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August 18, 2011

VIA ELECTRONIC FILING AND HAND DELIVERY

The Honorable Judge Leonard P. Stark
J. Caleb Boggs Federal Building
844 N. King Street, Unit 26, Room 6124
Wilmington, DE 19801-3556

**REDACTED
PUBLIC VERSION**

Re: *Xerox Corp. v. Google, Inc., et al., C.A. No. 10-136-LPS*

Dear Judge Stark:

Plaintiff Xerox Corp. ("Xerox") respectfully requests that Defendants Google, Inc. ("Google") and Yahoo! Inc. ("Yahoo") be ordered to provide relevant deposition testimony.

1. Google's Refusal to Provide Information Concerning the Accused Product.



REDACTED

REDACTED

2. Defendants' Refusal to Provide Testimony Concerning Their Counterclaims.

Topic 1 of Xerox's July 29, 2011, Notice of Deposition ("July 29 Notice") seeks testimony concerning the pre-filing basis of Defendants' counterclaims in this action. Despite earlier having demanded and received a Xerox witness to testify concerning the pre-filing basis for Xerox's claims, both Defendants refused to respond to Topic 1.

On May 19, 2011, Defendants served Xerox with a sweeping notice pursuant to Fed. R. Civ. P. 30(b)(6) seeking, among other things, Xerox testimony concerning all aspects of the pre-filing basis for Xerox's cause of action against Defendants, including "[a]ll facts and circumstances relating to Xerox's decision to file this lawsuit" and "all facts and circumstances

REDACTED

regarding *any search, analysis, investigation or opinion* regarding the Patent-in-Suit” (D.I. 183, Sched. A, Topics 1, 22 (emphasis added); *see also* Topics 2, 15(d), 20, 23.) Defendants’ notice also sought contention testimony regarding secondary considerations of non-obviousness. (*E.g., id.* at Sched. A, Topic 6 (“All facts and circumstances related to Xerox’s assertion, if any, that the Patent-in-Suit and/or any Asserted Claims enjoyed commercial success.”); *see also* Topics 5, 7-11.) In response to all these topics, Xerox conducted extensive investigation (*see* Ex. F) and produced a Rule 30(b)(6) witness, who was deposed by both Defendants on July 21. Defendants have now requested similar Rule 30(b)(6) testimony from Xerox’s licensing agent, IPValue. (D.I. 251, Ex. 1, Attachment A, Topics 1(d), 5, 6, 7, 8, 11-17.)

On July 29, Xerox served a Rule 30(b)(6) notice concerning the basis on which each Defendant filed its counterclaims. (D.I. 236, 237, Sched. A, Topic 1.) Despite receiving analogous discovery from Xerox, both Defendants refused to designate witnesses concerning this topic. Defendants first argued that Xerox’s notice improperly sought contention testimony. (Ex. G.) Xerox explained that its notice did not seek Defendants’ litigation contentions—only the pre-filing facts on which Defendants had based their counterclaims.⁴ (Ex. H.) Defendants then argued that Xerox’s notice improperly sought “opinions”. (Ex. I.) Xerox explained that the notice did not seek opinions—only the factual basis for the counterclaims—and that Xerox was not seeking any privileged information. (Ex. J.) Without further explanation, Defendants continue to refuse to designate witnesses. (Ex. K.)

Xerox also served on July 29 a deposition notice for Eric Schulman, a Google attorney who was the primary contact with whom Xerox and IPValue negotiated during licensing discussions and who, for that reason, could have personal knowledge of some of the information within the scope of Topic 1. (D.I. 241.) But even though Mr. Schulman is a current Google employee, Google has similarly refused to allow Xerox to depose Mr. Schulman in his personal capacity. (*See* Exs. I, K.)

The discovery sought under both deposition notices is relevant and proper. *See, e.g., Smith v. Gen. Mills, Inc.*, 2009 WL 2525462, at *3 (S.D. Ohio Aug. 13, 2009) (finding “numerous courts have ruled that a Rule 30(b)(6) notice of deposition that seeks the factual bases for another party’s claims or defenses is proper” and collecting cases). Defendants have asserted counterclaims of non-infringement, invalidity and/or unenforceability. (D.I. 24, at 9-10; D.I. 27, at 11-12.) To comply with Fed. R. Civ. P. 11(b)(3), Defendants were required to have a factual basis on which to assert counterclaims, and Xerox is entitled to know whether such a basis actually existed. And, having sought and obtained similar testimony from Xerox, Defendants cannot now in fairness refuse to reciprocate. *See UniRam Tech., Inc. v. Monolithic Sys. Tech., Inc.*, 2007 WL 915225, at *3 (N.D. Cal. Mar. 23, 2007) (“It would be unfair to prevent [plaintiff] from conducting its own 30(b)(6) deposition” on topics akin to those sought by defendant).

