

Exhibit Q

**(TimeBase's Supplemental
Response of March 1, 2010 to
Defendants' Interrogatories 1-5)**

to

**TimeBase's
Claim Construction
Response**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

TIMEBASE PTY LTD.,

Plaintiff,

vs.

THE THOMSON CORPORATION, WEST
PUBLISHING CORPORATION, AND WEST
SERVICES, INC.

Defendants.

)
) Civil Action No. 07-CV-1687 (JNE/JJG)
)
)
)
)

) **TIMEBASE'S SUPPLEMENTAL**
) **RESPONSE OF MARCH 1, 2010**
) **TO DEFENDANTS'**
) **INTERROGATORIES 1-5**
)
)

TIMEBASE PTY LTD.

Joseph N. Hosteny
Arthur A. Gasey
Niro, Scavone, Haller and Niro
181 West Madison Street, Suite 4600
Chicago, Illinois 60602
Phone: (312) 236-0733
jhosteny@hosteny.com
gasey@nshn.com

Michael R. Cunningham
Gray, Plant & Mooty
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Phone: 612/632-3000
Fax: 612/632-4444
michael.cunningham@gpmlaw.com

**THESE RESPONSES CONTAIN INFORMATION THAT IS DESIGNATED AS
"CONFIDENTIAL" OR "CONFIDENTIAL – ATTORNEYS' EYES ONLY" PURSUANT TO THE
STIPULATED PROTECTIVE ORDER**

TABLE OF CONTENTS

	<u>Page</u>
DEFENDANTS' INSTRUCTIONS AND DEFINITIONS.....	2
TIMEBASE'S OBJECTIONS TO DEFINITIONS, INSTRUCTIONS, AND ALL INTERROGATORIES	4
RESPONSES TO INTERROGATORIES.....	7
INTERROGATORY NO. 1. (Dates of Conception and Reduction to Practice).....	7
RESPONSE:	7
Supplement as of October 19, 2009:	8
Supplement as of November 13, 2009:	9
INTERROGATORY NO. 2. (Conception, Reduction to Practice, and Inventorship).....	10
RESPONSE:	10
Supplement as of October 19, 2009:	11
Supplement as of November 13, 2009:	13
Supplement as of January 13, 2010.....	15
INTERROGATORY NO. 3. (Obviousness – Level of Skill in the Art)	15
RESPONSE:	30
Supplement as of October 19, 2009:	31
INTERROGATORY NO. 4. (Damages).....	31
RESPONSE:	31
Supplement as of January 13, 2010	34
Supplement as of March 1, 2010	34
INTERROGATORY NO. 5. (Corporate Structure).....	34
RESPONSE:	47

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, TimeBase hereby responds to Defendants' Interrogatories 1-5:

DEFENDANTS' INSTRUCTIONS AND DEFINITIONS

A. As used herein, the terms "plaintiff," "TimeBase" or "you" shall mean and include plaintiff TimeBase Pty Ltd. and all predecessors-in-interest (merged, acquired, or otherwise), subsidiaries, parents, joint ventures, and affiliates thereof, and all current and former directors, officers, agents, employees, attorneys and other persons acting on their behalf.

B. As used herein, the phrase "the '592 Patent" means U.S. Patent No. 6,233,592, the phrase "the '228 Patent" means U.S. Patent No. 7,293,228, and "Patents-in-Suit" means U.S. Patent No. 6,233,592 and U.S. Patent No. 7,293,228.

C. As used herein, the phrase "Related Patents" means any United States or foreign counterparts to the Patents-in-Suit, including, without limitation, any patent or patent applications (including applications now abandoned)-deriving from or relying on the priority date of AU 04892.

D. As used herein, the phrases "accused product" or "accused products" mean the products or services that plaintiff accuses of infringement in this action.

E. As used herein, the term "commercial embodiment" means any product invented, reduced to practice, developed, sold, offered for sale and/or distributed by or for plaintiff or on its behalf that plaintiff contends is covered by one or more claims of the Patents-in-Suit or any Related Patents.

