

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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ERICH SPECHT, et al.,

Plaintiffs,

vs.

GOOGLE, INC., et al.,

Defendants.

No. 09 C 2572

Chicago, Illinois
July 20, 2010
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTIONS
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

For the Plaintiff:

NOVACK & MACEY
MR. P. ANDREW FLEMING
MR. JOHN F. SHONKWILER
100 North Riverside Plaza
Chicago, Illinois 60606
312-419-6900
and
MR. MARTIN J. MURPHY

For the Defendants,
Google, Inc.:

GREENBERG TRAURIG, LLP
MR. HERBERT H. FINN
MR. RICHARD D. HARRIS
77 West Wacker Drive
Chicago, Illinois 60601
312-456-8400

For the Defendant,
T-Mobile:

LOEB & LOEB, LLP
MR. ROBERT M. ANDALMAN
321 North Clark Street
Chicago, Illinois 60610
312-464-3100

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Court Reporter:

**FEDERAL OFFICIAL COURT REPORTER
MS. KRISTA FLYNN BURGESSON
219 South Dearborn Street
Chicago, Illinois 60604
312-435-5567**

1 THE CLERK: 09 C 2572, Specht versus Google.

2 MR. FLEMING: Good morning, your Honor. Andrew
3 Fleming, John Shonkwiler, and Martin Murphy appearing on
4 behalf of the plaintiffs.

5 MR. SHONKWILER: Good morning, your Honor.

6 MR. MURPHY: Good morning.

7 MR. HARRIS: Good morning, your Honor. Richard
8 Harris and Herb Finn on behalf of defendant Google.

9 MR. FINN: Good morning, your Honor.

10 MR. ANDALMAN: Good morning, your Honor. Robert
11 Andelman for T-Mobile. We were a party previously. That is
12 spelled A-n-d-a-l-m-a-n.

13 THE COURT: All right.

14 MR. FLEMING: Your Honor, there are 3 motions up this
15 morning.

16 There is a motion for leave to amend the complaint
17 filed by the plaintiffs, which includes the joinder of 4
18 defendants, Sprint, T-Mobile, AT&T Mobility, and Verizon.

19 There is a motion to strike that motion filed by
20 Google, and --

21 THE COURT: I think it is a motion to strike the
22 complaint that was filed.

23 MR. FINN: Yes.

24 MR. HARRIS: Yes, that is correct. We filed a motion
25 originally and --

1 THE COURT: And you responded this morning or last
2 night to their motion?

3 MR. FLEMING: Yes, your Honor.

4 THE COURT: And then there is a motion to compel that
5 position.

6 MR. HARRIS: That is correct, Judge.

7 THE COURT: And you responded to that?

8 MR. FLEMING: We have not filed a written response to
9 that motion.

10 THE COURT: Yes, you did.

11 I read it this morning.

12 MR. FLEMING: Yes, okay, yes, we did address that in
13 the --

14 THE COURT: You did address that, okay. So I have
15 read everything you have written.

16 Now, does anybody want to say anything?

17 Actually, first, what I should say, and it is not the
18 basis for my ruling, but in full disclosure, if I did allow
19 the amendment, and AT&T came into the case, I would have to
20 recuse myself. My wife is a board member of the parent
21 company, AT&T, and we have an ownership interest. Obviously
22 we have many shares of AT&T.

23 MR. HARRIS: That is understood, your Honor.

24 I would like to respond with the Court's permission
25 on just a few points.

1 THE COURT: Okay.

2 MR. FLEMING: Could I just address that comment your
3 Honor has made?

4 THE COURT: Yes.

5 MR. FLEMING: Does your Honor feel that that would
6 effect your Honor's position in terms of ruling on the
7 motion?

8 THE COURT: I don't think so, because they are not a
9 party to the case, but I really didn't think about it.
10 Obviously if I let them in, I would have to get out
11 immediately.

12 MR. FLEMING: I mean, there will be a case filed
13 against them, your Honor, it is not --

14 THE COURT: If there is, obviously I would have to
15 recuse myself under whatever the statute is.

16 MR. FLEMING: I think even in ruling on it then --
17 We have not looked at the issue, your Honor, but we
18 would like to be able to look at the issue.

