

EXHIBIT D

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VIA ELECTRONIC MAIL

Eliot D. Williams, Esq.
Baker Botts L.L.P.
30 Rockefeller Plaza
44th Floor
New York, NY 10012-4498

Re: *Red Bend Ltd. v. Google Inc.*, Case No. 09-cv-11813

Dear Eliot:

We have received and reviewed Red Bend's responses to Google's First Set of Requests for Production, which includes Request for Production Nos. 1-42. I write to follow up on several issues presented by those responses.

Request for Production Nos. 4 and 6 call for, among other things, documents relied upon by Red Bend's expert, Dr. Edwards, in preparing his declaration testimony. Red Bend objects to each on the ground that they call for "documents solely in the possession, custody and control of a non-party." To the extent this objection is intended to suggest that relevant documents in the possession of Red Bend's retained expert witness are not within Red Bend's possession, custody or control, the objection is not well taken. Please confirm that Red Bend is not withholding any document responsive to Request for Production Nos. 4 or 6 on this basis.

Red Bend refuses to produce documents in response to Request for Production Nos. 16, 38, 39 and 41, and has dramatically limited the scope of its response to Request for Production No. 26. Each request calls for discoverable documents, and we request that Red Bend respond in full.

Red Bend bears the burden on validity at the preliminary injunction stage, and Google is entitled to take discovery on all issues that Red Bend must prove. As to Request for Production No. 16, nothing requires Google or the Court to irrebuttably presume that Red Bend is entitled to the priority date of the Israeli application. If Red Bend does not claim a priority date before August 18, 1999, the date please so advise. If it does, please advise as to what priority date Red Bend claims and produce the requested documents.

Red Bend objects to a portion of Request for Production No. 26. Documents "related to . . . Red Bend's business model, customers and product offerings" are directly relevant to Red Bend's claims that its business is being irreparably harmed by the alleged infringement. As to this portion of the request, Google would be willing to accept the production of documents sufficient to show all sources and amounts of revenue from 2005 to the present, all financial statements and balance sheets for the period 2005 to the present, documents sufficient to show by quarter the revenue and profits associated with each Red Bend product alleged to practice the '552 patent, each and every contract

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related to income generated by Red Bend from 2005 to the present, and documents to show what goods or services were provided by Red Bend in return for consideration from 2005 to the present.

Red Bend objects to Request for Production Nos. 38, 39 and 41 as ambiguous. We disagree. Red Bend promotes itself as “the market leader in firmware over-the-air (FOTA) updating.” It also offers “vRapid Mobile™ SCOTA (software component over-the-air) updates,” as well as products and services that are apparently directed to over-the-air application and device management. Both Requests are directed to any goods or services not provided over the air, and the non-over-the-air market. If, for example, Red Bend provides any goods or services for updating firmware or software over the Internet (*e.g.*, providing updates to web browser software over the Internet), documents related to this would be responsive to Request for Production Nos. 38 and 39. If, for example, Red Bend provides any goods or services for updating firmware or software on a mobile device running a Windows operating system, documents related to this would be responsive to Request for Production No. 41. Please produce documents responsive to Request for Production Nos. 38, 39 and 41.

Please confirm by the close of business tomorrow that Red Bend is not withholding any non-privileged document responsive to Request for Production Nos. 4 and 6, and that it will produce all non-privileged documents responsive to Request for Production Nos. 16, 26, 38, 39 and 41. I look forward to hearing from you.

Sincerely yours,



Susan Baker Manning