

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

ONE NUMBER CORPORATION,	)	
	)	
Plaintiff / Counterclaim-	)	
Defendant,	)	
	)	Case No. 1:10-cv-0312-RLY-TAB
vs.	)	
	)	
GOOGLE, INC.	)	
	)	
Defendant / Counterclaimant.	)	

**ONE NUMBER CORPORATION'S MOTION FOR LEAVE TO  
TAKE LIMITED EXPEDITED WRITTEN DISCOVERY**

One Number Corporation ("One Number"), by counsel, pursuant to Rule 26(d) of the *Federal Rules of Civil Procedure*, respectfully moves the Court to grant One Number leave to conduct limited written discovery with Interrogatories and Requests for Production of Documents and Things to the Defendant Google, Inc. ("Google"). In support of its motion, One Number states:

**GENERAL BACKGROUND**

1. One Number filed its Complaint against Google for infringement of U.S. Patent No. 7,440,565 (the "565 Patent") and U.S. Patent No. 7,680,256 (the "256 Patent") on March 16, 2010. [Dkt. Entry 1].
2. On July 23, 2010, Google filed its Answer and Counterclaims (hereinafter the "Answer"). [Dkt. Entry 25]. Google seeks, *inter alia*, a

declaratory judgment that the claims of the `565 and `256 Patents are invalid for failure to comply with the Patent Laws, 35 U.S.C. §§ 1 *et seq.*, including, but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112. *Id.*

3. On July 26, 2010, Google filed Requests for *Inter Partes* Reexamination with the United States Patent & Trademark Office ("USPTO") in connection with the `565 Patent (the "`565 Request") and the `256 Patent (the "`256 Request"). [Dkt. Entries 28 and 29].

4. In the `565 Request and `256 Request, Google asserted that the claims of the `565 and `256 Patents are invalid as either being anticipated pursuant to 35 U.S.C. § 102 and/or obvious pursuant to 35 U.S.C. § 103 based on several prior art references. [Dkt. Entries 28 and 29].

5. On October 21, 2010, the USPTO issued a non-final Office Action in connection with the re-examination of the `565 Patent that rejected claims 1-11, 13-14, and 18 and confirmed that patentability of claims 12 and 17.<sup>1</sup> [Dkt. Entries 28 and 29]. On October 22, 2010, the USPTO issued a non-final Office Action in connection with the re-examination of the `256 Patent that rejected claims 1-13. [Dkt. Entries 28 and 29].

6. One Number's responses to the non-final Office Actions issued by the USPTO are due two months from the mailing dates of the non-final Office Actions, *i.e.* December 21, 2010 and December 22, 2010, respectively. Until the Office Actions issued on October 21 and 22, 2010, One Number was

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<sup>1</sup> One Number believes that Google infringes claims 12 and 17 of the `565 Patent, the patentability of which stands confirmed.

not aware of the exact timing that it would need the requested discovery due to the inherent delays in dealing with the USPTO.

7. On November 2, 2010, Google filed its Motion to Stay Proceedings Pending *Inter Partes* Reexamination of the Patents-In-Suit (hereinafter the "Motion to Stay"). [Dkt. Entry 28].

8. One Number's First Set of Interrogatories to Google and One Number's First Request for Production of Documents and Things to Google are attached hereto as Exhibit A.

9. The interests of justice are served by allowing One Number to conduct limited written discovery.

10. One Number anticipates that written discovery will disclose relevant evidence that supports its belief that the inventions set forth in the '565 and '256 Patents are novel and non-obvious.

11. Pursuant to Rule 26(d), this Court has broad discretion for the convenience of the parties and in the interests of justice to allow discovery in any sequence, including before the Case Management Plan (*See* F.R.Civ.P. 26(f)) and the initial conference between the parties (*See* S.D. Ind. L.R. 16.1(c)) when discovery typically commences.

12. Prior to filing this motion, One Number sought agreement from Google to answer such limited discovery, but was unable to secure such an agreement.

13. One Number is not requesting leave for vexation or delay but in the interests of justice.

14. One Number also requests that responses to these limited discovery requests be provided to One Number within fourteen (14) days of service thereof due to the fact that One Number's responses in the reexamination proceeding are due shortly thereafter.

WHEREFORE, One Number, by counsel, respectfully requests that the Court grant this motion and issue an Order granting leave to One Number to conduct early written discovery as set forth in Exhibit A attached hereto, and grant all other just and proper relief.

Date: November 11, 2010

Respectfully submitted,

/s/ Alastair J. Warr

Alastair J. Warr

Scott S. Morrisson

Dean E. McConnell

KRIEG DEVAULT LLP

One Indiana Square, Suite 2800

Indianapolis, IN 46204

Telephone: (317) 636-4341

Facsimile: (317) 636-1507

Email: awarr@kdlegal.com

smorrisson@kdlegal.com

dmccConnell@kdlegal.com

Attorneys for One Number

**CERTIFICATE OF SERVICE**

I hereby certify that on November 11, 2010, a copy of the foregoing was filed and served electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Todd G. Vare  
Jeff M. Barron  
Jennifer Schuster  
BARNES & THORNBURG LLP  
11 South Meridian Street  
Indianapolis, IN 46204  
(317) 236-1313  
(317) 231-7433 (Facsimile)  
[tvare@btlaw.com](mailto:tvare@btlaw.com)  
[jbarron@btlaw.com](mailto:jbarron@btlaw.com)  
[jschuster@btlaw.com](mailto:jschuster@btlaw.com)

/s/ Alastair J. Warr  
Alastair J. Warr