection by narrowing his claims, [the] prosecution history estops him from later arguing that the subject matter covered by the original, broader claim was nothing more than an equivalent.”); *Southwall Techs, Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed. Cir. 1995) (whether application of the doctrine of equivalents is restricted is a question of law).

3. PUM includes in Exhibit 4 law regarding inducement of infringement. PUM did not disclose in discovery that it contends Google induces infringement, or any facts to support such a claim. Thus, it should be precluded from pursuing a claim of indirect infringement at trial.

B. Invalidity

1. Whether the Asserted Claims of the patents-in-suit are invalid as anticipated under 35 U.S.C. § 102.

- (a) Authorities: 35 U.S.C. § 102; *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628 (Fed. Cir. 1987) ; *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994) (to be anticipating, a prior-art reference must disclose “each and every limitation of the claimed invention[,] ... must be enabling[,] and [must] describe ... [the] claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.”); *Helifix, Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 1347 (Fed. Cir. 2000) (where a reference ““does not expressly disclose in words’ one or more elements of a patent claim[, the reference can] nevertheless be anticipating if one of ordinary skill in the art would understand the [reference] as disclosing [the missing elements] and if such person could have combined the [reference’s] description of the invention with his own knowledge to make the claimed invention.”); *In re Donohue*, 766 F.2d 531, 533 (Fed. Cir. 1985) (“[P]ossession is effected if one of ordinary skill ... could have combined the publication’s description of the invention with his own knowledge to make the claimed invention.”); *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. ___, 131 S. Ct. 2238, 2245-46, 2249-50 (2011) (“Nothing in § 282’s text suggests that Congress meant ... to enact a standard of proof that would rise and fall with the facts of each case”; fact that references were previously before the PTO goes only to the weight the court or jury might assign them; “if the PTO did not have all material facts before it, its considered judgment may lose significant force ... concomitantly, the challenger’s burden to persuade the jury of its invalidity defense by clear and convincing evidence may be easier to sustain.”); *Sciele Pharma Inc. v. Lupin Ltd.*, 684 F.3d 1253, 1260 (Fed. Cir. 2012) (“reasonable to give more weight to new arguments or references ... not explicitly considered by the PTO”).

C. Issues Concerning Breach of Contract, Ownership, Conversion, and Constructive Trust

1. Whether Yochai Konig breached his Employment Agreement with SRI.
 - (a) Authority: *Abdelhamid v. Fire Ins. Exch.*, 182 Cal.App.4th 990, 999 (3d Dist. 2010) (“The standard elements of a claim for breach of contract are (1) a contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) damage to plaintiff therefrom.”); Cal. Labor Code § 2870; *Cadence Design*

Sys., Inc. v. Bhandari, 2007 WL 3343085, *5 (N.D. Cal. Nov. 8, 2007) (“[T]here are three independent scenarios in which an agreement assigning an invention to an employer is enforceable under section 2870: (1) The invention was developed using the employer's time or resources; or (2) The invention relates to the employer's business or actual or demonstrably anticipated research or development; or (3) The invention resulted from work performed by the employee for the employer.”); *Cubic Corp. v. Marty*, 185 Cal. App. 3d 438, 451 (4th App. Dist. 1986).

2. Whether Yochai Konig and PUM unlawfully converted SRI’s and Google’s interest in the '040 or '276 patents.
 - (a) Authorities: *Spates v. Dameron Hosp. Assn.*, 114 Cal.App.4th 208, 221 (3d Dist. 2003) ("Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages.")
3. Whether PUM or its predecessors-in-interest are good faith purchasers under 35 U.S.C. § 261.
 - (a) Authorities: 35 U.S.C. § 261; *Filmtec Corp. v. Allied-Signal Inc.*, 939 F.2d 1568, 1573 (Fed. Cir. 1991); *Rhone Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 284 F.3d 1323 (Fed. Cir. 2002).
4. Whether the statute of limitations on Google’s breach-of-contract, ownership, conversion, and/or constructive trust claims was tolled under Delaware Code Title 10, Section 8117.
 - (a) Authorities: 10 Del. C. § 8117; *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochem. Co., Inc.*, 866 A.2d 1, 18 (Del. 2005) (“It is settled law that the purpose and effect of Section 8117 is to toll the statute of limitations as to defendants who, at the time the cause of action accrues, are outside the state and are not otherwise subject to service of process in the state. In those circumstances, the statute of limitations is tolled until the defendant becomes amenable to service of process.”)

5. Whether the statute of limitations on Google's breach-of-contract, ownership, conversion, and/or constructive trust claims was tolled under the discovery rule.

- (a) Authorities: *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004) ("Under the 'discovery rule' the statute is tolled where the injury is 'inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of.'")

EXHIBIT 6

EXHIBIT 6

WITNESSES PUM EXPECTS TO CALL AT TRIAL

PUM identifies the following witnesses whom it expects to call live or by deposition at trial (both in their individual capacity, and as Rule 30(b)(6) designees if applicable). Determinations as to which witnesses will be called, and whether they will be called live or by deposition, will be made in accordance with the guidelines agreed to by the parties and those implemented by the Court. This list is not a commitment that any of the witnesses listed are available or will appear for trial. If any of these witnesses whom PUM intends to call live at trial become unavailable, PUM may call them by deposition or call a substitute witness. If any of the Google's witnesses fail to appear for trial, PUM reserves the right to use their deposition testimony. PUM also reserves the right to call any witness called by Google and any witness on Google's list of trial witnesses.

PUM reserves the right to call: (1) additional witnesses to provide foundation testimony should Google contest the authenticity or admissibility of any materials to be proffered at trial; (2) any witness identified by Google on its witness list; (3) substitute witnesses, to the extent that the employment status of any witness changes or a witness otherwise becomes unavailable for trial; (4) additional witnesses to respond to issues raised by the Court's pretrial or trial rulings or to issues raised after the submission of this list, such as testimony of witnesses who have not yet been deposed; and (5) any witness live for impeachment purposes or for rebuttal for good cause shown.

Plaintiffs may read the transcript or show videotapes (if applicable) of any designated portions of deposition testimony.

EXPERT WITNESSES

PUM intends to call the following expert witnesses live at trial. PUM reserves the right to call any expert witness identified in Google's witness list. The subject matter of the testimony of each of the following expert witnesses and their specialties are set forth in their respective expert reports served in this case:

Name	Address
Michael Pazzani	2186 Ravencrest Court Riverside, CA 92506
Jaime Carbonell	6501 Bartlett Street Pittsburgh PA, 15217

OTHER WITNESSES PUM MAY CALL AT TRIAL

LIVE OR BY DEPOSITION

Name	Address	LIVE / BY DEPOSITION
Yochai Konig		Live
Michael Berthold		By deposition
Onn Brandman		By deposition
David Konig		By deposition
Jonathan Alferness*		Live/by deposition
Cedric Dupont*		Live/by deposition
Greg Friedman*		Live/by deposition
Karthik Gopalratnam*		Live/by deposition
Taher Haveliwala*		Live/by deposition
Bryan Horling*		Live/by deposition
Rebecca Illowsky*		Live/by deposition
Glen Jeh*		Live/by deposition
Andras Nemeth*		Live/by deposition
Bilgehan Oztekin*		Live/by deposition
Shankar Ponnekanti*		Live/by deposition

Max Ventilla*	Live/by deposition
Aitan Weinberg*	Live/by deposition
Oren Zamir*	Live/by deposition
Douglas Bercow	By deposition
Horacio Franco	By deposition
Frank Montes	By deposition
Ray Perrault	By deposition
Mustafa Somnez	By deposition
Andreas Stolcke	By deposition

*These witnesses will be called live to the extent he/she appears at trial, otherwise he/she will appear by deposition.

EXHIBIT 7

EXHIBIT 7 TO PRETRIAL ORDER
WITNESSES GOOGLE EXPECTS TO CALL AT TRIAL

EXPERT WITNESSES

Google intends to call the following expert witnesses live at trial. Google reserves the right to call any expert witness identified in PUM's witness list. The subject matter of the testimony of each of the following expert witnesses and their specialties are set forth in their respective expert reports served in this case:

Name	Address
Ed Fox	203 Craig Drive Blacksburg, VA 24060
Michael Jordan	Department of Electrical Engineering and Computer Science University of California 387 Soda Hall #1776 Berkeley, CA 94720-1776

OTHER WITNESSES GOOGLE MAY CALL AT TRIAL LIVE OR BY DEPOSITION

Name	Live/By Deposition
Jonathan Alferness	Live
Reuben Benquesus	Live
Cedric Dupont	Live
Greg Freidman	Live
Karthik Gopalratnam	Live
Bryan Horling	Live
Rebecca Illkowsky	Live
Matthew Montebello	Live
Andras Nemeth	Live
Bilgehan Uygur Oztekin	Live
Shankar Ponnekanti	Live
Max Ventilla	Live
Aitan Weinberg	Live
Oren Zamir	Live
Jack Benquesus (a.k.a. Jack Banks)	Live or By Deposition
Yochai Konig	Live or By Deposition
Michael Pazzani	Live or By Deposition
Roy Twersky	Live or By Deposition
Horacio Franco	Live or By Deposition
Doron Aspitz	By Deposition
Douglas Bercow	By Deposition
Michael Berthold	By Deposition

Phillip Black	By Deposition
Onn Brandman	By Deposition
Ari Gal	By Deposition
Ron Jacobs	By Deposition
Glen Jeh	By Deposition
David Konig	By Deposition
Frank Montes	By Deposition
Raymond Perrault	By Deposition
James Salter	By Deposition
Mustafa Kemal Sonmez	By Deposition
Andres Stolcke	By Deposition

EXHIBIT 8

EX. 8 - PUM'S DEPOSITION DESIGNATIONS

EXHIBIT 8

PUM'S DEPOSITION DESIGNATIONS

PUM hereby submits its deposition designations with Google's counter designations, and PUM's objections to such counter designations.

The parties incorporate by reference designations of any errata pertinent to the excerpts of the deposition transcripts designated by PUM, counter designated by Google, or counter-counter designated by PUM.

Google's objections are identified with the following abbreviations:

<p>General Objections:</p> <p>R – Relevance, 402</p> <p>P – Fed. R. Evid. 403: Prejudicial</p> <p>H – Hearsay</p> <p>F – Lacks Foundation</p> <p>I – Incomplete</p> <p>V – Vague and ambiguous</p> <p>S – Beyond the scope of Rule 30(b)(6) deposition topics</p> <p>LC – Legal Conclusion</p> <p>ET – calls for expert testimony</p>	<p>Form Objections:</p> <p>L – Leading</p> <p>ARG – Argumentative</p> <p>A – Assuming Facts Not in Evidence</p> <p>C – Compound</p> <p>N – Narratives</p> <p>M – Misstates Testimony</p> <p>AA—Asked and Answered</p>
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MIS – misleading	
IC – improper counter	
NR – non-responsive	
IH – incomplete hypothetical	
SP – speculation	
SN – Fed. R. Evid. 408, Settlement Negotiations	

Google further notes that some of the designated testimony may be inadmissible based upon the Court's rulings on its motions in limine, or by narrowing by PUM of the scope of its case. By way of example, certain testimony designated by PUM may be irrelevant if PUM drops asserted claims or accused products and Google reserves the right to object to such designated testimony.

Alferness, Jonathan - 3/24/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
6:15 to 6:16					
7:17-19					
11:25 to 12:24					
17:18 to 18:11	I	18:12			
22:20 to 23:6	R, P				
24:20 to 25:10					
25:23 to 28:19					
33:10 to 34:8					
34:11 to 34:21					
35:10 to 37:25					
38:2 to 38:7					
55:21 to 56:9					
56:25 to 57:24					
58:6 to 58:25					
60:16 to 60:18	F, I	60:19-22			
62:15 to 62:19					
62:25 to 64:10					
73:1 to 75:20					
75:23 to 76:20					
77:4 to 77:7					
77:11 to 78:11					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
83:13 to 84:7					
84:11 to 86:18					
97:21 to 98:10	R, I				
101:13 to 101:22					
115:12 to 116:9					
117:6 to 117:11					

Bercow, Douglas 4/14/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
8:1 to 8:3					
8:8 to 8:10					
15:4 to 19:1					
19:21 to 20:18	R				
23:10 to 25:21	F				
26:15 to 28:11		28:12-18			
34:4 to 34:18	R				
38:9 to 39:12	R, SP, F				
55:2 to 55:17	SP, F, R				
55:21 to 56:15					

Berthold, Michael - 1/23/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
6:8 to 6:13					
9:8-11	I	9:11			
9:16 to 10:4					
12:20 to 12:24					
13:23 to 14:4					
14:16 to 15:5	I	16:5-9	L, R, P, F, M, IC, MIS		
19:5 to 19:8					
19:12 to 20:13					
31:13 to 31:16					
31:19 to 31:21					
31:24 to 32:21	I	32:22-33:14	S		
36:9 to 36:11	I				
39:20 to 39:23					
40:1 to 40:11	I	41:4-11	L, E, T, ARG, IC		
41:13 to 41:14	ET, R, P				
41:17 to 41:24					
49:15 to 50:22	P, I, ET, R				
50:25 to 52:11	ET				
56:8 to 56:11	ET, I				
63:11 to 63:15	I				
65:7 to 66:2	R, P				

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
66:5 to 67:12	I	69:6-9	L, ET, ARG, M, IC, MIS		
76:17-18	I	77:3-18			
78:4					
78:8 to 78:22					
85:5 to 86:9					
86:12 to 86:13					
86:18 to 86:20					
86:23 to 87:11					
167:5 to 168:20	R				
169:4 to 169:13	R				
172:6 to 173:7					
177:2 to 177:21	V, F				
177:23 to 178:1	R, P				
178:3 to 178:21	F, V, R, P				
178:23 to 178:25					

Brandman, Onn - 3/16/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's Counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
3:35 to 4:2					
6:21 to 7:20					
8:23 to 9:8					
9:12 to 9:23					
10:13 to 11:21		11:22-12:23, 21:15-22:3	V/A, ET, L, ARG, S, IC		
16:2-4					
17:15 to 19:20		19:21-24			
20:18 to 21:14		20:5-17	S, R		
22:2-3					
23:4 to 23:9		35:23-36:12	S, M, R, I	37:8-16	P, R, I
23:11 to 25:3					
32:20 to 33:20					

Dupont, Cedric - 4/14/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
6:24 to 7:4					
8:17-19					
11:3 to 12:16					
14:3 to 15:8					
17:7 to 17:13					
18:18 to 19:5					
22:9 to 23:6	I	21:24-22:6	I		
24:1 to 24:17	R, P				
25:10 to 26:2	R, P				
28:7 to 28:22					
29:12 to 31:18	R, P				
35:18 to 36:17	R, P				
37:18 to 38:6	R, P				
38:15 to 39:5	R, P				
39:9 to 40:12	R, P				
41:24 to 42:19	R, P				
44:9 to 45:5	R, P				
45:9 to 45:13	R, P				
45:22 to 46:5	R, P				
48:24 to 50:10	I	47:2-5, 50:11-23			
51:10 to 55:2	I, R, P	51:5-9			
64:22 to 65:2					

66:12 to 67:12					
67:18 to 67:25					
68:3 to 68:8					
70:7 to 71:1	I, R, P	68:12-25			
74:13 to 74:24	R, P				
76:1 to 76:8	R, P				
84:12 to 85:8	R, P				
85:18 to 86:12	R, P				
106:11 to 107:21	R, P				

Franco, Horacio 4/14/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
6:7 to 6:9					
6:11 to 6:18					
16:11 to 16:21					
43:10 to 46:10	R				
54:24 to 55:21					
61:17 to 62:5					
66:6 to 66:13		66:14-21	R, UFP		
74:17 to 75:1	ET				
102:23 to 103:23	ET, SP				

Friedman, Greg - 3/7/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's Counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
9:12 to 9:16					
12:7-9					
18:2 to 18:15		18:16-17			
19:10 to 19:20		19:25-20:9	IC	20:12-14, 20:16-22:1, 26:24-27:19	ARG R, P, IC
19:22 to 19:23					
24:25					
25:1 to 25:2					
25:4 to 26:9	I				
26:13					
26:15 to 27:19					
30:18 to 31:8	I	30:14-16			
37:22 to 38:15					
49:19 to 51:3					
52:9 to 55:23					
55:25 to 59:6	R				
60:14 to 60:22	I	59:7-60:13			
69:13-18					
69:25-70:13					
72:14 to 74:23					
75:2 to 75:12					
77:1 to 77:24					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's Counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
78:1 to 78:20					
79:16 to 80:7					
80:14 to 81:10					
84:24 to 85:3		85:4-10			
85:11 to 86:22					
87:9 to 87:11					
88:10 to 88:14		88:16-20			
88:22 to 89:9					
89:11 to 90:2					
124:8 to 126:13		127:9-13	S		
126:24 to 127:8					
127:17 to 128:23					
129:25 to 132:23					
138:17 to 139:7					
140:8 to 141:6	I				
146:13 to 148:25					
149:2 to 149:11					
176:12 to 178:7					

Gopalratnam, Karthik - 10/8/2010

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
11:11 to 11:19					
11:24 to 12:5					
12:20-21					
13:2 to 13:4					
13:12-15					
14:21 to 16:1					
16:20-18:7	R				
19:10-16		19:19-21	R		
20:3-10					
20:17-21:5					
21:18 to 22:14					
22:16 to 22:25					
23:3 to 23:20	L, F				
23:22 to 24:10	L, F				
24:12 to 24:14					
26:15 to 26:19					
27:16 to 28:5					
28:17 to 30:5					
30:14-16					
30:23-31:1		31:2-8, 31:12-32:1	R		
32:2 to 33:3					
33:5 to 33:12	R, ARG				

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
33:17 to 34:1	C, ARG, V				
34:3 to 34:24					
35:1 to 35:3					
36:14 to 38:12					
38:19 to 40:17					
41:4 to 41:7					
43:16 to 43:22					
45:14 to 45:25					
47:8 to 47:10					
47:15 to 48:6		48:7-15	R, S		
55:12 to 57:4					
57:8 to 58:9		58:10-17			
58:18 to 59:23					
59:15 to 61:7					
62:10 to 65:10					
65:16 to 65:20					
65:25 to 66:5					
66:11 to 66:19					
66:25 to 69:3					
69:18 to 70:14					
72:5 to 72:24					
73:14 to 73:24					
74:10 to 75:20					
77:7 to 78:15		78:16-22			

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
79:6 to 79:15					
80:7 to 81:7					
81:10 to 82:12					
83:2 to 83:14					
83:21-24	R, P				
84:6 to 87:10					
87:19-21	I	87:17-18			
87:24-25					
88:1-24					
90:1 to 90:19					
91:14 to 92:3					
92:12 to 93:20					
93:21 to 94:14					
94:18 to 96:1					
96:2 to 96:4					
96:6 to 96:14					
96:16 to 96:20					
97:2 to 97:15		97:16-21, 97:23-98:25			
99:16 to 99:18					
99:24 to 100:21					
102:10 to 103:8					
106:4 to 107:19		108:2-109:3	R		
113:1 to 114:5		112:15-25			
116:10 to 117:25					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
120:4 -23		119:23-120:3, 120:24-121:1, 121:3-16, 121:18-122:5			
122:6 to 122:16		122:17-124:12			
124:13 to 125:1	I				
126:21 to 127:16		126:11-20, 127:17-20	S, ET, IC	127:21-24	R, P
129:18 to 130:4					
130:12-18	R				
131:10-24	R, I				
136:6 to 138:9					
144:25 to 145:18					
163:14 to 164:16					
164:20 to 165:7					
168:2-10					
170:9 to 171:15		170:6-8			
185:9 to 185:20					
186:12 to 186:14					
193:22 to 194:14		195:12-14			
198:6-15		197:12-198:5			
203:1 to 210:25	I				
214:12-21					
215:13-17					
217:7-16		217:3-6			
218:4 to 220:25					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
227:8 to 232:1	R				
246:1-16					
248:25 to 249:6					
249:12 to 250:8					