F. As used herein, the term "Prosecutor(s)" means any person who acted as the attorney or agent for any of the named inventors and/or plaintiff, or at their or its direction, in connection with the prosecution of the Patents-in-Suit and any individual associated with the filing or prosecution of the application for the Patents-in-Suit, as defined by 37 C.F.R. § 1.56.

G. As used herein, "communication(s)" means any transmission of information by one or more persons and/or between two or more persons by any means, including, without limitation, telephone conversations; letters; telegrams; teletypes; telexes; telecopies; electronic mail; electronic documents; instant messages; text messages; other computer linkups; written memoranda; presentations; and face-to-face conversations.

H. As used herein, "document" has the same broad meaning as in Rule 34 of the Federal Rules of Civil Procedure, and includes any written or graphic matter or any medium of any type or description upon which intelligence or information is recorded or from which intelligence or information can be recorded, which is or has been in the possession, control, or custody of plaintiff, or of which plaintiff has knowledge, including the original and any non-identical copy (whether different from the original because of

notes made on said copy or otherwise) of any advertising literature; agreement; bank record or statement; blueprint; book; white paper; presentation; blog; website; journal; article; book of account; booklet; brochure; calendar; chart; check; circular; coding form; communication (intra- or inter-company); computer printout; computer-readable form; contract; copy; correspondence; data base; diary; schedule; agenda; personal calendar (electronic or otherwise); display; draft of any document; drawing; electronic mail or "e-mail"; film; film transparency; flyer; forecast; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; magnetic media of all kinds (including disks, tapes, or other media) containing computer software with supporting indices, data, documentation, flow charts, comments, object code, source code, and computer programs relating thereto; manual; map; memoranda; minute; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; price list; print; printed circuit board; promotional literature; receipt; record; recorded Read-Only-Memory (ROM); recording; report; solicitation; statement; statistical compilation; stenographic notes; study; summary (including any memoranda, minutes, notes, records, or summary of any (a) telephone, intercom, or voicemail conversation or message, (b) personal conversation or interview, or (c) meeting or conference); telegram; telephone log; travel or expense records; video recording; video tape; voice recording; voucher; worksheet or working paper; writing or other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information required may be obtained, or any other documentary material of any nature.

I. As used herein, the term "identify," as applied to a document, means to provide the following information:

(1) the date appearing on the document, and if no date appears thereon, the answer shall so state and shall give the date or approximate date such document was prepared;

(2) the general nature or description of the document (i.e., whether it is a letter, memorandum, drawing, etc.) and the number of pages of the document;

(3) the name of each person who signed the document, and if it was not signed, the answer shall so state and shall give the name of each person or persons who prepared it;

(4) the name of each person to whom the document was addressed and the name of each person other than such addressee to whom the document or copies thereof were given or sent;

(5) the name of each person having possession, custody or control of the document; and

(6) if the document was, but is no longer, in TimeBase's possession, custody, or control, state what disposition was made of it and when.

J. As used herein, the term "identify" or "identification," as applied to a person, shall mean to state his or her full name, present or last known address, present or last known position and business affiliation and, if applicable, the person's history of employment with TimeBase.

K. As used herein, "referring" and/or "relating" to any given subject means, without limitation, identifying, describing, discussing, assessing, stating, reflecting, constituting, containing, embodying, pertaining to or concerning, in any way, the particular subject matter identified.

L. Should you claim that any information requested in a discovery request is subject to a claim of privilege or claim of work product, state the nature of the claim being made, describe the grounds on which the claim rests, identify who is making the claim, and provide all information required by Fed. R. Civ. P. 26(b)(5).

M. These discovery requests are continuing and require timely supplementation as provided in Fed. R. Civ. P. 26(e).

**TIMEBASE'S OBJECTIONS TO DEFINITIONS,
INSTRUCTIONS, AND ALL INTERROGATORIES**

1. TimeBase objects to the numerous instructions and definitions A through M. TimeBase will use normal English meanings of words, accepted grammar, and will adhere to the requirements of the Federal Rules of Civil Procedure, the Local Rules including Rule 26.2, and the Pretrial Scheduling Order.

