

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ERICH SPECHT, an individual and doing business)	
as ANDROID DATA CORPORATION, and THE)	
ANDROID'S DUNGEON INCORPORATED,)	
)	
Plaintiffs/Counter-Defendants,)	
v.)	Civil Action No. 09-cv-2572
)	
GOOGLE INC.,)	Judge Harry D. Leinenweber
)	
Defendant/Counter-Plaintiff.)	Magistrate Judge Jeffrey Cole

**PLAINTIFFS' MOTION TO STRIKE, OR IN THE
ALTERNATIVE, TO FILE SUR-REPLY INSTANTER**

Plaintiffs Erich Specht, an individual and doing business as Android Data Corporation, and The Android's Dungeon Incorporated (collectively, "Plaintiffs"), by and through their attorneys, hereby move to strike the Affidavit of Edward G. Tharp and portions of the Reply filed by Motorola, Inc. ("Motorola") in support of its Motion to Quash Non-Party Subpoena (the "Motion") or, in the alternative, for leave to file the attached Sur-Reply, *instante*. In support hereof, Plaintiffs state as follows.

1. It is axiomatic that "[a] reply brief is for replying' not for raising essentially new matter that could have been advanced in the opening brief." Autotech Techs. Ltd. P'ship v. Automationdirect.com, Inc., 235 F.R.D. 435, 437 (N.D. Ill. 2006) (citation omitted). Nonetheless, Motorola has offered the Affidavit of Edward G. Tharp (the "Tharp Affidavit") and advanced two new arguments in its Reply attempting to justify its Motion to Quash.

2. Specifically, Motorola argues that:

- Certain financial information purportedly sought by Plaintiffs constitutes trade secrets (see Reply Section IV; Tharp Affidavit); and

- Plaintiffs' request for the Droid Licensing Documents is "moot" (see Reply at 8 n.5).

3. There is no reason why the Tharp Affidavit and the two new arguments could not have been advanced in Motorola's opening brief. Accordingly, it is improper for Motorola to now offer the Tharp Affidavit and the two new arguments in the Reply and they should be stricken. Alternatively, in the event that the Court decides not to strike the Tharp Affidavit and the two new arguments, Plaintiffs request leave to file the attached Sur-Reply addressing them.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order:

- A. Striking Section IV, the Tharp Affidavit and footnote 5 from Motorola's Reply in support of the Motion; or
- B. Granting Plaintiffs leave to file the Sur-Reply attached hereto as Exhibit A; and
- C. Granting Plaintiffs such other and further relief as is appropriate under the circumstances.

Respectfully submitted,

ERICH SPECHT, an individual and doing
business as ANDROID DATA
CORPORATION, and THE ANDROID'S
DUNGEON INCORPORATED

By: /s/ John Haarlow, Jr.
One of Their Attorneys

P. Andrew Fleming
John F. Shonkwiler
John B. Haarlow, Jr.
NOVACK AND MACEY LLP
100 North Riverside Plaza
Chicago, IL 60606
(312) 419-6900
Doc. #339773

Martin Murphy
2811 RFD
Long Grove, IL 60047
(312) 933-3200

CERTIFICATE OF SERVICE

John Haarlow, Jr., an attorney, certifies that he caused copies of the foregoing to be served by electronically filing the document with the Clerk of Court using the ECF system this 19th day of February, 2010.

/s/ John Haarlow, Jr.