

Carl Anderson

From: Jeremy Brandon [jbrandon@SusmanGodfrey.com]
Sent: Tuesday, July 21, 2009 4:58 PM
To: Stan Karas; Justin A. Nelson; Jason Wolff; Joseph S. Grinstein; Max L. Tribble; Juanita Brooks; gil@gillamsmithlaw.com
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

Stan,

Thanks the dates. We accept August 5, August 7, and August 18. We can't do August 14th, however, mostly because of the Markman hearing on the 12th. How about we push that one to August 20 or 21?

Also, in light of our review of the documents, we need to depose Sergey Brin. Please provide dates. If you will not allow Mr. Brin to sit for a deposition, please tell us this week.

One additional scheduling item ... we offered August 3rd for the deposition of Jared Burke way back on July 7. We never heard back. I emailed your team last Thursday and asked again whether that date worked. And I still haven't heard. Now, as I feared, the date no longer works. Please let us know if your client would still like to depose Mr. Burke, and I will go back to him and ask for a new date.

Regards,

jeremy

From: Stan Karas [mailto:stankaras@quinnemanuel.com]
Sent: 2009-07-21 16:01
To: Justin A. Nelson; Jason Wolff; Jeremy Brandon; Joseph S. Grinstein; Max L. Tribble; Juanita Brooks; gil@gillamsmithlaw.com
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

Jeremy, Justin, Joe, et al,

Over the past few days, we received a number of emails from you on numerous discovery issues. We are preparing a substantive response to them, and will get it to you this week. We want to avoid off-the-cuff responses to emails, which may lead to misunderstandings and unnecessary motion practice, particularly when we are in the process of searching for and indeed have produced materials responsive to several of your requests. We are, of course, cognizant that both sides wish to move this case forward expeditiously, and will get back to you as soon as possible.

On another topic, however, we can make Amin Zoufonoun available for deposition on August 5, Todd Curtiss on August 7, Mireya Bravomolo on August 14, and Johnny Chen on August 18. Please let us know asap if you have any conflicts with these dates and let us know your availability for each deposition if there is a conflict on your end. Thanks very much.

From: Justin A. Nelson [mailto:jnelson@SusmanGodfrey.com]
Sent: Friday, July 17, 2009 3:04 PM
To: Stan Karas; Jason Wolff; Jeremy Brandon; Joseph S. Grinstein; Max L. Tribble; Juanita Brooks; gil@gillamsmithlaw.com
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

Stan --

Here is a longer response to these issues, along with some other ones that were not in your email.

1. We are agreed on the date for Altherr. Thanks.
2. As discussed in the prior email, please give us a counter-proposal. Do you decline to make Wojcicki available in all circumstances? How much time do you need for each inventor and why do you need this time in addition to the day of depositions that you already have had for both witnesses? You previously indicated that you were limiting your request to conception-related issues. Is your new request so limited?
3. Thanks for compiling this. When can we expect this and can you make sure to tell us when this is produced?
4. We agree that it is without prejudice to any argument you make on admissibility, as I assume is true for all documents produced should you assert a good-faith claim that they are not admissible under the Rules of Evidence. Please let us know when plan on producing these, as at least some 30(b)(6) depositions are contingent upon this production, and we'd like to schedule a date soon.
5. As discussed in the prior email, you seem to have backtracked from your position on the call 1 week ago. We have tried to resolve this issue for well over a month. Google has a continuing obligation to search for and produce relevant documents. Limiting your search to something at the beginning of discovery with specified custodians and specified search terms, without taking into consideration any future developments, is not consistent with Google's discovery obligations. We have identified (1) custodians who appear to have relevant knowledge; and (2) at least some search terms that we do not believe were searched that were the code names for the accused products. Instead of fighting this for well over a month, you could have produced the documents. Please let us know ASAP what you plan on producing and how you plan on doing it. If you have questions about a particular custodian, you can email or call me about it, but we need a general answer about what you plan to do. We believe we have exceeded any meet and confer obligation, especially after our last two calls with lead and local counsel. In addition, we've noted other missing documents, such as Google's pre-IPO financials and other documents related to AdSense and AdWords financials, such as dashboard information. We've also not confirmed whether you've searched the wikis, the network, IMs, EMG, Board, and GPS presentations, corporate network drives for the accused products or the individuals, any particular financial databases, etc., for relevant documents. We also want to confirm that you are searching any legacy documents, such as Applied Semantics documents. You also have not stated whether you will provide more detailed search information for the limited list of acquisitions that goes beyond the FASB-141 material.
6. We have the right to depose someone on why online publishers do not participate in any pricing decisions. Given your email, I assume you are stipulating that publishers play no role in any pricing decisions? Please let us know ASAP on this issue so we can prepare a motion to compel.
7. We reject this limitation. We have a right to know Google's policies and procedures for licensing patents. This is not privileged. To the extent something contains attorney-client