19 THE COURT: Let's ask Google.

20 What is your view of that?

21 MR. HARRIS: Your Honor, we have been before this
22 Court so many times over the years, we have no doubts
23 whatsoever that this Court can rule fairly and equitably.

24 THE COURT: The question is whether it can do so
25 legally.

1 I think I can rule fairly.

2 MR. HARRIS: Yes.

3 THE COURT: But legally whether I can rule, that is
4 the issue.

5 If it is a motion to bring in a party -- if it
6 brought in, I would have to recuse myself.

7 MR. HARRIS: Well, thanks to plaintiff, your Honor,
8 that is really not a problem. It was just stated on the
9 record that they are going to go after AT&T no matter what the
10 Court rules.

11 So, in essence, regardless of how the Court rules,
12 AT&T eventually, according to what we have just heard, will be
13 a party in some case, probably assigned to some other Judge,
14 and I don't believe it effects at all this Court's ability to
15 rule on the motion.

16 MR. FINN: Moreover, your Honor, AT&T stands with the
17 other 3 potential defendants, or at least in the similar
18 position of the other potential defendants, and we assume you
19 have no issue with that, and that the ruling would be based
20 more on --

21 THE COURT: I have no issue with any of the other
22 defendants.

23 MR. FINN: Right.

24 And since they are similarly situated, it would
25 appear logical that you should be able to rule on the

1 entirety.

2 MR. FLEMING: Well, we do have a concern, your Honor,
3 and we would like to present something in writing to the
4 Court. We would like to look at this issue and present
5 something in writing.

6 We certainly are not going to --

7 THE COURT: Well, if I continue that motion --
8 I can rule on the motion for depositions, I believe.

9 MR. HARRIS: Very well, your Honor.

10 And also, certainly you can rule on the motion --

11 THE COURT: I can give a time and --

12 This is more for my own concern. I mean, I don't
13 want to do something illegal. I don't think it would be
14 illegal for me to rule on the motion, but --

15 MR. HARRIS: Understood.

16 MR. FLEMING: We can certainly get something on file
17 very quickly, your Honor.

18 THE COURT: That is what I am thinking of.

19 MR. FLEMING: We would certainly do that.

20 And we are back in court next Tuesday on the
21 continued motion to --

22 THE COURT: I am concerned about the motion because
23 of the discovery deadline, the other motion, which there is no
24 question I can rule on, having not taken up the issue of
25 bringing in any other additional defendants.

1 MR. HARRIS: Your Honor, could the Court rule on the
2 other 3 named parties, 2 of which were named in one of the
3 early amended complaints or one of the original complaints
4 over a year ago? Could the Court address just the 3, and
5 remove for now the issue of AT&T, so that this Court can
6 fairly and equitably address a motion for leave to amend a
7 complaint that is being brought ten days, in essence, before
8 the close of discovery in this case, while a separate motion
9 for extending discovery is still pending?

10 This is another approach, and I should mention to the
11 Court that there are 4 depositions scheduled over the next ten
12 days, one of which is the court ordered deposition --

13 THE COURT: That is what I was thinking of ruling on,
14 a motion --

15 MR. HARRIS: (Continuing) -- which was the subject of
16 a sanction order.

17 THE COURT: (Continuing) -- a motion to compel
18 depositions.

19 Now, that I can put off say until next week for
20 ruling on the motion to amend. They have tied them together,
21 but I don't see the basis for not ordering the depositions to
22 go forward.

23 It was agreed -- as I understood from looking at all
24 the E-mails back and forth, they were agreed to, the dates, up
25 to a few days ago, a week ago. I don't have it in my mind

1 exactly what the date was when Mr. Shonkwiler, I think,
2 notified Google's attorneys that the depositions would not go
3 forward because of the plan to file the third amended
4 complaint, bringing in new parties.

5 MR. SHONKWILER: Judge, this all happened rather
6 fast, and the one part of this that I think needs a little
7 clarifying is we don't want to postpone dispositive briefing
8 and we don't want to postpone discovery any more than we have
9 to if no new defendants were added.

10 There is some extension of the discovery deadline
11 that is necessary, and we will file a brief tomorrow if that
12 deadline stays on the calendar for filing a brief for the
13 defendant motion to extend discovery, just because discovery
14 is not complete between Google and the plaintiffs.

