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March 9, 2014

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

VIA ELECTRONIC FILING

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

Dear Judge Stark:

On behalf of PUM, we write in response to Google's letter of earlier today regarding PUM's deposition designations for the second day of trial. Google's two-page supplemental "explanation" is improper and contrary to the Court's instruction at the Pretrial Conference that the parties limit themselves to "one sentence" objections to deposition designations. Furthermore, Google sent the text of its letter to PUM less than an hour and a half before the parties' joint submission was due while also reserving the right to make "additional edits" before filing. To the extent, however, that the Court entertains Google's arguments, we write to correct the record.

Notably, Google does not, and cannot, contest that PUM's designations were timely. Instead it complains that PUM's designations are "drastically different" from those disclosed in the Pretrial Order. That is incorrect. PUM's designations are not different, but rather a subset of previous disclosures made when more issues, more prior art, more claims, and more accused products were in the case. PUM's disclosures were also made before the Court ruled on the parties' motions *in limine* and other issues, and at a time when PUM believed it may have as many as 22 hours for its trial presentation rather than 17. Google feigns shock that PUM reduced its designations "drastically," but such reduction is not at all uncommon prior to, or during, trial. PUM fully expects that Google will do the same and will not play in its case all of the 12-plus hours of deposition testimony it designated, particularly given the fact that it plans to elicit testimony from as many as 21 live witnesses. Although Google complains of the burden, this so-called "drastic" reduction of designations, if anything simplifies the task of providing counterdesignations. Indeed, now a day later, Google has not pointed to any further designations

The Honorable Leonard P. Stark

March 9, 2014

Page 2

it wishes to make, suggesting that Google was more interested in complaining rather than seeking any specific relief.

Second, the designations PUM disclosed today do not include any testimony on issues that relate to later phases of the case. Although Google contends that PUM's method is inconsistent with the Pretrial Order, it nevertheless "does not object" so long as Google does not get charged for time spent playing duplicative testimony "for completeness." But there is no reason the parties should be repeating counterdesignations. Google should not be permitted to make overbroad counterdesignations that do not relate to the same subject matter, and then seek to play them again later in the case.

Google's position is also inconsistent with its own arguments on order of proof. It was only four days ago that Google objected to PUM's proposed order of proofs at trial, including PUM's proposal that Dr. Konig testify once and on all issues. (*See* D.I. 623.) PUM's proposal was based, in part, on the proposition that having Dr. Konig "called to the stand multiple times" would result in "cumulative and disjointed testimony." (*Id.* at 2.) Google protested and the Court ultimately adopted Google's position, finding that Dr. Konig's testimony regarding infringement, validity, and breach of contract "can be segregated." (D.I. 627 at 2.) There is no reason that the testimony of witnesses testifying via deposition cannot be handled the same way. Moreover, as to Dr. Konig's testimony, the Court cautioned Google that it would "not be permitted to engage in redundant cross-examination." (*Id.*) PUM believes that the parties can similarly avoid designating redundant deposition testimony. In any event, Google should be charged for all of the testimony it designates.

Respectfully,

/s/ Karen Jacobs

Karen Jacobs (#2881)

KJ/lm

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

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