



UNITED STATES | ENGLAND | GERMANY | CHINA

THEODORE M. BUDD
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612-766-7952

October 7, 2009

Joseph N. Hosteny
Niro, Scavone, Haller & Niro, Ltd.
181 West Madison Street
Suite 4600
Chicago, IL 60602VIA EMAIL & UPSRe: *TimeBase Pty Ltd. v. The Thomson Corporation, et al.*

Dear Mr. Hosteny:

This letter follows on my previous letter of September 23, 2009 and my email of September 30, 2009, and also responds to your email of October 5, 2009.

My September 23, 2009 letter outlined several deficiencies in TimeBase's Infringement Claim Chart and requested a supplemental claim chart correcting these deficiencies within a week. Nearly two and a half weeks have since passed and we have yet to receive any written response, let alone a supplemental claim chart. This delay continues to prejudice our client's ability to prepare its responsive non-infringement claim chart, which is currently due to be served on October 16, 2009. Last week you indicated that you tried to send a message in response to my letter, but the message had been lost. I then asked you to fax your response, but to date we have not received anything from you on this issue, other than an email on October 5, 2009 suggesting that we discuss these issues. We believe it would be most effective if you provide a response to my letter before holding a conference. To that end, please provide a written response to the deficiencies raised in my letter immediately so we can understand TimeBase's position on these issues. We will be available for a conference regarding TimeBase's claim chart after receiving your written response.

Your October 5, 2009 e-mail requests a conference regarding Thomson's supplemental response to Interrogatory No. 1. Below we have attempted to respond to each of the issues raised in your e-mail. If, after reviewing this information, you still have questions regarding Thomson's responses to Interrogatory No. 1, then we will make ourselves available for a conference on these issues as well. However, as noted below, some of the topics listed in your e-mail were unclear. Thus, it would make sense for TimeBase to

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provide more detailed explanations on those points so that Thomson may investigate them prior to holding a conference.

1. **Financial Information for Westlaw** – Interrogatory No. 1 specifically requests financial information associated with “PastStat Locator, RegulationsPlus, and Graphical Statutes.” Thomson’s answer provided this information. Contrary to your suggestion, Interrogatory No. 1 did not seek financial information for Westlaw generally, and therefore none was provided. Moreover, Westlaw itself has not been accused of infringement in this matter. Accordingly, any financial information that extends beyond the three accused products is irrelevant to the present dispute and need not be produced.
2. **Financial Information for StatutesPlus** – Once again, Interrogatory No. 1 requests financial information for only “PastStat Locator, RegulationsPlus, and Graphical Statutes.” This information has been provided. Interrogatory No. 1 does not reference StatutesPlus, or request any financial information for StatutesPlus generally. In addition, as TimeBase has repeatedly been told, StatutesPlus is not a product. Instead, StatutesPlus is a name given to a suite of products. At this time, Thomson understands that the individual products accused of infringement are PastStat Locator and Graphical Statutes. Therefore, only financial information related to these products is relevant.
3. **Financial Information for RegulationsPlus** – Financial information for RegulationsPlus was included in Thomson’s response to Interrogatory No. 1. Your reference to “RegulationsPlus sub-products” is unclear. To the extent you believe that some subset of RegulationsPlus financial information was not provided, please identify that information specifically so we may investigate whether it was included.
4. **Revenues for Special Offer Inclusion, Special Offer Add On, and Limited Flat Fee** – It is difficult to tell from your email exactly what TimeBase’s issue is with respect to these revenues. Thomson’s response to Interrogatory No. 1 included revenues from each of these pricing methodologies. Thomson’s response also described each methodology in some detail. To the extent TimeBase contends that some requested information was not provided, please identify that information specifically so we may investigate whether it was included in Thomson’s response or should be provided in some further supplementation.
5. **Revenue from Governmental Units, Law Schools, and Sole Practitioners** – Thomson’s response to Interrogatory No. 1 included revenue from both private law firms and other organizations, including those listed above. Therefore, Thomson has already fully responded as to revenue from these identified entities.