2. TimeBase objects to any of Defendants' interrogatories that call for documents or information subject to the attorney-client privilege or the doctrine of work-product immunity. Any documents or information withheld from production on either basis will be identified in a withheld document list that complies with Fed.R.Civ.P. 26(b)(5) that will be exchanged with Defendants when Defendants are prepared to exchange their list of withheld documents.

3. TimeBase objects to Defendants' interrogatories to the extent they are not reasonably calculated to lead to discovery of admissible evidence.

4. TimeBase objects to Defendants' interrogatories to the extent that they request TimeBase to provide the names of all documents or persons. TimeBase will identify reasonably responsive documents. If known, TimeBase will identify those persons believed to be generally most knowledgeable regarding the requested subjects.

5. Interrogatories calling for contentions are premature and are necessarily limited by the lack of discovery.

6. TimeBase objects to supplementing responses other than as required by Fed.R.Civ.P. 26(e).

7. In those instances where the response to Defendants' interrogatory request can be derived from the business records of TimeBase or from an examination, audit or inspection of such business records, and the burden of deriving or ascertaining the answer is substantially the same for Defendants and TimeBase, TimeBase will specify the records from which a complete answer may be ascertained and afford Defendants' counsel a reasonable opportunity to audit, inspect and copy such records or provide categorized copies of such records in accordance with Federal Rule of Civil Procedure 33(d).

8. TimeBase objects to Defendants' interrogatories to the extent they request documents or information already in Defendants' possession or which are equally available to Defendants from other sources.

9. To the extent any interrogatory calls for information concerning the dates of conception and reduction to practice of the patented inventions, TimeBase objects to providing such information absent an exchange of information from Defendants. TimeBase will exchange dates of conception and reduction to practice simultaneously with Defendants' alleged prior art or alleged dates of conception and reduction to practice. See

Rule 26(c)(8), Fed.R.Civ.P. See also Wright & Miller, *Federal Practice and Procedure: Civil* * 2044; *Cleo Wrap Corp. v. Eisner Engineering Works, Inc.*, 176 USPQ 266, 267 (M.D. Pa. 1972); *Standard Pressed Steel Co. v. Astoria Plating Corp.*, 162 USPQ 441, 443-44 (N.D. Oh. 1969); *A.B. Dick Co. v. Underwood Typewriter Co.*, 235 F. 300, 304-05 (S.D.N.Y. 1916); *Carter Products, Inc. v. Eversharp, Inc.*, 360 F.2d 868, 873 (7th Cir. 1966); *Technitrol, Inc. v. Digital Equipment Corp.*, 62 F.R.D. 91 (N.D. Ill. 1973).

10. Defendants' interrogatories 2 and 4 include subparts and TimeBase objects. The Pretrial Scheduling Order, page 2, paragraph 3, allows 25 interrogatories counted in accordance with Rule 33(a). TimeBase offered to respond on condition that the Defendants would do likewise. Since the Defendants have not responded, TimeBase will adhere to the Pretrial Scheduling Order. The Defendants' November 25 letter demands that TimeBase supplement Interrogatory 2 with information that is not called for by Interrogatory 2. See the responses for details. The November 25 letter therefore does not comply with the Pretrial Scheduling Order. It also constitutes an unreasonable burden, by demanding that TimeBase obtain information from parties not under its control.

REDACTED

INTERROGATORY NO. 2. (Conception, Reduction to Practice, and Inventorship)

For each person who assisted, contributed to, or otherwise was involved in the conception and/or reduction to practice of the subject matter claimed by each of the Patents-in-Suit, identify each such person and describe fully and in complete detail the nature and extent of each such person's involvement in the conception and/or reduction to practice of the subject matter claimed by each of the Patents-in-Suit, including the claims to which each such person contributed.

RESPONSE:

Objections 1 to 10 are adopted by reference. This interrogatory calls for a contention regarding conception, reduction to practice, and inventorship, and therefore is governed by the Pretrial Scheduling Order. The claims of the patents are presumed to be valid. 35 U.S.C. § 282. The Defendants' pleadings assert that "The claims of the '592 patent are invalid for failure to comply with the patent laws, including without limitation, 35 U.S.C. §§ 102, 103, and/or 112." (Defendants' Joint Answer and Defenses to Plaintiff's Amended Complaint, June 18, 2007) and that "The claims of the '228 patent are invalid for the failure to comply with the patent laws, including, without limitation, 35 U.S.C. §§ 102, 103 and/or 112." (Defendants' Answer to Plaintiff's Complaint, November 29, 2007). The Defendants have the burden of going forward with proof on this issue, and the Defendants bear the

ultimate burden of persuasion by clear and convincing evidence. At present, however, the Defendants have not provided any discovery relevant to this subject.

