

Carl Anderson

From: Justin A. Nelson [jnelson@SusmanGodfrey.com]
Sent: Friday, July 24, 2009 1:18 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; Amy Candido
Subject: RE: Update to meet and confer issues

Stan --

We plan to file a motion to compel on Monday, after trying to resolve these since April and having 2 meet and confer phone calls over the past month. So that we can be clear on what remains at issue, we've outlined specifically what we intend to move on and what we will not move on at the present time. Please respond by this evening if we are mistaken so that we can prepare our motion. The reason for this urgency is that we've been talking since April, and we need this resolved ASAP given the impending discovery cut-offs. Please also let us know by Monday whether you will join in expedited consideration of this motion. You promised an answer to these questions well over a week ago. We are just getting your responses today, and have asked you to speed up an answer so that we would not file. Indeed, we asked you earlier in the week for your answers by yesterday so that we could completely resolve everything this week. We are still hopeful that you can respond today. Here's what we intend to file on. If we are wrong, please let us know ASAP:

1. Depositions of Wojcicki, Page, and Brin. We plan to move to seek these depositions. It's our understanding that you're still opposed, and no compromise is possible.
2. Further document search on executive custodians -- We have explained on both meet and confers that they have relevant information and we can't get this from any other source. We offered search terms. You have not given any counter-proposal. We consider this well past ripe. Your position has not changed, according to your letter. We will file a motion on this point.
3. You have not explained whether you have searched the dashboards and other places where Board documents and financial documents may be for margin and other financial information. We clearly don't have any of the pre-IPO financials, and we are missing many post-IPO quarterly documents. We intend to move on this ground.
4. You have not explained whether you've searched the network for relevant documents (not just financial documents, and not just for particular custodians). We intend to move on the fact that your network search was incomplete, which as we understand it was just looking at a defined list of custodians and not searching the entire network. It is also our understanding that you have not searched for all relevant GPS, EMG, and Board presentations. We've asked you since April to provide details on this point. We have not gotten any. We will include this lack of a complete search in our motion.
5. Applied Semantics "legacy" documents include documents from the company Applied Semantics, which Google purchased. You have not stated whether you have searched

this set of documents. We intend to include it in our motion unless we hear from you otherwise that you have searched these documents.

6. Please produce employee testimony ASAP is it becomes available. Given your representation of expedited action on this issue, we will not include it in our motion.

7. Given that you did not send this letter until the middle of Axe's deposition, we will consider Johnny Chen the deponent for topic 19. We believe topic 19 fairly covers why advertisers do not play a role in pricing decisions. You are refusing to produce a witness on this point, and we will include this in our motion unless we hear from you otherwise.

8. We disagree with the limitations Google has imposed on topic 34. We intend to move to compel on this point to ask about any written or unwritten policies or procedures on licensing.

9. We understand your letter to allow us to ask about the full scope of topics that were not specifically addressed elsewhere, including topics 2-14 of the second letter. We will not include in our motion.

10. We ask that you supplement your interrogatory responses sufficiently in advance of the depositions. Otherwise, we reserve the right to re-depose the relevant witnesses at your cost.

11. Your letter states that you will produce licensing and acquisition materials. To be clear, we've asked you (a) for all acquisitions, to provide summary details about the cost of the acquisition (including whether it was in stock or cash), along with any FASB-141 or equivalent information; and (b) for a defined list of 15 or so transactions that we picked from your list, the relevant internal deal documents. Your letter does not confirm that you will produce all this. We will put in our motion, but also note the unclarity of the issue and our hope that we can resolve it before any response.

12. You have not answered with respect to second 30(b)(6) topic 32. We plan to include this in our motion.

13. You've also not told us what's been produced in the most recent productions or told us that you intend to do so in the future. We will also note this issue for the court.

If we are mistaken on any of the above, please let us know ASAP, as we plan to finalize our motion over the weekend. Please also know about the expedited hearing process, and if you oppose, explain why you oppose given your delay in responding. We believe it is most efficient for the Court to consider these at the same time as the Markman hearing.

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: Friday, July 24, 2009 3:10 PM

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; Amy Candido

Subject: RE: Update to meet and confer issues

Please see attached correspondence.

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
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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
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Seattle, WA 98101
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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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