

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RED BEND LTD. and
RED BEND SOFTWARE INC.,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

CIVIL ACTION
NO. 09-cv-11813

GOOGLE INC.,

Counterclaim-Plaintiff,

v.

RED BEND LTD. and
RED BEND SOFTWARE INC.,

Counterclaim-Defendants.

**DECLARATION OF SUSAN BAKER MANNING IN SUPPORT OF
DEFENDANT AND COUNTERCLAIM-PLAINTIFF GOOGLE INC.'S
OPPOSITION TO RED BEND'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Susan Baker Manning, declare as follows:

1. I am over 18 years of age. I am a partner of Bingham McCutchen LLP, counsel for defendant and counterclaim-plaintiff Google Inc. I have personal knowledge of the facts stated herein, except those stated on information and belief, and, if called upon, could and would testify competently to them. I make this declaration in support of Google Inc.'s Opposition to Red Bend's Motion for a Preliminary Injunction.

2. Attached as Exhibit 1 is a true and correct copy of U.S. Patent No. 6,546,552. This document was produced with the bates numbers GRB-00000001 through GRB-00000016.

3. Attached as Exhibit 2 are true and correct copies of relevant pages bates numbered RedBend00000001, RedBend0000128 through RedBend0000135 and

RedBend0000144 through RedBend0000177 from the prosecution history of U.S. Patent No. 6,546,552.

4. Attached as Exhibit 3 is a true and correct copy of a document entitled “The meaning of open.” This document is publicly available at <http://googleblog.blogspot.com/2009/12/meaning-of-open.html>, and was produced with bates numbers RedBend0007798 through RedBend0007806.

5. Attached as Exhibit 4 is a true and correct copy of a document entitled “Browser Market Share.” This document is publicly available at <http://marketshare.hitslink.com/browser-market-share.aspx?qprid=0> (last visited Feb. 24, 2010).

6. Attached as Exhibit 5 is a true and correct copy of a document dated July 15, 2009 and entitled “Smaller is Faster (and Safer Too).” This document is publicly available at <http://blog.chromium.org/2009/07/smaller-is-faster-and-safer-too.html> and was produced with bates numbers GOOG-00026259 through GOOG-00026265.

7. Attached as Exhibit 6 is a true and correct copy of a document entitled “Software Updates: Courgette; How Courgette Works.” This document is publicly available at <http://dev.chromium.org/developers/design-documents/software-updates-courgette>, was marked as Google Exhibit 7 during the deposition of Yoram Salinger, and was produced with bates numbers GOOG-00027268 through GOOG-00027271.

8. Attached as Exhibit 7 is a true and correct copy of “Browser Security: Lessons from Google Chrome.” This document is publicly available at <http://delivery.acm.org/10.1145/1560000/1556050/p3-reis.pdf?key1=1556050&key2=4379517621&coll=GUIDE&dl=GUIDE&CFID=79539410&CFTOKEN=59860304>, and was produced with bates numbers GRB00004031 through GRB00004038.

9. Attached as Exhibit 8 is a true and correct copy of email correspondence dated January 31, 2010 that attaches a PowerPoint presentation entitled “Red Bend FOTA & DM for Android Handsets.” This document was produced with bates numbers RedBend0009056

through RedBend0009084, and was marked as Google Exhibit 14 during the deposition of Yoram Salinger.

10. Attached as Exhibit 9 is a true and correct copy of email correspondence with the subject line “Re: Making Android OTAs smaller?” dated October 4, 2009 to October 5, 2009. This document was produced with the bates numbers GOOG-00039449 through GOOG-00039450.

11. Attached as Exhibit 10 is a true and correct copy of the non-confidential transcript of the February 17, 2010 deposition of Yoram Salinger.

12. Attached as Exhibit 11 is a true and correct copy of the confidential transcript of the February 17, 2010 deposition of Yoram Salinger.

13. Attached as Exhibit 12 is a true and correct copy of document entitled “Courgette for Android” and dated November, 26, 2008. This document was produced with bates numbers GOOG-00027899 through GOOG-00027900.

14. Attached as Exhibit 13 is a true and correct copy of a document entitled “Red Bend DM & FOTA for Android Based Handsets” dated January 2009. This document was produced with bates numbers RedBend0009240 through RedBend0009247, and was marked as Google Exhibit 13 during the deposition of Yoram Salinger.

15. Attached as Exhibit 14 is a true and correct copy of email correspondence with the subject line “Fwd: Google Software updates optimised with Redbend algorithms,” and dated April 4, 2009. This document was produced with bates numbers GOOG-00039439 through GOOG-00039440.

16. Attached as Exhibit 15 is a true and correct copy of the CV of Terry H. Korn. Red Bend disclosed Mr. Korn as an expert witness in this case on January 12, 2010.

17. Attached as Exhibit 16 is a true and correct copy of a document entitled “Markets.” This document is publicly available at <http://www.redbend.com/markets/index.asp>, and was produced with bates numbers GRB00001777 through GRB00001778.