Second, gathering information on this subject is a significant burden, because the '592 and '228 patents have a priority date of January 31, 1997, over twelve years ago.

The Pretrial Scheduling Order requires that the Defendants provide their prior art statement by October 23, 2009. TimeBase will respond by December 1, 2009, as required by the Order. TimeBase therefore objects to this interrogatory, and will respond as necessary to the Defendants' prior art statement, and supplement this response as may be required by Rule 26(e).

Without waiving these objections, TimeBase will produce documents pursuant to Rule 33(c) concerning the persons involved.

Supplement as of October 19, 2009:

REDACTED

REDACTED

Supplement as of November 13, 2009:

REDACTED

REDACTED

Supplement as of January 13, 2010

TimeBase incorporates objections 1 to 10, and the additional objections made in the prior supplements to this interrogatory.

TimeBase's response to this interrogatory complies with the Court's order, and no further supplement is necessary. Without waiving these objections, TimeBase further supplements as follows:

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of all information, and identification by Bates number of all documents, relied upon by TimeBase to support its 10/12/00 submission to the United States Patent Office asserting that Ms. Lessing, Mr. Schnelle, Mr. Leslie, and Mr. Nolan were properly named as the inventors on the application that would later become the '228 patent.

Response

Interrogatory 2 asks about "subject matter claimed by each of the Patents-in-Suit." The '228 application was converted to a continuation-in-part of the '592 patent. See page 2 of the Amendment and Response received in the Patent Office on November 18, 2005, which states:

Application No. 09/689,927
Response dated November 18, 2005
Page 2

In the Specification:

Please insert the following heading and paragraph after the title of the application on page 1 of the specification:

--Cross Reference to Related Applications

This application is a continuation-in-part of U.S. Application No. 09/108,999, filed on July 1, 1998, now U.S. Patent No. 6,233,592, which is a continuation of International Application No. PCT/AU1998/000050, filed January 30, 1998, which designated the United States and was published in English, and which claimed priority to Australian Application No. PO4892, filed on January 31, 1997. These applications are incorporated by reference herein.--

The claims originally included in the application for the '228 patent (1 to 100) have not issued, and therefore are not "claimed by each of the Patents-in-Suit." The application claims were cancelled in their entirety, and replaced by a new set of claims 101 to 148. See page 4 of the Response Under 37 CFR § 1.111 received in the Patent Office on August 2, 2006. The issued claims asserted in this suit are not the claims in the original application. Thus, the "subject matter claimed by each of the Patents-in-Suit" is not the subject matter of the application claims, which were cancelled and moved. Interrogatory 2 asks about the claims asserted in this suit, not claims that were cancelled and moved to a pending application. The cancelled claims are therefore outside the scope of Interrogatory 2. See Objection 10.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of all information, and identification by Bates number of all documents, relied upon by TimeBase to support its November 18, 2005 submission to the United States Patent Office asserting that Ms. Lessing, Mr. Schnelle, Mr. Leslie, and Mr. Nolan were properly named as the inventors on the application that would later become the '228 patent.

Response

If the defendants mean to refer to the Amendment and Response received in the Patent Office on November 18, 2005, that document makes no assertion about the identities of the inventors.

In any case, the claims asserted in this suit are not the claims in the original application. Thus, the inventors named in the original '228 application were inventors of different claimed subject matter, not the subject matter of the claims asserted here. That application is still pending, is not asserted, and is outside the scope of Interrogatory 2,

which asks about the subject matter “claimed by each of the Patents-in-Suit.” See Objection 10.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of all information, and identification by Bates number of all documents, relied upon by TimeBase to support its October 19, 2009 interrogatory answer asserting that Ms. Lessing, Mr. Schnelle, Mr. Leslie, and Mr. Nolan are properly named as the inventors of the '228 patent.