15 But apart from the extension that is needed for that
16 purpose, we don't want to postpone dispositive briefing, any
17 summary judgment briefing, in this case.

18 If we can add the new parties, and get that briefing
19 schedule on the same track, it would be otherwise. None of
20 this needs to be cause for delay or expense, and no party here
21 wants to delay this trial or this summary judgment briefing,
22 and no party here wants to add expense.

23 I think that is the part where we missed each other
24 apparently on the phone, and at the briefing.

25 I talked to counsel outside of the courtroom this

1 morning, but just very briefly, and I don't know whether we
2 will be able to agree to a schedule for briefing and/or for
3 the addition of parties, but that is the part that I think is
4 not --

5 THE COURT: Well, the motion for briefing additional
6 parties is fully briefed, as far as I am concerned. I mean, I
7 am aware of the issues. Now the only question is whether or
8 not I legally can rule on it.

9 MR. HARRIS: There is one issue, Judge, that came up,
10 besides the delay and the representations that were being made
11 up, and the fact that this information has been known over a
12 year, that all of a sudden now it justifies things.

13 There was a transcript that was attached to the
14 motion we received last night, and with the Court's
15 permission, I would like to give the Court the entire segment
16 of the transcript as opposed to the one that was simply
17 paraphrased in the brief that was filed last night.

18 May I approach, your Honor?

19 THE COURT: Yes.

20 MR. HARRIS: Now, this particular transcript, and I
21 believe it is from February 23rd, I happened to be there that
22 day, and there is mention of the fact that there is a
23 reference that --

24 MR. FLEMING: Your Honor, we are now arguing the
25 motion that your Honor has indicated we will have an

1 opportunity to file something on.

2 I don't think this makes sense.

3 THE COURT: I don't need anything else to --

4 MR. FLEMING: We are not arguing enjoinder or arguing
5 discovery.

6 THE COURT: The only issue before me that I need is
7 that I think I should obtain input from you on whether or not
8 I legally have to recuse myself because you filed a motion to
9 bring in a party which, if I allow in, will require me to
10 recuse myself.

11 MR. HARRIS: I understand that, Judge.

12 I thought you were asking is there anything else that
13 either of the parties wanted to say with regard to the motion
14 to amend the complaints now for a third time before we address
15 deferring that issue until the Court addresses the concern of
16 recusal.

17 THE COURT: What I said is I thought I had sufficient
18 information from the briefing, particularly, the one that you
19 filed, the motion you filed with the brief, and then the brief
20 -- the 2 briefs, actually, they had the motion to amend, and
21 their brief that was filed -- I received a copy this morning
22 when I came in, and I have read it, but it is plaintiff's
23 memorandum in support of their motion for leave to file a
24 third party complaint in opposition of the motion to strike
25 the same and so on.

1 Now, you wanted to supplement what they -- one of
2 their exhibits, is that what you are saying?

3 MR. HARRIS: Yes, Judge.

4 I just wanted to add, because we were not aware that
5 they would be relying on the transcript of February 23, 2010,
6 but skip the first page where the Court specifically says --
7 and says it to Mr. Fleming, no less, that it will allow
8 Mr. Fleming to amend the pleadings up to July 15th, but not to
9 join new parties.

10 THE COURT: I think they did have that in here,
11 didn't they?

12 MR. HARRIS: I don't believe they had that page.

13 They had the reference a page or two later that
14 suggests if they want to come in with new parties, they would
15 have to file a motion that justifies it.

16 THE COURT: Yes, yes.

17 It was clear that I took that position that it would
18 require a motion, they couldn't do that on their own, but the
19 amendments contemplated would be clean up amendments, so to
20 speak, and that type of thing.

21 MR. HARRIS: That is correct, your Honor.

22 With that, that is all we have to add to supplement
23 then.

24 THE COURT: All right.

25 As far as the motion then to -- the other motion that

1 Google filed to compel the depositions, I am going to grant
2 that. It seems to me that there was an agreement reached, and
3 I am just looking through all the E-mails back and forth, that
4 the depositions would be taken within the Court imposed
5 discovery closure, and that they should have been, unless by
6 agreement of parties, gone through.