18. Attached as Exhibit 17 is a true and correct copy of a document entitled “Red Bend Business Strategy 2009” and dated March 2009. This document was produced with bates numbers RedBend0009824 through RedBend0009836, and was marked as Google Exhibit 17 during the deposition of Yoram Salinger.

19. Attached as Exhibit 18 is a true and correct copy of a document entitled “Corporate Profile.” This document is publicly available at <http://www.redbend.com/company/profile.asp>, and was produced with bates number GRB00001786.

20. Attached as Exhibit 19 is a true and correct copy of a document entitled “Board of Directors” dated April 7, 2009. This document was produced with bates numbers RedBend0008542 through RedBend0008566, and was marked as Google Exhibit 18 during the deposition of Yoram Salinger.

21. Attached as Exhibit 20 is a true and correct copy of a document entitled “Marketing Update; Sales Meeting, March 2009.” This document was produced with bates numbers RedBend0009674 through RedBend0009700, and was marked as Google Exhibit 16 during the deposition of Yoram Salinger.

22. Attached as Exhibit 21 is a true and correct copy of a document entitled “Firmware Updates.” This document is publicly available at <http://redbend.com/solutions/firmware-updates.asp>, and was produced with bates numbers GRB00001799 through GRB00001800.

23. Attached as Exhibit 22 is a true and correct copy of a document entitled “Board of Directors” dated February 4, 2009. This document was produced with bates numbers RedBend0008323 through RedBend0008373.

24. Attached as Exhibit 23 is a true and correct copy of a document entitled “[android-pioneers] Re: Cupcake rolled out to all external users yet?” dated September 8, 2009. This document was produced with bates number GOOG-00037727.

25. Attached as Exhibit 24 is a true and correct copy of a document entitled “Issue 22847: Need Incremental Installer for Mac.” This document is publicly available at <http://code.google.com/p/chromium/issues/detail?id=22847>, and was produced with bates number GOOG-00027919.

26. Attached as Exhibit 25 is a true and correct copy of a document entitled “RE: Linux Package Diffing” dated July 30, 2009. This document was produced with bates numbers RedBend0010287 through RedBend0010289, and was marked as Google Exhibit 22 during the deposition of Yoram Salinger.

27. Attached as Exhibit 26 is a true and correct copy of the non-confidential transcript of the February 9, 2010 deposition of Dr. Stephen Edwards.

28. Attached as Exhibit 27 is a true and correct copy of the confidential transcript of the February 9, 2010 deposition of Dr. Stephen Edwards.

29. Attached as Exhibit 28 is a true and correct copy of a document entitled “Exclusive License Agreement.” This document was produced with bates numbers RedBend0010952 through RedBend0010956, and was marked as Google Exhibit 34 during the deposition of Yoram Salinger.

30. To date, Google has produced over 250 prior art references to Red Bend, and on January 22, 2010 it filed and served a Request for Reexamination at the U.S. Patent and Trademark Office. Attached as Exhibit 29 is a true and correct copy of the “Request for Ex Parte Reexamination.” It was produced with Bates numbers RedBend0008017 through RedBend0008180.

31. Attached as Exhibit 30 is a true and correct copy of U.S. Patent No. 5,481,713. This document was produced with the bates numbers RedBend0008199 through RedBend0008212.

32. Attached as Exhibit 31 is a true and correct copy of an IBM Technical Disclosure Bulletin entitled “Maintainable ROS Code Through The Combination of ROM And

EEPROM,” published in February, 1990 by Batalden et al. This document was produced with the bates numbers Redbend0008214 through Redbend0008217.

33. Attached as Exhibit 32 is a true and correct copy of U.S. Patent No. 4,115,853. This document was produced with the bates numbers Redbend0008219 through Redbend0008231.

34. Attached as Exhibit 33 is a true and correct copy of U.S. Patent No. 5,790,796. This document was produced with the bates numbers Redbend0008233 through Redbend0008244.

35. Attached as Exhibit 34 is a true and correct copy of a document entitled “A Cross-Platform Binary Diff,” published in May, 1995 by Coppieters. This document was produced with the bates numbers Redbend0008246 through Redbend0008248.

36. Attached as Exhibit 35 is a true and correct copy of a document entitled “Re: Intro” dated January 12, 2009. This document was produced with bates numbers GOOG-00023113 through GOOG-00023116.

37. Attached as Exhibit 36 is a true and correct copy of a document entitled “Re: what are we using for chrome's diff updating?” dated October 15, 2008. This document was produced with bates numbers GOOG-00017435 through GOOG-00017440.

38. Attached as Exhibit 37 is a true and correct copy of a document entitled “Differential compression of executable formats” dated November 21, 2008. This document was produced with bates numbers GOOG-00022700 through GOOG-00022727.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 1, 2010, in Washington, D.C.



Susan Baker Manning

CERTIFICATE OF SERVICE

I hereby certify that this document(s) 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 March 1, 2010.

/s/ David M. Magee