

**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 INC.’S MOTION FOR CLARIFICATION OF SCHEDULING  
ORDER REGARDING TIMING OF DISPOSITIVE MOTIONS**

Defendant GOOGLE INC. ("Google"), by and through its undersigned attorneys, respectfully moves this Court for clarification of its prior orders regarding the scheduling of dispositive motions. As discussed below, when the parties appeared before the Court on February 23, 2010, the Court ruled that the parties could file dispositive motions beginning on July 30, 2010, which is also the date set for the close of oral discovery. However, the Minute Order issued by the Court after that hearing appears to erroneously suggest that July 30<sup>th</sup> was the deadline for filing dispositive motions. Therefore Google requests that the Court clarify its prior ruling and confirm that July 30<sup>th</sup> is the date upon which dispositive motions may first be filed, so there is no ambiguity in the record.

As noted above, the parties appeared before the Court on February 23, 2010 to address several issues, including the entry of a Scheduling Order under Rule 16(b). The parties were in agreement on facets of the Scheduling Order, although they disagreed on the timing of dispositive motions. After the Court set July 30<sup>th</sup> as the close of oral discovery, Plaintiffs then requested that the Court set that date as the earliest date on which the parties could file

dispositive motions. The Court agreed, noting that “you can file your motion as of July 30th” (Ex. A, Transcript from 2/23/10 Hearing, p. 17). After Google’s counsel raised a concern with regard to that date slipping in the event that the close of oral discovery were later extended, the Court further stated that “the deadline is July 30th, unless the defendant has the period for oral discovery extended. If you move to extend the oral discovery, then I would say that it might, but if plaintiff moves to extend, you can file your motion as of July 30th” (Id.).

Thus, it is clear from the Court’s comments on February 23 that the Court intended July 30 (the close of oral discovery) to be the earliest date on which the parties could file their dispositive motions. However, after that hearing the Court issued a Minute Order which stated “Dispositive motions due by 7/30/10” (Ex. B, Dkt. No. 174). While Google believes that the Court intended its Minute Order to set forth its ruling at the hearing, the language in the Minute Order somehow did not come out as intended.

More recently, on July 27<sup>th</sup> the Court issued its Order denying Plaintiffs’ motions to disqualify the Court and for leave to file a Third Amended Complaint, in which it noted that “Plaintiffs have stated no compelling reason why they submitted their amended complaint adding four new defendants near the eve of the close of oral discovery and just before Google has leave to file a motion for summary judgment” (Ex. C, Dkt. No. 235). The Court’s July 27<sup>th</sup> Order further confirms Google’s (and apparently the Court’s) understanding that July 30<sup>th</sup> is the first (not last) day for the parties to file dispositive motions.

Google has been preparing its dispositive motions and expects to file within the next 10 to 14 days. While it had believed that it might file such a motion on July 30<sup>th</sup>, recent unforeseen events affected and have hindered those efforts. Within the last three weeks, the parties have taken eight (8) depositions between them (five within the last five days alone). Many of the

depositions (including the Court-ordered deposition of Martin Murphy being taken on the last possible day, July 30) relate to issues anticipated to be raised in Google's dispositive motion. In view of the timing of those depositions, transcripts from all of them are not yet available to be incorporated into the dispositive motion.

In addition to all of the depositions being conducted, due to Plaintiffs' dilatory tactics, Google has also had to recently engage in expedited briefing and repeated appearances before the Court on Plaintiffs' Motions (i) for leave to file a Third Amended Complaint, (ii) to disqualify this Court, and (iii) to extend the close of oral discovery. As further part of Plaintiffs' dilatory tactics, on July 29, the day before the close of oral discovery, Plaintiffs produced over 2000 additional pages of documents, which, from at least a cursory initial examination, appear to have some relevance to issues to be addressed in Google's forthcoming motion for summary judgment. The late production of these documents further prevents adequate review prior to July 30<sup>th</sup>. Accordingly, Google requires further time to review these documents to determine, if in fact, they are relevant to those issues. As a result, Google has not been able to complete its motion for summary judgment.

Plaintiffs have not agreed to this request for clarification, instead preferring to address all scheduling issues in one omnibus discussion. Google does not generally object to such discussions if any further scheduling is in fact required. However the parties are engaged in the Court-ordered deposition of Martin Murphy which does not permit timely discussions and the immediacy of any potential deadline does not permit waiting for further discussions.

In view of the foregoing, Google requests that the Court clarify its prior Orders and confirm that the parties may file dispositive motions beginning on July 30, 2010—with the expectation that Google will be filing at least one motion for summary judgment within the next 10 to 14 days.

Respectfully submitted,

Dated: July 30, 2010

/s Herbert H. Finn

Herbert H. Finn (ARDC #6205685)

Richard D. Harris (ARDC #1137913)

Jeffrey P. Dunning (ARDC #6273364)

Cameron M. Nelson (ARDC #6275585)

GREENBERG TRAURIG, LLP

77 W. Wacker Drive, Suite 3100

Chicago, IL 60601

(312) 456-8400

Counsel for Google Inc.