

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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RED BEND LTD. and)	
RED BEND SOFTWARE INC.,)	
	Plaintiffs,)	
v.)	CIVIL ACTION
)	NO. 09-cv-11813
GOOGLE INC.,)	
	Defendant.)	
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GOOGLE INC.,)	
	Counterclaim-Plaintiff,)	
v.)	
RED BEND LTD. and)	
RED BEND SOFTWARE INC.,)	
	Counterclaim-Defendants.)	
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**AFFIDAVIT OF DAVID MAGEE IN SUPPORT OF GOOGLE’S
EMERGENCY MOTION TO COMPEL DEPOSITIONS OR IN THE
ALTERNATIVE STRIKE DELARATIONS OF YORAM SALINGER AND
STEPHEN EDWARDS AND/OR PRECLUDE REPLY BRIEFING**

I, David M. Magee, say and declare as follows;

1. I am an attorney at law duly licensed to practice before all courts in the Commonwealth of Massachusetts and before this United States District Court. I am counsel of record for Defendant and Counterclaimant Google, Inc. (“Google”). I have personal knowledge of the following facts and, if called as a witness could and would be competent to testify thereto.

2. Attached as **Exhibit 1** is a true and accurate copy of excerpts from the transcript of the Court’s December 2, 2009 Scheduling Conference discussing the need for live witnesses at the February 17, 2010 hearing on Red Bend’s motion for preliminary

injunction.

3. Attached as **Exhibit 2** is a true and accurate copy of correspondence dated December 22, 2009, from Susan Baker Manning, counsel to Google, to Eliot Williams, counsel to Red Bend concerning the volume of documents processed for Google's document production.

4. Attached as **Exhibit 3** is a true and accurate copy of correspondence dated January 4, 2010, from Susan Baker Manning, to Eliot Williams seeking deposition availability for Yoram Salinger and Dr. Stephen Edwards, Red Bend's declarants in support if its preliminary injunction motion.

5. Attached as **Exhibit 4** is a true and accurate copy of correspondence dated January 6, 2010, from Eliot Williams, to Susan Baker Manning refusing to make Mr. Salinger or Dr. Edwards available for deposition and selectively quoting from the December 2, 2009 hearing transcript (Exhibit 1, above) concerning the need for live witnesses at the February 7, 2010 hearing.

6. Attached as **Exhibit 5** is a true and accurate copy of correspondence dated January 6, 2010, from Susan Baker Manning, to Eliot Williams regarding Red Bend's refusal to make Mr. Salinger or Dr. Edwards available for deposition and calling for a meet and confer over the issue.

7. Counsel for Google attempted in good faith to resolve this dispute without the expense and burden of motion practice. On January 6, 2010, Susan Baker Manning and I contacted counsel for Red Bend via email and telephone conference in an effort to secure the Declarants deposition appearance. Mr. Williams responded that Red Bend would not produce the Declarants for the preliminary injunction phase of the case.

8. Google is seeking emergency relief because Red Bend's injunction motion is set for hearing on February 17, 2010 with Google's opposition brief thereto due by January 25, 2010.

I declare under penalty of perjury that the foregoing statements are true and correct.

Signed this 8th day of January, 2009, at Boston, MA.

By: /s/ David M. Magee
David M. Magee

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, by federal express, on January 8, 2010.

/s/ David M. Magee
David M. Magee, BBO # 652399