

EXHIBIT L

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January 29, 2010

Via E-mail

Jennifer C. Tempesta, Esq.
Baker Botts, L.L.P.
30 Rockefeller Plaza
New York, NY 10112

**Re: *Red Bend Ltd. v. Google Inc.*, Case No. 09-11813 (D. Mass.)
Red Bend's Discovery Responses**

Dear Jennifer:

Red Bend's document production and privilege log suffer from several significant deficiencies. I write to request that Red Bend promptly address and correct those deficiencies discussed below.

1. January 27, 2010 document production

We have reviewed the documents you sent on January 27, 2010, which we received yesterday. It appears that at least 22 of the 31 newly produced documents were in Red Bend's possession, and an additional 5 documents were publicly available, prior to the December 22, 2009 production deadline imposed by the Court, and are clearly responsive to Google's production requests. Red Bend's enclosure letter gave no explanation for their belated production. This, obviously, concerns us and causes us to question whether Red Bend has in fact produced all non-privileged responsive documents in its possession, custody or control. Please advise.

2. Privilege log

Red Bend's privilege log is inadequate. Red Bend bears the burden of justifying its withholding or redacting of an otherwise discoverable document on the privilege or work product grounds. *See, e.g., Spalding & Evenflo Cos. v. Wilson Sporting Goods Co.*, 1999 U.S. Dist. LEXIS 21966, *7 (Dist. Mass. 1999) (citing *Fisher v. United States*, 425 U.S. 391, 48 L. Ed. 2d 39, 96 S. Ct. 1569 (1976); *Borase v. M/A Com, Inc.*, 171 F.R.D. 10, 14 (D. Mass. 1997)); *see also Equal Rights Ctr. v. Post Props., Inc.*, 247 F.R.D. 208, 213 (D.D.C. 2008); *Moore's Federal Practice* (3d ed.) § 26.47. Although Red Bend has redacted certain documents, its privilege log makes no distinction between documents withheld in their entirety and those produced in redacted form. As to redactions, Red Bend's log does not identify by Bates number the documents to which any given claim of privilege or discovery protection pertains. It is thus impossible to determine which log entries correspond to each of the redacted documents, or if there are any corresponding

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Jennifer C. Tempesta, Esq.
January 29, 2010
Page 2

log entries at all. (*See, e.g.*, Correspondence dated Jan. 26, 2010 between you and Susan Baker Manning re redactions to late-produced documents.)

Red Bend may withhold or redact documents only if it states its privilege or work product objection with sufficient particularity so as to allow the Court (and Google) to assess its privilege claim. Fed. R. Civ. P. 26(b)(5). This requires, among other things, that the log identify by Bates number each redacted document to which any given entry corresponds.

In addition, Red Bend's document descriptions are inadequate in that they do not describe the nature of the documents in detail sufficient to assess the claims of privilege. All but two of the documents on the log are described as "[c]ommunication in furtherance of legal advice." Merely casting these documents as "in furtherance of legal advice" in conclusory terms does not make them privileged, and the document descriptions are inadequate for assessing whether the documents/redactions are or are not privileged. *Equal Rights Ctr.*, 247 F.R.D. at 213 (nature of claim must be sufficiently described without revealing the privileged information).

3. Documents relied upon by Edwards and Salinger

In my letter of January 11, 2010, I noted that Red Bend has not identified Dr. Edwards as the custodian of any produced document. We have also noted that Red Bend has not identified Mr. Salinger as a custodian of any produced document. In your response of January 12, you stated that Red Bend had produced all of the documents upon which Dr. Edwards and Mr. Salinger relied. However, we can find no support in the documents for several of the statements made by the declarants. Please identify the documents you refer to in your January 12, 2010 letter, and identify all documents produced for which either Dr. Edwards or Mr. Salinger was a custodian.

4. Documents responsive to RFPs 1, 9, 10, 12, 13, 14, 16 and 17

Red Bend has not produced documents relevant to the claim of foreign priority made for the '552 patent. On the face of U.S. Patent Application 6,546,552 Red Bend claims priority to Israeli Patent Application 125846. For example, Red Bend has not produced the file history for Israeli Patent Application 125846. This information is relevant at least to Google's Request For Production Nos. 1, 9, 10, 12, 13, 14, and 16.


Nor, apparently, has Red Bend produced any documents relevant to the conception and reduction to practice of the '552 patent, including invention records, corroborating evidence, or any actual reduction to practice, or documents related to the first use, sale, or offer for sale of any apparatus that practices any claim of the '552 patent. Nor has Red Bend identified Sharon Peleg, its Chief Technology Officer and the sole named inventor of the '552 patent, as the custodian of any produced document.

Please state whether Red Bend has produced documents responsive to Request for Production Nos. 1, 9, 10, 12, 13, 14, 16 and 17 and, if it has, identify them. Please also identify all documents produced for which Mr. Peleg is a custodian.

Jennifer C. Tempesta, Esq.
January 29, 2010
Page 3

5. Missing metadata for documents produced January 11, 2010

In your correspondence dated January 11, 2010 you indicated that the document corresponding to Log No. 467 was inadvertently withheld as privileged, and that the document was therefore attached to the correspondence. However, the document provided is lacking Bates numbers on all but one page, nor was any metadata provided. Please re-produce the document with these errors corrected.

Sincerely,

Elizabeth Austern