7 So, I will order that, that they be completed by the
8 discovery close.

9 MR. HARRIS: Thank you, your Honor.

10 THE COURT: So, that motion is granted.

11 MR. HARRIS: Thank you.

12 MR. SHONKWILER: Your Honor, tomorrow is the deadline
13 for briefing, any additional briefing, in support of the
14 pending motion extending discovery, the discovery deadline.
15 As I said before, we will be filing a brief to extend what
16 impact, if any, that will have on the ruling your Honor just
17 made.

18 THE COURT: None, none.

19 It seems to me there was an agreement reached to
20 produce witnesses at particular times, and if plaintiff -- I
21 assume Google knows that if they wish to depose the parties
22 again, they would have to seek leave of Court to do so.

23 MR. HARRIS: That is understood, your Honor.

24 MR. ANDALMAN: It is not Google, your Honor, it is
25 the other parties.

1 MR. MURPHY: We wanted to avoid the --

2 THE COURT: I am saying Google, if they wish to
3 depose your witnesses a second time because, if I grant -- or
4 if some Judge grants leave to bring in new parties, that they
5 would have to seek leave of Court to depose your people again,
6 not to say that the new parties wouldn't have an opportunity
7 to depose them, but that --

8 MR. SHONKWILER: That was our only concern, that the
9 new parties would, and we are not refusing to produce these
10 parties for deposition.

11 THE COURT: If I allow the amendment, that is the
12 problem you run into this late in the game by amending.

13 So, we will put the motion to amend the third amended
14 complaint over to next week, and you should file something by
15 the end of this week, just simultaneously file something by
16 the end of the week as to whether or not legally I can rule
17 on the motion.

18 You can also put in your arguments why perhaps I
19 shouldn't rule on it, and/or if you conclude I legally should
20 do it, I won't limit you to that, you can put anything you
21 want in there, whether I should recuse myself now, because you
22 have raised the specter of adding a party which would force me
23 to recuse myself, or whether I can rule on that legally, but
24 perhaps I shouldn't, because of whatever reason you can think
25 of.

1 MR. HARRIS: Very well.

2 You would like that filed by Friday?

3 THE COURT: Yes, so we can review it.

4 And we will continue the motion over until next
5 Tuesday.

6 MR. HARRIS: Okay.

7 THE CLERK: Tuesday, the 27th, at 9:00.

8 THE COURT: Okay.

9 MR. FLEMING: Can we have also until Friday to file
10 our brief in support of the extension for discovery?

11 THE COURT: Is the motion for extension up?

12 MR. FLEMING: It is up next Tuesday.

13 MR. FINN: Your Honor ordered that tomorrow the
14 plaintiffs file a supplemental brief, if necessary, for the
15 continued motion to extend discovery.

16 MR. FLEMING: It is due tomorrow, yes, but we will
17 obviously be in Mr. Specht's deposition tomorrow.

18 THE COURT: Wait a minute.

19 What is up tomorrow before me, anything?

20 MR. FLEMING: No, but we are supposed to file a
21 further brief tomorrow, your Honor, in support of our motion
22 to extend the discovery cut off. Your Honor wanted to see
23 what happened at the 30(b)(6) depositions and wanted us to
24 come and file supplemental briefs.

25 THE COURT: Okay.

1 MR. FLEMING: And so what I am suggesting is that
2 we file that on Friday as well, and that will be up next
3 Tuesday as well.

4 THE COURT: You can file it on Friday.

5 MR. FLEMING: Thank you, your Honor.

6 MR. HARRIS: Thank you.

7 THE COURT: All right.

8 (Proceedings concluded.)
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12 C E R T I F I C A T E

13
14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.
16

17 /s/Krista Burgeson, CSR, RMR, CRR July 20, 2010
18 Federal Official Court Reporter Date
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EXHIBIT B

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

ERICH SPECHT, et al.,	}	No. 09 C 2572
Plaintiffs,		
vs.		
GOOGLE, INC., et al.,	}	Chicago, Illinois
Defendants.		
		9:00 o'clock a.m.