3. Conclusion. For the foregoing reasons, Xerox respectfully requests that the Court order Defendants to provide the requested discovery.

⁴ Even if Xerox’s notice had sought contention testimony on this topic, Defendants’ prior demand for contention testimony from Xerox on numerous topics (D.I. 183, Sched. A, Topics 5-11) would not, in fairness, permit them to maintain such an objection.

Respectfully,

/s/ John G. Day

John G. Day

Attachments

cc: Richard L. Horwitz, Esquire (hand delivery; w/attachments)
David A. Perlson, Esquire (via electronic mail; w/attachments)
Jack B. Blumenfeld, Esquire (hand delivery; w/attachments)
Matthew B. Lehr, Esquire (via electronic mail; w/attachments)
Richard J. Stark, Esquire (via electronic mail; w/attachments)

EXHIBIT A



Andrew Hale/NYC/Cravath
08/09/2011 07:11 PM

To "Moore, David E." <dmoore@potteranderson.com>, Google-Xerox <Google-Xerox@quinnemanuel.com>, "Horwitz, Richard L." <rhowitz@Potteranderson.com>
cc Scott Leslie/NYC/Cravath@Cravath, Andrei Harasymiak/NY/Cravath@Cravath, Richard Stark/NYC/Cravath@Cravath, kkunz@cravath.com, Imaguire@ashby-geddes.com, jday@ashby-geddes.com, AMayo@ashby-geddes.com, Benjamin Diessel/NYC/Cravath@Cravath
bcc Xerox033
Subject 2011-08-09 EMAIL from A. Hale to Defendants stating Xerox is willing to accept written responses to deposition topics in attached 8/8 Notice

Counsel,

Xerox is willing to accept written responses to the deposition topics in the Notice below in the first instance, if Google believes that the information sought can more efficiently be provided via written responses than by deposition and agrees that its written answers will be admissible as if they were interrogatory responses. However, in the event the responses prove to be insufficient, Xerox reserves the right to seek a deposition pursuant to the Notice. Please let us know if Google agrees to provide written responses in the first instance.

Best,
Andrew

Andrew Hale
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1674
(212) 474-3700 (Fax)

"Finnegan, Shelly" Attached please find a Notice of Deposition of G... 08/08/2011 09:11:56 PM

From: "Finnegan, Shelly" <SFinnegan@ashby-geddes.com>
To: "rhowitz@potteranderson.com" <rhowitz@potteranderson.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "Google-Xerox@quinnemanuel.com" <Google-Xerox@quinnemanuel.com>
Cc: "ahale@cravath.com" <ahale@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, "bdiessel@cravath.com" <bdiessel@cravath.com>, "kkunz@cravath.com" <kkunz@cravath.com>, "rstark@cravath.com" <rstark@cravath.com>, "sleslie@cravath.com" <sleslie@cravath.com>, "Day, John G." <jday@ashby-geddes.com>, "Maguire, Lauren E." <Imaguire@ashby-geddes.com>, "Mayo, Andrew C." <AMayo@ashby-geddes.com>
Date: 08/08/2011 09:11 PM
Subject: Xerox Corporation v. Google, et al., C.A. No. 10-136-LPS-MPT

Attached please find a Notice of Deposition of Google Inc. filed today on behalf of Xerox Corporation in the above action under seal. Please note this Notice is not being served on counsel for Yahoo, because Schedule A to the Notice contains Google confidential information. A redacted public version of the Notice that does not contain Schedule A also was filed, and is attached.