6. **“The data and percentages used to apportion revenues”**– We do not understand this alleged deficiency with Thomson’s response. Please state with particularity the information you think should be provided with regard to “the data and percentages used to apportion revenues.” Please also identify in Interrogatory No. 1 where such information was requested. This additional clarification is necessary before Thomson can substantively respond on this issue.
7. **“The meaning of bands”** – Once again, we do not understand this alleged deficiency with Thomson’s response. Please state with particularity the information you think should be provided with regard to “the meaning of bands.” Please also identify in Interrogatory No. 1 where such information was requested. This additional information is necessary before Thomson can substantively respond on this issue.
8. **“Why data was redacted”** – Assuming that this question relates to the documents Thomson produced along with its answer to Interrogatory No. 1, Thomson can confirm that no substantive financial information was redacted from the produced documents. While these redactions will be fully addressed in Thomson’s redaction log, at this time we can represent that redactions were made only to remove notations providing that the produced financial information was collected by Thomson at the request of counsel. We trust that this response fully addresses the issue of redactions.
9. **“The legibility of the data provided on the disk.”** – Once again, we do not understand what you mean by this statement. If some of the documents provided by Thomson were not readable, please identify them by bates range so we can provide replacement copies.

Please let me know if you have any questions regarding the above. I look forward to receiving your written response to my September 23, 2009 letter.

Sincerely,



Theodore M. Budd

BUDTM:eriml
Enclosure



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November 4, 2009

Joseph N. Hosteny
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181 West Madison Street, Suite 4600
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BY E-MAIL & U.S. MAIL

Re: *TimeBase Pty Ltd. v. The Thomson Corp., et al.*
Civil Action No. 07-1687 (JNE/JJG)

Dear Joe:

As I stated in my email message to you on October 29, 2009, this letter is intended to respond to several of your email messages sent between October 22 and October 28, 2009. It also responds to your email messages of October 30 and November 2, 2009 raising various questions regarding Defendants' Prior Art Statement and document productions, as well as to other correspondence on document production issues. Because most of the issues in your recent email messages are related, we believe it is most efficient to respond in a single comprehensive letter.

October 22nd and 26th Emails regarding Defendants' Supplemental Response to Interrogatory No. 1:

As your emails dated October 22 and 26, 2009 point out, the parties have already discussed defendants' responses to TimeBase's Interrogatory No. 1 several times. In particular, we sent you a detailed letter dated October 7, 2009 responding to your email of October 5, 2009 regarding the purported deficiencies in defendants' responses to this interrogatory. Also, on October 9, 2009, we held a teleconference with you on the same subjects. We will now respond to the questions raised in your October 22 and 26, 2009 email messages.

Financial Information for Westlaw: TimeBase's Interrogatory No. 1 requests that defendants "[s]tate the annual sales and annual gross profits resulting from the purchase, rental lease or use of PastStat Locator, RegulationsPlus and Graphical Statutes for the years 2001 to the most recent date available..." As we stated in our letter of October 7 and during our teleconference on October 9, TimeBase has not accused Westlaw of infringement nor served an interrogatory requesting financial information for Westlaw. Thus, defendants' response to

Interrogatory No. 1 did not contain financial information for Westlaw because such information was never requested.

TimeBase seems to acknowledge that Interrogatory No. 1 does not request financial information for Westlaw because you offered a hypothetical interrogatory during the October 9th teleconference and in your October 22nd and 26th emails relating to this issue. Your hypothetical asked whether defendants would respond to an interrogatory asking defendants to “[s]tate the revenue and gross profits from use of all Westlaw services, including but not limited to the accused products.” To answer your question, defendants would of course respond to a properly served interrogatory by offering appropriate objections and/or substantive responses. However, defendants are not willing to provide hypothetical responses to hypothetical interrogatories.

In your emails of October 22 and 26, 2009, you take the position that defendants should provide the financial information for Westlaw in response to Interrogatory No. 1 as served (and not the hypothetical interrogatory set forth above) because you believe that Westlaw revenues and profits “result from” the use of the accused products. We disagree. None of the materials cited in your emails establishes that the revenues and profits of Westlaw result from the accused products. Simply because the accused products are part of the many products sold in connection with Westlaw in no way establishes that Westlaw’s revenues and profit “result from” or have any “effect . . . in promoting sales of” Westlaw. Moreover, because these products require subscriptions, many Westlaw customers do not even have access to or use the accused products. Accordingly, we believe defendants already have properly answered Interrogatory No. 1.

Revenues for Special Offer Inclusion, Special Offer Add On, Limited Flat Fee and from Governmental Units, Law Schools and Sole Practitioners; “the data and percentages used to apportion revenues”; “the meaning of bands”: Your emails of October 22 and 26 also raise some questions about the information that defendants provided in response to Interrogatory No. 1. First, TimeBase suggests that the compilations were specially prepared for litigation purposes. This suggestion is incorrect. Defendants assembled the requested financial information into charts because the information had to be gathered from databases and defendants believed that the best way to present the requested information was through compilation charts. Second, TimeBase raised specific questions about certain terms used in the interrogatory answer. Defendants believe that the terms already have been clearly explained, but we are willing to provide the following additional explanations:

“W/LH”: Refers to a subscription package which includes Legislative History databases.

