

**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.	)	

**PLAINTIFFS' MOTION FOR EXTENSION  
OF TIME TO COMPLETE ORAL DISCOVERY**

Plaintiffs, Erich Specht, an individual and doing business as Android Data Corporation, and The Android's Dungeon Incorporated, by their attorneys, Novack and Macey LLP and Martin J. Murphy, respectfully request that the Court grant them an extension of time to complete oral discovery. As demonstrated below, the requested extension is necessary because: (1) Google, Inc. ("Google") is unwilling to make its witnesses available for deposition within a reasonable time; and (2) Christopher White ("White"), an important witness, appears to be dodging service of a subpoena.

**A. GOOGLE REFUSES TO PROVIDE PROMPT DEPOSITION TESTIMONY**

1. On February 23, 2010, the Court ordered that oral discovery be completed by July 30, 2010.
2. On April 30, 2010, Plaintiffs served a Notice of Depositions on Google seeking three depositions: (a) White on May 25, 2010; (b) Andy Rubin ("Rubin") on May 26, 2010 and (c) Rule 30(b)(6) witness(es) on May 27, 2010. (A copy of the Notice of Deposition is attached hereto as Exhibit A.) Google never stated whether or not any of these dates were acceptable.

3. Due to an intervening scheduling conflict, Plaintiffs indicated that they would need to reschedule the depositions for June 2010.

4. Google seized on this opportunity to delay the depositions for as long as possible. Among other things, Google claimed that Rubin could not be available for a deposition on June 8, 9, 10, 24, 25, 28, 29 or July 1, 5, 6, 7 or 8, offering instead July 9, 2010 as the date. (See emails from H. Finn and P. Fleming dated May 12, 2010, attached hereto as Exhibit B.) Next, Google claimed that it could not produce a Rule 30(b)(6) witness for deposition until July 14, 2010 -- a mere two weeks prior to the close of oral discovery. (See email from H. Finn dated June 3, 2010 at 2, attached hereto as Exhibit C at 3-4.)

5. Plaintiffs objected to the delay and suggested two alternatives, either: (a) provide dates in June for the 30(b)(6) testimony; or (b) proceed with that deposition on July 14, 2010 and agree to extend the cutoff date for oral discovery for 45 days. (See email from P. Andrew Fleming dated June 3, 2010 at 3, attached hereto as Exhibit C.)

6. Google rejected both alternatives. Google's sole justification is that: (a) Plaintiffs withdrew the original 30(b)(6) dates in May; and (b) Google previously informed Plaintiffs "that scheduling depositions of certain witnesses in June would be difficult." (Id. at 2.) Both of these justifications are meritless.

7. First, Google never confirmed with Plaintiffs regarding the May deposition dates for Rubin and the 30(b)(6) witness(es). So, Google's attempt to shift the burden onto Plaintiffs for changing unconfirmed dates is disingenuous.

8. Second, the only witness who purportedly had a scheduling conflict for the entire month of June was Rubin, not each and every 30(b)(6) witness. (See email from H. Finn dated

May 11, 2010 at 1, attached hereto as Exhibit D.) Accordingly, Google's latest claim -- that none of its Rule 30(b)(6) witnesses are available until July 14, 2010 is similarly disingenuous.

9. In all events, nothing can justify Google's refusal to offer any date sooner than July 14, 2010 for the proposed Rule 30(b)(6) deposition.

10. Indeed, Google's game plan is becoming all too transparent -- push the key depositions into mid- to late- July so Plaintiffs will have insufficient time to conduct any follow up discovery regarding issues raised in the Rubin and/or 30(b)(6) depositions.<sup>1</sup>

**B. WHITE IS AVOIDING SERVICE**

11. White is an important witness in this case. He is one of the original founders of Android, Inc. Ans. 2d Am. Cplt. ¶21. Android, Inc. was acquired by Google in 2005 and was developing a product that eventually became Google's infringing Android OS. After the acquisition, White initially worked for Google, but he is no longer a Google employee.

12. White is represented by Greenberg Traurig, the same counsel retained by Google. Indeed, White appeared through that counsel in connection with a motion to dismiss the original complaint in this case. However, White's counsel is now refusing to accept service of any subpoena on his behalf. (See January 29, 2010 email from H. Finn at 1 ¶1, attached hereto as Exhibit E.) True to form, counsel is doing so despite Plaintiffs' willingness to extend similar courtesies to Google. (See email from J. Haarlow at 1, attached hereto as Exhibit F.) The Court should not give its blessing to these stonewall tactics.

13. On May 4, 2010, Plaintiffs issued a subpoena seeking testimony and documents from White, who, on information and belief, resides in San Francisco, California. The subpoena

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<sup>1</sup> Worse yet, Google remains coy about whether all of its Rule 30(b)(6) witnesses will be tendered on July 14, 2010, thus leaving open the possibility that additional Rule 30(b)(6) depositions will need to be scheduled after July 14, 2010.

sought production of documents on May 20, 2010 and testimony on May 25, 2010. Plaintiffs served a copy of the subpoena on counsel for Google.

14. Plaintiffs' process servers repeatedly tried to serve White from May 5 to May 11, but have been unsuccessful. Plaintiffs then engaged the services of local counsel to try and perfect service of a subpoena on White. They tried on four occasions in late May, 2010 to serve White but were unsuccessful. Plaintiffs believe that White has been informed that they are seeking to serve him with a subpoena and he is avoiding service thereof.

15. Accordingly, Plaintiffs have no alternative but to continue to attempt personal service of successive subpoenas on White. The Ninth Circuit requires that subpoenas be served personally on all deponents. E.g. Chima v. U.S. Dept. of Defense, 23 Fed. Appx. 721, 725 (9th Cir. 2001).

16. Accordingly, for this additional reason, Plaintiffs request that the Court extend the date set for the close of oral discovery until such time as they can affect service on, and depose, White.

WHEREFORE, for the reasons set forth above, Plaintiffs respectfully request that the Court vacate the oral discovery deadline set for July 30, 2010, for 45 days, until September 17, 2010.

Respectfully submitted,

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

By:           /s/ P. Andrew Fleming            
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**CERTIFICATE OF SERVICE**

P. Andrew Fleming, an attorney, certifies that he served the foregoing by causing a true and correct copy to be delivered by the ECF system to:

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on this 8th day of June, 2010.

/s/ P. Andrew Fleming