

Carl Anderson

From: Stan Karas
Sent: Thursday, July 16, 2009 3:36 PM
To: Justin A. Nelson; Jason Wolff; Jeremy Brandon; Joseph S. Grinstein; Max L. Tribble; Juanita Brooks
Cc: Aimee M. Robert; Carl Anderson; Patsy Goff; ccapshaw@capshawlaw.com; Sandeep Seth; Stacy Schulze; Diane Doolittle; Nancy P. Johnson
Subject: RE: Update to meet and confer issues

Justin, et al,

I wanted to get back to you regarding the handful of issues left outstanding as of our last meet and confer.

1. I can now confirm that Leslie Altherr's deposition will take place on July 30.
2. We decline your offer to make each inventor available for 3 hours of deposition in exchange for Ms. Susan Wojcicki's. Please let us know if your final position is that you will not produce the inventors for deposition (outside of the 30(b)(6) context) other than pursuant to this arrangement. We're glad to continue working with you on this issue, but need to receive your final position soon, so that we could have ample time to move to compel, if necessary. As we have explained several times, your client is asserting over 80 claims against Google, which you have intimated repeatedly that it has no intention of trying, and given the failure to identify specific dates of invention in its interrogatory responses we cannot be constrained by a 3 hour limit.
3. We are in the process of compiling a list of deponents and declarants in ad-related cases, and expect to forward it to you in the near future. It's a time-consuming process. Note that we have already produced the deposition of Greg Badros (who testified in the HyperPhrase matter regarding AdSense for Content) in 2008, and we have also produced the depositions of two other witnesses in that matter who testified concerning certain ads revenue issues.
4. With respect to FASB forms and licenses from the list that we provided, we do not object to producing them as long as you agree that it is without prejudice to our argument that they are irrelevant or otherwise inadmissible. An initial batch of acquisition materials identified in our earlier discussions has been collected and will be produced next week. We note that no FASB-141 documents were located in the initial materials we located but we are in the process of trying to determine whether they exist.
5. With respect to your request to search the documents of additional custodians, the scope of your request is broadening not narrowing as we discussed. I suggest that you and I have a brief call next week. Leaving aside the apex witness issue, many of the people listed have no perceptible connection to the issues in this case, and we'd like to clarify why you have selected them for additional document pulls. Please let me know what day/time works for you.
6. Regarding PMK Topic No. 19, its wording is confusing and simply doesn't fit Google's ad business model. In other words, other than with direct publishers, who you have said you are not pursuing, there is no participation by "Internet Media Venues" (presumably a "publisher" in view of your infringement contentions) in pricing decisions.
7. Regarding PMK Topic No. 34, we continue to stand behind the privilege objections. We may, however, offer Johnny Chen to testify regarding Google's procedures for licensing patents where a patent is offered to Google for license. Please let us know if you accept this limitation of topic.
8. We are continuing to gather the patent applications. While we have been producing them on a rolling basis throughout the litigation, a first batch is expected to be produced next week as part of a rolling production as they are collected from prosecution counsel. Again, please also confirm that your client has produced all its related patent applications too.
9. With respect to opening user accounts, as we explained, Google can't waive the TOS as an administrative matter. However, we can send you a letter confirming that Google will not seek to exclude evidence of plaintiff's and/or its experts' use of the accounts for litigation purposes based on claimed violations of the TOS. Please let us know if you accept this compromise.

There are also a number of things on which we're waiting for you to get back to us.

1. We are still waiting for your limitations on Second PMK Notice Topics 18 and 32.
2. Please let us know when you will produce the metadata for the electronic documents produced, especially the metadata for documents that you claimed in discovery support plaintiff's prior invention argument.

Carl Anderson will also write to you separately regarding items of discovery still outstanding on your end. Thanks.

Stan

From: Stan Karas
Sent: Wednesday, July 15, 2009 2:42 PM
To: Justin A. Nelson; Jason Wolff; Jeremy Brandon; Joseph S. Grinstein; Max L. Tribble
Cc: Aimee M. Robert; Carl Anderson; Patsy Goff; ccapshaw@capshawlaw.com; Sandeep Seth; Stacy Schulze; Diane Doolittle; Nancy P. Johnson
Subject: RE: Update to meet and confer issues

I will confirm for certain tomorrow, but we should be able to make Ms. Alterr available for deposition on July 30.

From: Justin A. Nelson [mailto:jnelson@SusmanGodfrey.com]
Sent: Wednesday, July 15, 2009 10:18 AM
To: Jason Wolff; Jeremy Brandon; Stan Karas; Joseph S. Grinstein; Max L. Tribble
Cc: Aimee M. Robert; Carl Anderson; Patsy Goff; ccapshaw@capshawlaw.com; Sandeep Seth; Stacy Schulze; Diane Doolittle; Nancy P. Johnson
Subject: Update to meet and confer issues

Stan, Juanita -- Another reminder to please get back to us ASAP on the open issues. And most pressingly, can you please confirm a date for the Altherr depo today? Thanks.