“GS”: Refers to Graphical Statutes.

“Ver”: Refers to Versioning Databases.

“CFRA-VER”: Refers to a database identifier for Historical Versioning of the Annotated Code of Federal Regulations.

“Bands”: Refers to categories of law firms based on the number of attorneys or Westlaw users within the firms. For example, firms with 11 to 15 attorneys fall within “the 11-15 band.” Retail rates are established for “bands” of law firms, such that all firms within “the 11-15 band” are charged the same rate for the same service.

Defendants will provide an additional explanation for the term “actual use percentages” within the next few days. To the extent that TimeBase has further questions, we ask that TimeBase provide these questions in writing so that defendants may consider them and provide an appropriate response.

During our teleconference on October 9, 2009, you requested that defendants produce the underlying business records to the compilations provided in response to Interrogatory No. 1. As mentioned above, the business records used to compile the charts provided in response to Interrogatory No. 1 are databases that include information for numerous other products and services. We do not believe it would be helpful or practical to produce all of the database information to TimeBase, and any such production would be unduly burdensome to defendants.

October 26th Email regarding Document Request No. 39:

Your email message of October 26 asks questions about Document Request No. “38,” but we understand you to be referring to Document Request No. 39 regarding the production of settlement agreements and negotiation documents. Defendants maintain their objections set forth in the Objections and Responses to Document Request No. 39, including the objection that license agreements reached as part of the settlement of litigation are not relevant to the damages calculation, and defendants reserve the right to challenge the relevancy and admissibility of such license agreements. Defendants are also not presently aware of any license agreements that directly relate to PastStat Locator, RegulationsPlus, or Graphical Statutes. However, given the breadth of your document request, i.e. “license agreements . . . that related in any way to PastStat Locator, RegulationsPlus, or Graphical Statutes,” defendants will produce under the designation “Confidential – Attorneys’ Eyes Only” the license agreements defendants are aware of at this time that might conceivably be covered by this broad request. Under no circumstances should the production of these agreements be considered an admission by defendants as to the relevancy or admissibility of these documents. To the contrary, defendants contend that the license agreements—all stemming from litigation settlements—are not relevant to the subject matter of the present litigation.

October 26th and November 2nd Emails regarding Defendants’ Interrogatory Responses:

In one of your emails sent on October 26, 2009, you requested that defendants “[i]n light of Judge Graham’s ruling . . . supplement its interrogatory responses, and withdraw any objections based on the pretrial schedule or statements.” We understand that you are referring to Magistrate Judge Graham’s Order dated October 23, 2009 in which Judge Graham ordered TimeBase to fully respond to defendants’ Interrogatories 1-3. As an initial matter, Judge Graham’s Order does not pertain to defendants or the discovery responses served by defendants. In addition,

defendants fully responded to plaintiff's interrogatories and objected only to the extent the information sought was to be specifically provided as part of the Scheduling Order. Defendants have, in fact, provided the requested information as part of the Scheduling Order and will continue to do so. For example, defendants already have provided requested information in their Responsive Infringement Claim Chart and Prior Art Statement, as required by the Pretrial Scheduling Order. Information relating to claim construction issues will be provided beginning this week and as required by the Pretrial Scheduling Order.

October 28th Email regarding TimeBase's Document Request No. 38:

You posed the question whether defendants will provide documents if TimeBase limits "the request to U.S. patents and pending applications for any Westlaw product." To begin, we believe that such a modification is expanding, rather than an attempt to "limit," the scope of the request. Although we maintain our objections as stated in Defendants' Objections and Responses dated April 24, 2008, defendants are willing to produce a list of the U.S. patents and published pending patent applications related to statutory versioning. For any pending applications that are not publically available, defendants will produce copies of those applications subject to the provisions of the Protective Order.

October 30th and November 2nd Emails regarding Defendants' Document Productions:

In your email of October 30, you raise a number of questions with respect the documents produced by defendants. We respond to each of these questions below.

"Intentional gap from 209685 to 209931": As stated in our cover letter with this production, the gap between production numbers 209685 to 209931 is intentional.

"There are a number of documents that have not been translated . . . TimeBase requests that Thomson produce translations.": Defendants do not possess translations of these documents and thus are unable to produce any translations. We note that one of the documents listed by TimeBase (207677) has a cover page in French, but the article is in English.

"I noted that some documents that say they are redacted . . . TimeBase requests unredacted copies.": Two of the listed documents were redacted based on privilege and/or attorney-work product. Defendants will include these documents on its Log of Withheld Documents. The third document, 196192, contains no redactions, nor does it indicate that any redaction was made to the document.

