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March 13, 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:

We write in reply to Google's March 11 letter (D.I. 643) concerning its final election of anticipatory references and obviousness combinations for trial. Although PUM had thought that the parties were in agreement on Google's invalidity theories, it now appears that Google is seeking to reserve on which obviousness combinations it will rely at trial. Indeed, PUM attempted to confirm the scope of Google's invalidity case again last night but Google did not respond. This is improper.

During the January 27, 2014 teleconference, the Court ordered Google to provide a list of no more than 10 prior art references and no more than 15 obviousness combinations that it intended to assert at trial. (*See* D.I. 569 at 2.) Google provided that list to PUM on January 31, and it was incorporated into the Joint Pretrial Order. (Ex. A.) The Court's Order following the January 27 teleconference also required the parties to "provide notice of any claims, products, combinations, or other issues they will not pursue at trial" on March 3. (D.I. 569 at 2.) Google received a one-day extension to that deadline at the pretrial conference. Further, Google proposed, and the Court agreed, that "defendant has until March 4th to do any further reduction, and then we're locked in. You are going to have to use some trial time for whatever is still in the case on March 4th." (D.I. 619 at 122.)

On March 4, Google dropped two references but did not indicate which of the remaining references were primary references or the obviousness combinations on which they would rely. Only a day later did Google confirm which references were primary references. PUM asked Google to confirm that it was still relying on all of the remaining obviousness combinations, but Google did not respond, and refused to include this information in the March 8 submission to the

Court. It was not until Google filed its March 11 response disagreeing with PUM's listing of references that it became clear that Google was seeking to reserve on which obviousness combinations it would rely at trial.

Google's "reservation" is contrary to the Court's orders, which first required Google to identify its obviousness combinations (D.I. 569 at 2), and then required the parties to make binding elections on the theories they would pursue at trial. (D.I. 619 at 122.) Having itself proposed that the parties be bound by their elections, Google cannot reserve on which combinations it will rely at trial.

PUM therefore requests that Google be required to present all of the obviousness combinations that Google previously identified, other than those rendered moot by the withdrawal of references, as set forth in PUM's March 11 letter. (D.I. 640.)

Respectfully,

/s/ Karen Jacobs

Karen Jacobs (#2881)

KJ/dlw
Enclosure
cc: Clerk of the Court (Via Hand Delivery; w/ encl.)
All Counsel of Record (Via Electronic Mail; w/ encl.)
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