Response

The identification of the inventive entity was an error without deceptive intent, correctable by 35 U.S.C. § 256, which provides in part:

Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his part, the Director may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issued a certificate correcting such error.

See also 37 CFR § 1.324. TimeBase is currently unaware of any documents that identify the inventive entity (Schnelle, Lessing, Leslie, and Nolan) as the inventive entity of the claims as issued in the '228 patent. With respect to the claims as filed, those claims have been moved to another application which is not asserted in this suit. Because Interrogatory 2 requests information about “subject matter claimed by each of the Patents-in-Suit,” information about a different, pending, unasserted application is outside the scope of Interrogatory 2 and therefore not relevant. See also Objection 10.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of all information, and identification by Bates number of all documents, relied on by TimeBase to support its November 10, 2009 submission to the United States Patent Office asserting that Mr. Leslie and Mr. Nolan were improperly named as inventors of the '228 patent and that Mr. Mariani was improperly omitted as an inventor of the '228 patent. In particular, TimeBase should provide a complete and detailed explanation of why its earlier inventorship determinations

with respect to the '228 patent of October 12, 2000, November 18, 2005, and October 19, 2009 were incorrect.

Response

This paragraph asks for the reasoning by TimeBase and its counsel. The reasoning leading to that decision, any selection of documents, and any communications in connection with it, are protected by the attorney-client privilege and work-product. The parties to those communications were Mr. Vishal Khatri, Ms. Leonie Muldoon (acting at the direction of TimeBase's counsel), Mr. Joseph Hosteny, and each of the individuals who signed the documents in the Request for Correction of Inventorship Pursuant to 37 C.F.R. § 1.324, TB312376. The dates of the communications were in late October and early November, 2009. The general subject matter was inventorship of the claims which issued in the '228 patent. The documents were the '592 patent, the '228 patent application as published, the '228 patent as issued, and the statement each person subsequently signed.

As recited above, § 256 provides that proof of the facts and such other requirements are at the discretion of the Director. See also 37 CFR § 1.324. TimeBase will produce any further submissions to the Patent Office, should they occur. Otherwise, the communications are protected by the attorney-client privilege and work-product.

At the present time, TimeBase is unaware of any further information or documents on this subject. TimeBase reserves the right to supplement.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of how the July 1998 e-mail authored by Geoff Nolan and referenced in TimeBase's October 19, 2009 interrogatory answer evidences the conception and/or reduction to practice of the '592 and '228 patents.

Response

If the defendants refer to TB002922, the document was cited in part because it contains the date "Sun Jul 7 09:15:16 1996" in the first line, and was believed at that time to be relevant to Interrogatory 2. It is no longer believed to be relevant, subject to any testimony that Mr. Schnelle or Mr. Nolan might offer.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of the contributions of Ms. Lessing and Mr. Schnelle to each of the claimed inventions. TimeBase's interrogatory answers to date provide no details regarding the contributions of either of these individuals. TimeBase previously asserted that it had no access to either Ms. Lessing or Mr. Schnelle, yet TimeBase was able to communicate with Ms. Lessing and Mr. Schnelle to obtain their signatures for 37 C.F.R. 1.324 statements as recently as November 9, 2009. Therefore, it is apparent that TimeBase does have at least some access to these individuals and has discussed with them, at least to some extent, the inventorship of the '592 and '228 patents. Therefore, TimeBase should immediately provide all information regarding the contributions of these individuals that is currently in TimeBase's possession or otherwise reasonably accessible to TimeBase.

Response

REDACTED

REDACTED

TimeBase has to the best of its knowledge and current ability responded as required by Rules 33 and 34 concerning the contributions by Ms. Lessing and Mr. Schnelle, as described in the November 13 supplement above. Thus, no further information is presently available to TimeBase; see pages 11-13, which state that neither person is within TimeBase's control.

Documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel. Information from this time frame about the activities of Mr. Schnelle and Ms. Lessing is therefore not available, and has been produced to the extent it is available.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Thus, there is no additional information to provide at the present time. TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of all communications between TimeBase or its attorneys and each of Ms. Lessing, Mr. Schnelle, Mr. Mariani, Mr.

