

# **EXHIBIT F**

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December 9, 2009

**VIA ELECTRONIC MAIL**

Jennifer C. Tempesta, 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 Jennifer:

Thank you for your letter of this afternoon confirming that Red Bend will produce documents responsive to Google's Request for Production Nos. 26, 38, 39 and 41.

As to relevant documents responsive to Request for Production Nos. 4 and 6 in the possession of Red Bend's retained expert witness, we believe that, at minimum, such documents are in Red Bend's control. *See, e.g., Gerling International Ins. Co. v. Commissioner of Internal Revenue*, 839 F.2d 131, 140 (3d Cir. 1988) ("control" is the legal right to obtain the required documents on demand).

Moreover, as a practical matter, please consider whether Red Bend actually wants Google to issue and serve a separate Rule 45 subpoena on its expert witness. Dr. Edwards may well think it vastly more convenient to provide the documents we have requested to Red Bend for production rather than dealing with a process server, retaining counsel, responding in writing to the subpoena, and separately producing the requested documents. If Red Bend will not agree to produce all responsive documents in its possession, custody or control—including documents in Dr. Edwards' possession—we will issue a subpoena so as to avoid further debate on the point.

As to Request for Production No. 16, Google disputes the validity of the asserted claims of the '552 patent. *See, e.g., Defendant Google Inc.'s Answer To Plaintiffs' First Amended Complaint And Counterclaim at 10* ("Second Affirmative Defense: Invalidity") and 15 ("Count II: Invalidity"). Lest there be any doubt, Google intends to challenge the validity of the asserted '552 patent claims at the preliminary injunction stage. Red Bend will therefore bear the burden of proof as to validity at this stage. *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1377 (Fed. Cir. 2009) ("at [the preliminary injunction] stage it is the patentee, the movant, who must persuade the court that, despite the challenge presented to validity, the patentee nevertheless is likely to succeed at trial on the validity issue."). Request for Production No. 16 seeks evidence that goes directly

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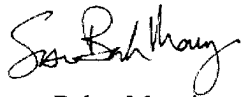
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to the invalidity of the '552 patent. Please therefore produce all documents responsive to this Request.

If you wish to discuss these matters further, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Susan Baker Manning". The signature is written in a cursive, flowing style.

Susan Baker Manning