**TRANSCRIPT OF PROCEEDINGS - STATUS AND MOTION
BEFORE THE HONORABLE HARRY D. LEINENWEBER**

APPEARANCES:

For the Plaintiffs: **LAW OFFICE OF MARTIN J. MURPHY**
MR. MARTIN J. MURPHY
2811 RFD
Long Grove, Illinois 60047
847-540-8899

For the Defendant, **GREENBERG TRAURIG, LLP**
Google, Inc.: **MR. HERBERT H. FINN**
MR. RICHARD D. HARRIS
77 West Wacker Drive
Chicago, Illinois 60601
312-456-8400

For the Defendant, **LOEB & LOEB**
T-Mobile: **MR. ROBERT M. ANDALMAN**
MS. EMILY R. HAUS
321 North Clark Street
Chicago, Illinois 60610
312-464-3100

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Court Reporter:

FEDERAL OFFICIAL COURT REPORTER
MS. KRISTA BURGESON
219 South Dearborn Street
Chicago, Illinois 60604
312-435-5567
Krista_Burgeson@ilnd.uscourts.gov

1 THE CLERK: 09 C 2572, Specht versus Google.

2 MR. MURPHY: Good morning, your Honor. Martin Murphy
3 on behalf of the plaintiffs.

4 MR. HARRIS: Good morning, your Honor. Richard
5 Harris and Herb Finn on behalf of Google.

6 MR. FINN: Good morning.

7 MR. ANDALMAN: Good morning, your Honor. Robert
8 Andalman and Emily Haus for T-Mobile.

9 MS. HAUS: Good morning.

10 THE COURT: Status today?

11 MR. MURPHY: Your Honor, at this point the
12 plaintiffs have decided to withdraw their motion for the
13 preliminary injunction at this time and rather get all the
14 pleadings in order, get everybody in, and perhaps proceed at
15 that point.

16 THE COURT: So, the motion for the preliminary --
17 for the TRO and the preliminary injunction are withdrawn?

18 MR. MURPHY: Yes.

19 MR. HARRIS: They are done. That is correct, your
20 Honor.

21 THE COURT: Okay.

22 MR. HARRIS: Before addressing plaintiff's motion to
23 amend the complaint under plaintiff's interpretation of Rule
24 15, Judge, I did want to mention that after the Court opened
25 up the opportunity to take some discovery, and we put together

1 a schedule, we identified 4 witnesses that we were going to be
2 taking here and in California, came in with briefing dates and
3 things like that, and right after that -- oh, and we started
4 exchanging some documents as well, and right after that, the
5 motion was withdrawn.

6 Here we are now, and instead of subtracting
7 defendants from the complaint, apparently we are going to be
8 adding some new defendants to the amended complaint.

9 THE COURT: Let me see.

10 Who have you got in here? Is AT&T in here?

11 MR. MURPHY: No, AT&T is not.

12 THE COURT: Okay.

13 MR. MURPHY: I have added 5 defendants, your Honor,
14 4 of them are employees of Google, and one is Android Inc.,
15 which is a subsidiary of Google, and Android Inc. was actually
16 incorporated by the 4 employees of Google. They purchased
17 Android Inc. from these individuals.

18 MR. HARRIS: Unfortunately, your Honor, we not only
19 don't have a copy of the proposed amended complaint, again,
20 because of what is happening under Rule 15, according to
21 plaintiff, we have no basis whatsoever for the addition now
22 of individual employees of Google, as well as a wholly-owned
23 sub.

24 MR. MURPHY: None of the defendants have answered.
25 None of the defendants' answers are due until at least the

1 29th, because I originally served everybody with notice and
2 request for waivers.

3 So, there are no answers in the file yet. No one has
4 filed. No one's answers are due for another 25 days, at the
5 earliest.

6 THE COURT: When are you going to file the amended
7 complaint?

8 MR. MURPHY: Today. I have to file it
9 electronically, so I will go back to my office, once I have
10 leave, and file it today.

11 THE COURT: And incidentally, what is the Astonishing
12 Tribe?

13 MR. MURPHY: The Astonishing Tribe, Inc.?

14 THE COURT: AB.

15 MR. MURPHY: Yes.

16 THE COURT: What is it?

17 MR. MURPHY: It is a corporation. It is one of the
18 -- there are 47 members of the open handset alliance, and the
19 open handset alliance together with Google are the -- the
20 manufacturers or makers of this Android software.

21 So, these are all members of this open handset
22 alliance.

23 MR. HARRIS: Your Honor, there are 48 or 49 --
24 actually, there will be 52 or 53 co-defendants now. The vast
25 majority of those co-defendants have been sued because they

1 belong to a trade association. There has been no pleading,
2 much less any kind of showing, that they have actually used
3 the mark, much less used that mark in commerce, but because
4 they belong to this handset association, they have been sued.