Leslie, and Mr. Nolan, regarding the inventions claimed in the '592 and '228 patents. All written correspondence with these individuals should also be produced in this matter, as it was previously requested (Request No. 10).

Response

This is outside the scope of Interrogatory 2. Without waiving that objection, these communications were with or at the direction of counsel, or both. They are therefore protected by the attorney-client privilege and work-product. The parties to the communications were Ms. Lessing, Mr. Schnelle, Mr. Mariani, Mr. Leslie, Mr. Nolan, Mr. Khatri, Ms. Muldoon (acting at the direction of TimeBase's counsel). The approximate dates of the communications were late October or early November, 2009. The general subject matter of the conversations was inventorship of the claims which issued in the '228 patent. TimeBase objected to Request 10 on the same basis. In any event, TimeBase is not presently aware of any responsive, non-privileged documents that have not been produced. See Objection 10.

No further information is available to TimeBase at the present time. It therefore reserves the right to supplement.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands] [i]dentification by Bates number of all documents, and a complete and detailed description of all evidence, TimeBase is aware of regarding the potential conception of the claimed inventions in 1995, as referenced in TimeBase's interrogatory answer.

Response

Documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel.

Information from this time frame about the activities of Mr. Schnelle and Ms. Lessing is therefore not available, and has been produced to the extent it is available.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Thus, there is no additional information to provide at the present time. TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of the contributions made by each of Ms. Lessing, Mr. Schnelle, and Mr. Mariani to the claimed 1995 conception.

Response

Mr. Mariani's recollections have been provided to the extent they are presently recalled by him. Ms. Lessing and Mr. Schnelle are not under the control of TimeBase, as described above, and their recollections will have to be obtained via deposition. Documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel. Information from this time frame about the activities of Mr. Schnelle and Ms. Lessing is therefore not available, and has been produced to the extent it is available.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Thus, there is no additional information to provide at the present time.

TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of all information, and identification by Bates number of all documents, TimeBase is aware of supporting a date of conception for the '592 and '228 patents of October 14, 1996.

Response

All such documents that are presently available following a search pursuant to Rule 34 have been produced or identified. See the supplements of October 19 and December 13 above. No additional documents are presently known to exist. Documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel. Information from this time frame about the activities of Mr. Schnelle and Ms. Lessing is therefore not available, and has been produced to the extent it is available.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Thus, there is no additional information to provide at the present time. TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of the contributions made by each of Ms. Lessing, Mr. Schnelle, and Mr. Mariani to the claimed October 14, 1996 conception.

Response

Mr. Schnelle and Ms. Lessing are not under TimeBase's control as described above at pages 11-13 and 20. See the supplements of October 19 and November 13 above. Mr. Mariani's recollections have been described, and no further information is recalled at the present. Note that documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel. Information from this time frame about the activities of Mr. Schnelle and Ms. Lessing is therefore not available, and has been produced to the extent it is available.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Thus, there is no additional information to provide at the present time. TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands] [p]roduction of all documents prepared by Mr. Mariani and expressly relied on by TimeBase in its answer to Interrogatory No. 2. TimeBase has expressly relied on the substance of these communications in providing its interrogatory answer and therefore cannot assert that these documents are privileged. *See, e.g., U.S. v. Davis*, 583 F.3d 1081,1090 (8th Cir. 2009) (attorney client privilege cannot be used as both a sword and a shield). The production should include at least the two documents dated January 19, 1997, Mr. Mariani's notes, and the flowchart for the invention that are each discussed in TimeBase's interrogatory answer.

Response

A party does not waive its attorney-client privilege by asserting it. Nor has TimeBase inserted the issue of conception or reduction to practice into the case; if anyone were to raise the issue, it would be the defendants. Title 35, U.S.C. § 282 states in part:

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. . . . The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.

Thus, TimeBase is not using the privilege offensively, such as seeking some form of relief.