Haveliwala, Taher - 4/19/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
12:15 to 12:18					
13:6 to 13:18					
14:4 to 14:9					
14:23-15:5					
16:5 to 16:15					
16:21 to 17:5					
19:17 to 20:13	R, P				
20:21 to 20:22	F, V, SP, R, P				
20:24 to 21:10					
22:13 to 22:15	R, P				
22:19 to 22:24	R, P				
23:4 to 23:7	R, P				
23:12 to 23:21					
25:15 to 25:16	N, V, F, R, D				
25:18 to 25:22					
25:24 to 26:20	N, V, R, P				
27:12 to 29:1	R, P				
29:18 to 30:20	V, ARG, R, P				
31:6 to 31:18	R, P, V, R				
31:6 to 33:20	R, P, ARG, V				
33:22 to 34:16	R, V, IH, V, C				
34:18 to 35:25	R, V, C				

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
36:2 to 36:14	R				
40:14 to 40:16	I, V, F				
40:18 to 41:19	I	40:20-41:1			
41:21 to 42:1	V, F, I	41:17-20			
42:3 to :42:18	V				
42:20 to 43:2					
43:4 to 43:6					
43:10 to 43:12					
43:14 to 44:3	I, V, P, R	44:5-45:1			
45:2 to 45:5	P, R				
45:7 to 47:1					
48:4 to 48:9	P, R, V, MIS				
48:11 to 49:2					
49:4 to 49:23	V				
49:25 to 51:16	P, R				
51:20 to 54:19	P, R, V		I		
54:23 to 55:17	P, R, I	55:18-56:23, 58:1-6		58:13-60:4	V
60:17 to 61:7					
61:10 to 61:14					
61:16 to 61:20	C, V				
62:15 to 62:16	V, I				
62:18 to 63:1					
63:25 to 64:3	I	64:4-16			
64:17 to 64:18					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
65:2 to 66:8					
69:15 to 70:3					
71:1 to 71:5					
72:24 to 73:5					
73:7 to 73:18					
74:1 to 74:2	V				
74:4 to 74:10	V				
74:12 to 75:12					
76:6 to 76:15					
76:17					
79:2 to 79:8					
79:10 to 80:15	C, V				
80:17 to 81:11					
82:15 to 82:25					
83:19 to 83:22	I				
83:24 to 84:13					
86:4 to 86:10					
86:14 to 87:2	C				
87:4 to 88:5	I	88:22-89:8			
125:16 to 126:1					

Horling, Bryan C. 11/12/2010

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
11:10 to 11:13					
12:17-19					
13:8-11					
13:20-14:9					
14:24 to 15:2					
16:11 to 16:21					
16:24 to 17:15	I	17:16-18:20			
19:22 to 20:10	I	21:5-14			
21:23 to 22:24					
23:5 to 23:12					
24:4 to 24:25					
25:3 to 25:19					
25:22 to 26:7					
27:19 to 28:9					
30:13 to 32:20	I	30:7-10			
32:25 to 34:1					
34:7 to 34:9	I	34:10-35:8			
35:11 to 35:14					
35:20 to 35:25					
36:17 to 36:21					
37:2 to 38:1					
38:12 to 39:9	I	39:10-22			

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
39:23 to 40:15		40:16-21			
40:22 to 41:2	I	41:3-23			
42:16 to 45:14	I	45:15-25			
46:1 to 47:16					
47:18	V, A, M, I	47:19-22			
47:23 to 48:5					
48:16 to 48:22					
49:1 to 49:7					
50:4 to 50:24					
51:7 to 51:20	I	51:21-52:7			
52:8 to 52:11					
52:13 to 52:14					
52:17 to 53:11	I	53:20-23			
54:14 to 54:19	I	54:10-13, 54:20-21			
55:12 to 56:1	I, R	55:10-11			
56:17 to 56:19	V				
56:21 to 56:22	I	56:23-25			
57:4 to 57:24					
58:2 to 58:18					
58:25 to 59:10	I	60:7-10, 62:4-8			
63:13 to 63:20					
64:20 to 66:11					
67:15 to 68:22					
69:16 to 69:19					
69:25 to 70:2	I	70:3-4			
70:5 to 70:16	I	70:17-6			
71:2 to 71:3					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
74:14 to 74:21					
75:7 to 75:13					
75:16 to 75:17					
75:21 to 76:2	I	76:3-8	S		
76:9 to 76:15					
76:23 to 77:21					
78:20 to 79:7	I	79:8-14			
79:15 to 81:6					
81:25 to 82:20	I	81:12-24			
83:5 to 83:25					
84:7 to 84:9					
84:13 to 84:20	I	84:21-85:4			
85:20 to 86:4	I	85:10-19			
86:17 to 86:25					
87:6 to 87:9	I	87:1-5			
99:2 to 99:17					
102:3 to 103:15					
109:6 to 109:17					
115:1 to 115:7					
119:4 to 119:12	I	119:13-23			
119:24 to 120:25					
121:8 to 121:12		122:16-17, 122:20-24			
121:16 to 121:18					
122:2 to 122:7					
122:25 to 123:10	I	123:11-15			
123:19 to 123:23	I	123:24-124:2			
127:12 to 127:18	I	127:19-21			
127:22 to 128:5	I	128:6-15			

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
128:16 to 129:1					
129:25 to 130:9	R, P				
132:9 to 133:12	R, I	133:13-24			
135:14 to 135:22					
136:4 to 136:7					
136:13 to 136:19					
141:16 to 141:18					
141:24 to 142:1					
142:16 to 142:19					
143:9 to 143:14					
143:17 to 144:7		144:8-17			
144:18 to 146:7					
147:5 to 148:7					
148:21 to 149:4		149:5-12			
149:13 to 149:20	I	149:21-23			
149:24 to 150:3					
150:14 to 152:12					
152:16 to 153:18					
154:16 to 154:22	I	154:23-155:7			
155:21-23					
171:13 to 171:20					
172:12 to 173:3	I				
173:8 to 173:20					
195:25 to 196:2					
212:6 to 212:7	R, P, I				
212:11 to 212:22	I	212:23-213:7	I		
239:1 to 239:6	R, P				
241:9 to 241:18					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
Source code transcript					
157:14 to 157:18					
158:8 to 158:13					
158:24 to 159:4					
159:8 to 159:11					
159:14 to 160:13					

Illowsky, Rebecca Maxine 3/22/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
8:14 to 8:15					
9:8-10					
10:4 to 10:17					
10:18 to 11:10	I				
11:23 to 13:1					
14:4 to 14:11		14:12-14			
16:10 to 14:18					
16:23 to 17:2					
17:3 to 18:12	I	18:13-19:10			
19:11 to 20:18					
21:14 to 23:15	I	23:16-18			
24:10 to 24:18					
25:5 to 25:13					
26:5 to 26:13					
28:19 to 30:12					
31:9 to 33:3	R				
34:11 to 34:20					
35:14 to 36:23					
40:22 to 41:5					
44:3 to 44:24					
50:1 to 51:10					
53:24 to 54:5	I	53:8-23			

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
56:23 to 57:11	I	57:12-13			
61:7 to 61:9					
61:11 to 62:8					
65:6 to 66:14					
66:22 to 67:12					
67:17 to 68:5					
68:15 to 68:17					
69:2 to 71:3					
71:13 to 71:15	I	71:5-12			
71:22 to 72:1	I	72:2-4			
77:24 to 78:15					
86:9 to 87:19	R, I	87:21			
87:23 to 88:11					
88:13 to 89:5	I	89:7-10			
89:11 to 91:7	V				
91:9 to 91:25	A, V				
92:15 to 92:19					
93:4 to 93:12					
94:10 to 94:12					
96:14-15					
96:19-21	I	98:3-5			
99:7 to 99:25					
101:15 to 101:23					
102:1 to 102:3	I	102:4-103:1		103:2-9	V, P, IC

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
114:20 to 115:18					
115:20 to 115:24					
116:1 to 116:15	I	116:16-19			
116:21 to 116:22					
116:24 to 117:7					
117:9 to 117:14					
117:16 to 117:25					
118:1 to 120:8					
130:25 to 131:7	R, I, V, C				
135:17 to 136:20	I				
147:7 to 147:21					
156:1 to 156:21	I, R				
157:1 to 157:17	R				
157:20 to 157:22					
157:24 to 159:24					
165:2 to 165:23	R, V, A				

Jeh, Glen 2/14/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
12:14 to 12:17					
13:16-22					
16:9 to 17:2					
17:11 to 18:22	R, P				
18:25	R, P	19:1-4			
19:5 to 19:20					
19:25 to 20:20					
22:9 to 22:25	M,K				
23:6 to 23:20	V, F				
23:24 to 24:23					
25:4 to 25:23	R				
26:25 to 27:20	I	26:20-24			
27:25 to 28:12					
28:15 to 29:9					
29:23 to 30:19					
31:9 to 31:12					
31:14 to 31:20					
32:4 to 32:6	C, V, I	32:25-33:4			
32:8 to 32:24					
33:5 to 33:8	V, ARG, R				
33:10 to 33:18					
33:20 to 34:15					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
34:17					
36:11 to 37:9					
37:11 to 37:14	ARG, V, I	37:15-25			
38:1 to 38:8	I	39:4-21			
41:4 to 41:13		40:5-17			
41:15 to 42:12	I	41:14	IC		
42:14 to 42:20					
42:22 to 44:18					
45:7 to 45:23					
47:17 to 48:10					
53:12 to 53:18					
58:6 to 59:23					
60:10 to 60:13					
61:3 to 61:18					
62:16 to 64:2					
64:9 to 64:13	ARG, V, C				
64:15 to 65:4					
65:6 to 67:15	ARG, V, M	67:16-68:5			
68:6 to 72:8					
72:14 to 74:15					
76:23 to 77:10	I				
78:18 to 81:8					
82:4 to 82:19					
84:21 to 85:8	I				

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
85:22 to 88:22					
93:15 to 94:11	I				
96:7 to 99:20					
100:20 to 101:8	I				
105:4 to 105:7		105:8-20		105:23-106:17	IC
105:23 to 106:17					
107:18 to 107:25	ARG, V, IH, M				
108:2 to 108:21					
108:23 to 109:9	ARG, V, IH, M				
112:6 to 112:9	C, ARG, IH, V				
112:11 to 113:1	ARG, IH, V, M				
113:3 to 113:18	ARG, V				
113:20 to 114:7	IH, ARG, V				
114:9 to 114:16	I, V				
116:17 to 117:2	I, C				
117:4 to 118:3					
119:8 to 119:10	I				
119:17 to 120:1					
120:6 to 121:11					
121:18 to 121:20					
123:24 to 124:13					
124:24 to 125:2					
127:5 to 127:21					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
144:23 to 145:13	I	146:14-147:2	I	147:3-17, 147:22-148:3	IC, I (should include 147:18-21)
152:13 to 152:19	I	152:20-22			
152:23 to 153:3					
154:1 to 154:5					
154:16-21					
155:9 to 156:1					
156:25 to 158:4					
162:4 to 162:14	H				
162:21 to 163:5	H				
170:15 to 172:2					
173:16 to 174:19					
175:10-18					
178:24 to 180:9					
180:25 to 181:7	I				
181:9 to 182:10	I				
197:15 to 198:4	R				
199:13 to 201:2					
201:10 to 201:12					
204:23 to 205:22					
206:1 to 208:12					
208:15 to 208:18					
213:3	V, IH				
213:5 to 214:4	R				

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
214:9 to 214:18					
241:9 to 241:23					
242:25 to 243:6	V, R, I	242:15-23			
243:8 to 243:9	V, R, I, P, F				
244:16 to 244:25	I				
245:2 to 245:14	SP, ET, R, P, F				
245:22 to 246:2	F, ET, R, P				
246:5 to 246:8	F, ET, R, P				
246:10 to 246:15	F, ET, R, P				
267:6 to 267:7	F, ET, R, P				
267:10 to 268:12	F, ET, R, P				

Konig, David 7/8/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
4:3 to 4:14					
8:23 to 9:14					
10:12 to 11:6		11:7-9			
12:3 to 12:19					
14:2 to 14:5					
14:10 to 14:17					
15:5 to 15:11					
15:13 to 15:14		15:18-19, 15:21-23	I		
16:4 to 17:10		20:16-18			
23:3 to 23:24					
33:20 to 34:8		31:21-22, 32:17-33:15		32:4-10	
34:21 to 34:23		34:9-20			
34:25 to 35:3					
35:6 to 36:3					
39:6-7		39:8-21	F		
39:25 to 42:4		42:5-7			

Montes, Frank 3/17/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
5:22 to 6:1					
6:5 to 6:7					
10:1 to 11:1					
11:16 to 11:18					
19:17 to 20:6					
25:14 to 27:19	R, LC, F, SP, H				

Nemeth, Andras 7/14/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
8:19 -20					
11:6-9	I	11:10-13	R		
11:16-23					
11:25 to 13:18					
15:19-22					
16:9-18:7	ET				
22:14-19	I	22:20-24			
22:25-23:2					
23:15-25	I	23:10-13			
24:13-23	R, P, I	25:21-26:1			
28:14-21	I, R, P	28:2-13			
29:15-30:6	R, P				
30:8-32:5	R, P				
32:7-14	R, P, I	32:15-17			
33:2-12	I, R, P				
34:20 to 35:17	R, P, I	35:18-21			
39:6-9	I, V, C, R, P	35:22-36:5			
36:11-17	R, P, I, V	36:18-23			
52:4-6	R, P				
52:8-24	R, P				
53:1-7	R, P				
53:9-19	R, P, I	54:18-24	ET, IC	55:9-56:25	R, P, IC, V, A

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
56:6-9	V, A, R, P				
56:11-18					
56:20-25	V, A, R, P, I	54:18-24	ET, IC	55:9-56:25	R, P, IC, V, A
57:22-24	R, P				
58:1-13	R, P, I	58:14-23	I		
60:2-20	R, P				
64:8 to 64:17	I	63:15-20	S		
65:20 to 65:25	I	66:1-8			
118:15-19					
118:21 to 119:19	I	64:19-23			
122:16-19					
123:24 to 124:3					
124:5-16	I	64:19-23			
126:16 to 127:2	I, V	64:19-23			
127:4-10					
218:21-219:21					
219:23-220:5					
221:24-222:7					
223:3-224:3	I	222:8-223:1			
224:5-10					

Oztekin, Bilgehan Uygur 3/8/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
10:17 to 10:18					
11:22 to 12:1					
12:13-17					
15:5 to 16:14	R, P				
18:1 to 18:7					
20:5 to 21:6					
21:15 to 23:5	R, P				
26:1 to 27:4					
33:7 to 34:13	I, R, P				
53:24 to 54:3					
54:10 to 56:1	I	54:5-9			
56:7 to 56:8	R, P				
56:12 to 56:25					
57:2 to 58:8					
59:3 to 59:10	M, P				
66:5 to 67:6					
67:8 to 69:9					
70:7 to 71:9					
71:18 to 71:23					
72:16 to 73:2	I	73:3-25			
74:1 to 74:6	I	74:12-19			
76:25 to 77:16	I	77:17-19			
78:24 to 79:20					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
80:1 to 80:3					
80:6 to 82:6	I	82:7-9			
82:25 to 84:5	I	84:6-19			
84:20 to 85:22					
86:11 to 86:17					
87:1 to 87:15	V, I	87:17-20, 88:4-15			
87:23 to 88:3					
88:18 to 89:15					
89:23 to 91:23					
102:5 to 102:18					
116:3 to 118:1	I	118:2-6			
124:12 to 125:3	I	123:11-124:9, 131:17-132:11	R, UP, S, IC		
169:14 to 170:25	R, P				
171:12 to 171:14					
172:10 to 172:14					
244:17 to 244:18					
245:18 to 247:18	I				

Perrault, Raymond 8/17//2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
7:8 to 7:10					
16:15 to 17:22					
18:6 to 20:8	SP, F				
22:19 to 23:25					
30:20 to 31:6					
32:14 to 33:5					
36:9 to 37:1		37:2			

Ponnekanti, Shankar 10/7/2010

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
8:8 to 8:22					
8:25-9:4					
9:11-20					
9:22-23					
10:4 to 10:11	I	10:18-21	I	10:21	
13:7 to 14:3	I	12:14-16	I		
14:13 to 14:19					
14:24 to 15:2					
15:20 to 16:20					
17:7 to 17:10					
17:16-23					
18:19 to 20					
18:23 to 19:5					
20:1 to 20:11					
21:25 to 22:2					
22:7 to 22:19					
22:22 to 23:2	I	23:3-10	I	23:11-18	R, P
26:6 to 26:25	I	26:1-5			
27:5 to 27:14					
27:19 to 28:13	I	28:21-29:3			
30:9 to 30:25					
31:6-13	I	31:1-5			

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
31:15-16	I	31:17-20	I	31:24-32:11	ARG, I (should include 32:12-17)
33:23 to 34:2					
34:4-13					
34:15 to 34:19					
34:21 to 34:24					
36:23 to 37:2					
37:12 to 37:21					
38:8 to 38:12					
38:23 to 39:5					
39:9-12					
40:11-19					
41:19 to 41:16					
41:21 to 42:3					
42:6 to 42:18	R				
43:21 to 44:9	V, ARG, R, P, M				
44:11 to 45:13					
47:7 to 47:10	I, R, P	47:11-18			
47:19 to 47:22	I, R, P				
48:10-24					
50:7-11					
51:7-12	R, P				
52:11 to 53:10					
53:12 to 54:8					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
54:17 to 56:23					
57:1 to 58:12					
58:14 to 58:17					
58:19 to 58:25					
60:12 to 60:23					
62:6 to 62:24					
63:18 to 64:2					
64:5 to 64:17					
66:20 to 67:7					
67:14 to 67:23					
69:3 to 70:1					
70:20 to 71:6					
72:2 to 72:23	R				
73:3 to 74:1	V				
74:2 to 74:10					
74:19 to 75:2					
75:11 to 76:12	I	76:13-25	I, ET	77:1-9	R, P
79:17 to 80:7					
80:14 to 81:5					
82:13 to 82:24					
83:2 to 84:5					
86:14 to 86:18					
88:17 to 89:7					
96:14 to 96:19	R, P				

