

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PA ADVISORS, LLC,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 2:07-cv-480-RRR
	§	
GOOGLE INC., et al.,	§	
	§	JURY TRIAL DEMANDED
Defendants.	§	
	§	

**PLAINTIFF’S MOTION TO DEEM AS TIMELY FILED PLAINTIFF’S RESPONSE
(DKT. NO. 515), INCLUDING EXHIBIT NO. 16, TO YAHOO! INC.’S MOTION TO
DECLARE THIS AN EXCEPTIONAL CASE AND
FOR ATTORNEYS’ FEES AND COSTS (DKT. NO. 492)**

Plaintiff nXn Tech, LLC (“nXn,” formerly known as PA Advisors, LLC) files this Motion to have the Court consider as timely filed nXn’s Response (Dkt. No. 515) to the Motion To Declare This An Exceptional Case filed by Defendant Yahoo! Inc. (“Yahoo”) (Dkt. No. 492), which request includes considering as timely filed Exhibit No. 16, which is subject to a Notice of Correction to substitute the correct Exhibit Number 16 as part of the nXn Response.

FACTUAL BACKGROUND

1. On April 30, 2010, nXn filed several documents pursuant to the Court’s Orders of April 19, 2010 (Dkt. Nos. 501 and 503), granting Plaintiff’s unopposed motions to extend the deadline for Plaintiff’s responses to Defendants’ filings of April 2, 2010.¹ Among the responses nXn filed was Plaintiff’s Response to the Motion of Yahoo! Inc. To Declare This An Exceptional Case And For Attorneys’ Fees And Costs Pursuant to 35 U.S.C. Sec. 285 (Dkt. No. 492) (“Yahoo’s Section 285 Motion”).²

¹ On April 2, 2010, Defendant Yahoo filed its Motion To Declare This An Exceptional Case And For Attorneys’ Fees And Costs Pursuant to 35 U.S.C. Sec. 285 and a Proposed Bill of Costs; Defendant Google filed its Motion For Determination of Exceptional Case and Award of Attorneys’ Fees (Dkt. No. 493) and a Motion for Taxation of Costs.

² Plaintiff also filed on April 30, 2010: (1) Response to Motion of Google Inc. for Determination of Exceptional Case and Award of Attorneys’ Fees (Dkt. No. 493), accompanied by the Wiley Declaration and 33 attached exhibits, and two additional declarations, filed as Dkt. No. 512; (2) Objection to Yahoo’s

2. The uploading process for this particular motion began on or around 11 p.m. on Friday, April 30, 2010, but because of the size of one particular document—Exhibit 10³—and technical problems with one other exhibit, as of approximately 11:50 p.m. the Response as to Yahoo had not yet been filed. Accordingly, the undersigned Ms. Wiley, aware of the problems were delaying the uploading process, began the process of serving on counsel for Yahoo the Response and some 40 exhibits in support of the nXn Response. *See* Wiley Decl. & Ex. A.⁴

3. Because of this unforeseen delay, the filing notice reflects that the official date and time of filing was 12:08 a.m. on Saturday May 1, 2010. *See* Wiley Decl. Ex. B.

4. In light of the unforeseen technical glitch that rendered the filing some 8 minutes late, nXn files this request to consider the Response, in its entirety and as corrected with the correct Exhibit 16, as timely filed.

5. This request set forth in Paragraph 4 also applies to the filing of corrected Exhibit 16, which was inadvertently not filed with the balance of Dkt. No. 515, but was in fact served on counsel for Yahoo.⁵

6. Plaintiff has conferred with counsel for Yahoo, and Yahoo is not opposed to this relief.

Bill of Costs, accompanied by a declaration and supporting spreadsheets, filed as Docket Number 514; and (3) Response to Google Inc.'s Motion for Taxation of Costs, accompanied by a declaration and supporting spreadsheets, filed as Dkt. No. 513.

³ Exhibit 10, as accurately reflected by the Declaration was the March 1, 2010 hearing before this Court. The size of that file (5 MB) was due to insufficient deletion of extraneous pages and the scanning process used to create that exhibit.

⁴ Not until Monday May 3, 2010, did Ms. Wiley learn that some of these exhibits were not successfully transmitted to counsel for Yahoo. The emails showing the attempted service are included within Exhibit A to the Wiley Declaration.

⁵ For purposes of this request concerning Exhibit 16, nXn incorporates by reference its Motion for Leave to Substitute as Exhibit 16 the Exhibit attached to the Wiley Declaration that accompanies that motion.

7. nXn therefore requests that the Court enter the attached order to find nXn's Response timely filed, including the Exhibit 16 that is subject to a separate filing, a Notice of Correction, to which Yahoo also is unopposed.

Dated: May 5, 2010

Andrew W. Spangler
SPANGLER LAW P.C.
208 N. Green Street, Suite 300
Longview, Texas 75601
(903) 753-9300
(903) 553-0403 (fax)
spangler@spanglerlawpc.com

David M. Pridham
LAW OFFICE OF DAVID PRIDHAM
25 Linden Road
Barrington, Rhode Island 02806
(401) 633-7247
(401) 633-7247 (fax)
david@pridhamiplaw.com

John M. Bustamante
Texas Bar No. 24040618
BUSTAMANTE, P.C.
54 Rainey Street, No. 721
Austin, Texas 78701
Tel. 512.940.3753
Fax. 512.551.3773
Email: jmb@BustamanteLegal.com

Patrick R. Anderson
PATRICK R. ANDERSON PLLC
4225 Miller Rd, Bldg. B-9, Suite 358
Flint, MI 48507
(810) 275-0751
(248) 928-9239 (fax)
patrick@prapllc.com

Respectfully submitted,

By: /s/ Elizabeth A. Wiley
Elizabeth A. Wiley

Elizabeth A. Wiley
Texas State Bar No. 00788666
THE WILEY FIRM PC
P.O. Box 303280
Austin, Texas 78703-3280
Telephone: (512) 560.3480
Facsimile: (512) 551.0028
Email: lizwiley@wileyfirmpc.com

Marc A. Fenster
CA Bar No. 181067
LEAD COUNSEL
mfenster@raklaw.com
Andrew Weiss
CA Bar No. 232974
aweiss@raklaw.com
Adam Hoffman
CA Bar No. 218740
ahoffman@raklaw.com
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., 12th Floor
Los Angeles, CA 90025
(310) 826-7474
(310) 826-6991 (fax)

CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served May 5, 2009 with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission, and/or first class mail on this same date.

Dated: May 5, 2010

/s/ Elizabeth A. Wiley
Elizabeth A. Wiley