

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NETJUMPER SOFTWARE, L.L.C.,
a Michigan limited liability corporation,

Case No. 04-70366-CV
Hon. Julian Abele Cook
Magistrate Judge R. Steven Whalen

Plaintiff,

vs.

GOOGLE INC.,
a Delaware corporation,

Defendant.

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**PLAINTIFF NETJUMPER SOFTWARE, LLC'S EMERGENCY MOTION FOR ONE-WEEK
EXTENSION OF DEADLINE TO FILE RESPONSE BRIEF TO DEFENDANT
GOOGLE, INC'S MARKMAN BRIEF**

Plaintiff, Netjumper Software, LLC ("Netjumper"), hereby moves pursuant to LR 7.1(f) and 6.1 for an extension of Netjumper's deadline for filing a response brief to Google Inc.'s

Markman brief. On May 25, 2006, this Court entered an oral Order setting forth briefing deadlines as well as other expert discovery deadlines. No written Order from this Court followed. The parties have attempted to adhere to the timeframes set by this Court's May 25, 2006 oral Order. During the May 25, 2006 conference call when expert discovery deadlines were set, Google did not make mention of any additional fact witnesses, including Randall Stark whom Google now wishes to depose.

The parties have been unable to reach full agreement on certain issues which has resulted in the instant motion practice. Last week, Google had given consent to Netjumper for a one-week extension for filing a response brief to Google's *Markman* brief. But, when Netjumper had declined to allow Google to conduct additional fact discovery after the fact discovery cut-off, Google's counsel stated in a voicemail to Netjumper's counsel that the consent to an extension of time was part of a "package deal." Google is conditioning its consent to Netjumper's request for an additional week to file a response brief upon Netjumper's consent to allow the deposition of an additional fact witness who was not disclosed at the May 25, 2006 Scheduling Conference call.¹

There is no prejudice that would befall Google if a one-week extension is granted to Netjumper to file a response to Google's *Markman* brief. If anything, Netjumper would be prejudiced as it was operating under the presumption that Google had agreed to the one-week extension regardless of whether Netjumper would allow Google the opportunity to depose a fact witness after fact discovery cut-off. In its motion seeking leave to take the deposition of Randall Stark, Google requests an expedited briefing schedule and further requests that Netjumper be allowed a one-week extension to file a response brief while waiving its right to a reply brief. Please see Google motion attached as **Exhibit A**.

¹ Google has also filed a motion seeking emergency leave to take the deposition of Randall Stark.

WHEREFORE, Netjumper respectfully requests that this Honorable Court enter the attached Order granting Netjumper a one-week extension to file a response brief to Google's *Markman* brief thereby moving the due date from July 24, 2006 to July 31, 2006.

Respectfully submitted,

SOMMERS SCHWARTZ, P.C.

s/ Nabeel N. Hamameh (P60981)
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Dated: July 24, 2006

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**BREVI IN SUPPORT OF PLAINTIFF NETJUMPER SOFTWARE, LLC'S EMERGENCY
MOTION FOR ONE-WEEK EXTENSION OF DEADLINE TO FILE RESPONSE BRIEF TO
DEFENDANT GOOGLE, INC'S MARKMAN BRIEF**

On May 25, 2006, during a Scheduling Conference call, this Court issued an oral Order establishing briefing deadlines and expert discovery deadlines. As of May 25, 2006, fact

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discovery was cut off and concluded. There was no formal Order entered by this Court for this round of briefing that Google has engaged in. A week prior to Netjumper's response deadline, Netjumper realized that it would require an additional week to fully brief the issues at hand, and accordingly, made the request upon Google's counsel for consent to an extension of one week to Netjumper's response deadline. Google's counsel agreed to Netjumper's request for a one-week extension as the parties were working together on a deposition schedule for expert testimony. When a dispute arose as to a potential deponent, Randall Stark, Google's counsel indicated in a voicemail message to Netjumper's counsel that consent to the one-week extension was conditioned upon Netjumper's willingness to allow Google to depose Randall Stark, a fact witness, out of turn. Netjumper did not consent to the deposition of Randall Stark, especially since notice of his deposition was not raised at the May 25, 2006 conference call.

Accordingly, Netjumper has been forced to file the instant motion. Google, in its emergency motion for leave to depose Randall Stark, requests that Netjumper should be allowed a one-week extension by this Court to file a response brief, and even goes so far as to request an expedited briefing schedule and waives its right to a reply brief. However, a formal request for this relief was not made by Google at the conclusion of its motion.

At no time during the May 25, 2006 conference call did Google's counsel make mention that they wished to take the deposition of Randall Stark. While the issues related to Google's motion will be addressed in a response to that motion, the issue before this Court on this immediate motion is that Netjumper be granted a one-week extension to file its response to Google's Markman brief. There would be no prejudice that would befall Google if the one-week extension was granted. If anything, Netjumper would be unduly prejudiced as it was operating under the presumption until earlier today that it had been granted by Google a one-week extension to file a response brief.

WHEREFORE, Netjumper respectfully requests that this Honorable Court enter the attached Order granting Netjumper a one-week extension to file a response brief to Google's *Markman* brief thereby moving the due date from July 24, 2006 to July 31, 2006.

Respectfully submitted,

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Dated: July 24, 2006

PROOF OF SERVICE

I certify that on July 24, 2006, I electronically filed the forgoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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