Shelly Finnegan
Evening Secretary

Ashby & Geddes
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
(302) 654-1888 ext. 284
(302) 654-2067



Sfinnegan@ashby-geddes.com Sealed Notice of Deposition (00544308).PDF



Redacted Notice of Deposition (00544262).PDF

EXHIBIT B

**EXHIBIT B:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT C

**EXHIBIT C:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT D

**EXHIBIT D:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT E

**EXHIBIT E:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT F

**EXHIBIT F:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT G

quinn emanuel trial lawyers | silicon valley

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WRITER'S DIRECT DIAL NO.
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WRITER'S INTERNET ADDRESS
andreaproberts@quinnemanuel.com

August 2, 2011

VIA EMAIL

Scott Leslie
Cravath Swaine & Moore LLP
Worldwide Plaza
825 Eighth Ave.
New York, NY 10019

Re: *Xerox Corp. v. Google Inc. et al.*, C.A. No. 10-136-LPS-MPT

Dear Scott:

I write in response to Xerox's July 29, 2011 Notice of Deposition of Google Inc. Google objects to the Notice as follows:

At the outset, Google objects generally to the Notice to the extent that it is overly broad, unduly burdensome and harassing; to the extent that the topics seek information obtainable in a less burdensome manner; and to the extent that it seeks information concerning "any" or "all" searches, analyses, investigations, opinions, documents or persons. Google objects to the Notice to the extent that it is vague and ambiguous, and fails to describe with reasonable particularity the matters for examination as required by Fed. R. Civ. P. 30(b)(6). Google further objects to the Notice to the extent that the topics seek information not reasonably calculated to lead to the discovery of admissible evidence, and/or which exceed the scope of discovery permitted by the Federal Rules of Civil Procedure.

Google objects to the Notice to the extent it seeks disclosure of information that is subject to the attorney-client privilege or work-product protection, particularly to the extent that it seeks the work product, mental impressions, conclusions, opinions, or legal theories of Google's counsel, experts, and/or consultants developed in connection with this or other litigation.

quinn emanuel urquhart & sullivan, llp

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SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111-4788 | TEL (415) 875-6600 FAX (415) 875-6700
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LONDON | 16 Old Bailey, London EC4M 7EG, United Kingdom | TEL +44(0) 20 7653 2000 FAX +44(0) 20 7653 2100
TOKYO | NBF Hibiya Bldg., 25F, 1-1-7, Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan | TEL +81 3 5510 1711 FAX +81 3 5510 1712
MANNHEIM | Erzbergerstraße 5, 68165 Mannheim, Germany | TEL +49(0) 621 43298 6000 FAX +49(0) 621 43298 6100

Google also objects and responds to each subject of examination enumerated in Schedule A as follows:

Topic No. 1: The basis for Google's assertions in its declaratory judgment counterclaims that U.S. Patent 6,778,979 ("979 Patent") is not infringed and/or is invalid and/or is unenforceable, including without limitation:

(a) any and all searches, analyses, investigations or opinions undertaken or developed by Google prior to the filing of those counterclaims concerning Xerox's claims that Google has infringed U.S. Patent 6,778,979, including the results of each such search, analysis, investigation or development of opinion; the dates each such search, analysis, investigation or development of opinion was undertaken; the identification and role of each person involved in each such search, analysis, investigation or development of opinion; and the identification of all documents relating to each such search, analysis, investigation or opinion;

(b) any and all searches, analyses, investigations or opinions undertaken or developed by Google prior to the filing of those counterclaims concerning the validity of U.S. Patent 6,778,979, including the results of each such search, analysis, investigation or development of opinion; the dates each such search, analysis, investigation or development of opinion was undertaken; the identification and role of each person involved in each such search, analysis, investigation or development of opinion; and the identification of all documents relating to each such search, analysis, investigation or opinion; and

(c) any and all searches, analyses, investigations or opinions undertaken or developed by Google prior to the filing of those counterclaims concerning the enforceability of U.S. Patent 6,778,979, including the results of each such search, analysis, investigation or development of opinion; the dates each such search, analysis, investigation or development of opinion was undertaken; the identification and role of each person involved in each such search, analysis, investigation or development of opinion; and the identification of all documents relating to each such search, analysis, investigation or opinion.

Response: Google objects to Topic No. 1 as compound, vague, ambiguous, overbroad and unduly burdensome, particularly to the extent that it seeks information not bounded by the limitations in subtopics (a), (b), and (c) and to the extent it seeks information concerning the non-infringement, invalidity and unenforceability of the '979 patent. Google objects to this Topic as seeking information that is not relevant to any claim or defense in this action, particularly to the extent that it seeks testimony concerning "any and all searches, analyses, investigations or opinions undertaken or developed by Google prior to the filing of [Google's] counterclaims" regardless of the outcome or relevancy of such "searches, analyses, investigations or opinions" and to the extent it fails to describe with reasonable particularity the matters on which examination is requested. Google further objects to this Subject to the extent it seeks disclosure of information that is subject to the attorney-client privilege or work product

protection and to the extent that it calls for expert opinion or legal conclusion.