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
97:2 to 97:6	R, P				
97:11 to 97:21					
99:3 to 100:2	R, P				
100:7 to 100:11					
100:17 to 101:5	R, P				
101:9 to 101:13	I, P, R				
102:12 to 103:12					
108:6 to 108:21					
108:25 to 109:4	I	109:5-110:7	ET		
112:9-12					
113:5 to 113:8					
114:20 to 115:4					
115:23 to 116:22					
117:8 to 117:10					
117:12 to 118:9					
118:17 to 119:8					
120:7 to 120:14					
120:21 to 120:22					
121:2 to 121:9					
121:15 to 121:18	V, M				
121:20 to 121:23	I	121:24-122:4	I	122:5-17	
122:18 to 123:1					
123:14 to 123:15					
123:17-19					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
124:14 to 124:20					
126:18 to 127:4					
127:21 to 128:5					
128:23 to 129:8					
131:24 to 132:4					
132:12 to 132:20	I	132:21-133:3			
134:11 to 135:24					
137:14 to 137:23	I	137:24-138:8			
138:9 to 139:1					
141:1 to 141:19	R, P				
143:8 to 143:9					
143:11 to 143:13					
144:10 to 146:23	R, I, P				
147:20 to 148:14	R, P				
149:2 to 149:5	R, P				
149:7 to 149:21					
150:4-20					
155:18 to 156:5	R, P				
164:3 to 164:19					
164:20 to 165:9					
167:2 to 167:19					
168:2 to 168:22					
169:17 to 170:2					
175:18 to 175:20					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
175:22 to 176:12	V, I, R				
179:11-12	R, P				
180:21 to 182:13					
183:16-20					
192:15 to 193:8					
193:10 to 193:19	ARG, V				
194:10-22	P, R, I	194:23-25			
203:4 to 204:11	R, P				
204:13-14					
206:1-17	I				
208:5-17	I	207:24-208:4			
237:13-21	I	237:22-238:4	I	238:5-10	ARG, I, R, P
246:11-23	R, P				
253:13-25					
256:17-23					
256:25 to 259:7	R, P				
262:1-14					

Rohe, Andre 2/4/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
9:7 to 9:9					
9:24 to 10:5					
15:20 to 18:9					
18:16 to 19:16					
19:22 to 20:7		21:20-22:1			
25:9 to 26:4	I	24:14-25:8, 26:5-27:14			
27:15 to 27:18	I				
30:20 to 32:6	I	30:4-19			
33:14-22					
38:1 to 42:18		37:20-25			
41:1 to 43:2					
44:19 to 45:17		45:18-20			
45:21 to 46:13	I	46:15-16			
46:17 to 46:25					
47:2 to 49:23	S, I	49:24-50:12			
48:7 to 48:14	S				
50:22 to 54:7					
53:17 to 54:7					
54:15 to 55:24	I	55:25-56:6			
56:7 to 57:1	I	57:2-5, 57:18-24, 58:1-2			
58:13 to 58:23					

59:1 to 59:14					
60:23 to 64:16	I	60:10-22			
72:1 to 73:8					
74:19 to 75:15	I	79:24-81:20			
81:21 to 82:1	I				

Sonmez, Mustafa Kemal 8/15/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
4:1 to 4:3					
4:9 to 4:11					
7:21 to 9:16					
11:15 to 12:21					
13:12 to 13:23					
18:17 to 21:8					
27:5 to 27:16	ET				
29:21 to 30:17	ET, NR				
34:4 to 34:11	ET, NR				
35:13 to 37:1	ET, NR, SP, F				
55:8 to 60:11	I, SP, F, NR,				
62:1 to 64:6					
65:24 to 66:5		65:20-23, 66:6-18	CMP, MIS, CNF, UFP		
92:9 to 94:12	NR, LC, ET, F,				
100:17 to 102:10	ET,				

Stolcke, Andreas 7/6/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's Counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
3:4 to 3:6					
7:22 to 9:1					
10:23 to 12:4					
14:21 to 15:15					
16:11 to 18:9	SP, R, ET	18:10-17, 18:19, 18:21-23, 18:25-19:25	MIS, R, CNF UFP		
36:21 to 38:19		38:20-39:25	R, MIS, UFP, CNF	40:22-41:2	IC, ET
51:18 to 52:6	NR				
54:4 to 54:14	LC, SP, F				
55:1 to 55:10	LC, SP, F				
74:11 to 77:7	R, SP, F, ET				
78:5 to 79:2	ET				
79:21 to 80:7					
82:12 to 82:17	SP				
90:2 to 91:9					

Ventilla, Max 7/31/2012

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
9:24 to 9:25					
10:21-23					
12:11-13:6					
15:10-17:8					
18:12 to 18:16					
18:18 to 18:22					
19:9 to 19:17					
23:14 to 23:19					
39:3-4					
39:15 to 40:1	I	40:2-9			
40:24 to 41:6					
41:8 to 41:9	I	42:1-2			
41:11 to 41:25					
42:9 to 42:14	I	42:15-24			
43:10 to 43:11	I	43:5-9			
44:15 to 44:20					
45:5 to 46:10					
46:16 to 47:4					
47:6 to 48:10	I	46:11-15	I		
48:19 to 49:15	I	48:11-12			
50:20 to 50:22	I	50:23-51:8			
51:10 to 51:11					

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
51:15 to 17					
51:19 to 20					
51:22					
51:24					
52:1					
52:3					
52:5					
52:7					
52:9					
52:11					
52:13 to 52:14					
52:20					
52:22 to 52:24					
53:1 to 53:5	I	53:6-54:3			
56:22 to 57:1					
57:5 to 57:8	I	57:10-23			
57:24 to 58:1					
58:6 to 58:16					
58:18 to 58:20					
58:22 to 58:23					
58:25 to 59:1					
59:3 to 59:7					
59:9 to 59:10					
59:12					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
73:21 to 74:13					
74:20 to 75:23					
75:25					
76:2					
76:4 to 76:6					
76:8					
76:10					
76:12 to 76:14					
110:16 to 111:19	I	110:4-15			
111:23 to 112:4	I	111:20-22			
114:21 to 115:19					
119:6 to 119:23	S				
120:12 to 121:6	S				
122:4 to 123:22					
124:5 to 124:13					
128:11 to 128:23					
135:12 to 135:18					
141:10 to 141:16	I	141:3-9, 141:17-19			
144:1 to 145:2	I				
148:12 to 149:1					
152:9 to 152:12	V, I				
152:14 to 152:16					
152:19 to 152:20					
152:22 to 152:25					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
153:2 to 154:25					
170:15 to 171:20	I	169:15-170:14			
183:1 to 186:18	I	186:19-23	I	186:24-187:10	
186:24 to 187:10					

Weinberg, Aitan 3/2/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
5:18 to 5:19					
6:13-15					
7:8 to 7:17					
9:17 to 10:15					
11:15 to 12:25	R				
13:12 to 14:13	R				
17:22 to 18:11	I	18:12-17			
18:18 to 18:23					
19:2 to 19:7					
28:13 to 29:7	I	18:12-17			
30:5 to 31:17	I	31:18-32:3			
32:8 to 33:4	I	32:4-7			
33:8 to 33:18	I	18:12-17			
33:25 to 36:22	I, V	18:12-17			
37:9 to 39:25	M, ET				
40:12 to 41:3		41:13-20			
41:8 to 41:12					
41:21 to 41:24					
42:15 to 42:23					
43:5 to 46:10	R, V				
46:16 to 47:8	I	47:9-10, 47:12-13			
51:2 to 51:21	ARG, V, I	52:8-20			

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
52:21 to 54:8					
54:25 to 55:11					
55:21 to 56:14	F, V				
57:6 to 60:8	AA, I	18:12-17			
69:23 to 70:12	R, I	70:13-71:3	R		
76:14-22	R				
77:8 to 78:13	R				
83:5 to 84:5	I	84:6-10			
86:17 to 87:14					
87:22 to 88:2					
90:17 to 91:14					
93:16 to 95:17	I				
99:16-100:8	R, P				
106:20 to 107:9	I	107:10-12, 107:19-22			
109:24 to 110:23	I	107:19-22			

Zamir, Oren E. 4/13/2011

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
9:13 to 9:14					
10:3 to 10:16					
10:22-25					
11:18-20					
12:10-14					
13:16 to 13:18					
14:23 to 15:20	I	14:13-22, 15:21-16:10	R		
16:12 to 16:20					
17:1 to 18:2					
18:8 to 18:10					
18:17 to 18	I	18:20-19:3			
19:3 to 19:8					
21:18 to 22:14	I	20:25-21:7, 21:11-17			
23:6 to 23:10					
24:7 to 24:12					
29:23 to 30:7	I, R, P	28:23-29:22			
35:21 to 36:14					
36:16 to 36:21					
36:22 to 38:19	V, M				
38:21 to 40:8					
41:10 to 41:21	I	41:22-42:17			
45:5-6					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
45:9 to 45:11					
46:17 to 47:9					
47:11 to 47:15					
47:17 to 47:19					
47:21 to 49:16	I	49:23-50:4			
50:5 to 50:7					
50:9 to 50:15					
50:17 to 51:20					
51:23 to 52:11					
52:19 to 52:23					
53:6 to 54:13					
54:20 to 55:2	V				
55:4 to 55:24					
57:6 to 57:9					
62:19-23					
63:4-15					
65:2-3					
65:5-9	V				
65:12 to 66:1					
70:1-4		70:5-10			
70:11 to 71:13					
73:5 to 73:16	I				
82:3 to 82:6					
83:25 to 85:8	I	83:14-24			

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
85:10 to 86:1	V, C				
86:10 to 87:16					
88:11 to 89:4					
90:14 to 90:23	I	90:24-91:10, 91:19-21	ET, L, IC	91:13-21	
91:13 to 91:18					
91:23 to 93:12					
93:18-23		93:14-17			
93:25 to 94:3	V, A				
94:13 to 95:5		94:5-12			
97:13 to 97:25					
98:3 to 98:18					
98:25 to 99:8					
99:13 to 99:17					
99:20 to 100:10	V, C, A				
100:17 to 100:25					
101:2 to 101:8	V				
101:11-17	V, A				
103:6 to 103:21					
104:22 to 104:24					
105:1 to 105:17					
105:24 to 106:1					
106:3 to 106:6					
106:13 to 106:21	I	106:9-12			

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
107:4 to 107:13	I	106:22-107:3, 107:14-19,			
108:4 to 108:5	I	107:23-108:3			
109:4 to 109:17	I	108:7-109:3	I		
109:21 to 110:1					
110:18 to 110:20					
110:22					
111:4 to 111:7					
111:14 to 111:22					
111:24 to 112:3					
112:14 to 113:8					
113:10 to 113:13					
113:16 to 114:7					
114:9 to 115:11					
115:7 to 115:21		115:23-116:3			
116:7 to 117:14					
117:16 to 118:17	V. A				
119:3 to 119:9	I	118:18-119:2			
119:11 to 119:12					
122:6 to 122:16	I	122:17-123:1, 123:17-20			
124:5 to 124:16					
124:18 to 124:23	I	124:24-125:5, 125:7-10			

Plaintiff's Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
139:20-21	I				
140:1-17	I				
141:20 to 141:7					
142:11 to 142:19					
142:21 to 143:25					
144:2 to 144:19	S	146:10-24			
147: 22 to 148:8					
148:10-21					
148:23 to 149:8					
151:17 to 152:4					
152:6 to 153:1	I	153:2-4			
163:4 to 164:7	I	163:13-164:9, 164:16-165:1, 165:8-14			
164:10-14					
165:2 to 165:7					
171:4 to 171:23	I	171:24-172:8, 172:23-24			
172:9 to 172:19					
173:5 to 173:8					
173:10 to 173:25	V				
174:2 to 174:3					
174:9 to 174:17					
174:19					
178:14 to 178:24					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
179:1 to 180:8					
180:10 to 180:22					
186:7 to 186:17					
186:20 to 187:17	R, P				
189:6-9	I, R, P				
189:10 to 189:18					
190:4 to 190:19					
190:21 to 190:25					
191:2 to 191:9	R, P				
191:11 to 193:17		193:20-194:4			
194:11 to 194:13	R, P				
194:15 to 195:18					
196:3 to 197:13	R, P				
197:15-16					
197:18 to 199:6	V, A, R, P, I	199:7-200:5			
201:2 to 201:9	R, P				
201:11 to 201:25	V, S, SP, R, P				
202:1 to 205:4	R, P, V				
209:20 to 209:24	R, P				
210:4 to 210:5	V, C, R, P				
210:7					
210:9 to 210:14					
225:17 to 226:1					
226:3 to 227:10					

Plaintiffs Designations	Defendant's Objections to Plaintiff's Designations	Defendant's Counter Designations to Plaintiff's Designations	Plaintiff's Objections to Defendant's Counter-Designations	Plaintiff's counter-counter-designations	Defendant's Objections to Plaintiff's Counter-counter-Designations
227:14 to 228:10	R, P				
228:16 to 228:25	PRIV, R, P, V, C				
229:2 to 229:6	V, C, R, P, I	229:8-14	S, R		
230:2 to 230:8	R, P				
230:10 to 230:11	V, R, P				
230:13 to 230:22	V, C, R, P				
230:24 to 231:16	R, P				
232:3 to 232:4					
232:6 to 233:2					
236:5 to 236:18					
239:3 to 239:12					
242:2 to 242:6					
248:15 to 249:10					
250:18 to 251:6					
254:11 to 254:14					
254:16 to 254:24	V, R, P				
264:20 to 265:2	I	262:14-15, 264:17-19			
265:4 to 265:17	V				
269:19 to 269:25	I, SP, S	269:9-16			

EXHIBIT 9

EXHIBIT 9

GOOGLE'S DEPOSITION DESIGNATIONS

Google hereby submits its deposition designations with PUM's objections and counter designations thereto, Google's objections to such counter designations and counter-counter designations thereto, and PUM's objections to such counter-counter designations.

The parties incorporate by reference designations of any errata pertinent to the excerpts of the deposition transcripts designated by Google, or counter designated by PUM.

PUM's objections are identified with the following abbreviations:

PUM Objections	
R	Relevance: The exhibit/statement is objectionable because it is not relevant and/or any probative value it may have is substantially outweighed by the danger of unfair prejudice, or confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence (<i>see</i> F.R.E. 401, 402, 403)
ND	Not disclosed: The exhibit is objectionable because it was not timely disclosed by Google
H	Hearsay: The exhibit/statement is objectionable as hearsay if offered to prove the truth of the matter asserted (<i>see</i> F.R.E. 801, 802)
A	Authentication: The exhibit may be objectionable if it is not properly authenticated (<i>see</i> F.R.E. 901(a))
IC	Improper Compilation: The exhibit is an improper compilation of documents that do not belong together

M	Mischaracterization: The description of this document on Google's exhibit list mischaracterizes the document
D	Duplicate: The exhibit appears more than once on Google's exhibit list
LF	Lack of Foundation: The exhibit/statement is objectionable as insufficient foundation or lack of personal knowledge has been laid (<i>see</i> F.R.E. 602, 901)
UP	Unfair Prejudice
SW	No Sponsoring Witness (<i>See FRE 602</i>)
NC	Not Complete: The exhibit is objectionable because it is incomplete and the introduction of the remaining portions or related documents ought, in fairness, to be considered contemporaneously with it (<i>see</i> F.R.E. 106) (exhibit appears to be an incomplete document and/or missing pages)
DEPOSITION OBJECTIONS	
ARG.	Argumentative
A&A	Asked and Answered
Att Col	Attorney Colloquy or Objection
B/S	Beyond the Scope of the topics for which the corporate witness was designated
BE	Best Evidence
C	Outside the scope of the witness' Competence or Expertise

C/S	Evidence of a Compromise or Settlement
CMP	Completeness
CNF	Confusion of Issues
FNE	Assumes Facts Not in Evidence
F	Form
L	Leading
LC	Calls for Legal Conclusion
MIS	Misleading
MPT	Mischaracterizes Prior Testimony
N	Narrative Question
OB	Overly Broad
P	Privilege
RPT	Repetitive
S	Speculative
UFP	Unfair Prejudice
V/A	Vague or Ambiguous

WP	Work Product
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Google's objections are identified with the following abbreviations:

<p>General Objections:</p> <p>R – Relevance, 402</p> <p>P – Fed. R. Evid. 403: Prejudicial</p> <p>H – Hearsay</p> <p>F – Lacks Foundation</p> <p>I – Incomplete</p> <p>V – Vague and ambiguous</p> <p>S – Beyond the scope of Rule 30(b)(6) deposition topics</p> <p>LC – Legal Conclusion</p> <p>ET – calls for expert testimony</p> <p>MIS – misleading</p> <p>IC – improper counter</p> <p>NR – non-responsive</p> <p>IH – incomplete hypothetical</p>	<p>Form Objections:</p> <p>L – Leading</p> <p>ARG – Argumentative</p> <p>A – Assuming Facts Not in Evidence</p> <p>C – Compound</p> <p>N – Narratives</p> <p>M – Misstates Testimony</p> <p>AA—Asked and Answered</p>
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SP – speculation	
SN – Fed. R. Evid. 408, Settlement Negotiations	

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
Aspitz, Doron	06/10/2011	3:10-15					
		5:4-9	R; L	5:10-18			
		5:19-6:1	R; L	6:2-11			
		6:12-7:11	R; VA; CMP; UFP	7:12-14			
		11:18-22					
		12:16-13:5	R; VA; CNF; S	13:6-12			
		13:18-14:3	R; FNE; UFP; N				
		17:10-19	R; CNF				
		19:9-11	R; CNF				
		22:15-19	R; CNF; FNE; CMP	22:20-23:1			
23:2-4	R; CNF; FNE; CMP	22:20-23:1					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		26:3-19	R; CMP; LC; UFP; N; F; CNF; L; C; OB; UFP	27:13-20			
		26:22-24	R; CMP; LC; UFP; N; F; CNF; L; C; OB; UFP	27:13-20			
		27:1-7	R; CNF; OB; UFP	27:13-20			
		29:10-20	R; UFP; CNF; S; VA	28:15-21	P		
		30:8-16	R; CNF; L; UFP				
		39:7-15	R; CMP; S; CNF;	30:20-31:7	IC, R		
		40:10-11	R				
		40:24-41:10	R; UFP				
		41:13-25	R; UFP; CNF				
		43:7-10	R; UFP; L; CNF				
		43:20-44:1	R; UFP; CMP	43:11-44:4			
		44:5-45:2	R; UFP; CNF				
		58:2-7	R; UFP; VA				
		58:13-19	R; UFP; VA; S	58:22-59:3			