"We are assuming that completes Thomson, SAIC and Tasmanian documents cited in the defendants' prior art statement": Defendants will continue to produce copies of prior art references as they are acquired.

"There are three URLs referred to under item 43 regarding EnAct. No copies were provided . . . TimeBase respectfully demands that the defendants produce these missing"

materials”: Each of the cited URLs is for the Tasmanian Government’s website, with two of the URLs being historical versions of the website available via www.archive.com. All of the URLs are correct and functional. TimeBase should be able to access the URLs by itself, but defendants will produce copies of these website pages today.

“Items 47 to 56 are not accompanied by any production numbers or page numbers . . . TimeBase respectfully requests that the defendants provide these missing materials.”: Defendants will produce CDs containing Items 47 to 56 tomorrow.

As to TimeBase’s position that it may seek extra time to respond to Defendants’ Prior Art Statement based on the fact that it did not receive copies of all of the prior art references along with service of the Prior Art Statement, defendants contend that such a position is without merit under the Pretrial Scheduling Order. Please see my email of October 29, 2009 on this issue.

Miscellaneous Document Production Issues

On October 7 and 8, 2009, you sent several email messages with questions regarding defendants’ responses to TimeBase’s document requests. We also met on October 26, 2009 to discuss these questions. Although the above-discussed email messages addressed most of your questions, we are providing updated information on the remaining topics discussed during the October 26th teleconference.

Source Code: TimeBase’s Document Request Nos. 32-34 seek the source code for PastStat Locator, RegulationsPlus and Graphical Statutes. On April 24, 2008, defendants objected to these questions on several grounds, including on the grounds that the phrase “source code for [the accused product]” is vague and ambiguous and on the grounds that the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. To date, TimeBase has not provided any explanation as to why any portion of defendants’ source code—which is a highly sensitive, proprietary trade secret of defendants—is relevant to any issue in the case. In fact, based on TimeBase’s Infringement Claim Chart and its comments that the screen shots attached as Tabs E and F to the Claim Chart establish infringement, TimeBase already has taken the position that it is unnecessary to review any source code. Nonetheless, if TimeBase provides an explanation as to why portions of defendants’ source code for the accused products is relevant to this litigation, defendants’ will consider TimeBase’s request.

Documents identifying the differences between versions of the accused products: Defendants have produced all of the non-privileged documents that they are presently aware of related to this request. If further relevant and responsive documents are located, defendants will produce them, subject to the objections stated in their discovery responses.

Instructions, Training Manuals, etc.: Defendants have produced all of the non-privileged documents that they are presently aware of related to this request. If further relevant and responsive documents are located, defendants will produce them, subject to the objections stated in their discovery responses.

Joseph N. Hosteny
November 4, 2009
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Organization Charts: Defendants will produce representative organization charts for Defendants.

Witness Statements: Defendants are presently unaware of any relevant and responsive witness statements.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T.M. Budd', written in a cursive style.

Theodore M. Budd

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December 16, 2009

Re: *TimeBase Pty Ltd. v. The Thomson Corp., et al.*
Civil Action No. 07-1687 (JNE/JJG) (D. Minn).

Dear Joe:

This letter is intended to respond to your email messages dated Tuesday, December 15, and Wednesday, December 16, 2009.

1. *"Thomson said it would provide us discovery about the percentages used to derive the revenues it provided in its interrogatory response . . . Also, we want to see the underlying records. We understand that Thomson refuses."*

As we explained during our teleconference yesterday, the defendants will produce a compilation showing the usage percentages used to derive revenue for the accused products from the bundles, including both the accused and unaccused products. We have been working on collecting this information, but it is a manual process that takes time. We believe that the data will be available by early- to mid-January, and we will produce that data as soon as it is available.

As for the underlying records, we have previously explained that the business records used to compile the charts provided in response to Interrogatory No. 1 are databases that include information for numerous other products and services. Please see my letter dated November 4, 2009. We do not believe it would be feasible to produce all of the database information to TimeBase, and any such production would be unduly burdensome to defendants. The only reasonable way to produce the relevant financial data is to perform searches in the database(s) and produce compilations. The defendants will continue to produce these compilations where appropriate.

2. *"We asked for a list of patent and patent applications to address one of our document requests. I proposed that on October 28. We have not received your answer following our conference."*

Please see my letter dated November 4, 2009. The defendants have already responded to your October 28, 2009 proposal. As we stated previously, although we maintain our objections as stated in Defendants' Objections and Responses dated April 24, 2008, defendants are willing

to produce a list of the U.S. patents and published pending patent applications related to statutory versioning. For any pending applications that are not publically available, defendants will produce copies of those applications subject to the provisions of the Protective Order. We are working on collecting this information and will provide it to TimeBase when it is available.

