

# EXHIBIT 1

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June 17, 2010

## **BY ELECTRONIC MAIL**

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

Dear Susan:

We were surprised by Google's letter and subsequent emergency motion filed today with the Court requesting a status conference based on Red Bend's purportedly late document production, especially because you did not even hint that Google needed more time to prepare for Mr. Peleg's deposition during the parties' most recent meet and confer on discovery issues, only three days ago.

As we have explained to you on several occasions (*see, e.g.*, my letter of May 19th and Red Bend's objections to Google's initial set of document requests), preliminary injunction discovery was limited in scope, and did not include documents related to, *e.g.*, damages. Thus, Red Bend's supplemental production was not at all inappropriate, unusual, or unanticipated. This is, after all a patent case, which numerous courts have recognized are unique "because of the complex nature of the damages determination and the extensive discovery that is often necessary to prove the nature and extent of those damages." *See e.g., Novopharm Ltd. v. Torpharm, Inc.*, 181 F.R.D. 308, 310 (E.D.N.C. 1998). *See also Smith v. Alyeska Pipeline Serv. Co.*, 538 F.Supp. 977, 982-83 (D.Del. 1982), *aff'd*, 758 F.2d 668 (Fed. Cir. 1984). Thus, the fact that Red Bend has recently produced additional documents is not evidence that its initial search was insufficient in any way. It is simply evidence of the procedural fact that the parties have entered the plenary discovery phase of this litigation.

Your motion filed today requests a status conference to discuss scheduling matters with the Court. This filing was entirely premature. Although your co-counsel, Mr. Magee, called us at 3pm this afternoon -- he did not allow for a meet and confer in any sense of the word, only asking if we would oppose Google's motion for a "status conference," without explaining what the purpose of the status conference would be, much less proposing an alternative schedule. You then filed your letter with the Court only an hour later without our response or even giving us the opportunity to address your scheduling concerns.

As we have pointed out before, we remain unconvinced that Mr. Peleg's deposition would have any relevance to or bearing on the claim construction issues that are to be addressed at the hearing on July 28th, especially in view of the Federal Circuit's *en banc* holding

that inventor testimony and other extrinsic evidence is “less reliable” than the intrinsic evidence and that use of such evidence “poses the risk that it will be used . . . in derogation of the ‘indisputable public records consisting of the claims, the specification and the prosecution history,’ thereby undermining the public notice function of patents” and “is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence.” *Phillips v. AWH Corp.*, 413 F.3d 1303, 1317-19 (Fed. Cir. 2005) (*en banc*). *See also Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996) (“Nor may the inventor’s subjective intent as to claim scope . . . guide the court to a proper interpretation when the patent documents themselves do so clearly.”)

Nevertheless, we would have, and still are, amenable to discussing scheduling issues, including moving the dates of Mr. Peleg’s deposition and claim construction briefing, if you really remain unprepared. Unfortunately, rather than attempting a good-faith meet and confer by disclosing to us the substance of the issue about which Google wanted relief and making a proposal for a modified schedule, Google has prematurely run to the Court in contravention of the meet and confer requirement. Accordingly, we suggest Google consider proposing in good faith a scheduling modification and withdrawing Google’s pending motion for a hearing, at least until the parties have completed a proper meet and confer on this issue.

Very truly yours,

*/s/ Eliot D. Williams*

Eliot D. Williams

# EXHIBIT 2

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May 28, 2010

## **VIA HAND DELIVERY**

Susan Baker Manning, Esq.  
c/o Hope De Los Santos  
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399 Park Avenue  
New York, NY 10022

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

Dear Ms. De Los Santos:

Enclosed please find two (2) media discs containing the supplemental Goodwin Proctor document production; bearing production numbers GP00008156-148451 and the second containing the supplemental Red Bend document production, bearing production numbers RedBend000012255-44916.

Very truly yours,

Steve Liquori

# EXHIBIT 3

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May 19, 2010

## VIA E-MAIL

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

Dear Susan:

I write in response to your missive of May 18, 2010. Your cavalier treatment of the facts makes it impossible for us to respond to each of your false allegations, but suffice it to say we completely disagree with your reconstruction of what occurred during the limited preliminary injunction discovery period and in our subsequent correspondence. For instance, we do not appreciate, and find reckless, your unfounded accusations that Red Bend has “violated the Court’s orders” (which, incidentally, you do not identify), that Red Bend has failed to comply with its discovery obligations, that Red Bend acted “surreptitiously,” that it was not “forthcoming,” that it “secretly” withheld documents, that it “corrupted” metadata, that it failed to act in “good faith,” or that the preliminary injunction record is somehow “incomplete.” Your inflammatory and accusatory language is offensive, unprofessional, and unproductive.

As we have previously noted in our objections to your initial set of document requests and in our subsequent correspondence (and as you must concede), preliminary injunction discovery was limited in scope. Accordingly, the fact that Red Bend is now searching for and producing additional documents (over the thirty thousand pages already produced) is not evidence that its initial search was “insufficient.” It is merely evidence of the procedural fact that the parties have entered the plenary discovery phase of this litigation. Indeed, your complaint that Red Bend produced only “licenses and consolidated financial statements” rather than “detailed financial information” from the emails and archives of Red Bend’s CFO during the preliminary injunction phase of this case (when damages, as you concede on page 2 of your letter, was not at issue) is indicative of the meritlessness of Google’s current position.

Red Bend, unlike Google, does not have endless resources to debate irrelevant issues and generate unnecessary paperwork. Accordingly, we refuse to backtrack further over Google’s stale complaints. We addressed each and every concern you raised during the preliminary injunction phase, produced exactly those additional documents and reports you requested, and even gave you more time to take depositions and submit your papers.

Although we do not believe we are required to do so, we will nonetheless start this Friday producing on a rolling basis additional documents responsive to your overly-broad requests, with Mr. Peleg's additional documents targeted for production by mid-week. If you still insist on going forward with Mr. Peleg's deposition in early June,<sup>1</sup> we can produce him in New York on Thursday, June 3rd. He is not available the following week.

We assume from your letter that Google will have no additional documents to produce, since it believes Red Bend should have none. Please confirm. We, too, would like to start taking depositions but want to make sure we have all of Google's documents first.

Very truly yours,

*/s/ Eliot D. Williams*

Eliot D. Williams

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<sup>1</sup> We note that, contrary to Google's suggestion, there is no urgent need for Mr. Peleg's deposition testimony. To the extent Mr. Peleg were to testify regarding his understanding of the patent claims, such testimony would not be relevant to the proper claim construction in this case. *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996) ("Nor may the inventor's subjective intent as to claim scope, when unexpressed in the patent documents, have any effect. Such testimony cannot guide the court to a proper interpretation when the patent documents themselves do so clearly").