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		60:18-61:7	R; UFP; CNF; L				
		62:8-12					
		64:6-66:12	R; S; CNF; UFP				
		66:25-67:9	R; S; UFP; CNF	67:10-22			
		69:3-8	R; L; CNF; UFP	67:10-22			
		75:12-14					
		75:18-76:12	R; S; L; FNE; UFP	76:13-22	IC, R		
		97:10-13					
		97:18-98:8	R; S; L; UFP	98:9-12	IC, R		
		98:13-17	R; UFP; CNF				
		103:15-23	R; C; S; FNE; CNF; VA				
		104:2-17	R; C; S; FNE; CNF; VA; UFP				
		108:25-109:6	R; L; UFP				
Benquessous (Banks), Jack	06/07/2011	5:9-12					
		8:11-19	R; LF; S; UFP; C	20:4-7	IC, R, P		
		16:18-22	R; UFP; CNF				
		17:2-13	R; UFP				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		18:2-10	R; UFP; S; LF; C	20:4-7	IC, R, P		
		20:8-24	R; S				
		23:12-24:10	R; S; FNE; UFP; CNF; C				
		30:3-25	R; S; FNE; UFP	31:1-3; 92:5-15			
		31:4-11	R; S; UFP; RPT				
		35:1-13	R; A; UFP; CNF				
		35:23-25	R; RPT				
		39:19-25	R; UFP				
		40:23-41:12	R; UFP; CNF; S				
		48:1-2	R; UNF	20:4-7	IC, R, P		
		53:22-54:2					
		54:8-18	R; UFP; F; MPT				
		54:20-21	R; UFP; F; MPT	55:1-55:12; 92:25-94:2	IC, R		
		54:24-25	R; UNF;	55:1-55:12; 92:25-94:2	IC, R		
		58:3-7	R; LF; A				
		58:10-11	R; UFP; V/A; S				
		58:18-19	R; UFP; S				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		60:8-60:13	R; CNF				
		61:8-15	R; UFP; CNF; S; C	61:16-21; 62:23-63:2	IC, R, I, P		
		62:8-13	R; UFP; CNF; L; S; C	62:23-63:2; 92:25-94:2	IC, R		
		63:13-17	R; UFP; L				
		65:17-20	R; UFP; S; L				
		67:6-68:7	R; S; C; LF; UFP	62:23-63:2	IC, R, I, P	63:3-8	R, UFP, C, LF
		68:11-24	R; S; LF; C; UFP				
		71:20-73:2	R; A; F; UFP; S;	73:8-10; 91:11-23			
		73:11-16	R; UFP	73:8-10; 91:11-23	R		
		74:2-75:5	R; UFP; S; V/A				
		76:16-22	R; UFP; V/A				
		77:21-25	R; V/A; S; C; UFP				
		89:23-90:17	R; UFP	89:20-22; 90:18-23; 91:2-4		90:24-91:1,	R, IC
		92:17-24	R; UFP; CNF	92:5-15			
Bercow, Douglas	04/14/2011	8:8-10					
		15:1-20					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		19:7-20	MIS, CMP, CNF, UFP	26:20-27:10; 31:4-32:5; 35:14-36:18; 37:18-40:1; 38:2-8; 39:13-40:1			
		22:9-15	CMP	22:21-25	IC		
		26:5-9	CMP	25:22-27:10			
		52:25-53:9	MIS, CMP	31:4-32:5; 35:14-36:18; 37:18-40:1; 38:2-8; 39:13-40:1; 53:10-54:5	IC for 35:14-36:18 and 53:10-54:5		
		60:2-61:22	MIS, C, LF				
		63:7-66:22	R, UFP, MIS, C, LF, CMP, CNF	63:2-6			
		67:15-75:5	R, S, LF, UP, CNF, MIS, CMP, NC, C	75:6-18			
		75:18-76:8	C, LF, MIS, UFP, CNF, R				
		76:20-77:24	R, CMP, NC, UFP, C, LF, S	77:25-78:11	IC		
		78:15-23	R, MIS, CMP, NC, C, LF, S	79:6-81:17	IC		

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		80:19-81:5	C, LF, S, CMP, NC, MIS, CNF				
		81:18-82:11	R, UFP, C, LF, S, CNF	81:6-83:5			
		83:7-11	CMP, LF, C, CNF	83:12-84:5; 84:12-24	I, IC, F, R, P	84:6-11	R
Berthold, Michael	01/23/2011	6:8-13					
		11:9-13					
		12:20-24					
		14:10-15-	R, S, CNF, UP, FNE	14:16-15:5; 165:1-166:17	IC, I IC, I	15:6-16:4; 166:18-21	L, LC, S
		15:3-16:4	L, LC, S,	175:19-176:14	IC, R, I		
		16:10-18	R, S, CNF, UP, FNE	16:19-17:13; 165:1-166:17	I IC, I	17:14-18; 166:18-21	R, UFP; R, UFP
		21:25-22:15					
		23:3-5	LC	22:16-23:2			
		28:1-29:19	R, S, CNF, UP, LC, CMP	29:20-30:22			
		32:5-21					
		33:2-14	R, S, CNF,	33:15-34:13; 35:7-23; 36:1-6	I	34:14-25; 35:21-23; 36:1-6	R; R
		42:9-12	R, S	42:13-14			
		48:15-49:12					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		63:16-22	LC, OB, V/A, CNF,	63:23- 64:15; 175:19-24	IC, I IC, R	64:16-25	V/A, R, UFP
		69:6-9	L, LC, F, OB, V/A, CMP	67:1-69:5			
		74:2-17	LC, V/A, S	78:4-22	IC, R, I	76:17-18; 77:3-8; 77:15-18	V/A, CMP, CNF, R
		86:6-24	S, LC, R, CMP	86:24-87:11			
		92:13-16	R, LC	91:20-92:4	IC	92:5-11	UFP
		95:2-24	R, LC, L, CNF, UP	95:25-96:7	IC		
		97:10-24	R,				
		98:1-99:1	R, CNF, UP	99:24-100:13	I	99:2-23	R
		108:22-109:3	L, LC, F, UP, CNF,	109:4-6; 109:9-16; 175:19-24.	I	108:4-17	R, UFP
		109:17-20	L,LC, F, UP, CNF	109:21-22; 109:25-110:4	I	110:5-12	R, LC,CMP
		114:4-11	R				
		122:25-123:14	L, LC, F, CNF, UP				
		131:2-18	R	131:19-22			
		132:6-16	R	132:25-133:4	I	132:17-24	R, UFP
		136:12-137:25	R				
		138:4-8	R				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		140:24-141:11	ARG, R, L, UP,				
		142:13-145:2	ARG, R, L, UP,	145:3-10; 184:15-185:15	I	185:16-20; 186:3-9	ARG, R, UP; R
		145:11-16	ARG, R, L, UP,	184:15-185:15			
		146:22-147:21-t	ARG, R, L, UP,	147:22-148:6; 184:15-185:15	I	148:7-22	R, UFP
		161:8-10	ARG, R, L, UP,	161:11-12			
		163:14-164:2		166:23-167:1; 167:3-4; 167:10-24			
Black, Phillip	05/06/2011	4:7-11					
		6:18-7:21	R; UFP				
		13:4-17	R; N; V/A; C; S	10:10-19	IC, R		
		17:4-17	R; V/A; C				
		21:25-22:7	R; UFP; S; CMP	22:17-24	I, IC	22:25-23:1	CMP, R,
		26:11-27:15	R; S; L; UFP				
		29:6-9					
		29:13-30:6	R; UFP; CNF; S				
		34:14-25	R; UFP	35:6-18	IC, I, R	35:1-7	R, UFP

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		36:24-37:10	R; S; V/A; LF				
		45:10-15	R; UFP				
		45:21-47:19	R; UFP; S				
		48:15-17					
		52:23-54:13	R; S; UFP; CNF				
		55:17-56:14	R; UFP; S				
		59:14-15					
		59:18-61:11	R; S; UFP; CNF				
		62:5-7	R; S; F; V/A;				
		62:9-20	R; S; F; V/A; L				
		63:15-18	R				
		68:5-10	R				
		68:20-69:3					
		84:3-13	R				
		87:14-23	R; UFP; C; S; L	86:20-87:5	IC, R, P		
		93:2-10	R; S; UFP				
		93:17-96:6	R; S; L; UFP				
		97:5-7					
		99:2-12	R; S; UFP; C; CNF	99:13-100:2	P		
		107:9-20	R; S; C; CNF; LF; F				
		107:22	R; S; F				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
Brandman, Onn	03/16/2011	3:25-4:2					
		7:8-13					
		8:23-9:8					
		9:12-14					
		10:13-23					
		11:17-12:4	R, OB, V/A, UP, CNF	12:18-22	IC	12:18-23	R, IC
		12:6-11	R, UP, CNF, S	12:18-22	IC	12:18-23	R, IC
		12:13-17	R, UP, CNF	12:18-22	IC	12:18-23	R, IC
		15:19-16:4	L, LC, C, UP, CNF,				
		17:15-18:2	CMP	18:3-20, 18:14-19:20	P		
		19:21-24					
		20:5-22:3	20:5-17-R, CNF, UP 21:15-22:1-UP, R, S,				
		25:8-26:4	S, R, CNF,				
		26:6-7	R, CNF				
		26:18-27:13	R, CNF,				
		28:4-5	R, S, CNF, UP				
		28:12-32:14	R, S, CNF, UP, FNE				
34:2-11	R, S, CNF						

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations	
		35:23-36:12	R, S, UP, CNF, FNE,OB, V/A, CMP	37:8-23	I, R	37:8-16	CMP	
		38:14-20	R, S, UP, CNF					
Franco, Horacio	04/14/2011	6:15-18						
		11:6-19		12:14-13:9	IC, R, P			
		16:11-21						
		17:5 -18:5		18:6-19:13; 22:25-23:11; 24:22-:26:2	IC, R, P			
		45:10-13						
		45:20 – 46:7						
		46:11 – 49:7	R, CMP	49:8-50:25; 61:17-63:8; 93:9-94:19	F, IC,			
		95:10 – 99:10	R, CMP, UP	99:11-100:11				
		100:11 – 102:10						
		102:23 – 103:13	CMP	104:11-25; 106:8-11				
Gal, Ari	02/10/2011	5:9-12						
		7:4 – 8:17	R, L, UFP, CNF					
		8:24 – 9:5	R, L, LF, S, UFP, CNF	8:18-23				
		10:23 – 12:20	R, LF, S, UFP, CNF					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		13:3 – 14:8	R, LF, S, UFP, CNF, B/S, C				
		16:3-7	R				
		18:7 – 21:5	R, LF, L, S, UFP, CNF, B/S, C				
		21:10-24	R, L, S, UFP, CNF				
		22:3-8	R, L, S, UFP, CNF, B/S				
		23:10-19	R, L, S	17:16-19, 18:4-6	IC		
		24:18 – 25:4	R, S, UFP, CNF, C	17:16-19, 18:4-6	IC		
		37:20-22	R, S, LF, UFP, CNF, B/S, C				
		38:11 – 39:9	R, S, L, LF, UFP, CNF, B/S, C				
		39:16 – 40:21	R, S, L, LF, UFP, CNF, B/S, C				
		45:24 – 48:11	R, L, UPF, CNF, A&A, C				
		48:19 – 49:9	R				
		49:21 – 49:23	R, UFP, CNF				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		49:25-50:11	R, LF, C, S, UFP, CNF	50:12-13	IC		
		51:4-12	R, C, CNF, UFP, S	51:13-14	IC		
		53:7-13	R, C, CNF, UFP, S	53:16-17	IC		
		53:18 – 54:15	R, C, CNF, UFP				
		56:9-23	R, CNF, UFP				
		63:15 – 64:8	R, CNF, UFP				
		65:19 – 66:16	R, CNF, UFP, S				
		67:4-18	R, C, LF, CNF, UFP, S				
		68:6 – 69:18	R, C, LF, CNF, UFP, S, OB				
		70:15 – 73:14	R, UFP, CNF, A&A				
		73:22 – 74:4	R, UFP, CNF, S,	75:1-8			
		75:9-18	R, CNF, UFP, OB				
		76:1 – 79:12	R, CNF, UFP, OB, B/S, A&A, ARG				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		84:7 – 85:24	R, CNF, UFP, S, L				
		87:4-6	R, CNF, UFP, C, B/S	87:7-8	IC		
		87:9-11	R, CNF, UFP, C, B/S	87:12-13	IC		
		87:14-19	R, CNF, UFP, C, B/S				
		118:18 – 118:21	R				
		118:24-119:8	R, S				
		120:5 – 121:2	R, S, L, B/S, C				
		123:13 – 124:21	R, L, B/S, C, ARG., F, CNF, UFP				
		170:4-19	R, L, B/S. C, CNF, UFP	169:19-170:3			
Jacobs, Ron	08/25/2010	5:7-9					
		8:12-9:16	V/A, A&A	10:3-17	IC, R		
		12:8-18	R	12:23-13:1			
		14:8-14	R	14:15-24			
		15:2-20	R, UFP, C	15:21-16:4; 17:2-8	I		
		20:12-19	R, CNF	20:20-23; 21:22-22:10	IC, R, ET		
		24:7-12	CMP, C, R	23:20-24:6; 24:13-17	IC		

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		24:18-20	CMP, R,				
		32:1-3	CMP, R, CNF	32:20-33:8	IC, I, R		
		34:12-15	CMP, R, CNF, V/A				
Jeh, Glen	02/14/2011	12:16-17					
		22:9-25		19:18-20; 20:21-22:20	R, P, IC R, P, IC		
		24:10-20		24:6-9; 25:4-14	R		
		37:7-14		37:16-20	I	37:21-38:8	R
		38:9-13					
		38:15-39:21					
		40:5-17		40:19-24; 41:4-13; 41:15-42:12; 42:14-16	I, IC, R, P I	41:14-14	R, CMP, IC
Konig, Yochai	12/02/2010	5:14-17					
		5:22-25					
		8:12-14					
		9:6-17					
		10:6-21					
		14:1-15:15		15:16-19			
		16:25-18:23					
		21:1-10					
		22:23-23:2					
		23:4-12					
		23:19-22					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		23:24-24:10					
		24:12-25:20					
		26:21-28:6		28:7-14	IC		
		30:6-13		30:14-17			
		37:13-16		37:17-20			
		39:16-22	R				
		43:7-44:5		44:6-9			
		44:10-45:5		45:6-9	IC		
		45:10-21		45:22-46:2			
		47:6-8	R				
		49:22-50:7					
		57:14-58:12		58:13-25			
		62:24-64:20	R as to 64:9-20				
		66:19-23					
		67:4-13		67:14-25	IC		
		70:2-71:2					
		72:4-12		71:22-72:3			
		72:16-73:7					
		73:11-20					
		75:12-16					
		79:4-22	R as to 79:14-22	78:9-14	IC		
		84:5-85:15					
		105:11-21	Argumentative				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		117:14-118:4	A&A as to 117:20-118:4	117:4-13			
		149:9-16					
		149:22-150:22	R				
		152:11-155:11	R				
		155:22-156:3	R, Argumentative				
		178:1-9					
		181:9-13		181:14-182:9			
		182:10-14					
		186:23-22					
		189:20-190:2		190:3-7			
		190:8-191:6		190:3-7			
		202:13-203:17		202:7-12; 203:18-204:1	IC I	204:3-4	R, CMP
		206:8-207:1	R				
		207:7-9	R				
		207:14-208:25	R				
		220:16-221:24	R				
		223:3-224:2	R				
		233:14-22	R	233:18-22			
		240:7-10	R				
		240:15-16					
		242:24-243:22	R				
		244:12-17	R				
		258:2-12	R	259:2-12	IC		

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations	
Konig, Yochai	05/04/2011	282:22-283:11		283:12-18				
		283:23-285:11						
		285:25-286:5		286:6-8				
		286:25-287:8						
		288:18-289:4			289:5-11; 289:13-290:7			
		290:8-292:6			292:4-7			
		293:1-294:23						
		296:11-18	R					
		299:1-299:14						
		303:10-20						
		304:15-25			305:1-15			
		306:4-307:4						
		308:10-17						
		311:3-16			311:17-312:8			
		312:9-25						
		316:20-318:7						
		323:10-326:1						
		327:21-24						
		328:1-24						
		329:5-23				329:24-330:2		
		332:4-21				331:24-332:3		
		333:8-15						
		343:12-1						
350:18-351:3								
353:11-23								

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		356:19-357:19		357:20-358:19			
		358:21-359:13					
		359:17-360:25					
		362:9-363:13		363:14-364:4			
		364:5-16					
		367:16-369:1		369:2-8			
		369:9-12					
		369:14-370:4		370:12-19			
		370:6-10					
		370:20-372:7		372:9-16			
		378:1-9					
		381:18-382:10	R as to 381:18-23				
		384:14-23	R				
		386:6-12					
		386:14-21					
		386:23-387:20	R as to 387:8-15				
		399:2-401:6					
		401:8-11					
		401:13-17					
		401:19					
		403:23-404:3	R as to 403:23-24				
		404:5-404:11					
		408:17-22		408:10-15			

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		409:4-7					
		419:22-420:9					
		436:1-3					
		436:6-11					
		455:1-456:13					
		457:6-459:5					
		469:12-24					
		475:6-16					
		476:25-477:4					
		478:9-15					
		479:1-8					
		482:12-17					
		490:2-13					
Konig, Yochai	01/26/2012	532:15-533:7					
		543:3-544:7					
		545:3-10					
		547:15-548:4					
		555:16-556:3					
		558:3-14					
		564:10-14					
		574:14-22			574:23-575:10		
		576:20-577:6	R				
Konig, David	07/08/2011	4:3-6					
		10:12-18					
		10:22 – 11-4					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		11:7-9					
		12:3-10					
		12:23 – 13:3	R				
		15:18-19	R, C, OB				
		15:21-23	R, C, OB				
		16:4 – 17:7					
		20:16-18	R, OB				
		24:14 – 25:13	R, P, CMP, UFP	25:22-25	IC		
		25:15-21	R, P, CMP, UFP	25:22-25	IC		
		31:21-22	S, CMP, C	31:23-25	IC	32:4-10	R, IC
		32:17 – 33:4	R			32:4-10	R, IC
		33:6-15	R				
		33:20 – 34:23					
		34:25 – 36:3					
		39:6-22	R, CMP	39:23-42:4		42:5-7	
		40:21-24					
		45:16 – 46:15	R, CMP,	46:16-17, 46:19-47:2			
		48:7-23	R, CNF, OB, V/A				
		55:15 – 56:17	R, CNF, UP				
		56:20-21	R, UP, CNF				
		56:25 – 57:22	R, UP, CNF				
		58:8-10	R, UP, CNF				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations	
		58:14-25	R, UP, CNF, S,					
		59:2-11	R, CNF, S					
		60:22 – 61:5	R, S, UP, CNF, CMP	61:6-7				
		71:25 – 73:25	R, CNF, S					
Montes, Frank	03/17/2011	6:4-7	H					
		10:12-24	H					
		11:2-4	H	11:19-12:5; 21:6-22:19	IC, R, P			
		44:13-18	H	28:3-33:4; 42:11-43:10	IC, R, P			
		44:22-45:3	H	46:24-47:8	IC, R, P			
Pazzani, Michael J.	11/17/2012	8:10-13	R					
		13:6-14:11	L, LC, CNF, F, CMP	14:12-19, 15:10-17:7				
		14:21-23	L, LC, CNF, F, CMP	14:12-19, 15:10-17:7	IC			
		14:25-15:2	L, LC, CNF, F, CMP	14:12-19, 15:10-17:7	IC			
		15:4-8	L, LC, CNF, F, CMP	14:12-19, 15:10-17:7	IC			
		17:11-22	R					
		18:6-10	L, LC, F, R, CNF					
		18:12-21	L, LC, F, R, CNF					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		18:23-19:23	L, LC, F, R, CNF	19:24-30:6	IC		
		31:2-21	L, LC, F, R, CNF	31:22-33:1	IC		
		33:7-10	L, LC, F, R, CNF				
		33:12-34:12	L, LC, F, R, CNF				
Perrault, Raymond C.	08/17/2011	7:15-23					
		16:15-17:21	CMP	17:18-24			
		18:6-8					
		22:1-13	R, UP				
		26:11-22	R, CMP				
		27:13-17	R, CMO, UP				
		36:9-13					
		39:10-40:14	R, CNF, UP	30:20-31:6; 19:11-15			
		41:5-43:2	R, CNF, UP	30:20-31:6; 19:11-15			
		52:1-16		51:24-52:2			
		52:24-56:3	R, CNF, UP	55:6-16			
		56:9-19	R, CNF, UP				
56:21-23	R, CNF, UP, CMP	57:3-58:1					
Salter, James H.	9/10/2010	3:7-9					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		4:12-18	CMP, CNF	5:2-10; 9:21-2; 12:24-13:3	IC, R		
		13:17-21	CMP, CNF	14:15-19			
		15:4-16	CMP, R,CNF	15:17-21	IC		
		21:3-23	CMP, R,CNF	22:8-13			
		22:14-8	CMP, R,CNF				
		24:3-11	R,CNF	24:12-15	IC		
		34:3-35:9	CMP, R,CNF	35:15-16			
		35:17-25	CMP, R,CNF	37:19-25	IC		
		38:1-9	R, UFP	41:10-15; 41:19-42:1	IC, ET		
		42:2-16	CMP, CNF, R	42:17-21	IC		
		43:20-25					
		44:8-45:20	R, UFP	48:16-49:2	IC, R, P		
		49:6-50:7	R, CNF				
		51:4-15	R, UFP				
		54:11-14	R, CMP, V/A	57:6-8; 57:10-17; 57:24-58:6 58:24-59:21; 59:23 60:25-61:6; 61:11-62:1; 62:4	IC		
		62:11-19	R	62:20-24			