5 That is where this case is going.

6 THE COURT: Well, I am taking counsel on his word
7 that there is Rule 11.

8 Will you be representing many of them?

9 MR. HARRIS: We expect to, your Honor. Some of them
10 have not been served yet.

11 THE COURT: We will not end up with 47 lawyers?

12 MR. MURPHY: So far we have 6, and only 2 defendants
13 represented.

14 MR. HARRIS: You have the room for it but I don't
15 think that will happen, Judge. That won't be the case.

16 Frankly, by the time the response period comes into
17 play in terms of responding to the allegations in the
18 complaint, I think it will come down in size considerably.

19 THE COURT: Okay.

20 Well, I will grant the motion to file the first
21 amended complaint.

22 That is adding parties, right?

23 MR. MURPHY: It is adding parties. It is correcting
24 typos, because some of the names -- I took all the names off
25 their web site, I was rushing to get this in, some names were

1 abbreviated, and I had to go back and do some research to find
2 their legal names.

3 It was pointed out by some of the attorneys for some
4 of the various defendants that the actual member of the open
5 handset alliance is not the company name, but another company,
6 and so I needed to correct some of the defendants' names, put
7 in the jurisdiction, their residency, and some of the counts
8 were --

9 THE COURT: But AT&T is not a member of the alliance;
10 is that correct?

11 MR. MURPHY: They are not.

12 THE COURT: Okay.

13 MR. HARRIS: We don't represent the alliance, your
14 Honor, so I don't know.

15 I can tell the Court though that in view of the fact
16 that we have already started producing documents, and we had a
17 mini schedule for accommodating the now withdrawn motion for
18 preliminary injunction, that it is really, really important in
19 this case that we start addressing discovery, and we wanted to
20 request in stanter the Court's approval for us to exchange
21 discovery immediately to that purpose.

22 I think it is going to be very, very important in
23 this case to start addressing the facts behind these
24 accusations.

25 MR. MURPHY: Your Honor, with respect to the

1 documents they produced, all they produced so far, is Google's
2 10-K's and 10-Q's, quarterly filings with the SEC, which are
3 not even relevant to this case.

4 I would like to get everybody in and get everybody's
5 pleadings so we can at least form what the case is about,
6 figure out exactly what the issues are, and what positions
7 everybody is taking.

8 Counsel wants to proceed with discovery, yet he has
9 never filed a responsive pleading to my motion, my memorandum,
10 or has ever produced any answer to the complaint.

11 So, I would like to know what exactly -- what are
12 the -- what is the dispute.

13 THE COURT: You have sent out requests to waive
14 service; is that correct?

15 MR. MURPHY: Correct.

16 THE COURT: And do you anticipate that all the
17 parties that you will be representing will waive service? Do
18 you anticipate them to waive service?

19 MR. HARRIS: We expect a lot will, and a good number
20 will not. We don't know right now for sure.

21 I can tell you, Judge, that this is now the third
22 appearance for the motion for preliminary injunction that has
23 now been withdrawn.

24 There was a sense for urgency, and now all of a
25 sudden, the brakes are put on.

1 We want to get to the facts of this case. We need to
2 at least exchange discovery to that purpose, Judge, instead of
3 waiting 60 or 90 days to find out what this case is about.

4 MR. MURPHY: Your Honor, the purpose of the temporary
5 restraining order was to block the developer's conference
6 which took place on May 27th and May 28th, that was the
7 purpose of the TRO, to stop that.

8 When that didn't happen, we were going into the
9 preliminary injunction, and it seemed fruitless to have one
10 defendant preliminarily enjoined as opposed to all the
11 defendants that are actually infringing on the trademark.

12 So, I thought it best, rather than wasting the
13 Court's time and all the attorneys' time, coming in here one
14 at a time seeking preliminary injunctions, to have everybody
15 in here, frame the issues, and then proceed.