Google further objects to Topic No. 1 to the extent that it improperly requests that Google present its contentions in a deposition, which is not permitted in the District of Delaware. Discovery regarding the factual and legal bases of a contention should be dealt with through contention interrogatories. Google further objects to this topic to the extent it seeks (1) information protected from discovery by the attorney-client privilege, or (2) the work product, mental impressions, conclusions, opinions, or legal theories of Google's counsel, experts, and/or consultants developed in connection with this litigation.

Subject to these objections, Google will not provide a witness to testify regarding Topic 1.

Topic No. 2: The date on which Google first anticipated litigation with Xerox concerning U.S. Patent 6,778,979 and the circumstances surrounding such anticipation of litigation, including identification of all relevant documents (by Bates number) and persons with knowledge.


Response: Google objects to Topic No. 2 as vague, ambiguous, overbroad and unduly burdensome, particularly to the extent it seeks information concerning the terms and phrases "anticipated litigation," "circumstances surrounding," and "all relevant documents...and persons with knowledge." Google objects to this Topic as seeking information that is not relevant to any claim or defense in this action. Google further objects to this topic to the extent it seeks (1) information protected from discovery by the attorney-client privilege, or (2) the work product, mental impressions, conclusions, opinions, or legal theories of Google's counsel, experts, and/or consultants developed in connection with this litigation. Google also objects to the extent that this topic fails to describe with reasonable particularity the matters for examination. Further, especially given the bifurcation in this case, we do not understand the relevance of this topic and would welcome an explanation from Xerox as to why this is an appropriate topic at this time.

Very truly yours,



Andrea Pallios Roberts

EXHIBIT H

Re: Xerox v. Google 

Scott Leslie to: Margaret P. Kammerud

08/03/2011 11:38 AM

'Andrew Hale', "aharasymiak@cravath.com", "AMayo@ashby-geddes.com",
"anthony.fenwick@davispolk.com", "bdiessel@cravath.com", "Lisson, David",
"David E. Moore", Google-Xerox, "jblumenfeld@mnat.com",
Cc: "jday@ashby-geddes.com", "jeremy.brodsky@davispolk.com",
"kkunz@cravath.com", "imaguire@ashby-geddes.com",
"mnoeika@mnat.com", "Richard L. Horwitz", 'Richard Stark'

Meg -

In response to Andrea's letter of yesterday, Xerox refers Google to Xerox's letter to David Lisson, also dated yesterday, regarding Yahoo's objection to Topic 1 of Xerox's July 29, 2011, Notice of 30(b)(6) deposition. Specifically, contrary to Google's and Yahoo's position, Topic 1 of Xerox's Notice is not seeking Google's or Yahoo's contentions in this case. Instead, it is seeking information regarding Google's and Yahoo's pre-filing basis for their counterclaims, including facts concerning their pre-filing analyses and investigations. In addition, as stated in Xerox's letter, Defendants previously requested that Xerox designate a witness pursuant to Rule 30(b)(6) to provide testimony concerning many topics analogous to the ones Google and Yahoo now object to. Xerox provided a witness to testify concerning those topics, and there is therefore no basis for Google or Yahoo to now refuse to provide witnesses concerning the same subject matter. In addition, as detailed in my letter to David, Defendants have sought deposition testimony concerning various Xerox contentions relating to non-obviousness and infringement. Accordingly, even if Xerox's notice sought contention testimony--which it does not--Google would not be in a position to refuse to provide such testimony. Please confirm that Google will provide a witness to testify regarding Topic 1, or provide a time when counsel for both Google and Yahoo are available for a meet-and-confer today or tomorrow.

With respect to Google's objections concerning Topic 2, the date on which Google anticipated this litigation and the circumstances surrounding Google's anticipation of this litigation are plainly relevant, as Yahoo obviously recognized in agreeing to designate a witness to testify concerning this topic. We therefore do not understand why Google believes that it need not provide such information. Furthermore, as Xerox has stated repeatedly to Google in other correspondence, Google has asserted work-product protection over a host of documents in this case without any explanation of the subject matter of those documents or any indication of which litigation they might even relate to. Although Xerox has asked Google to rectify this omission by supplementing its privilege log, Google has repeatedly refused to do so. It is therefore impossible to assess the validity of Google's assertions, particularly when Google has asserted work-product protection over documents that pre-date the filing of this case by a number of years. Again, please confirm that Google will provide a witness to testify concerning Topic 2. If Google continues to refuse to do so, we can address this issue during the parties' meet-and-confer.