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		64:6-65:7	R, UP	65:13-15; 65:17-19	IC, P		
Sonmez, Mustafa Kemal	08/15/2011	4:9-11					
		4:18-19	R				
		12:18-13:23					
		18:17-25	CMP				
		19:9-20:1					
		29:21-24					
		30:13-17					
		34:4-11					
		35:3-36:7					
		41:22-42:16	R, MIS, UFP, CNF, CMP				
		42:18-21	R, MIS, UFP, CNF				
		43:1-8	R, MIS, UFP, CNF	43:7-44:15	IC, I		
		45:22-46:4					
		46:9-47:10	R, MIS, UFP, CNF, CMP, NC	47:11-49:3	IC		
		55:8-21					
64:23-25	R, UFP, CNF, MIS, CMP, NC	65:1-15					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		71:21-72:18	R, UFP, CNF, MIS, CMP, NC	72:19-74:7			
		75:15-76:1	R, UFP, CNF, MIS,				
		100:6-11					
		100:22-101:15					
		101:23-102:1					
Stolcke, Andreas	07/06/2011	7:22-9:5					
		9:9-10:7					
		10:23-25					
		11:3-4					
		11:8-10					
		12:5-18					
		13:23-14:1	CMP, MIS	14:2-8			
		16:11-13					
		16:17-17:10					
		17:12-22					
		17:24					
		18:1-4					
		18:12-17					
		18:19-23					
		18:25-20:7					
		20:13-17	R, CMP	20:20-21:1			
21:8-19	R						
21:22-22:2	R						

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		22:9-17	R				
		23:1-11	R, MIS				
		23:13-15	R, MIS				
		23:17-24:18	R, MIS				
		24:20-25:21	R, MIS				
		28:4-12	MIS, CMP, NC, CNF, UFP	28:20-29:12			
		29:13-23	MIS, CNF, UFP, CMP, NC	29:24-25			
		30:1-20	MIS, CNF, UFP, CMP, NC				
		30:22-32:3	MIS, CNF, UFP, CMP, NC	32:4-12; 33:25-34:10	R		
		34:11-35:1	MIS, CNF, UFP	35:9-13	I	35:2-9	CMP
		35:14-17	MIS, CNF, UFP, CMP, NC	36:9-14			
		35:20-36:8					
		36:15-21					
		36:23-37:10					
		37:12-25	R, MIS, UFP, CNF				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		38:22-39:25	R, MIS, UFP, CNF				
		40:3-14	R, MIS, UFP, CNF				
		40:21-41:2					
		41:10-14	R, MIS, UFP, CNF				
		41:16-42:6	R, MIS, UFP, CNF				
		42:8-12	R, MIS, UFP, CNF				
		45:8-47:1	R, MIS, UFP, CNF, S, CMP	47:2-5	47:2-5	IC	
		48:20-24					
		49:1-3					
		49:7-50:23	R, MIS, UFP, CNF, S	65:2-5; 65:17-19	65:17-19		
		50:25-51:7	R, MIS, UFP, CNF				
		51:9-11	R, MIS, UFP, CNF, CMP	52:8-18	52:8-18		
		57:18-23	MIS, CMP, CNF	57:10-17	57:10-17	IC	
		58:2-4	C, R, MIS, UFP, CNF, S				
		58:18-59:1	C, R, MIS, UFP, CNF, S				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		60:1-3	C, R, MIS, UFP, CNF, S				
		60:5	R, MIS, UFP, CNF, S, C				
		73:13-74:7					
		74:11-22					
		74:25					
		75:2-4					
		75:6-9					
		75:12-13					
		75:16					
		75:18-24					
		76:1-8					
		76:10					
		76:12-14					
		76:16	R, MIS, UFP, CMP				
		78:18-22					
		78:24-79:16	R, MIS, UFP, CNF				
		79:18-80:7	CMP	80:8-10	IC		
		96:17-20	R, MIS, UFP, CNF				
		96:22-24	R, MIS, UFP, CNF				
		100:8-16	R, CNF, S, C. LF				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		100:19-101:8	R, CNF, S, LF, C				
		103:15-19	R, MIS, UFP, CNF				
		104:16-20	R, MIS, UFP, CNF				
		105:17-19	R, MIS, UFP, CNF				
		105:21-106:23	R, MIS, UFP, CNF				
Twersky, Roy	12/03/2010	5:13-15					
		7:10-22	CMP, MIS	7:23-24	IC		
		7:25 – 8:5	S, CNF, MIS, UFP				
		8:13-15	S, MIS, CMP, UFP	9:9-15	IC, R		
		8:24 – 9:3					
		10:16-18	MIS, C, CMP, CNF, S				
		12:16-20	MIS, C, CMP, CNF, S	13:3-11; 15:5-16:21	IC, I, R, P	16:22-24, 17:2-12	R, MIS, CNF, S
		18:4-9	LF, C, MIS, UFP, S				
		18:12-17	LF, C, MIS, UFP, S				
		20:14-20	LF, C, MIS, UFP, S				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		20:22 – 21:1	LF, C, MIS, UFP, S				
		21:5 – 22:14	LF, C, MIS, UFP, S, CMP	101:10-102:11; 104:21-25	IC, R, P	101:4-9	Improper counter, R, MIS. CNF
		22:22 – 23:6	LF, C, MIS, UFP	23:12-18	P	23:19-20	
		24:2-22	R, UFP, MIS, S				
		27:3-11	R, MIS, CNF, C				
		27:19-21	MIS, CNF, UFP	27:22-28:2; 28:22-29:24; 30:7-11	IC, R, P		
		34:22 – 35:11	CMP, S	34:10-14; 35:12-23; 36:15-18	IC, R, P, I		
		37:14-19	R, UFP, CNF, MIS	87:14-88:2; 99:1-4	I, IC, R, P		
		39:8-25	R, UFP, CNF, MIS				
		42:7 -18	UFP, CNF, C, MIS LF				
		43:2-10	R, UFP, S, LF, C, CNF, MIS				
		45:17-25	UFP, S, LF, C, CNF, MIS	44:12-17	IC, ET, P		

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		50:14 – 51:2	MIS, UFP, CNF, CMP	49:25-50:7; 51:3-52:8; 53:24-54:5; 54:10-14	IC, ET	54:6-9	S, R, C, MIS, UFP
		92:6-13	R, S, LF, C, UFP				
		96:21-25	R, S, LF, C, UFP				
		107:16 – 109:5	MIS, CNF, C, LF, CMP	109:6-110:21	IC, R, P		
		110:22 – 111:4	MIS, CNF				
		111:15 – 113:4	R, MIS, C, LF, CNF, UFP				
		114:1 – 115:5					
		115:14 – 116:12	R, MIS, CNF, UFP, CMP	116:17-25	I, IC		
		117:1-8	R, MIS, UFP, CNF				
		119:6 – 125:22	R, UFP, CNF, MIS				
		126:20 – 127:2	R, UFP, CNF, MIS, CMP	126:15-17; 127:3-128:12; 129:12-16; 129:17-130:4	IC, I, P, R		
		130:15 – 134:4	R, UFP, MIS, CMP	134:10:20	IC, P		
		134:21 – 135:7	R, UFP, MIS				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		160:9 – 162:6	MIS, CNF. UFP, CMP				
		177:9 – 178:7	MIS, CNF. UFP, CMP	173:15-23	IC		
		178:21 – 180:25	R, MIS, CNF. UFP				
		181:7 – 182:17	R, MIS, CNF. UFP, CMP	185:14- 186:14; 186:24 – 187:2	IC, R, P, I		
		189:10-16	R, MIS, C. LF				
		190:17 – 191:11	R				
Twersky, Roy	05/05/2011	209:14 – 210:22					
		212:13-19					
		215:9-13					
		215:15-19					
		215:21 – 219:10	R				
		220:2-3	R, UFP, MIS, CNF				
		220:10-12	CMP, MIS	220:13-16; 235:2-4; 238:7-17	IC		
		221:13 – 222:1	R, MIS, UFP				
		224:15 – 225:12	CNF, MIS, UFP, CMP	225:20-23	I, IC, P		
		226:8-10	MIS, CMP	226:11-17	IC		
228:18 – 232:21	R, MIS						

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		236:19 – 237:7	R, MIS, UFP, CNF		IC, I, P		
		237:19-22	R, MIS, UFP, CNF				
		238:7 – 239:16	R, UFP, MIS, CNF, CMP	239:17-20	I, IC, P		
		248:16 – 249:25	R, MIS, UFP, CNF				
		250:25 – 251:12	S, R, UFP, CNF, MIS				
		252:17-21	S, R, UFP, CNF, MIS				
		254:13-15	S, R, UFP, CNF, MIS				
		255:2 – 256:10	S, R, UFP, CNF, MIS				
		256:23 – 257:2	S, R, UFP, CNF, MIS				
		257:4-12	R, S, UFP, CNF, MIS				
		257:14-19	R, S, UFP, CNF, MIS				
		257:21-25	R, S, UFP, CNF, MIS				
		261:5-12	R, S, UFP, CNF, MIS				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		263:17-22	R, S, UFP, CNF, MIS				
		272:15 – 273:11	R, S, UFP, CNF, MIS, CMP	269:23-270:3;	I, IC, P	268:23-269:22; 270:4-272:14	Improper counter, R, MIS, S, CNF
		273:13-16					
		273:18-24	R, S, UFP, CNF, MIS, CMP	275:8-21	I, IC, P		
		278:2 – 280:8	R				
		280:10-15					
		280:17-23	R				
		296:17-25	MIS, CMP, CNF, UFP	301:4-7; 303:25-304:11; 308:24-309:2	I, IC, P		
		311:2-23	R, MIS, C, LF	S		311:24	CMP, R, improper counter
		312:25 – 313:7					
		314:2 – 315:11					
		316:18-21					
		316:23 – 317:4					
		317:6-7					
		317:12 – 319:6	CMP	319:7 – 320:15	IC	320:16-22	improper counter
		320:23 – 321:1					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		321:4-25	CMP	321:21-323:6	I, IC	324:16-326:4	improper counter, new subject matter and documents, R, CNF, MIS, UFP, CMP
		328:1-16	R, MIS, CNF, C, LC			326:13-327:25; 328:24-329:4	improper counter, new subject matter and documents, R, CNF, MIS, UFP, CMP
		332:3-25	R, UFP, MIS, S				
		334:14-21	R				
		335:12-21	R, UFP, MIS, S				
		335:23 – 338:10					
		339:6 – 340:7					
		340:9 – 341:3					
		342:4-19		343:5-11	IC, P		
		350:6-7					
		350:11-20	LC, C				

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		352:21 – 353:6	S, LC, C, CNF, MIS, UFP				
		353:8-10	S, LC, C, CNF MIS, UFP				
		353:12 – 355:14	S, LC, C, CNF, MIS, UFP				
		355:16 – 356:3	S, LC, C, CNF, MIS, UFP				
		356:18 – 357:1	S, LC, C, CNF, MIS, UFP, CMP	357:8-358:2	I, IC	357:2-7	
		371:23 – 372:9	LC, CNF, MIS, UFP				
		379:18 – 381:2	R, MIS. CNF				
		383:1-9	CMP, MIS				
		385:2-4	CMP, MIS. CNF, UFP	392:10-17; 393:11-23	IC, P		
		395:10 – 396:22	CMP, MIS, CNF	394:25-395:9	IC, P		
		398:22-25					
		399:12-16					
		402:1 – 404:7					
		404:9-12					
		405:8 – 406:18					

Witness	Date	Defendant's Designations	PUM's Objections	PUM's Counter Designations	Defendant's Objections to PUM's Counter Designations	Defendant's Counter-Counter Designations	PUM's Objections to Defendant's Counter-Counter Designations
		411:22 – 413:1	UFP, MIS, R, CNF				
		413:3 – 414:2	UFP, MIS, R, CNF				
		431:2-11					
		432:11-23					
		433:25 – 434:11	R, MIS, CNF				
		447:3 – 449:12	R, MIS, UFP, CNF, LC				
		450:2 – 451:2	LC, MIS, CNF, UFP				
		451:5 – 452:25	LC, MIS, CNF, UFP				
		454:17-23	S, LC, UFP				
		456:4-25	S, LC, MIS, UFP				
		Twersky, Roy	01/26/2012	482:3-22			
486:12-22							

EXHIBIT 10

REDACTED
IN ITS
ENTIRETY

EXHIBIT 11

REDACTED
IN ITS
ENTIRETY

EXHIBIT 12

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)
GOOGLE, INC.,)
)
Counterclaimant,)
)
v.)
)
PERSONALIZED USER MODEL, L.L.P.)
and YOCHAI KONIG,)
)
Counterclaim-Defendants.)

**PUM'S MOTION *IN LIMINE* TO PRECLUDE GOOGLE FROM
PRESENTING ARGUMENT OR EVIDENCE THAT IT IS AN OWNER OF THE
PATENTS-IN-SUIT OR ON OTHER RELATED LEGAL AND EQUITABLE ISSUES**

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February 10, 2014

PUM moves *in limine* to preclude Google from presenting argument or evidence: (1) that Google is an owner of the patents-in-suit; (2) that PUM lacks standing to bring this lawsuit; (3) that Google is entitled to a constructive trust; or (4) on Google's claims for conversion.

It is undisputed that Google has no legal title to the patents-in-suit; instead it has, at best, an equitable claim to title. As set forth below, equitable title cannot defeat PUM's standing. There is thus no issue for the jury to decide. Google's claims to equitable ownership and for imposition of a constructive trust also are matters for the Court to decide in equity and not for the jury. Google concedes these are not jury questions in its sections of the Pretrial Order, asserting that these matters are "to be decided by the Court." (Ex. A.)

Finally, because Google must first establish it had legal title or an immediate right to possession to state a claim for conversion, this, too, is an issue for the Court to decide as a predicate to any conversion claim. Because Google's can only meet this threshold requirement if the Court first grants equitable relief, there is nothing for the jury to decide on conversion either. As a result, Google should be precluded from offering evidence or argument on these issues before the jury.

ARGUMENT

A. Google's Standing, Ownership, and Constructive Trust Claims Are Matters of Equity For the Court to Decide

Just as the Court determines whether a party is entitled to the equitable relief of an injunction, here the Court must decide all issues of equitable relief related to standing and ownership. Therefore, there is no reason to refer to the issues of standing, co-ownership, or constructive trust to the jury. Google agrees that "[a]ny factual or legal determinations relevant to" equitable issues such as laches "should be determined by the Court." *See* Ex. A. It also

agrees that the equitable issues of ownership and constructive trust are to be decided by the Court. *Id.*

The sole issue in determining whether a plaintiff has standing to bring a patent infringement suit is whether the plaintiff possesses legal title ownership of the patent. *Arachnid, Inc. v. Merit Indus., Inc.*, 939 F.2d 1574, 1579 (Fed. Cir. 1991). The only parties with legal title ownership are the patentee, his assignee, his grantee, or his personal representatives. *See id.* Google does not and cannot contend that it falls into any of these categories or that it otherwise has legal title to the patents-in-suit. *See* D.I. 185 at 12 (alleging that Dr. Konig assigned his rights in the patents “to Utopy – not SRI – on June 15, 2000”). Rather, Google asks the Court to find that it is entitled to a declaration of ownership “by virtue of Konig’s [alleged] contractual obligation” to assign his rights in the patents-in-suit to his former employer, SRI, pursuant to his employment agreement. (D.I. 185 at 14.)¹ As Google acknowledges in its sections of the Pretrial Order, declaration of ownership is an equitable determination that only the Court may make. (Ex. A). There is no reason for the jury to hear argument or evidence on that issue.

Google’s constructive trust claim is also not an issue for the jury. “A constructive trust . . . is an equitable remedy, not a substantive claim for relief.” *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP*, 150 Cal. App. 4th 384, 398 (Cal. Ct. App. 2007).

Because these issues are indisputably legal and equitable issues that only the Court may decide, argument and evidence on these issues should be precluded as not only irrelevant, but also likely confusing to the jury and unduly prejudicial to PUM.

¹ Google thus agrees the employment agreement itself effected no immediate transfer of Dr. Konig’s rights. *See Bd. Of Trustees of Leland Stanford v. Roche*, 583 F.3d 832, 841-42 (Fed. Cir. 2009) (contract language agreeing to assign effects no immediate transfer of interest).

B. Google Cannot Prove Conversion Until The Court Decides Its Ownership Claim

Google cannot establish conversion without first proving that it is an owner. *Fremont Indem. Co. v. Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 119 (Cal Ct. App. 2007) (listing “the plaintiff’s ownership or right to possession of personal property” as first element of tort). To establish ownership, a party must show either that it has legal title or was entitled to immediate possession at the time of the alleged conversion. *Plummer v. Day/Eisenberg, LLP*, 184 Cal. App. 4th 38, 45 (Cal. Ct. App. 2010). As noted above, Google acknowledges that it has neither. That is because SRI never held legal title to the patents, but at best had an equitable claim to have legal title assigned to it in the future. *See Roche*, 583 F.3d at 841-42. Google further acknowledges that it must first establish that Dr. Konig breached his employment agreement to make any claim to the relief that it seeks. (D.I. 185 at 14.) As a result, Google cannot establish the first element of its conversion claim – that it legally owned or had a right to immediate possession of the patents-in-suit – until after the Court first determines whether Google is entitled to be declared a co-owner of the patents-in-suit.

If the Court concludes that Google is entitled to the equitable relief of a declaration of ownership, Google cannot go “back to the future” and prevail on a retroactive claim of legal ownership. *See Arachnid*, 939 F.2d at 1579 (right to seek equitable relief of declaration of ownership cannot retroactively divest legal title holder of title to the patent). Thus, all argument and evidence of Google’s conversion claim should also be heard by the Court and not the jury.

CONCLUSION

Google should be barred from presenting arguments or evidence that it is a co-owner of the patents-in-suit or that PUM lacks standing, or from otherwise presenting argument or evidence relating to its claims of co-ownership, standing, constructive trust, and conversion.

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered participants.

Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on February 10, 2014, upon the following individuals in the manner indicated:

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EXHIBIT A

EXHIBIT 5 TO PRETRIAL ORDER
GOOGLE’S STATEMENT OF ISSUES OF LAW TO BE LITIGATED AT TRIAL

Google submits the issues of law that remain to be litigated based upon Google’s current understanding of each parties’ claims and defenses. Google believes that some of these issues are issues of law that must be resolved by the Court. Accordingly, below Google first lists issues of law that must be resolved by the Court, then lists all other issues that remain to be litigated at trial. Should the Court determine that any issue identified is more properly considered an issue of fact, it shall be so considered and Google incorporates it by reference into its list of contested facts to be litigated. Google reserves the right to revise, modify, supplement, or change the issues of law to be litigated in light of any pretrial rulings by the Court and/or in light of any further identification of issues of law and fact by PUM and/or to address any additional issues, arguments, evidence or other developments in the case, including pending and anticipated motions, and similar developments.

Issues of Law to Be Litigated at Trial and Decided by the Court

A. Invalidity

Whether the Asserted Claims of the patents-in-suit are invalid as obvious.

- (a) Authorities: 35 U.S.C. § 103 ; *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007); *Perfect Web Technologies, Inc. v. InfoUSA, Inc.*, 587 F.3d 1324 (Fed. Cir. 2009). *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) (Obviousness is a question of law, based on underlying facts.). *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966) (To determine obviousness, a court must consider: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art; and (4) any relevant secondary considerations, such as commercial success, long felt but unsolved needs, and the failure of others.)

B. Standing

Whether PUM lacks standing to sue because it failed to join as plaintiffs all co-owners of the patents-in-suit, including Google.

- (a) Authorities: 35 U.S.C. § 262; *Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1467 (Fed. Cir. 1998) (“an action for [patent] infringement must join as plaintiffs all co-owners.”).

C. Contract Interpretation

Google understands that the Court has ruled that the issue of contract interpretation is an issue of fact for the jury. (See D.I. 521; D.I. 537.) In particular, Google understands that the Court has found that the issue of interpretation of the word “conceived” is an issue of fact to be decided by the jury. Google does not agree that PUM has introduced any conflicting extrinsic evidence or that the jury should decide this issue, but Google seeks confirmation that the Court has ruled on this matter. (See also Exhibit 19.)

- (a) Authorities: *Winet v. Price*, 4 Cal. App. 4th 1159, 1166 (4th Dist. 1992) (“[W]hen the competent parol evidence is not conflicting, construction of the instrument is a question of law”); *Scheenstra v. Cal. Dairies, Inc.*, 213 Cal. App. 4th 370, 390 (5th Dist. 2013) (“Even where uncontroverted evidence allows for conflicting inferences to be drawn, our Supreme Court treats the interpretation of the written contract as solely a judicial function.”); *Tautges v. Global Datacenter Mgmt., Inc.*, No. 09-785, 2010 WL 3384980, *3 (S.D. Cal. Aug. 26, 2010) (“If no parol evidence is introduced to interpret the contract, or if the evidence is not contradictory, the trial court’s resolution of the ambiguity is a question of law.”); Cal. Civ. Code §§ 1636, 1643, 1644, and 1649; *Elec. Electronic Control, Inc. v. L.A. Unified School Dist.*, 126 Cal. App. 4th 601, 612 (2d Dist. 2005) (construing contracts requires “examining the words the parties have chosen [,] giving effect to the ordinary meaning of those words.”); *AT&T v. Integrated Network Corp.*, 972 F.2d 1321, 1324 (Fed. Cir. 1992) (“We disagree with the district court that conception of inventions, as used in the employment agreement, is solely a technical question of patent law . . . the contract may have used conception in its generic, broadest sense.”).

D. Laches

Whether the relief Google seeks for its counterclaims for a declaration of Google’s rights as co-owner, breach of contract, conversion, and constructive trust, is barred by the doctrine of laches. Any factual or legal determinations relevant to laches should be determined by the Court.

- (a) Authorities: *Whittington v. Dragon Group, L.L.C.*, 991 A.2d 1, 8 (Del. 2009) (“laches generally requires proof of three elements: first, knowledge by the claimant; second, unreasonable delay in bringing the claim; and third, resulting prejudice to the defendant.”) (internal quotation marks omitted).

E. Remedies

1. Whether Google is entitled to a declaration that it is a rightful co-owner of the '040 or '276 patents.

- (a) Authorities: 28 U.S.C. §§ 2201-2202.

2. Whether a constructive trust should be imposed against Yochai Konig and PUM, to compel transfer of '040 and '276 patent title from its wrongful holder (PUM) to its rightful holder (Google).

- (a) Authorities: *Campbell v. Superior Court*, 132 Cal. App. 4th 904, 920 (4th Dist. 2005) (“A constructive trust is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner.”); *Grove v. Grove Valve & Regulator Co.*, 4 Cal. App. 3d 299 (1970); *In re Bake-Line Group, LLC*, 359 B.R. 566, 574 (Bkrtcy D. Del. 2007) (“Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises.”); *U.S. v. Dubilier Condenser Corp.*, 289 U.S. 178 (1933) (“A patent is property, and title to it can pass only by assignment. If not yet issued, an agreement to assign when issued, if valid as a contract, will be specifically enforced.”)

Additional Issues to be Litigated at Trial

A. Infringement

1. Whether Google’s Accused Products literally infringe any of the asserted claims of the '040 or '276 patents.

- (a) Authorities: 35 U.S.C. § 271; *Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683, 696 (Fed. Cir. 2008) (jury must examine the evidence to determine whether the accused product infringes the properly construed claims); *Warner-Lambert Co. v. Teva Pharms. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005) (infringement must be proven by a preponderance of the evidence); *Seal-Flex, Inc. v. Athletic Track & Court Constr.*, 172 F.3d 836, 842 (Fed. Cir. 1999) (a patentee must “prove that the accused product or process contains, either literally or under the doctrine of equivalents, every limitation of the properly construed claim”); *Morton Int’l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1468-69 (Fed. Cir. 1993) (upholding lower court’s finding of noninfringement based on plaintiff’s failure to prove that the accused product met all of the claimed requirements); *Kim v. ConAgra Foods, Inc.*, 465 F.3d 1312, 1316, n.1 (Fed. Cir. 2006) (dependent claims not infringed when independent claim not infringed); *MicroStrategy Inc. v. Bus. Objects, S.A.*, 429 F.3d 1344, 1352-53 (Fed. Cir. 2005) (no literal infringement where accused product did not contain every element of the claim); *Cross Med. Prods. v. Medtronic Sofamor Danek*, 424 F.3d 1293, 1309-11 (Fed. Cir. 2005) (no direct infringement where accused product did not include each claim limitation); *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1353-54 (Fed. Cir. 2001) (no literal infringement where all of the elements of the claim not present in the accused system); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1550 (Fed. Cir. 1983) (no infringement of an invalid patent).

2. Whether Google’s Accused Products infringe any of the asserted claims of the '040 or '276 patents under the doctrine of equivalents.

- (a) Authorities: Equivalence to a claim limitation depends on "whether the substitute element matches the function, way, and result of the claimed element, or whether the substitute element plays a role substantially different from the claimed element." *Warner-Jenkinson v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997). *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1160 (Fed. Cir. 1998) ("If a theory of equivalence would vitiate a claim limitation, however, then there can be no infringement under the doctrine of equivalents as a matter of law."); *Overhead Door Corp. v. Chamberlain Group, Inc.*, 194 F.3d 1261 (Fed. Cir. 1999) (infringement by equivalents is only appropriate where the accused structure “performs substantially the same function in substantially the same way to achieve substantially the same result as does the” missing element); *Dolly, Inc. v. Spalding & Evenflo Cos.*, 16 F.3d 394, 398 (Fed. Cir. 1994) (doctrine of equivalents cannot be used as a pretext to extend or enlarge claim scope or to ignore claim

limitations; “[i]n short, the concept of equivalency cannot embrace a structure that is specifically excluded from the scope of the claims.”); *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1331-34 (Fed. Cir. 2001) (“The question of insubstantiality of the differences is inapplicable if a claim limitation is totally missing from the accused device.”). *Zygo Corp. v. Wyko Corp.*, 79 F.3d 1563, 1569 (Fed. Cir. 1996) (“A finding of equivalency just because the same result is achieved is a flagrant abuse of the term ‘equivalent.’”); *Zodiac Pool Care, Inc. v. Hoffinger Indus.*, 206 F.3d 1408, 1417 (Fed. Cir. 2000) (not proper to “reduce the claims to nothing more than ‘functional abstracts, devoid of meaningful structural limitations on which the public could rely.’”) (citations omitted); *Planet Bingo, LLC v. GameTech Int’l, Inc.*, 472 F.3d 1338, 1345 (Fed. Cir. 2006) (application of doctrine of equivalents not appropriate “where the accused device contain[s] the antithesis of the claimed structure.”); *Freedman Seating Co. v. Am. Seating Co.*, 420 F.3d 1350, 1358 (Fed. Cir. 2005) (“[A]n element ... is not, as a matter of law, equivalent ... if such a finding would entirely vitiate [a] limitation.”); *The Johns Hopkins Univ. v. Datascope Corp.*, 543 F.3d 1342, 1348, n3 (Fed. Cir. 2008) (“FDA equivalence is irrelevant to patent law because it involves fundamentally different inquiries”); *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.* (doctrine of equivalents cannot recapture subject matter “specifically identified, criticized, and disclaimed”); *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 734 (2002) (presence of amendment triggers presumption that application of the doctrine of equivalents is precluded, because when patentee responds to “[a] rejection by narrowing his claims, [the] prosecution history estops him from later arguing that the subject matter covered by the original, broader claim was nothing more than an equivalent.”); *Southwall Techs, Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed. Cir. 1995) (whether application of the doctrine of equivalents is restricted is a question of law).

3. PUM includes in Exhibit 4 law regarding inducement of infringement. PUM did not disclose in discovery that it contends Google induces infringement, or any facts to support such a claim. Thus, it should be precluded from pursuing a claim of indirect infringement at trial.

B. Invalidity

1. Whether the Asserted Claims of the patents-in-suit are invalid as anticipated under 35 U.S.C. § 102.

- (a) Authorities: 35 U.S.C. § 102; *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628 (Fed. Cir. 1987) ; *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994) (to be anticipating, a prior-art reference must disclose “each and every limitation of the claimed invention[,] ... must be enabling[,] and [must] describe ... [the] claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.”); *Helifix, Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 1347 (Fed. Cir. 2000) (where a reference ““does not expressly disclose in words’ one or more elements of a patent claim[, the reference can] nevertheless be anticipating if one of ordinary skill in the art would understand the [reference] as disclosing [the missing elements] and if such person could have combined the [reference’s] description of the invention with his own knowledge to make the claimed invention.”); *In re Donohue*, 766 F.2d 531, 533 (Fed. Cir. 1985) (“[P]ossession is effected if one of ordinary skill ... could have combined the publication’s description of the invention with his own knowledge to make the claimed invention.”); *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. ___, 131 S. Ct. 2238, 2245-46, 2249-50 (2011) (“Nothing in § 282’s text suggests that Congress meant ... to enact a standard of proof that would rise and fall with the facts of each case”; fact that references were previously before the PTO goes only to the weight the court or jury might assign them; “if the PTO did not have all material facts before it, its considered judgment may lose significant force ... concomitantly, the challenger’s burden to persuade the jury of its invalidity defense by clear and convincing evidence may be easier to sustain.”); *Sciele Pharma Inc. v. Lupin Ltd.*, 684 F.3d 1253, 1260 (Fed. Cir. 2012) (“reasonable to give more weight to new arguments or references ... not explicitly considered by the PTO”).

C. Issues Concerning Breach of Contract, Ownership, Conversion, and Constructive Trust

1. Whether Yochai Konig breached his Employment Agreement with SRI.

- (a) Authority: *Abdelhamid v. Fire Ins. Exch.*, 182 Cal.App.4th 990, 999 (3d Dist. 2010) (“The standard elements of a claim for breach of contract are (1) a contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) damage to plaintiff therefrom.”); Cal. Labor Code § 2870; *Cadence Design*

Sys., Inc. v. Bhandari, 2007 WL 3343085, *5 (N.D. Cal. Nov. 8, 2007) (“[T]here are three independent scenarios in which an agreement assigning an invention to an employer is enforceable under section 2870: (1) The invention was developed using the employer's time or resources; or (2) The invention relates to the employer's business or actual or demonstrably anticipated research or development; or (3) The invention resulted from work performed by the employee for the employer.”); *Cubic Corp. v. Marty*, 185 Cal. App. 3d 438, 451 (4th App. Dist. 1986).

2. Whether Yochai Konig and PUM unlawfully converted SRI’s and Google’s interest in the '040 or '276 patents.
 - (a) Authorities: *Spates v. Dameron Hosp. Assn.*, 114 Cal.App.4th 208, 221 (3d Dist. 2003) ("Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages.")
3. Whether PUM or its predecessors-in-interest are good faith purchasers under 35 U.S.C. § 261.
 - (a) Authorities: 35 U.S.C. § 261; *Filmtec Corp. v. Allied-Signal Inc.*, 939 F.2d 1568, 1573 (Fed. Cir. 1991); *Rhone Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 284 F.3d 1323 (Fed. Cir. 2002).
4. Whether the statute of limitations on Google’s breach-of-contract, ownership, conversion, and/or constructive trust claims was tolled under Delaware Code Title 10, Section 8117.
 - (a) Authorities: 10 Del. C. § 8117; *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochem. Co., Inc.*, 866 A.2d 1, 18 (Del. 2005) (“It is settled law that the purpose and effect of Section 8117 is to toll the statute of limitations as to defendants who, at the time the cause of action accrues, are outside the state and are not otherwise subject to service of process in the state. In those circumstances, the statute of limitations is tolled until the defendant becomes amenable to service of process.”)

5. Whether the statute of limitations on Google's breach-of-contract, ownership, conversion, and/or constructive trust claims was tolled under the discovery rule.

- (a) Authorities: *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004) ("Under the 'discovery rule' the statute is tolled where the injury is 'inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of.'")

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

**OPPOSITION TO PUM’S MOTION *IN LIMINE* TO PRECLUDE ARGUMENT OR
EVIDENCE THAT GOOGLE IS AN OWNER OF THE PATENTS-IN-SUIT OR OTHER
RELATED LEGAL AND EQUITABLE ISSUES**

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A. PUM's Motion Is Vague and Impractical in Terms of Requested Relief

PUM's motion *in limine* regarding ownership and "other related legal and equitable issues" is quite vague in terms of what evidence it actually wishes to preclude. The opening sentence states: "PUM moves *in limine* to preclude Google from presenting argument or evidence: (1) that Google is an owner of the patents-in-suit; (2) that PUM lacks standing to bring this lawsuit; (3) that Google is entitled to a constructive trust; or (4) on Google's claims for conversion." (MIL at 1.) But it is difficult to see what this request means in practice. For example, the evidence supporting Google's ownership claim, constructive trust request, and standing defense is largely the same as the evidence supporting Google's breach-of-contract claim – namely, that Google is the rightful owner of the Asserted Patents because Konig breached his Employment Agreement with SRI and Google has purchased SRI's rights to the Asserted Patents. PUM implicitly concedes that Google's breach of contract claim should go to the jury, as it does not list the breach-of-contract claim as one of the areas that it wishes to preclude. But if evidence supporting the breach-of-contract claim goes before the jury, then evidence supporting the ownership claim, constructive trust request, and standing defense will go before the jury as well. It is largely the same evidence. As just one specific example, the Google-SRI purchase agreement both gives Google standing to bring the breach-of-contract claim as SRI's assignee and also is necessary to establish Google's ownership rights.

B. Google Should Be Allowed to Raise Ownership Issues Before the Jury to Show the Motive for PUM's Changed Position on the Conception Date

As best Google can determine, what PUM is really arguing is that Google should be forced to litigate the breach-of-contract claim in isolation, without mentioning to the jury the likely consequences of a successful breach-of-contract claim – namely, that Google will be declared a rightful owner of the Asserted Patents and PUM will be subjected to a constructive

trust ordering transfer of patent title from PUM to Google. While Google has no intention to lecture the jury on the details of constructive trust law, it is both relevant and important for Google to explain to the jury that a successful breach-of-contract claim will make Google a rightful co-owner of the Patents. This will show the jury the great importance of the breach-of-contract claim, and thus support Google's trial story that PUM strategically flip-flopped on the Asserted Patents' conception date to try to defeat this important new claim.

Specifically, PUM served two interrogatory responses before the breach-of-contract claim was raised stating that the patented inventions were conceived no later than July 1999 – a time when Konig was employed by SRI and required by his Employment Agreement to assign his inventions to SRI. But immediately after Google brought the breach-of-contract claim, PUM served a new interrogatory response changing the conception date to September 1999, right after Konig left SRI. (D.I. 413 at 2-3.) Google believes that PUM's changed story on the conception date was not sincere, but was a strategic attempt to avoid the breach-of-contract claim by taking the patents outside the time period governed by Konig's Employment Agreement. To convince the jury that PUM's changed story was insincere – *i.e.*, to convince the jury that the initial July 1999 conception date is the correct one – it is important for Google to explain why PUM would be so highly motivated to change its story on this issue. This requires telling the jury about the severe consequences that could result if the July 1999 conception date remained – namely, that Konig's rights to the Asserted Patents could be held by Google and PUM would lose ownership of the Patents. For this reason, raising the ownership issues before the jury is very important to effectively litigate the breach-of-contract claim before the jury.

C. PUM's Argument to Preclude Google's Conversion Claim Fails Because Google's Present Equitable Title is Sufficient to Establish Conversion

PUM also argues that Google's conversion claim should be barred from the jury because "Google cannot establish the first element of its conversion claim – that it legally owned or had a right to immediate possession of the patents-in-suit – until after the Court first determines whether Google is entitled to be declared a co-owner of the patents-in-suit." (MIL at 3.)

This argument is wrong as a matter of law. Google concedes that it does not yet have legal title to the patents – it instead has equitable title, based on its status as SRI's assignee and SRI's contractual right to Konig's inventions. *See Arachnid, Inc. v. Merit Indus., Inc.*, 939 F.2d 1574, 1581 (Fed. Cir. 1991) ("Although an agreement to assign in the future inventions not yet developed may vest the promisee with *equitable* rights in those inventions once made, such an agreement does not by itself vest *legal* title to patents on the inventions in the promisee.") (emphasis in original). Indeed, the whole point of Google's constructive trust request is to compel transfer of legal patent title from its wrongful holder (PUM) to its rightful holder (Google). Yet even before Google wins legal title, its present equitable title is perfectly sufficient for a conversion claim. This is hornbook law:

The right to possession may, of course, be based on ownership or title, but it need not be. A merely possessory right is sufficient. In addition, a right of possession is, for the purposes of an action for conversion, sufficiently based on "equitable" ownership.

14A Cal. Jur. 3d Conversion § 54 (emphasis added). Thus, PUM's argument that Google's conversion claim is unripe and should be precluded fails as a matter of law.¹

¹ PUM's position is also illogical. It states that "all argument and evidence of Google's conversion claim should also be heard by the Court and not the jury." (MIL at 3.) But "[c]onversion is a common law tort," which carries a right to a jury trial. *J&J Sports Prods., Inc. v. Orellana*, No. 08-5468, 2010 WL 1576447, *2 n.1 (N.D. Cal. April 19, 2010). It would thus violate the Seventh Amendment for this claim to be heard by the Court, as PUM requests.

