

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

RED BEND LTD., and  
RED BEND SOFTWARE INC.,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 09-cv-11813-DPW

**PLAINTIFFS' NOTICE OF POST-HEARING FACTUAL DEVELOPMENTS IN THE  
REEXAMINATION PROCEEDING AT THE U.S. PATENT AND TRADEMARK  
OFFICE**

On Friday, June 4, 2010 defendant Google Inc. (“Google”) filed a document entitled “Defendant Google Inc.’s Notice of Post-Hearing Factual Developments in the Reexamination Proceeding At the U.S. Patent and Trademark Office” (Google’s Post-Hearing Notice”). (*See* Dkt. No. 81). Google’s Post Hearing Notice attached a copy of the Non-Final Office Action issued in the Reexamination of the patent-in-suit and noted that the United States Patent and Trademark Office (“PTO”) rejected certain Asserted Claims based on Wetmore and, with regard to certain dependent claims, based on Wetmore in view of Sadowsky.

Four days later, on June 8, 2010, Red Bend filed a document entitled “Plaintiffs’ Response to Defendant Google’s Post-Hearing Notice” in which Red Bend alerted the Court that the PTO actually upheld the patentability of many of the Asserted Claims in this action. Therein, Red Bend also noted that the rejection was merely an initial rejection, that such initial rejections are the norm, and that Red Bend had not yet provided the PTO with any argument in connection with Google’s reexamination request and/or the PTO’s initial rejection. (Dkt. No. 83).

Red Bend now files this document to notify the Court of significant developments in the Reexamination at the PTO. First, on June 29, 2010, Red Bend filed a response related to Google’s reexamination request and the initial rejection issued by the PTO. (*See* Exh. 1, attached hereto, which was also attached as Exhibit D to the Declaration of Ms. Manning in Support of Google’s Claim Construction Brief at Dkt. No. 94). Second, on August 11, 2010 Red Bend’s patent attorney held an interview with the Examiners handling the reexamination. (*See* Exh. 2, Interview Summary, attached hereto). The interview summary, just received from the PTO today, indicates that an agreement was reached between Red Bend and the PTO, and that the “[e]xaminer agrees that Wetmore does not teach the claimed invariant references or distinct label marks as claimed and defined by the specification.” (*Id.* at 3).

In view of the foregoing, Red Bend renews its request that its motion for a preliminary injunction be granted.

Dated: August 16, 2010

Respectfully submitted,

By: */s/ Jennifer C. Tempesta*

---

Jennifer C. Tempesta

Daniel Cloherty (BBO# 565772)  
Dwyer & Collora, LLP  
600 Atlantic Avenue - 12th Floor  
Boston, MA 02210-2211  
Telephone: (617) 371-1000  
Facsimile: (617) 371-1037

Robert C. Scheinfeld (RS-2632) (Admitted PHV)  
Eliot D. Williams (EW-6560) (Admitted PHV)  
Jennifer C. Tempesta (JT-4841) (Admitted PHV)  
Baker Botts L.L.P.  
30 Rockefeller Plaza  
44th Floor  
New York, New York 10012-4498  
Telephone: (212) 408-2500  
Facsimile: (212) 408-2501

*Attorneys for Plaintiffs Red Bend Ltd. and  
Red Bend Software Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on August 16, 2010.

By:           /s/ Jennifer C. Tempesta          

Jennifer C. Tempesta