Identification of a privileged document in an interrogatory response is not a waiver. *Willemijn Houdstermaatschaap BV v. Apollo Computer, Inc.*, 707 F.Supp, 1429, 1439 (D.Del. 1989). The defendants' citation is inapposite because the content of the privilege communications in that case were affirmatively used by the holder of the privilege to obtain relief. In *U.S. v. Davis*, 583 F.3d 1081, 1090 (8th Cir. 2009), the defendant was arrested for selling crack cocaine, fled, and was indicted. He was arrested again, and pleaded guilty. He obtained a new lawyer and moved to withdraw his plea. At the hearing on his motion, Davis claimed his first lawyer had given him bad advice about pleading guilty; he testified about the advice given him by, and his conversations with, his first lawyer. His first lawyer was called as a witness by the government. Davis therefore affirmatively used the privileged communications with his first lawyer in an effort to vacate his guilty plea. His motion was denied, and he was sentenced to 293 months (almost 25 years). Davis claimed on appeal that the first lawyer violated Davis's attorney-client privilege. The court of appeals affirmed the denial of the motion.

Here, TimeBase provided only the information called for by Rule 26(b)(5), that is, the parties to the communications, the dates, the general subject matter, and the reason for withholding them. The content of the documents was not disclosed. See pages 13 and 14 above. That is the assertion of a privilege, not a waiver of it. *Willemijn Houdstermaatschaap BV v. Apollo Computer, Inc.*, 707 F.Supp, 1429, 1439 (D.Del. 1989).

Documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel. Information from this time frame about the activities of Mr. Schnelle and Ms. Lessing is therefore not available, and has been produced to the extent it is available.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Thus, there is no additional information to provide at the present time. TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed explanation of TimeBase's conclusion, stated in its interrogatory answer, that the document appearing at TB043044 was prepared before December 31, 1996. This conclusion appears particularly suspect because the document itself includes dates in 1997.

Response

The defendants' letter is not accurate. TimeBase indicated at page 14 above that a DTD was referred to at TB043044 as Appendix B. TB043044 says in part:

- 20 Appendix C. The DTDs according to the preferred embodiment are set forth in detail in Appendix B. A DTD is used to define the structure of publication data, preferably being legislation, down to a comprehensive level. This is done by using

TimeBase next said that an appendix begins at TB043064. That is the first page of Appendix B. A portion of that page shows:

-27-

APPENDIX B

CODING - Document Type definitions (dtds)

ACT.DTD

<!-- *****

Document Type Definition for a set of acts

Typical invocation :

<!DOCTYPE acts PUBLIC "-//SGMLSE//DTD 1.0 Acts//EN" >

Copyright Aunty Abha's Electronic Publishing Pty. Ltd. 1996, 1997

***** -->

As TimeBase stated, this document includes copyright dates of 1996 and 1997 for "ACT.DTD." As TimeBase stated, "This document, a DTD for a set of acts, was therefore prepared before December 31, 1996." It may well have been revised in 1997, but the copyright date of 1996 gives rise to a presumption that the document was first created sometime in 1996. The patent application was filed on January 31, 1997; it is reasonable to assume that the underlying documents were logically created earlier.

No further information is available to TimeBase at the present time, and it therefore reserves the right to supplement.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands the] precise date when Mr. Mariani joined TimeBase.

Response

Pursuant to Rule 33(d), see TB009417-23.

No further information is available to TimeBase at the present time, and it therefore reserves the right to supplement.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands] [p]roduction of executed employment agreements with each of Ms. Lessing, Mr. Schnelle, Mr. Leslie, and Mr. Nolan. TimeBase previously produced some employment agreements with these individuals in response to Request No. 13, but executed employment agreements have not been provided.

Response

This is outside the scope of Interrogatory 2; see Objection 10. Without waiving that objection, the defendants are incorrect; any signed employment agreements were provided in TimeBase's initial production. See:

REDACTED

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands a] complete and detailed description of all communications between Mr. Schnelle or Ms. Lessing and Mr. Mariani in October or November of 1996 as referenced in TimeBase's interrogatory answer.