Justin A. Nelson
Susman Godfrey
1201 Third Avenue
Suite 3800
Seattle, WA 98101
206-516-3867

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From: Jason Wolff [mailto:wolff@fr.com]
Sent: Wednesday, July 15, 2009 9:52 AM
To: Jeremy Brandon; stankaras@quinnemanuel.com; Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble
Cc: Aimee M. Robert; carlanderson@quinnemanuel.com; Patsy Goff; ccapshaw@capshawlaw.com; Sandeep Seth; Stacy Schulze; dianedoolittle@quinnemanuel.com; Nancy P. Johnson
Subject: RE: Function Media v. Google: depositions

Jeremy,

Further to our call, Google does not presently intend to call Ms. MacNeille to testify at trial. If this changes we'll promptly notify you and give you an opportunity to depose her before then. If you would still like to proceed with her deposition on July 22, please let me know today.

As I also mentioned, we just learned Ms. MacNeille is being treated for a respiratory condition and because of this does not start her day until 11 am -- we were able to get her to agree to start at 10 am, but I'm a bit concerned that with prior commitments on the 23rd and flight

schedules we'd be stuck in Philadelphia an extra day (if we moved the date this wouldn't be an issue on our end).

Lastly, Ms. MacNeille came across another document last night and has asked a third party for permission to disclose it under the protective order. As soon as I receive it it will be forwarded to you.

Regards,
Jason

-----Original Message-----

From: Jeremy Brandon [mailto:jbrandon@SusmanGodfrey.com]
Sent: Wednesday, July 15, 2009 7:09 AM
To: Jason Wolff; stankaras@quinnemanuel.com; Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble
Cc: Aimee M. Robert; carlanderson@quinnemanuel.com; Patsy Goff; ccapshaw@capshawlaw.com; Sandeep Seth; Stacy Schulze; dianedoolittle@quinnemanuel.com; Nancy P. Johnson
Subject: Re: Function Media v. Google: depositions

Jason,

Sorry, but we can't do the 21st. We're fine with doing the depo at her lawyer's office on the 22nd. Just let me know.

Thanks.

-----Original Message-----

From: Jason Wolff <wolff@fr.com>
To: Jeremy Brandon; stankaras@quinnemanuel.com <stankaras@quinnemanuel.com>; Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble
CC: Aimee M. Robert; carlanderson@quinnemanuel.com <carlanderson@quinnemanuel.com>; Patsy Goff; ccapshaw@capshawlaw.com <ccapshaw@capshawlaw.com>; Sandeep Seth; Stacy Schulze; dianedoolittle@quinnemanuel.com <dianedoolittle@quinnemanuel.com>; Nancy P. Johnson <NJohnson@fr.com>
Sent: Tue Jul 14 18:00:55 2009
Subject: RE: Function Media v. Google: depositions

Jeremy,

Could we move Ms. MacNeille's deposition to July 21 starting at 10 am instead of July 22? I don't know where you intend to have this deposition yet, but we're checking on a space in her local attorney's office in downtown Philadelphia (for either day -- July 21 or 22).

Please let me know.

Thanks,
Jason

From: Jeremy Brandon [mailto:jbrandon@SusmanGodfrey.com]
Sent: Wednesday, July 08, 2009 3:31 PM
To: stankaras@quinnemanuel.com; Justin A. Nelson;
gil@gillamsmithlaw.com; Jason Wolff; Juanita Brooks; Thomas Walsh;
Joseph S. Grinstein; Max L. Tribble
Cc: Aimee M. Robert; charley@pbatyler.com; ederieux@capshawlaw.com;
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Sandeep Seth; Stacy Schulze; dianedoolittle@quinnemanuel.com;
melissa@gillamsmithlaw.com
Subject: RE: Function Media v. Google: depositions

Stan,

McNeille on July 22 works for us. Let's postpone Kinnier as previously discussed. Ranganath on Aug. 7 works for us. Fielding on Aug 27 works for us. As we've discussed, Mr. Chen is off on the 21st b/c we are still awaiting docs.

Thanks.

From: Stan Karas [mailto:stankaras@quinnemanuel.com]
Sent: 2009-07-06 22:38
To: Justin A. Nelson; 'Harry L. Gillam, Jr.'; 'Jason W. Wolff'; 'Juanita R. Brooks'; 'Thomas B. Walsh, IV'; Joseph S. Grinstein; Max L. Tribble; Jeremy Brandon
Cc: Aimee M. Robert; 'Charles Ainsworth'; 'Elizabeth DeRieux'; 'Jeffrey Ramin'; Carl Anderson; 'Nancy Claire Abernathy'; Patsy Goff; 'Robert Christopher Bunt'; 'S. Calvin Capshaw'; Sandeep Seth; Stacy Schulze; Diane Doolittle; 'Melissa R. Smith'
Subject: Function Media v. Google: depositions

Counsel,

For everyone's convenience, here is a list of deposition dates that we have proposed in recent telephone conversations: Jeannette McNeille - July 22 in Philadelphia; Alex Kinnier - July 14-17 in Silicon Valley (you've asked to postpone this deposition until August); Raganath - July 24 or August 7 in Silicon Valley. In addition, Roy Fielding is available for deposition on July 14 or August 27 or 28 in San Diego. Please let me know if you have a conflict with any of these dates.

Thanks.

Stan

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