

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RED BEND SOFTWARE, INC.,

Plaintiff,

Civil Action
No. 09-11813-DPW

v.

GOOGLE, INC.

December 2, 2009,
10:55 a.m.

Defendant.

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
1 COURTHOUSE WAY
BOSTON, MA 02210

DEBRA M. JOYCE, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 5204
Boston, MA 02210
617-737-4410

1 talking about the taint that perhaps would apply to Red Bend
2 during this period of time where Google is using its muscle and
3 marketing muscle to advertise to the world that its code is
4 open.

5 THE COURT: Okay. So, you know, if David has to wait
6 a bit to bring down Goliath, I'm not sure that's material here.

7 So I think I understand what your concerns are, and
8 they're reasonable concerns, I'm just not persuaded that it
9 justifies what I might call distorting the schedule a bit,
11:06 10 including the schedule for me to be able to absorb these
11 materials.

12 MR. SCHEINFELD: Well, your Honor, I've tried my best.

13 THE COURT: Okay. And you can report to your client
14 that you did, that you faced an obdurate and unreasonable
15 judge.

16 (Discussion off the record.)

17 THE COURT: So if we set this -- I'm going to set it
18 and then work my way back for hearing on the afternoon, let's
19 say, 2:30 on Wednesday, February 17th. Do the parties
11:07 20 realistically think they're going to have live testimony here
21 or want to have live testimony?

22 MR. SCHEINFELD: Yes, your Honor.

23 THE COURT: Like what?

24 MR. SCHEINFELD: We would propose at this point in
25 time hearing from two of our witnesses, our principal and our

1 expert.

2 THE COURT: What are they going to talk about?

3 MR. SCHEINFELD: Well, harm, our principal is going to
4 talk --

5 THE COURT: Let me tell you -- why is it that I can't
6 just take your -- take their depositions -- take their
7 affidavits on this? I always like to make new friends, but I'm
8 not sure that I need to meet them here.

9 MR. SCHEINFELD: Well, your Honor could take their
10 declarations, but then we would want the opportunity to cross.

11 THE COURT: Let's see what I think about that. Do you
12 want to press your luck by telling me --

13 MR. SCHEINFELD: You're doing so well.

14 MS. BAKER MANNING: Well, I will tell you, your Honor,
15 certainly if Red Bend intends to present their witnesses live,
16 I think it would make sense to have live witnesses as well.

17 THE COURT: My default on this at this point is
18 declarations or affidavits from the witnesses that you intend
19 to introduce here.

11:09 20 MS. BAKER MANNING: And would cross be introduced
21 through deposition testimony, your Honor?

22 THE COURT: I don't know what cross would be necessary
23 yet. And what I think I would say is in the argument on the
24 17th, I'll hear you on the question of whether or not you think
25 it is necessary to have cross-examination. And then I'll

1 schedule time if I think it's appropriate. But we're dealing
2 with a preliminary injunction here, and I'm not sure that --
3 because it's not going to be resolved in a final form at this
4 stage that I think that live testimony is going to be that
5 helpful, but I certainly don't know enough about it, that a
6 kind of desire of your clients to speak in open court is not
7 enough for me, and the chance to practice cross-examination
8 skills is not enough for me either.

9 So it's got to be something that tells me it's going
10 to be material to my disposition of the matter that couldn't
11 fairly have been anticipated by the parties here.

12 I view live testimony generally as important for
13 purposes of dealing with witnesses' credibility, and I'm not
14 sure credibility is going to be that much of an issue here.
15 Maybe it will, I don't know. Won't be the first time I'm
16 surprised, but the time at which I'll make a determination
17 about that I think is going to be at the hearing on this.

18 So what I'm carving out is, as I said, 2:30 on
19 February 17th.

11:10 20 That then, I think, works us back here, just using the
21 time frame that Google has in its, I think, reply, so Google --
22 let's see --

23 MS. BAKER MANNING: We had proposed, your Honor,
24 anticipating a hearing the week of the February 15th, which is
25 where we are. We had suggested we file an opposition on

1 January 29th, which I believe is a Friday.

2 THE COURT: Okay. So January 29th for the opposition.
3 Here the parties' depositions' schedule and production of
4 document schedule I don't understand -- apart from wanting to
5 expedite it more on the part of Red Bend, I don't see that as a
6 problem. Is it?

7 MR. SCHEINFELD: No, it's not, your Honor. But if I
8 may address the time of Google's opposition. If that's the
9 case, your Honor, we would only have six days to file a reply,
10 and we would -- I would like more time to do that. I'm not
11 suggesting that we push back the hearing. What I'd like to
12 have is Google's opposition due a week or two earlier than
13 January 29th to give Red Bend time to reply, more time to
14 reply.

15 THE COURT: So what you had the last time under your
16 proposal is nine days?

17 MR. SCHEINFELD: That's correct, your Honor.

18 THE COURT: Okay. The 25th, January 25th for Google's
19 opposition to the motion for preliminary injunction. But in
11:13 20 terms of the document production and that sort of thing, the
21 development of time periods, do I have to impose one or do you
22 think you can work it out without coming back to me?

23 MR. SCHEINFELD: I think we'll be able to work that
24 out.

25 MS. BAKER MANNING: There is one issue I would like to