16 So, I think it is best that we get answers on file
17 and proceed in the normal fashion.

18 THE COURT: Who is before the Court now, Google?

19 MR. HARRIS: That is correct, your Honor.

20 THE COURT: Who else?

21 MR. ANDALMAN: Your Honor, we filed an appearance on
22 behalf of T-Mobile. There are some service issues that we
23 need to talk to Mr. Murphy about. We received a waiver of
24 service request this week, I am not sure it is the right
25 entity, so we are not technically served, and we haven't

1 waived service at this point, but we have filed an
2 appearance.

3 MR. HARRIS: Your Honor, we were told at the last
4 hearing on the 21st that the preliminary injunction action was
5 not being targeted toward anybody else other than Google.

6 We have just been told now that the purpose, the
7 intent, behind the preliminary injunction was to stop
8 everybody. We are getting frustrated with the little
9 misdirection here.

10 The Court certainly may recall the fact that Google
11 was the target for the preliminary injunction. Now that has
12 been withdrawn. Google would like to know the basis for this
13 complaint.

14 And we are well aware of this Court's position on not
15 only the formal discovery, but the informal exchange of
16 discovery, and anything we can do to get things going as soon
17 as possible to find out if there is, in fact, any basis for
18 this complaint, would sincerely be appreciated.

19 THE COURT: When would you anticipate --

20 I mean, are you going to file an answer or a motion
21 or --

22 MR. FINN: Yes.

23 MR. HARRIS: We are going to be answering, or
24 otherwise responding, probably otherwise responding, certainly
25 well within the period that the waiver request addressed.

1 THE COURT: Which is what?

2 MR. HARRIS: The deadline I think is the 29th of
3 June.

4 MR. FINN: 29th or 30th, based on the current
5 complaint, your Honor.

6 THE COURT: What exactly --

7 Well, what discovery do you want at this point?

8 MR. HARRIS: We want to go into, as this Court knows,
9 the crucial issue of abandonment. We want to simply find out
10 what business this individual did between 2001 and 2009 when,
11 on the day before its trademark was going to go abandoned, it
12 all of a sudden resurrected all of its companies, started
13 filing, doing all sorts of things, and within a day or two
14 after, filed suit.

15 We want to simply find out, take a look, at what
16 business he has been doing, because we --

17 THE COURT: The problem is if you depose -- do you
18 want to depose someone, or is this just written discovery?

19 MR. HARRIS: I'm sorry?

20 THE COURT: Do you want to depose someone or is it
21 written discovery?

22 The problem I see as far as depositions are
23 concerned, you know, we have got a bunch of defendants who
24 aren't in the case, and aren't participating, which would mean
25 duplicating it, and that is why it makes some sense to delay

1 it.

2 I don't have a problem with some written discovery
3 targeted for a specific purpose.

4 MR. HARRIS: Your Honor, for now, the written
5 discovery would be the limits of what we are looking at.

6 We would like to be able to get some Answers to
7 Interrogatories. We want to see documents, that is what we
8 want to see.

9 We realize we are not in a situation where we need
10 depositions for a preliminary injunction hearing, because
11 conveniently, that has now been withdrawn.

12 MR. MURPHY: Your Honor, every time we have come in
13 here they want to answer, they want to respond, and then every
14 time I try to get a response out of them, they want to do
15 discovery.

16 Counsel has stated that we have got tons of documents
17 that establish abandonment, yet they have never pled
18 abandonment except in here to argue that -- I mean,
19 abandonment is their affirmative defense, or they file a cross
20 complaint for cancellation.

21 They haven't sought to cancel my client's trademark
22 registration ever. They used it. They knew about it since
23 February of 2008 that my client had the registered mark,
24 Android Data, but they took no action. They waited for us to
25 come in on the assumption that we will lose it.

1 THE COURT: Well, I will permit Google, as soon as
2 you file a responsive pleading, to send out written discovery
3 limited to the issue of abandonment.

4 That is what you want; is that correct?

5 MR. HARRIS: Yes, your Honor.

6 MR. MURPHY: And then would I also be allowed
7 discovery with regard to their search, their trademark search,
8 and investigations?

9 THE COURT: Written discovery.

10 You want it as to what, now?

11 MR. MURPHY: Well, what steps they took before using
12 the name Android did they take to ensure that they weren't
13 infringing on my client's trademark.

14 I believe one of the defendants, Android Inc.,
15 actually began the infringement in 2003, one year after my
16 client registered his trademark.