advice, you can assert a privilege objection, but Google's general policies cannot be privileged. Again, please let us know whether you will refuse to produce a witness to testify. We reserve our rights here, because we do not think there is any basis to assert privilege.

8. Thanks for your continued production. Jeremy Brandon will answer as to our production.

9. Jeremy Brandon will follow up on this issue.

Here are some other open issues that you have not addressed:

- a. Corrupted files -- We have been waiting for over a month to get an answer on corrupted files. Please update us ASAP or we will include this in our motion to compel.
- b. On second 30(b)(6) topic 18, we think that any questions we might ask will be subsumed in other topics, and we will drop that one.
- c. On second 30(b)(6) topic 32, we will limit this to AdSense and AdWords as discussed on the phone. Please let us know ASAP so that we can tee this up for a motion to compel if necessary.
- d. On our second 30(b)(6) notice, other than the four topics listed in your email (18, 19, 32, and 34), you did not discuss them. We discussed other of your objections on the phone, such as your mischaracterization of our position on topics 2-14 and other topics. You did not list them in your email. We assume that we will be able to ask questions of these topics. If you plan to prevent us from questioning on these topics to the full extent of our notice, please let us know immediately so we can add to our motion to compel.
- e. Please provide us some proposed dates for your remaining individual and 30(b)(6) witnesses so that we can try to confirm our schedules as soon as possible on what looks like will be a very busy August.
- f. As noted in point #5 above, you haven't given a date for the production of the limited set of acquisition documents that go beyond FASB-141 for the set we identified, plus the answers to our other questions about the acquisitions contained in our email of Monday the 13th.
- g. Please confirm, as you stated on the calls, that you are producing (a) the taxation decisions and allocation documents; and (b) the missing source code
- h. Please confirm that you are updating your rog responses with updated Bates ranges, especially for licenses, etc.
- i. You've also confirmed that you are producing relevant documents and testimony from witnesses designated as 30(b)(6) witnesses.
- j. We raised an issue about redactions. Please confirm your privilege log and redactions are complete.
- k. Native files for large spreadsheets
- l. A reminder to please tell us what you've produced in the past couple weeks and going forward so we can both be on the same page.

With respect to our metadata documents, I know we are working on this. Jeremy Brandon can provide more details.

Thanks.

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

This message is intended only for the people to whom it is addressed and is intended to be a confidential attorney-client communication. If this message is not addressed to you, please delete it and notify me.

From: Stan Karas [mailto:stankaras@quinnemanuel.com]
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
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Seattle, WA 98101
206-516-3867

This message is intended only for the people to whom it is addressed and is intended to be a confidential attorney-client communication. If this message is not addressed to you, please delete it and notify me.

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;
jrambin@capshawlaw.com; carlanderson@quinnemanuel.com;
chenry@capshawlaw.com; Patsy Goff; Chris Bunt; ccapshaw@capshawlaw.com;
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 Rambin'; 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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