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Dated: February 10, 2014
1139995/ 34638

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PERSONALIZED USER MODEL, L.L.P.,)
)
Plaintiff,)
)
v.)
)
GOOGLE, INC.,)
)
Defendant.)
)
-----)
GOOGLE, INC.,) C.A. No. 09-525 (LPS)
)
Counterclaimant,)
)
v.)
)
PERSONALIZED USER MODEL, L.L.P.)
and YOCHAI KONIG,)
)
Counterclaim-Defendants.)
)

PUM’S REPLY IN SUPPORT OF ITS MOTION *IN LIMINE* TO PRECLUDE GOOGLE FROM PRESENTING ARGUMENT OR EVIDENCE THAT IT IS AN OWNER OF THE PATENTS-IN-SUIT OR ON OTHER RELATED LEGAL AND EQUITABLE ISSUES

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February 18, 2014

Google agrees that its claims for a declaration of co-ownership, lack of standing, and constructive trust are not jury issues. Although Google may present evidence on its breach of contract claim, including Google's attempt to acquire patent rights¹ and evidence on conception, it should be precluded from mentioning the relief it seeks in order to unfairly sway the jury on the breach of contract claim. *See, e.g., American Fundware, Inc.*, 831 F. Supp. 1516, 1528 (D. Colo. 1993) (barring data relating to claim for injunctive relief as matter for court not jury). Google also should not be permitted to wrongly mislead the jury that if its conception date is accepted, it would own the patents, and PUM would lose ownership and lack standing.²

Google's assertion that conversion must go to the jury also fails. *See United States v. Bailey*, 288 F. Supp. 2d 1261, 1270 (M.D. Fla. 2003) ("possessory interest [that is] dependent on future events" is insufficient for conversion claim). Google agrees that the employment agreement did not transfer ownership, and thus seeks a declaration of equitable ownership, which is an issue for the Court. Google does not address PUM's cited authority, but instead cites a treatise that equitable ownership suffices for conversion. The treatise and case law make clear, however, that an agreement must actually "create an equitable assignment" of "a property interest" to find equitable ownership for conversion. *See McCafferty v. Gilbank*, 249 Cal. App. 2d 569, 574-76 (Cal. Ct. App. 1967); *Clifford v. Concord Music Grp., Inc.*, 2012 WL 380744, at *3 (N.D. Cal. Feb. 6, 2012) ("mere contractual obligation" does not create property interest).

¹ Contrary to Google's assertion, the SRI purchase agreement (which purported to transfer patent rights) makes no mention of assigning rights to assert a breach of contract claim against Dr. Konig. (*See* Ex. B § 4.) PUM expects to establish at trial that Google has no such rights.

² Google must do more than establish when conception occurred to be declared an owner. For example, it must show its claims are not time-barred, that Section 2870 does not apply, that Dr. Konig's prior assignment did not cut off his ability to assign to Google, *see Bd. of Trustees v. Roche*, 583 F.3d 832, 841-42 (Fed. Cir. 2009), that PUM is not a good faith purchaser for value, and that the Court should impose a constructive trust. Further, Google is wrong that PUM, as legal title holder, lacks standing or would lose ownership (Google has not asserted any claim to the rights assigned by the other inventors).

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February 18, 2014

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EXHIBIT B

REDACTED

EXHIBIT 13

REDACTED
IN ITS
ENTIRETY

EXHIBIT 14

REDACTED
IN ITS
ENTIRETY

EXHIBIT 15

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EXHIBIT 16

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IN ITS
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EXHIBIT 17

**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.,)	
Defendant.)	JURY TRIAL DEMANDED
)	
)	
)	
<hr/>		
GOOGLE, INC.)	
)	
Counterclaimant,)	
v.)	
PERSONALIZED USER MODEL, LLP and)	
YOCHAI KONIG)	
Counterdefendants.)	
)	
)	

**GOOGLE’S MOTION IN LIMINE NO. 3 TO PRECLUDE EVIDENCE THAT
“CONCEIVED” SHOULD BE GIVEN A PATENT-LAW MEANING, DUE TO PUM’S
FAILURE TO DISCLOSE SUCH EVIDENCE IN ITS INTERROGATORY RESPONSES**

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An important issue for Google’s breach-of-contract claim is the interpretation of the word “conceived” in the Konig-SRI Employment Agreement. PUM has indicated that it will present evidence at trial for why “conceived” should be given a patent-law definition. (MSJ Hearing Tr. 126:13-15; 127:4-11.) However, PUM failed to disclose any such evidence in its interrogatory response, after Google served an interrogatory specifically requesting that PUM disclose such evidence.

Specifically, Google’s Interrogatory No. 5 to PUM and Konig requested the following:

If either PUM or KONIG, or both, contend that KONIG and SRI intended for the term “conceived” in KONIG’S employment agreement with SRI, attached as Exhibit A, to mean “conceived” as a matter of Federal patent law, state all facts supporting that contention and IDENTIFY all DOCUMENTS that support that position and all witnesses having knowledge of such facts.

PUM’s and Konig’s response to this interrogatory read, in its entirety:

In addition to the foregoing general objections, Counter-Defendants specifically object to this interrogatory to the extent that it seeks a legal conclusion regarding the term “conceived” which is a term with specific legal meaning. Counter-Defendants further object to this interrogatory because it seeks information not in Counter-Defendants’ possession, custody, or control regarding what “SRI” intended “conceived” to mean in its employment agreement. The specific information relating to what SRI intended “conceived” to mean is currently in the possession, custody, and control of SRI and for this reason Google can receive this information from SRI.

(Ex. A at 9.) Because PUM and Konig failed to disclose a single fact supporting their contention that “conceived” should get a patent law meaning, in response to Google’s interrogatory specifically requesting such information, they should be barred from introducing any evidence on this point at trial. Fed. R. Civ. P. 37(c)(1); *Woods v. DeAngelo Marine Exhaust, Inc.*, 692 F.3d 1272, 1282-83 (Fed. Cir. 2012) (affirming exclusion of evidence under Rule 37(c)(1) where party failed to disclose this evidence in its contention interrogatory response).

PUM cannot demonstrate that its failure to provide this information in its interrogatory response “was substantially justified or is harmless,” so as to avoid preclusion at trial. Fed. R.

Civ. P. 37(c)(1). PUM itself takes the position that the pivotal inquiry into the parties' contractual intent is limited to "outward manifestations [] of the intent at the time of contracting." (MSJ Hearing Tr. 126:5-7 ("Under the objective theory of contract interpretation which is followed in California and I suspect in Delaware as well, it is only what those outward manifestations are of the intent at the time of contracting which are evidential.")). Thus, there is no justification for PUM's failure to disclose whatever outward manifestations of intent that it intends to rely on for interpreting the word "conceived." And PUM's silence on this issue is certainly not harmless, as it prevents Google from ascertaining what evidence PUM intends to rely on for its contract interpretation position. With trial barely a month away, this severely prejudices Google's own trial preparation.

It is no excuse for PUM to say that "[t]he specific information relating to what SRI intended 'conceived' to mean is currently in the possession, custody, and control of SRI," because PUM again takes the position that only SRI's outward conduct is relevant to determining SRI's intent. This outward conduct would, of course, be available to PUM and Konig. Furthermore, PUM would have access to any facts regarding Konig's intent, whether that intent was expressed outwardly or kept internally. Yet PUM failed to disclose any facts about any aspect of the parties' intent – be it outward intent or inward intent, SRI's intent or Konig's intent. Even though the parties' intent is the dispositive question for contract interpretation, PUM's interrogatory response on this issue is a complete blank slate. Accordingly, PUM (and Konig) should be barred at trial from introducing any evidence that "conceived" in the Konig-SRI Agreement should be given a patent-law meaning.

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Dated: February 10, 2014
1139995/ 34638

EXHIBIT A

REDACTED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PERSONALIZED USER MODEL, L.L.P.,)
)
Plaintiff,)
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v.)
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GOOGLE, INC.,)
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Defendant.)
C.A. No. 09-525 (LPS)

GOOGLE, INC.,)
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Counterclaimant,)
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v.)
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PERSONALIZED USER MODEL, L.L.P.)
and YOCHAI KONIG,)
)
Counterclaim-Defendants.)

**PUM’S RESPONSE TO GOOGLE’S MOTION IN LIMINE NO. 3
TO PRECLUDE EVIDENCE THAT “CONCEIVED” SHOULD BE
GIVEN A PATENT LAW MEANING**

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February 14, 2014

Google's Motion *in Limine* No. 3, which seeks to preclude PUM from offering evidence that "conceived" should be given its patent law meaning, should be denied because it amounts to nothing more than a fourth attempt for summary judgment on its ownership defense, following the failure of its three prior attempts.¹

As the Court is well aware, Google already argued in its summary judgment motion that it should be declared a co-owner of the patents-in-suit based on its argument that the lay definition, rather than the patent law definition, of conception should apply. (*See* D.I. 413 at 8.) Further, the *sole* basis for Google's motion for reconsideration (after the denial of its summary judgment motion) was the alleged absence of conflicting evidence as to whether the lay or legal definition of conception was intended in the employment agreement. (*See, e.g.*, D.I. 523 at 1.) Notwithstanding the centrality of this issue to its motions, in none of its many submissions did Google ever argue that PUM had not offered or could not offer any evidence in support of the patent law definition based on its interrogatory responses. (*See, e.g.*, D.I. Nos. 413, 493, 523, 531). In fact, Google did not even mention in any of its submissions PUM's response to Google's Interrogatory No. 5, on which Google now relies.

It is well established that, now after the denial of all of Google's earlier motions, Google cannot raise arguments that could and should have been raised in connection therewith. *See, e.g.*, *Cooper Notification Inc. v. Twitter Inc.*, C.A. No. 09-865-LPS, Order at 3-4 (D. Del. July 16, 2012) (denying motion for reconsideration, including because issues raised were "beyond the scope of defendant's summary judgment motions in the Court's opinion"); *Flashseats LLC v. Paciolan Inc.*, C.A. No. 07-575-LPS, 2011 WL 4501320, at *2 (D. Del. Sept. 28, 2011) (quoting

¹ Google previously moved for leave to file a motion for summary judgment based on lack of standing when it first filed its third party complaint. (D.I. 196). It then moved for summary judgment again after the conclusion of fact and expert discovery (D.I. 412), and then moved for reconsideration. (D.I. 523). All of these motions were denied.

Karr v. Castle, 768 F.Supp. 1087, 1093 (D. Del. 1991) (“Reconsideration should not be granted where it would merely accomplish repetition of arguments that were or should have been presented to the Court previously.”). Having filed and lost multiple summary judgment motions, it is too late now to seek another bite at the apple in the guise of preclusion.

Google next complains that in the particular interrogatory response on which Google now focuses, PUM responded that “the specific information relating to what SRI intended conceive to mean, is currently in the possession, custody and control of SRI.” Google ignores the fact, however, that this response was provided on April 11, 2011, before any SRI-related depositions were taken. Since that time, the evidence on which both parties will rely relating to the meaning of the employment agreement not only has been well-known to and hotly disputed by the parties, but was before the Court in connection with the summary judgment briefing. Further, Google does not, and cannot, contend that it ever complained to PUM about this interrogatory response or asked that it be supplemented.

Far from being unfairly surprised, in its prior summary judgment submissions over a year ago, Google relied on PUM’s Fourth Supplemental Response to Interrogatory No. 1, which Google expressly understood as asserting a patent law definition of “conception.” *See, e.g.*, D.I. 413 at 8 (asserting that this response relied on the “standard used to determine conception under federal patent law”) (emphasis in original). *See also* D.I. 523 at 2 (noting PUM’s argument that Dr. Konig had not yet conceived the invention in the patent law sense). Further, the evidence on which PUM relies was discussed in that briefing and was referenced by the Court in its Opinion. (*See, e.g.*, D.I. 530 at 4-5; D.I. 537 at 3.) At no point did Google argue that this evidence was not properly disclosed.

Finally, Google cites the preclusion standard of Federal Rule of Civil Procedure 37(c)(1) but fails to apply it. The decision whether to preclude evidence is based on consideration of the *Pennypack* factors, which include: “(1) the importance of the information withheld; (2) the prejudice or surprise to the party against whom the evidence is offered; (3) the likelihood of disruption of the trial; (4) the possibility of curing the prejudice; (5) the explanation for the failure to disclose; and (6) the presence of bad faith or willfulness in not disclosing the evidence (the ‘*Pennypack* factors’).” *Abbott Labs. v. Lupin Ltd.*, No. 09-152-LPS, 2011 WL 1897322, at *3 (D. Del. May 19, 2011) (citing *Meyers v. Pennypack Woods Home Ownership Ass’n*, 559 F.2d 894, 905 (3d Cir. 1977)). Google does not even begin to satisfy these standards. Most importantly, the evidence Google seeks to preclude is undeniably important. Google in essence seeks to preclude PUM from asserting a later invention date based on the patent law definition. Google also cannot establish that any information whatsoever was withheld; nor does it demonstrate any prejudice or surprise. Indeed, the very fact that Google never even referred to this interrogatory response in any of its many submissions confirms that it never relied on it. Further, there is no unfair surprise, or any risk of disrupting the trial, because both parties will rely on the factual record that is well known to both of them. Nor does Google even try to demonstrate any bad faith or willfulness by PUM in failing to disclose any evidence.

At base, Google is simply seeking another backdoor attempt at summary judgment by moving to preclude PUM from presenting evidence that conception should be given a patent law meaning.² Google’s motion *in limine* should be denied.

² Of course, to prevail on its claims, Google must show more than just that Dr. Konig conceived of the inventions while he was employed at SRI. Google must also show that the inventions fell within the scope of the agreement, that its claims are not time-barred and that Dr. Konig’s inventions were not protected under section 2870 of the California Labor Code.

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February 14, 2014

**IN THE UNITED STATES DISTRICT COURT
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Counterclaimant,)	
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PERSONALIZED USER MODEL, LLP and)	
YOCHAI KONIG)	
)	
Counterdefendants.)	

**REPLY IN SUPPORT OF GOOGLE’S MOTION *IN LIMINE* TO PRECLUDE
EVIDENCE THAT “CONCEIVED” SHOULD BE GIVEN A PATENT-LAW MEANING**

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Washington, D.C. 20001-3706

PUM does not dispute that it disclosed no facts supporting its contention on the meaning of “conceived,” in response to a Google interrogatory seeking “all facts” on this subject. PUM just argues that this failure should have no consequences. PUM’s arguments are unpersuasive.

This is not another “attempt for summary judgment” on the contract claim or ownership defense. (Opp., 1.) As PUM acknowledges, this motion does not address many issues relevant to that claim and defense, including Section 2870 or the statute of limitations. (Opp., 3 n.2.) Nor does this motion repeat arguments from MSJ. Google argued at MSJ that there is no conflicting evidence on the meaning of “conceived.” (D.I. 523, 1.) The Court disagreed. (D.I. 537, 3.) But the ultimate question of whether an evidentiary conflict exists is distinct from the *in limine* question of whether the Court should preclude evidence not properly disclosed.¹

PUM argues that Google served its interrogatory before the SRI depositions and never asked PUM to supplement its response. (Opp., 2.) Yet PUM does not argue that evidence about the parties’ outward intent depends on the SRI depositions. Anyway, if PUM believed that the depositions provided new evidence, it was PUM’s duty to supplement its response accordingly. Finally, PUM’s failure was not harmless. In the *Abbott* case cited by PUM, this Court found harmlessness from a tardy expert disclosure because the opposing expert could and did rebut it. *Abbott*, 2011 WL 1897322, *5. Yet PUM never supplemented its interrogatory response.

Failure to offer any substantive response to an important interrogatory is not harmless.

¹ While PUM suggests that Google should have raised the preclusion issue at MSJ, PUM did not even assert the existence of conflicting evidence until the MSJ briefing was complete, in its Opp. to Google’s Motion for Reconsideration. (D.I. 530, 4-5.) Given that PUM opposed Google replying to its Opp. at all, it is hardly surprising that Google’s Reconsideration Reply did not raise preclusion in addition to addressing the facts PUM raised in its Opp. In any event, PUM cites no case finding “waiver” in a situation remotely like here. Instead, PUM’s cited cases stand for the unremarkable proposition that a party may not seek reconsideration of an order based on issues not previously raised in briefing leading up to that order.

Respectfully submitted,

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EXHIBIT 18

EXHIBIT 18

PUM'S LIST OF MISCELLANEOUS ISSUES

PUM submits the following list of issues it believes should be addressed at the Pretrial Conference. PUM reserves the right to modify or supplement this list at any time before the Conference, including in response to Google's list of miscellaneous issues.

1. Google should be prohibited from rearguing the Court's ruling on Google's motion to dismiss for lack of standing. (D.I. 396.) The Court rejected as a legal matter Google's theory that title never passed to PUM because PUM allegedly did not exist as a legal entity at the time Levino Ltd. assigned the patents-in-suit to PUM. (*Id.* at 2.) There are no additional factual disputes to be resolved concerning this assignment. Google should not be permitted to reargue that issue before the jury.

2. Notwithstanding that Google has had almost five years to develop its invalidity case, in its January 31, 2014 election of references, Google disclosed for the first time that it would rely on two articles authored by PUM's *infringement* expert, Dr. Pazzani, as part of its *obviousness* case. On the same day, it included Dr. Pazzani on its witness list, despite having never listed him in its disclosures.

There is no dispute that Google's invalidity expert, Dr. Jordan, did not even mention the Pazzani references in his 198-page expert report. Therefore, PUM's invalidity expert, Dr. Carbonell, had no reason to address these references in his rebuttal expert report.¹ Nor has

¹ Although Google did identify the Pazzani references among many other references in an interrogatory response, PUM reasonably assumed that Google had narrowed its case to only those references discussed in Google's expert report, particularly given that Dr. Jordan cannot offer any opinions beyond the scope of his report. Google also asserts that its examination of Dr. Pazzani on these references at his deposition, which was entirely irrelevant to Dr. Pazzani's *infringement* opinions, somehow sufficed to put PUM on notice. Not so. It was not until Google served its sections of the Pretrial Order on

Dr. Carbonell formulated any opinions directed to the new obviousness combinations that Google now seeks to assert.

Further, Google had never identified Dr. Pazzani as a fact witness on which it would rely, notwithstanding having identified over 40 prior art witnesses in its disclosures. PUM therefore had no reason to expect that Google would attempt to rely on Dr. Pazzani's testimony to introduce these references. *See Pfizer, Inc. v. Ranbaxy Labs., Ltd.*, C.A. No. 03-209 (JJF), 2005 WL 2296613 (D. Del. Sept. 20, 2005) (precluding Pfizer from relying on Ranbaxy's experts where Pfizer had failed to timely designate the experts as witnesses and the statements were not authorized statements for a party pursuant to Fed. R. Evid. 801(d)(2)(C)).

3. Google also should be precluded from calling Matthew Montebello, one of the 40 potential prior art witnesses Google had identified in its disclosures. Google only identified Mr. Montebello as a witness it would call for trial on January 31, 2014, with its sections of the Pretrial Order. Google continued to identify more than 20 prior art witnesses on which it may rely as late as December 2013, when it served its fifth supplemental disclosure. Google then refused to answer PUM's question during the parties' meet and confer as to whether Google actually intended to bring any prior art witness to trial.