17 So, that is why I am adding Android Inc., which was
18 then purchased by Google, for the purposes of issuing this
19 Android software.

20 THE COURT: You want written discovery on --

21 MR. MURPHY: With respect to the trademark research,
22 as to Google and Android Inc., as to the research they did
23 with respect to the trademark, Android, that they tried to
24 register.

25 MR. HARRIS: Your Honor, that would be discovery on

1 the issue of willfulness. I don't know if that is a crucial
2 substantive issue right now.

3 MR. MURPHY: Well, abandonment -- you are going to
4 allege that we abandoned it at some point in time, and if you
5 started using it before any abandonment, and you have
6 infringed before any abandonment, if there was such a thing of
7 abandonment, which we of course dispute, then certainly there
8 is this timeframe here that we would like to know about.

9 We would like to know when did they start their
10 infringing activities, what was the -- they had a web site,
11 Android Inc., they had -- I'm sorry, a web site, Android.com,
12 they had the corporation, Android Inc., which was registered
13 in California, registered in California and Delaware, and we
14 have these 4 individuals that were --

15 MR. HARRIS: Your Honor, apparently we are going to
16 have some new trademark law that will be generated in this
17 case where, under plaintiff's claim, if someone started using
18 a mark illicitly or unlawfully before it was abandonment, then
19 abandonment is somehow told or stayed along the way, which is
20 --

21 THE COURT: I suppose if it hadn't been abandoned,
22 there would be a period of time prior to abandonment where
23 there might be damages. That is possible.

24 MR. HARRIS: That would be a big if, your Honor, but
25 I don't believe that is the case.

1 We are looking at 7 years of nonuse in this case. We
2 want to see -- we want to see that which was promised to us
3 before the motion was withdrawn.

4 MR. MURPHY: Every time we come in the number
5 changes, 3 years, 4 years, 5 years, and now it is 7 years.
6 This is why I need a response, your Honor. Their information
7 changes.

8 THE COURT: You will get an answer or other pleading
9 at some point.

10 MR. MURPHY: Yes, then we will take it from there, I
11 guess.

12 THE COURT: Right.

13 So, you can take paper discovery limited to the issue
14 of the efforts made to research -- what is it?

15 MR. MURPHY: To investigate the trademark.

16 THE COURT: To investigate the trademark, yes.

17 MR. MURPHY: Also, counsel said he has loads of
18 documents showing their investigation, and I would like to see
19 those documents.

20 THE COURT: I will let you retain those.

21 So, we will have a status in July then, because your
22 answer or other pleading will be in then, or if have you a
23 motion, you will probably come in on it.

24 MR. HARRIS: Very well.

25 THE COURT: All right.

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Give them a date in July.

THE CLERK: July 22 at 9:00.

MR. MURPHY: Thank you, your Honor.

MR. HARRIS: Thank you.

MR. FINN: And your Honor, just so we are clear, the preliminary injunction hearing date of July 8th is gone?

THE COURT: It is vacated on the basis of the withdrawal of the motion for both TRO and the preliminary injunction.

MR. FINN: Thank you.

MR. HARRIS: Thank you, your Honor.

MR. MURPHY: Thank you.

MR. ANDALMAN: Thank you.

(Proceedings concluded.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Krista Burgeson, CSR, RMR, CRR
Federal Official Court Reporter

June 4, 2009
Date

EXHIBIT C

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

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

DECLARATION OF HERBERT H. FINN

1. My name is Herbert H. Finn. I am a partner with Greenberg Traurig, LLP and counsel to Google Inc. in the above-captioned case.

2. On more than one occasion in this case, the Court has apprised the parties, both on and off the record, that if AT&T was a party to the case the Court may have to consider recusal because of the Court's spouse's relationship with AT&T.

3. I have reviewed the transcripts that are in our possession and located one such hearing in which the Court mentioned AT&T dated June 4, 2009. During that hearing, the Court twice confirmed that AT&T was not a party. (June 4, 2009 Transcript, pp 4-7). While this is the only transcript I have located, I am certain there were other instances where the Court, in the presence of both parties, specifically addressed the potential conflict if AT&T were added as a Defendant.

I declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct to the best of my knowledge, information and belief.

Date: July 23, 2010



Herbert H. Finn

EXHIBIT D

(Filed Under Seal)