Best,

Scott

Scott A. Leslie
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1778 (phone)
(212) 474-3700 (fax)

"Margaret P. Kammerud"

Counsel: Please see attached correspon...

08/02/2011 10:31:15 PM

From: "Margaret P. Kammerud" <megkammerud@quinnemanuel.com>
To: 'Scott Leslie' <SLeslie@cravath.com>
Cc: 'Andrew Hale' <AHale@cravath.com>, "aharasymiak@cravath.com"
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<RStark@cravath.com>
Date: 08/02/2011 10:31 PM
Subject: Xerox v. Google

Counsel:

Please see attached correspondence.

Margaret P. Kammerud
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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[attachment "8_2_11 letter to S Leslie re 30(b)(6) Notice.pdf" deleted by Scott Leslie/NYC/Cravath]

EXHIBIT I

**EXHIBIT I:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT J

CRAVATH, SWAIN & MOORE LLP

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ONE ROPEMAKER STREET
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WRITER'S DIRECT DIAL NUMBER

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RICHARD W. CLARY
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JULIE A. NORTH
ANDREW W. NEEDHAM
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ROBERT I. TOWNSEND, III
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FAIZA J. SAEED
RICHARD J. STARK
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MARK I. GREENE
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SPECIAL COUNSEL
SAMUEL C. BUTLER
GEORGE J. GILLESPIE, III

OF COUNSEL
PAUL C. SAUNDERS

August 10, 2011

Xerox Corp. v. Google Inc., et al., Civ. A. No. 10-136-LPS

Dear Andrea and David:

As indicated in Scott Leslie's email to Andrea dated August 8, 2011, concerning Topic 2 of Xerox's July 29, 2011, 30(b)(6) deposition notice (the "Notice"), I write to address additional issues raised in Google's letter dated August 8, 2011, and Yahoo's email of the same date.

First, Defendants continue to provide no valid reason or authority for their refusals to provide witnesses in response to Topic 1 of Xerox's July 29, 2011, Notice. Although Defendants earlier attempted to argue that Xerox is seeking contention testimony, as Xerox explained repeatedly in correspondence and during the parties' meet-and-confer, Topic 1 does not seek contention testimony. Instead, this topic squarely seeks information concerning the factual bases for Defendants' counterclaims. Such information is plainly relevant to this case, and Defendants have not asserted otherwise. Indeed, as we have repeatedly pointed out, Defendants have sought, and Xerox has provided, a Xerox 30(b)(6) witness on analogous topics (as well as on various Xerox contentions, for that matter).

You write in your letter that "Xerox conceded it seeks information regarding the substance of opinions that resulted from Google's pre-filing investigations," but that does not accurately summarize Xerox's position. As we told you on the call, Xerox seeks only information concerning the factual bases for Defendants' counterclaims. When Defendants inquired whether Xerox's request extends to "opinions," Xerox responded that it was not seeking any privileged information, but that opinions would be relevant if they comprised a factual basis for Defendants' counterclaims. Xerox is therefore not seeking testimony concerning opinions per se, but, as we have repeatedly told you, the pre-filing basis on which Defendants filed counterclaims against Xerox. Moreover, we note that Defendants' requests for 30(b)(6) testimony concerning the basis for Xerox's claims expressly included "[a]ll facts and circumstances regarding any search, analysis, investigation or opinion regarding the Patent-in-Suit and any Related Patents/Applications, including without limitation any search, analysis, investigation or opinion regarding patentability, unpatentability, enforceability, unenforceability,

validity, invalidity, infringement, noninfringement, meaning, interpretation, construction or scope of the Patent-in-Suit or Related Patents/Applications". Therefore, like Defendants' earlier invocation of "contentions" in attempting to stonewall the requested discovery, Defendants' invocation of "opinions" is another groundless straw-man argument. Accordingly, Xerox will raise this issue with the Court.

Second, with respect to Google's refusal to designate a witness or even to provide written testimony for Topic 2 of Xerox's July 29 Notice, which seeks the date on which Google anticipated litigation with Xerox, Scott previously addressed this issue in his August 8 email to you. Because the information Xerox seeks is relevant and because Google has provided no explanation for refusing to provide it, Xerox will also raise this issue with the Court.

