

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

ERICH SPECHT, et al.)	
)	C.A. No. 09-cv-2572
Plaintiffs,)	
)	Judge Leinenweber
v.)	
)	Magistrate Judge Cole
GOOGLE INC.,)	
)	
Defendant.)	

**GOOGLE’S OPPOSITION TO PLAINTIFFS’ MOTION FOR EXTENSION OF TIME
TO COMPLETE ORAL DISCOVERY**

Plaintiffs’ motion to extend oral discovery is both premature and unnecessary. Ample time remains to complete oral discovery, which is not set to close for forty-five days. Plaintiffs have provided no reason why depositions cannot be completed in that time period -- all Google witnesses should be deposed before the currently scheduled close of discovery, and Plaintiffs’ speculation about the need for purported “follow up” discovery is baseless. Nor have Plaintiffs explained why they need a general extension of 45 days to conduct this unspecified “follow up” discovery. To the extent Plaintiffs base their motion on their inability to serve Mr. White, they still have 45 days remaining in the discovery period to serve him, and as a result it is premature to consider any extensions with respect to Mr. White.¹ Accordingly, Google opposes Plaintiffs’ motion.

I. Google has *not* refused to provide “prompt” deposition testimony.

One of Google’s two Rule 30(b)(6) witnesses, Andy Rubin, is scheduled to be deposed on July 9, 2010. That date was agreed upon by the parties only *after* Plaintiffs unilaterally

¹ As recently as last week, Google advised that the extension request was likely unnecessary and at best premature. However, Plaintiffs chose to withhold that email from the Court. (Ex. 1.)

withdrew their originally-noticed May 26th date, and only *after* Plaintiffs refused Google's offer to make Mr. Rubin available *promptly* thereafter on June 2nd and June 3rd. (Ex. 2.) In any event, that date is well in advance of the close of oral discovery. While Plaintiffs complain that they will have "insufficient time to conduct any follow up discovery," Plaintiffs have yet to show that they will even *need* any follow up discovery. Nor have Plaintiffs shown that this unspecified, wholly speculative follow up discovery cannot be completed before July 30, 2010.

Google's other Rule 30(b)(6) witness has been made available for deposition on July 14th, 2010 -- more than two full weeks before the close of oral discovery.² Plaintiffs complain that "nothing can justify Google's refusal to offer any date sooner than July 14, 2010." But Plaintiffs fail to acknowledge that Google actually *did* make a 30(b)(6) witness (Mr. Rubin) available earlier than July 14, and fail to establish why Google would need to "justify" anything. The earliest date Google can make its second Rule 30(b)(6) witness available is July 14th, and it is well before the close of discovery. Plaintiffs' argument that this leaves "insufficient time" to conduct follow up discovery is once again speculative and unsupported, and its claim that Google somehow needs to "justify" this perfectly reasonable date is meritless.

Plaintiffs have failed to show that they cannot complete oral discovery before the currently scheduled close of July 30, 2010. They have not identified any additional discovery they might need after completing the Rule 30(b)(6) depositions. They have not identified any additional Google or third party witnesses that they believe need to be deposed. They have not identified *a single deposition* that cannot be completed before July 30, 2010. Nor have they explained why they need a full, 45-day general extension of oral discovery in order to conduct purported "follow up" which likely will not be needed in the first place. Plaintiffs' attempt to

² Notably, despite being available on the proposed July 14th date, Plaintiffs have refused to confirm that they are proceeding with the deposition. Instead, Plaintiffs would only accept the July 14th date if Google agreed to what is an unnecessary extension of time.

spin Google's timely presentation of its two Rule 30(b)(6) witnesses several weeks before the close of oral discovery as some kind of "delay" is baffling.

II. Plaintiffs' unsupported disparagement of Mr. White is inappropriate.

With respect to Mr. White, Plaintiffs' personal attacks on Mr. White are inappropriate. Apparently frustrated that Mr. White will not simply walk into Plaintiffs' counsel's offices of his own accord, Plaintiffs disparage Mr. White by accusing him of avoiding service. Plaintiffs' disparagement of Mr. White is notably lacking any support.³ Significantly, Plaintiffs' motion tacitly admits that Plaintiffs have *not* been diligent in locating Mr. White, as it concedes that they stopped trying to locate him in May. (Pls'. Mot. ¶ 14.)

Mr. White is not obligated to subject himself to the Court's jurisdiction. Indeed, this Court has previously determined that it does not have jurisdiction over Mr. White when it dismissed him (and the three other individuals that were then co-defendants) for, amongst other bases, lack of personal jurisdiction. While the undersigned counsel continues to represent Mr. White relative to this matter, Mr. White has not authorized counsel to accept service on his behalf. Plaintiffs' ineffectiveness at formal service does not alter that lack of authorization.

Nevertheless, there are 45 days remaining in discovery, and if Mr. White is truly as "important" as Plaintiffs claim,⁴ surely they can retain a competent process server to locate and serve Mr. White in that time frame. There is no need, at this time, to consider generally extending oral discovery based upon Plaintiffs' failed efforts at serving Mr. White.

³ Plaintiffs have not submitted affidavits from their purported process servers or local counsel, and as a result have not established that they have been diligent in attempting to serve Mr. White, or that they even have the correct address for Mr. White.

⁴ Again, Plaintiffs' allegations that Mr. White is an "important" witness are entirely unsupported. Notably, Mr. White has not been employed by Google since 2006 -- over a year before Google began using the ANDROID trademark at issue in this case. Plaintiffs have failed to identify any "important" information that Mr. White may have that Plaintiffs cannot obtain from another source, such as Mr. Rubin, who Mr. White worked for during his tenure at both Android, Inc. and Google.

III. Conclusion

Plaintiffs have failed to set forth a factual or legal basis for their motion. There remains ample time in the oral discovery period to complete any necessary discovery, and all depositions requested by Plaintiffs from Google have been scheduled for dates well before the close of discovery. Plaintiffs have not identified any discovery that would need to be taken after July 30th, let alone identified discovery that would take an additional 45 days to complete.

Respectfully submitted,

Dated: June 16, 2010

/s Cameron M. Nelson

Herbert H. Finn
Jeffrey P. Dunning
Cameron M. Nelson
GREENBERG TRAURIG, LLP
77 W. Wacker Drive, Suite 3100
Chicago, IL 60601
(312) 456-8400

Counsel for Google Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing **GOOGLE'S OPPOSITION TO PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO COMPLETE ORAL DISCOVERY** with the Clerk of Court using the CM/ECF system, which will send notification of such filings to all counsel of record.

Dated: June 16, 2010

/Cameron M. Nelson/