Response

Documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel. Information from this time frame about the activities of Mr. Schnelle and Ms. Lessing is therefore not available, and has been produced to the extent it is available.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Mr. Mariani's recollections have been described in the supplements above, and Ms. Lessing and Mr. Schnelle are not available, as described above. Thus, there is no additional information to provide at the present time. TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

Paragraph from Nov. 25, 2009 Letter from Defendants

[Thomson demands] [c]onfirmation that Mr. Mariani's contributions to the inventions of the '592 and '228 patents are limited to "preparation of an embodiment described in the provisional application, his assistance with notes for the attorneys, his involvement in preparing a flowchart for the invention, and his discussions with Mr. Schnelle and Ms. Lessing."

Response

The defendants are incorrect. TimeBase did not say that Mr. Mariani's contributions were "limited to" certain aspects. TimeBase's supplement of November 13 stated "that all three (inventors) collaborated with respect to the entirety of the invention."

Documents from 1995 and 1996 are for the most part not reasonably accessible and thus are not available, as described in a prior supplement. See the Advisory Committee

Notes to the 2007 Amendments to Fed.R.Civ.P. 34, Rule 26(b)(2)(B), and the Declaration of Leonie Muldoon, an exhibit to TimeBase's Response to Thomson's Motion to Compel.

Additional searching was performed on the documents produced by TimeBase. After a reasonable search pursuant to Rule 34, no additional documents have been located at the present time. Thus, there is no additional information to provide at the present time. TimeBase reserves the right to supplement, e.g., if Ms. Lessing or Mr. Schnelle is deposed and sheds light on this subject.

INTERROGATORY NO. 3. (Obviousness – Level of Skill in the Art)

For purposes of assessing obviousness under 35 U.S.C. § 103, describe fully and in complete detail what TimeBase contends to be the pertinent art of the subject matter claimed by the Patents-in-Suit and the level of ordinary skill in that art at the time the invention of the was made, including the level of education and/or experience necessary to qualify as a hypothetical person of ordinary skill in the pertinent art.

RESPONSE:

Objections 1 to 10 are adopted by reference. Without waiving those objections, TimeBase responds.

This is a contention interrogatory, and is governed by the Pretrial Scheduling Order. The claims of the patents are presumed to be valid. 35 U.S.C. § 282. The Defendants' pleadings assert that "The claims of the '592 patent are invalid for failure to comply with the patent laws, including without limitation, 35 U.S.C. §§ 102, 103, and/or 112." (Defendants' Joint Answer and Defenses to Plaintiff's Amended Complaint, June 18, 2007) and that "The claims of the '228 patent are invalid for the failure to comply with the patent laws, including, without limitation, 35 U.S.C. §§ 102, 103 and/or 112." (Defendants' Answer to Plaintiff's Complaint, November 29, 2007). The Defendants have the burden of going forward with proof on this issue, and the Defendants bear the ultimate burden of

As to objections:

/s/ Joseph N. Hosteny

Joseph N. Hosteny
Arthur A. Gasey
Niro, Scavone, Haller & Niro
181 West Madison, Suite 4600
Chicago, Illinois 60602
Telephone: (312) 236-0733

Michael R. Cunningham
Gray, Plant & Mooty
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Phone: 612/632-3000
Fax: 612/632-4444
michael.cunningham@gpmlaw.com

Attorneys for TimeBase Pty Ltd.

VERIFICATION

This supplemental response cannot be verified by a representative of TimeBase due to the designation of documents under the Stipulated Protective Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that **TIMEBASE'S SUPPLEMENTAL RESPONSE OF MARCH 1, 2010 TO DEFENDANTS' INTERROGATORIES 1-5** was served upon Thomson's counsel on March 2, 2010, listed below, by email and first class mail to:

Mindy Sooter; MSooter@faegre.com
Terry Beyl; TBeyl@faegre.com
Katherine S. Razavi;
krazavi@faegre.com
Kevin P. Wagner;
KWagner@faegre.com
David Gross; DGross@faegre.com
Calvin L. Litsey; CLitsey@faegre.com
Theodore M. Budd;
TBudd@faegre.com
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Phone: 612-766-7000
Fax: 612-766-1600

Attorneys For Thomson

/s/ Joseph N. Hosteny
Joseph N. Hosteny