Mr. Montebello was never disclosed as an expert witness and was not previously deposed. Further, 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. *Cont'l Oil Co. v. Cole*, 634 F.2d 188, 196 (5th Cir. 1981). *See also Valmet Paper Mach., Inc. v. Beloit Coro.*, 895 F. Supp. 1158, 1167 (W.D. Wis.1995), *rev'd on*

January 31 that Google provided any notice that it would actually rely on those references as part of its obviousness case. Nor could that questioning alleviate any prejudice to PUM because the experts had already rendered their opinions and served their reports prior to that deposition.

other grounds, 105 F.3d 1409 (Fed. Cir. 1997) (excluding the testimony of a prior art witness, holding that “to the extent the testimony was not cumulative, it tended to enlarge impermissibly on the teachings of the patent”). This is particularly of concern here where Google seeks to read Mr. Montebello’s “position paper” on the detailed scope of the claims at issue here. (*See* Ex. A).

Google also rejected PUM’s request for a live or video deposition of Mr. Montebello before the Pretrial Conference, so that the parties and the Court would be able to assess the permissible scope, if any, of Mr. Montebello’s testimony. Google asserted that PUM is not entitled to a deposition simply because he was previously disclosed, somehow suggesting that PUM should have taken the depositions of each of the hundreds of potential witnesses Google identified during fact discovery. Google only offered to make Mr. Montebello available for deposition in connection with the trial, but that comes too late because it does not provide PUM an adequate opportunity to learn of Mr. Montebello’s proposed testimony or to prepare its case. Further, PUM should not have its trial preparation disrupted with the taking of a deposition.

PUM respectfully requests an opportunity to present to the Court its objections to Mr. Montebello’s testimony following his deposition.

4. Google should be precluded from referring to any purported recent changes in its technology, including changes to the use of Google Search and [REDACTED], and Google Search Ads, as to which Google only just provided notice to PUM. These changes were not disclosed during fact discovery, or fact discovery on these changes was refused. There comes a time in each case, and in particular this five-year-old case, that discovery must come to a close. It would be prejudicial to PUM if Google were permitted to refer to documents that it hand selected for production on the eve of trial, as to which PUM has had no discovery. Moreover, with damages bifurcated, the degree of use of the accused products is not currently at issue and may be

addressed later, when the damages trial takes place. Contrary to Google's assertions, such changes would have marginal value at best to commercial success, coming nearly a decade after the '040 patent issued and five years after this lawsuit was filed.

5. 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.

6. As set forth in PUM's motion *in limine*, Google's attempts to introduce evidence of the ongoing reexamination proceedings is improper. Just prior to the filing of this Pretrial Order, Google reaffirmed its intent to rely on such evidence. On February 14, 2014, Google served a "supplemental" expert report of Dr. Jordan, without leave of Court, which purports to rely on additional materials from the reexamination proceedings.

7. Google's attorneys and experts should be prohibited from rearguing claim construction positions rejected by the Court in its *Markman* opinion, as set forth, for example, in PUM's Motion to exclude certain testimony of Dr. Fox under Daubert (D.I. 555).

8. The order and sequence in which the Court wishes to try Google's breach of contract claims, and PUM's defenses thereto.

9. How the Court wishes to decide the equitable issues in this case, such Google's claims for a declaration of ownership, constructive trust, conversion, and PUM's claim of laches. PUM suggests that a hearing be set following the conclusion of the jury trial at which argument can be presented.

10. How the Court wishes to decide the legal issues relating to PUM's statute of limitations defense, such as whether 10 Del. C. § 8121 (Delaware's borrowing statute) or § 8117 applies.

11. Google requests guidance concerning witnesses on which both sides will rely. Although Google proposes to examine Dr. Konig during PUM's case, and thus exceed the scope of direct, it does not address Google witnesses on which both sides will rely. PUM proposes that to the extent PUM wishes to examine a Google witness live for its case-in-chief that the Google witness be made available to PUM during Google's case and that PUM be permitted to exceed the scope of direct. PUM further proposes that its infringement case be left open pending completion of this testimony.

12. Google's listing of Reuben Benquessous, PUM's general partner, and Levy Benaim, a PUM limited partner, on its witness list, notwithstanding that Google failed to identify them as potential witnesses during fact or expert discovery, which closed 14 months ago. Google has not provided any reason why their testimony would be relevant to any issue in this case. Instead, Google has made clear that it has added them solely for purposes of harassment because PUM indicated that its principals wish to attend the trial.

EXHIBIT 19

EXHIBIT 19 TO PRETRIAL ORDER
GOOGLE'S LIST OF MISCELLANEOUS ISSUES

Google submits the following list of issues it believes should be addressed at the Pretrial Conference. Google reserves the right to modify or supplement this list at any time before the Conference.

1. By the very nature of this patent infringement suit, PUM has access to some of Google's most sensitive confidential information. Due to the strong protective order entered by this Court, Google has produced hundred of thousands of pages of materials that include highly sensitive engineering documents without troubling the Court with the concerns the company would otherwise have. While Google respects the right of public access to judicial proceedings, public dissemination of this information would cause considerable harm to Google's competitive standing; allowing companies to compete against Google without the years of refinement and significant financial outlay Google has invested in these trade secrets and other sensitive information. The strong public interest in protecting this kind of sensitive commercial information from disclosure outweighs the common law presumption of public access to judicial proceedings. Thus, testimony related to the confidential operations of Google's products and systems, particularly any source code, should be shielded from public disclosure. Accordingly, Google asks the Court to close the courtroom whenever testimony regarding Google's confidential commercial information is offered at trial, and to seal all documents and portions of transcripts discussing Google's sensitive commercial information. Google will work with PUM and the Court to limit any such closings and ensure the least disruption to the trial proceedings.

2. Google understands that in denying its motion to dismiss for lack of standing, the Court rejected Google's assertion that title never passed to PUM because PUM did not exist as a legal entity at the time Levino Ltd. assigned the patents-in-suit to PUM. (D.I. 396.) Accordingly, Google understands that this argument has been rejected as a matter of law and that the Court has found no related factual issues remain to be tried before the jury on this issue. However, if this incorrect, Google should be permitted to present evidence and argument on the issue of standing to the jury. Google requests clarification of the Court's finding on this issue.
3. Google's "Smart Ad Selection System" is sometimes referred to within the company by the acronym SmartASS. Google asked witnesses to refer to the system as SmartAds during depositions, but on occasion they or counsel used the term SmartASS. In addition, the term SmartASS appears in documents included on the parties' exhibit lists. Google requests that parties and witnesses refrain from using the term SmartASS in the presence of the jury. Google also requests that the term SmartASS be replaced with SmartAds in documents shown to the jury and in deposition designations played to the jury. PUM has indicated that it does not oppose Google's proposal herein.
4. Google believes that the meaning of the word "conceived" in Yochai Konig's employment agreement with SRI is an issue of law to be decided by the Court and that there is no conflicting extrinsic evidence such that this issue could be decided by the jury. However, Google understands that in denying Google's motion for summary judgment on its counterclaim of breach of contract and Google's motion for reconsideration, the Court rejected Google's position and will let the jury decide the meaning of the word

“conceived.” (*See* D.I. 521; D.I. 537.) Google requests clarification if this understanding is incorrect.

Google responds below to the issues PUM has indicated should be addressed at the Pretrial Conference.

1. In its portions of the Pretrial Order (*see* Exhibit 18), PUM requests that Google and its experts be prohibited from rearguing claim construction positions. This, however, should apply to both parties. Both parties and their experts should be prohibited from rearguing claim construction positions rejected by the Court in its *Markman* opinion. The parties should apply the Court’s claim constructions.
2. PUM includes in Exhibit 2 allegations regarding indirect infringement. As detailed in Google’s Reply in Support of Google’s Motion *in Limine* To Preclude Evidence or Arguments on Copying or Pre-Suit Knowledge, PUM did not disclose in discovery (including interrogatory responses and its infringement expert’s report on infringement) that it contends Google indirectly infringes, or any facts to support such a claim. Thus, there are no legal and factual issues to be addressed at trial on indirect infringement to the jury on this issue and PUM, PUM should not be allowed to do so. As also explained in Google’s Reply to MIL No. 1, PUM should not be allowed to use a claim of indirect infringement never disclosed in discovery as a way to introduce the pre-suit letters that are the subject of MIL No. 1.
3. PUM requests that Google be precluded from relying on PUM’s infringement expert, Dr. Pazzani’s articles as obviousness references. (*See* Exhibit 18.) Initially, this request is an improper motion *in limine* that should be disregarded by the Court.

In any event, as PUM admits, Google identified Dr. Pazzani’s articles as prior art

in an interrogatory response served on June 9, 2011. And Google questioned Dr. Pazzani about those articles during his deposition. Thus, PUM has long been on notice that Google considered his articles to be prior art. That Google's invalidity expert did not rely on them does not mean they are inadmissible.

Indeed, PUM does not cite any case which indicates that Google can be precluded from providing evidence of the state of the art separate and apart from what an expert relies on. Nor could it. Obviousness is a question of law, and “precedent does not require ‘expert’ opinions on matters of law.” *Soverain Software LLC v. Newegg Inc.*, 705 F.3d 1333, 1336, 1341 (Fed. Cir. 2013); *see also Friskit, Inc. v. RealNetworks, Inc.*, 499 F. Supp. 2d 1145 (N.D. Cal. 2007), *aff’d per curiam*, 306 Fed. Appx. 610 (Fed. Cir. 2009) (granting summary judgment of obviousness without relying on expert testimony). PUM also cannot demonstrate any prejudice here. The case cited by PUM, *Pfizer, Inc. v. Ranbaxy Labs., Ltd.*, 2005 WL 2296613 (D. Del. Sept. 20, 2005), does not support PUM’s position. That case holds that an opposing party’s expert’s deposition testimony does not fall within the hearsay exception for statements by a person who has been authorized by a party to “make a statement concerning the subject,” under F.R.E. 801(d)(2)(C). *Id.* Dr. Pazzani is listed as one of PUM’s live witnesses, so Google should be able to introduce his two prior art articles through his live testimony.

4. PUM also asks that Google be precluded Matthew Montebello from testifying at trial. Again, this request is an improper motion *in limine* that should be disregarded by the Court.

Google disclosed Mr. Montebello in its Initial Disclosures on May 4, 2011, his article was disclosed as prior art in an interrogatory response served on May 12, 2011,

and Google's invalidity expert relied on his article as anticipatory prior art. And while PUM suggests that Google should have disclosed Mr. Montebello earlier as a “trial witness,” Google disclosed him as a trial witness the day such disclosures were due, January 31, 2014. Here too, there is no prejudice. PUM made no effort to take any discovery as to any prior witness throughout the case, and never even asked Google which prior art witnesses it might rely on at trial during discovery.

Nevertheless, and notwithstanding the fact that it is well after the close of fact discovery, Google told PUM it would not object to Mr. Montebello (who resides in Malta and is not in Google's control) being deposed in the U.S. prior to trial. Google proposed that Mr. Montebello travel to the U.S. early for trial and be deposed prior to the start of trial when counsel will likely all be in Wilmington, which Mr. Montebello is willing to do. PUM has indicated it intends to proceed with this deposition.

5. PUM indicated in Exhibit 18 that it wishes to discuss the number of Google witnesses included on Google's witness list. As Google has explained to PUM and the Court (Dkt. No. 574), the number of potential live witnesses on Google's witness list is a direct result of PUM's own trial witness list and the unreasonable breadth of PUM's infringement case. PUM initially designated deposition testimony from 15 Google witnesses (current and former Google employees) and 24 witnesses total. It is unlikely that PUM intends to play all of the deposition testimony it designated. PUM takes issue with the fact that Google initially listed 13 of those Google witnesses as potential live witnesses. In other words, PUM apparently believes that it will need to rely on these witnesses' testimony to prove its infringement claims, but is seeking to preclude Google from having the ability to rely on those same witnesses' testimony to rebut PUM's claims. This is patently

unfair. In the course of preparing the Joint Pretrial Order, PUM has dropped two accused products, which resulted in PUM removing one Google witness from PUM's witness list. Google has removed the same witness, Andre Rohe, from its own witness list based on PUM's representation that it is dropping Google News from its list of accused products.

6. In Exhibit 18, PUM proposes that PUM be permitted to examine Google's live witnesses during Google's case and that PUM be permitted to exceed the scope of Google's direct examination. PUM further proposes that its case be left open pending completion of this testimony. Google does not agree to this proposal.

PUM has taken 19 depositions in this case. It has designated nearly 34 hours of deposition testimony. Rather than narrow its case, PUM suggests it wants to wait until Google puts on its case and try its case through the witnesses Google calls in its case. PUM is the plaintiff asserting that Google infringes its patents. The case that Google puts on to rebut PUM's case-in-chief on infringement, including which witnesses Google will call live, necessarily depends on the case-in-chief that PUM presents, including which witnesses or deposition testimony PUM presents, and which theories PUM presents. What PUM proposes will effectively allow PUM to further delay settling and narrowing PUM's actual infringement case. It would also unfairly force Google to put on a defense rebutting an infringement case that has not even been fully presented or that may change or evolve even after PUM's case in chief is done. PUM should to provide the evidence it believes it needs in its case-in-chief using the depositions it has taken of Google's witnesses.

Relatedly, PUM identifies Yochai Konig as a witness that it “may call” live. Rather than put on its affirmative case during PUM’s case with Mr. Konig’s testimony, Google intends to call Mr. Konig live during its case, but seeks guidance from the Court if its preference is for Mr. Konig to take the stand only once.

7. PUM requests that Google be precluded from referring to and presenting evidence of recent changes in its technology, including changes to the use of Google Search and [REDACTED] (See Exhibit 18.) This request is yet another improper motion *in limine* that should be disregarded by the Court. However, to the extent that the Court considers PUM’s request, Google does not believe that it should be so precluded. Google could not disclose these changes during fact discovery because they had not yet occurred or been planned. For example, In August 2012, Google informed PUM that [REDACTED] that PUM accuses of infringing the patents-in-suit in connection with Google Search would be phased out. Google offered to provide PUM discovery on this change, but PUM chose not to pursue it. On January 16, 2014, Google produced documents from October 2013 – January 2014 concerning the planned elimination of the [REDACTED] functionality before trial.

There is no reason why Google should be precluded from informing the jury that Google does not use some of the accused functionality for some of the accused products anymore, or is planning to discontinue using those products, as PUM will presumably argue that its patents and their alleged use in Google’s products are of great importance. Also, as purported evidence of secondary considerations of non-obviousness, PUM’s invalidity expert points to purposed commercial success from Google’s accused products. If PUM is permitted to introduce such evidence, and it should not as there is no nexus to

the accused functionality, Google should be permitted to refute it by showing that the accused functionalities did not even contribute to those revenues. Similarly, PUM's invalidity expert opined that Google's "continued adoption of the patented technology, for example, in [REDACTED]" is evidence of the patents' non-obviousness. Again, Google should be permitted to refute this argument by explaining that it is eliminating that functionality.

8. PUM notes in Exhibit 18 that Dr. Jordan served a supplemental report on February 14, 2014. This supplemental report is very limited; it only explains what has occurred in the *inter partes* reexaminations of the patents-in-suit since his last report was served. That is, the Examiner has issued Final Office Actions rejecting all asserted claims of both patents-in-suit, and PUM has appealed those decisions to the PTAB. To the extent that evidence or argument regarding the reexaminations is permitted (as it should be), Dr. Jordan should be able to provide the very minimal additional information referenced in his supplemental report so that the jury has current information.
9. In Exhibit 18, PUM suggests a hearing set following the conclusion of the jury trial at which argument can be presented. Google agrees with this approach, provided that such hearing be scheduled at a mutually convenient time for the parties and the Court.
10. In Exhibit 18, PUM indicates that it wishes to discuss Google's listing of Reuben Benquessos (Banks) and Levy Benaim, on its Fifth Supplemental Initial Disclosures. Google has never stated that it listed these witnesses "solely for purposes of harassment" as PUM states. Rather, Google has repeatedly explained to PUM that it is presently not planning to call either witness, but reserves its right to do so based on PUM's recent

representation of their importance to PUM and the potential that either is implicated in testimony and theories presented by PUM at trial. Both of these witnesses are individuals that PUM represented would be present for trial, and that the trial needed to be scheduled such that they could be available to attend.

EXHIBIT 20

EXHIBIT 20 TO PRETRIAL ORDER
GOOGLE'S IDENTIFICATION OF OBVIOUSNESS PRIOR ART REFERENCES AND
"COMBINATIONS"

Pursuant to the Court's oral order on January 27, 2013 and the Court's January 30, 2014 Order (D.N. 567), Google identifies herein the reduction of prior art references on which it will rely to establish obviousness of the asserted claims of the patents-in-suit. Under that Order, the Court held that Google may not rely on more than ten prior art references to make its obviousness case. The Court further held that Google may rely on no more than 15 obviousness "combinations" of no more than six references each. In light of the foregoing, Google intends to rely on the prior art references and "combinations" of references listed below to establish obviousness of the asserted claims.

Set forth below are the eight prior art references Google identified pursuant to the Court's Order:

1. "Personal WebWatcher: design and implementation" by Dunja Mladenic ("Mladenic");
2. "Collecting User Access Patterns for Building User Profiles and Collaborative Filtering" by Ahmad M. Ahmad Wasfi ("Wasfi");
3. "A Personal Evolvable Advisor for WWW Knowledge-Based Systems" by M. Montebello, W.A. Gray, and S. Hurley ("Montebello");
4. Autonomy Agentware ("Autonomy");
5. U.S. Patent No. 7,631,032 to Refuah ("Refuah");
6. "WebWatcher: A Tour Guide for the World Wide Web" by Joachims, Freitag, and Mitchell ("Joachims");
7. "Syskill & Webert: Identifying interesting web sites," by Michael Pazzani, Jack Muramatsu & Daniel Billsus ("Pazzani 1"); and
8. "Learning and Revising User Profiles: The Identification of Interesting Web Sites," by Michael Pazzani and Daniel Billsus ("Pazzani 2").

Set forth below are the fifteen groups of prior art references, the "combinations," identified by Google pursuant to the Court's Order that Google may rely to show the obviousness of the asserted claims:

1. Mladenic and Wasfi and Montebello
2. Mladenic and Wasfi and Montebello and Joachims
3. Mladenic and Wasfi and Montebello and Pazzani 1 and Pazzani 2

4. Mladenic and Wasfi and Montebello and Refuah
5. Mladenic and Wasfi and Montebello and Joachims and Refuah
6. Mladenic and Wasfi and Montebello and Autonomy
7. Mladenic and Wasfi and Montebello and Joachims and Autonomy
8. Mladenic and Refuah
9. Mladenic and Montebello
10. Mladenic and Autonomy
11. Montebello and Refuah
12. Montebello and Autonomy
13. Wasfi and Montebello
14. Wasfi and Refuah
15. Wasfi and Autonomy

In *KSR Intern. Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007), the Supreme Court noted “[t]o determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art.” As in *KSR*, Google may supplement the disclosures of the references identified above by experience and background information and knowledge of one of skill in the relevant art, such as known concepts, tools, and features used in machine learning, search engines, and information retrieval. In relation to the state of the art and the knowledge of one skilled in art, Google may also rely on, among other things, admissions and statements in the patents-at-issue, admissions and statements from PUM, and its witnesses and experts, and testimony of other witnesses, including Google’s experts.

Further, Google's "combinations" may change based on changes in PUM's allegations, asserted claims, and stated positions and expert opinions and testimony on the state of the art, ordinary skill in the art, or disclosures in the art, subsequent Court rulings, or as part of further narrowing of the issues.