3. *"We would like to know if Thomson has produced the licenses and settlement agreements Thomson indicated it would produce."*

As stated in my November 4, 2009 letter, the defendants maintain their objections set forth in the Objections and Responses to Document Request No. 39, including the objection that license agreements reached as part of the settlement of litigation are not relevant to the damages calculation, and defendants reserve the right to challenge the relevancy and admissibility of such license agreements. However, as we previously stated, we will produce license agreements stemming from litigation with the express reservation that we believe such agreements are not relevant to the subject matter of the present litigation. Enclosed with this letter are three such agreements. See THOM00213537-THOM00213566, THOM213570-THOM00213576. (Please note that the gap between THOM00213567 and THOM00213569 is intentional.) The defendants will produce additional responsive agreements, to the extent they exist, as they are located.

4. *"We asked that documents referred to in the prior art list that were designated confidential or confidential – attorneys' eyes only, be declassified."*

The defendants have already responded to your request for declassification. Please see my letter dated December 15, 2009. As promised in that letter, we are now enclosing declassified copies of the 16 CDs cited in the defendants' Prior Art Statement. See THOM00213521 – THOM00213536. (Note that the original production contained 17 CDs, but only 16 CDs were cited in the Prior Art Statement.)

5. *"We asked that Thomson supplement its response to Interrogatory 2, particularly as regards the 112 issues, to the best of Thomson's current knowledge."*

Please see Thomson's Supplemental Objections and Answers dated September 3, 2009. Thomson has already supplemented its response to Interrogatory No. 2, including more than three pages of supplemental response to the subpart regarding § 112. Thomson will continue to supplement its response to Interrogatory No. 2 as appropriate.

6. *"I am not sure I raised this before, but Thomson's responses to interrogatories should be supplemented with the information in your letters, e.g., regarding bands. As it presently stands, your letter is not an interrogatory supplement and is not verified as required by Rule 33. Thus, the letter would not be usable at trial."*

TimeBase has not served any interrogatories seeking information "regarding bands." Furthermore, the defendants did not use the term "bands" in their response to Interrogatory No. 1. The term was merely used in documents produced by the defendants, and the defendants are not obligated to supplement its interrogatory responses to define such terms, especially when TimeBase's interrogatories have not sought such information. In our November 4, 2009 letter,

December 16, 2009

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we provided further explanation of the term "bands" as a courtesy. However, to the extent you want that explanation in an interrogatory answer, TimeBase should serve an interrogatory that seeks this information.

7. *"I am not sure if we raised this before, but we want to discuss Thomson's objections to document requests 56-80 where Thomson indicated it would not produce documents, and want to know when responsive documents will be provided."*

As stated in my e-mail dated December 15, 2009, the defendants are willing to discuss these issues in a separately scheduled meet-and-confer. Please propose times when you are available. We note that TimeBase's Requests for Production No. 56-80 were not discussed during our teleconference yesterday.

8. *"Thomson's responses to interrogatories 6 and 7 are not as required by law. They do not include the information we seek with respect to the alleged prior art references, and we should have Westlaw revenues."*

The defendants maintain their objections set forth in Thomson's Objections and Answers to Interrogatories Nos. 6-7, which were served on December 7, 2009.

9. *"TimeBase stated in its objections to the defendants' interrogatories that it would nevertheless answer sub-parts that did not comply with the scheduling order, or Fed.R.Civ.P. 33, so long as the defendants did likewise. The defendants did not respond. TimeBase has answered sub-parts. However, TimeBase notes from the defendants' most recent responses that the defendants are declining to answer sub-parts to any extent. TimeBase will therefore do likewise since it is unfair for the parties to operate under different rules."*

The Pretrial Scheduling Order provides that "[n]o more than a total of twenty-five (25) interrogatories, counted in accordance with Rule 33(a), shall be served by each side." In March 2008, TimeBase served separate sets of interrogatories on each of the defendants, totaling 15 interrogatories, many of which contained discrete subparts. Since then, TimeBase has purported to serve two additional interrogatories, which also contain discrete subparts. In total, the 17 served interrogatories contain discrete subparts in excess of the 25 interrogatory limit imposed by the Pretrial Scheduling Order. Notwithstanding that, we have been responding to each of TimeBase's interrogatories, including subparts. We expect TimeBase to respond to our interrogatories, which do not exceed the 25 interrogatory limit, including subparts.

Best Regards,

FAEGRE & BENSON LLP



Theodore M. Budd