Third, even though Mr. Schulman is a current Google employee and even though Mr. Schulman is in possession of relevant information, Google has refused to proceed with his noticed deposition, but points to no authority to support its refusal. Accordingly, Xerox will proceed with Mr. Schulman's deposition. Please let us know the dates when he is available.

Fourth, with respect to Google's offer to produce Mr. Fanti in lieu of Mr. Maxwell, Xerox is willing in principle to accept Google's offer. As you know, Google has yet to provide a date for Mr. Ponnekanti's previously noticed deposition. Depending on Mr. Ponnekanti's availability, Xerox is willing to depose either Mr. Fanti or Mr. Maxwell, as long as the deposition can be scheduled within a day of Mr. Ponnekanti's deposition. Please let us know Google's proposed schedule as soon as possible.

Fifth, Defendants have indicated that they intend to proceed with a 30(b)(6) deposition of non-party IPValue Management, Inc. ("IPValue"), as well as up to two personal depositions of IPValue employees. Xerox notes that in light of this representation, Defendants should serve their deposition notices on IPValue immediately in order to allow IPValue sufficient time to object and respond, as appropriate, and to schedule the depositions within a reasonable timeframe.

Sixth, Defendants have indicated that despite the parties' agreement that they would identify all outstanding depositions they intended to take by August 8, Defendants are reserving the right to notice additional depositions after they have had the opportunity to review the small number of documents Xerox produced from its XRCE facility last Thursday as a result of earlier technical issues involving Xerox's discovery vendors. However, should Defendants believe those documents do in fact merit additional depositions, Defendants should notify Xerox by this Friday, August 12. In addition, because Xerox believes that these newly produced documents are substantially the same as documents Xerox has already produced in this case, Defendants should identify which particular documents in the new production contain material Defendants have not seen before, and thus warrant depositions to be noticed after the parties' agreed-upon deadline. Xerox will then evaluate Defendants' requested depositions on a case-by-case basis, and reserves the right to oppose those depositions.

Very truly yours,

/s/

Benjamin H. Diessel

Andrea Roberts

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VIA EMAIL

EXHIBIT K

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August 12, 2011

VIA EMAIL

Benjamin Diessel
Cravath Swaine & Moore LLP
Worldwide Plaza
825 Eighth Ave.
New York, NY 10019

Re: *Xerox Corp. v. Google Inc. et al.*, C.A. No. 10-136-LPS-MPT

Dear Ben:

I write in response to your August 10, 2011 letter. We disagree with many of the characterizations in your letter, both of our expressed positions and the information and documents Xerox seeks. Since the parties have had repeated correspondence on these issues, there is no point in continuing the back-and-forth. That said, there are a few points that warrant a response.

First, as to Eric Schulman's deposition, Xerox appears to have changed its position since the parties' August 4 meet and confer. During the meet and confer, we asked why Xerox wanted to depose Mr. Schulman. Xerox explained that it noticed his deposition because he was the point person at Google with whom Xerox and IPValue negotiated. Xerox stated that *Xerox does not anticipate getting anything further from his deposition than would be obtained via the 30(b)(6) topics*. Indeed, in your August 5 summary email, you stated: "With respect to the previously noticed depositions of Eric Schulman and Lisa McFall, Xerox indicated that a decision whether and when to proceed with those depositions is contingent on resolution of the dispute concerning Topic 1 of Xerox's July 29 Notice." Then, on August 10, Xerox changed its tune and stated that Xerox will proceed with his deposition. Google maintains that this deposition is inappropriate for the reasons previously stated. Xerox's changed position regarding his deposition seems like

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nothing more than an attempt to harass him and Google.¹

Second, we will attempt to schedule Mr. Ponnekanti's deposition within a day of Mr. Fanti or Mr. Maxwell's deposition, if the witnesses' schedules permit.

Lastly, Defendants do not at this time intend to notice any additional depositions based upon Xerox's production of documents last week.

Very truly yours,



Andrea Pallios Roberts

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¹ In contrast, Defendants sought to depose Mr. Schnose because he *was* identified by Xerox as having knowledge of facts relevant to this case. But, after Xerox represented that Mr. Schnose is an attorney and would not be called as a trial witness, Defendants confirmed that they would not take his deposition.

EXHIBIT L

**EXHIBIT L:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT M

**EXHIBIT M:
CONTAINS GOOGLE'S HIGHLY
CONFIDENTIAL INFORMATION**

EXHIBIT N

**EXHIBIT N:
CONTAINS GOOGLE'S HIGHLY
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EXHIBIT O

**EXHIBIT O:
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