

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

NORTHEASTERN UNIVERSITY and
JARG CORPORATION

Plaintiffs,

v.

GOOGLE INC.

Defendant.

Case No. 2:07-CV-486-CE

JURY TRIAL DEMANDED

**PLAINTIFFS NORTHEASTERN UNIVERSITY AND JARG CORP.'S OBJECTIONS
TO DEFENDANT GOOGLE INC.'S PRE-TRIAL DISCLOSURES**

Pursuant to the Court's Discovery Order and Docket Control Order, dated August 21, 2008 (Dkt. Nos. 32 & 33), Plaintiffs Northeastern University and Jarg Corporation file and serve their objections to Defendant Google Inc.'s Witness List, Deposition Designations, and Exhibit List served on Plaintiffs on February 18, 2011 as revised on March 3, 2011.

1. Plaintiffs object to Defendant's Witness List as failing to comply with this Court's Discovery Order (Dkt. No. 32 at ¶ 6(a)), requiring each party to "separately identify[] those [witnesses] the party expects to present at trial and those whom the party may call if the need arises."

2. In addition to the specific objections identified in Attachment A hereto, Plaintiffs object to Defendant's Deposition Designations pursuant to FED. R. EVID. 801 & 804 and FED. R. CIV. P. 32. Specifically, Defendant should not be permitted to use deposition testimony from any witness that appears at trial for any purpose, other than proper impeachment. Additionally, Plaintiffs should not be permitted to use deposition testimony from any witness who does not appear at trial but whose attendance Defendant could have procured by process or other reasonable means, including but not limited to Urs Hoelzle, Cosmos Nicolaou, Anna

Patterson, Yonatan Zunger, and Kaustuv.

A party can rely on deposition testimony if the witness is unavailable under FED. R. EVID. 804(a)(5) & (b)(1) or Fed. R. Civ. P. 32(4)(D). But each of the witnesses specifically listed above is a current employee of Google and thus is not unavailable within the meaning of the Rules. Instead, Defendant can procure the attendance of each of these witnesses at trial. *See Canal Indem. Co. v. Palmview Fast Freight Transp., Inc.*, No. 3:09-CV-0451, 2010 WL 645833, at *3 (N.D. Tex. Feb. 24, 2010) (“But even assuming that witnesses are needed in this case, any corporate representative of Canal is within Canal’s control and can be compelled to attend proceedings in Dallas.”); *AT&T Intellectual Prop. I, L.P. v. Airbiquity Inc.*, No. 3:08-CV-1637, 2009 WL 774350, at *4 (N.D. Tex. Mar. 24, 2009) (“Airbiquity can require its employee witnesses to attend trial.”); *Hartfield v. Offshore Oil Servs.*, No. G-06-275, 2006 U.S. Dist. LEXIS 69469, at *16-17 (S.D. Tex. Sept. 14, 2006) (“[D]efendants can compel the attendance at trial of their own employees”); *Continental Airlines, Inc. v. Am. Airlines, Inc.*, 805 F. Supp. 1392, 1397 (S.D. Tex. 1992) (concluding that a party will be able to compel testimony at trial of its own employees). Accordingly, Defendant should be precluded from offering any deposition testimony from these five witnesses.

Further, Plaintiffs generally object to any deposition testimony designated by Defendant that is the subject of the parties’ agreed motion in limine or Plaintiffs’ motions in limine, motions to exclude certain evidence, Daubert motions and challenges to experts (if any), and any dispositive motions. Plaintiffs reserve their right to make additional objections leading up to and at trial. Subject to the foregoing, Plaintiffs’ object to Defendant’s Deposition Designations as set forth in Attachment A.

3. In addition to the objections identified in Attachment B hereto, Plaintiffs object to

Defendant's Exhibit List as failing to comply with this Court's Discovery Order (Dkt. No. 32 at ¶ 6(a)), requiring each party to "separately identify[] those [documents or exhibits] which the party expects to offer and those which the party may offer if the need arises."

Further, Plaintiffs generally object to any document or exhibit identified on Defendant's Exhibit List that is the subject of the parties' agreed motion in limine or Plaintiffs' motions in limine, motions to exclude certain evidence, Daubert motions and challenges to experts (if any), and any dispositive motions. Plaintiffs reserve their right to make additional objections leading up to and at trial. Subject to the foregoing, Plaintiffs object to Defendant's Exhibit List as set forth in Attachment B.

Dated: March 4, 2011

Respectfully submitted,

/s/ Nicole E. Glauser

Otis W. Carroll, Jr. (Tx Bar No. 03895700)
Collin Maloney (Tx Bar No. 00794219)
IRELAND CARROLL & KELLEY
6101 S Broadway, Suite 500
Tyler, Texas 75703
Tel: (903) 561-1600
Fax: (903) 581-1071
Fedserv@icklkw.com

Constance S. Huttner
VINSON & ELKINS LLP
666 Fifth Avenue, 26th Floor
New York, New York 10103
Tel: (212) 234-0040
Fax: (212) 237-0100
chuttner@velaw.com

William B. Dawson (Tx Bar No. 05603600)
GIBSON, DUNN & CRUTCHER
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6912
Tel: (214) 698-3132
Fax: (214) 571-2900
wdawson@gibsondunn.com

David B. Weaver (Tx Bar No. 00798576)
David P. Blanke (Tx Bar No. 02453600)
Christopher V. Ryan (Tx Bar 24037412)
Michael Valek (Tx Bar No. 24044028)
Stephen C. Stout (Tx Bar No. 24060672)
James D. Shead (Tx Bar No. 24070609)
Nicole E. Glauser (Tx Bar No. 24050694)
Zeke DeRose, III (Tx Bar No. 24057421)
VINSON & ELKINS LLP
2801 Via Fortuna, Suite 100
Austin, Texas 78746
Tel: (512) 542-8400
Fax: (512) 236-3338
dweaver@velaw.com
dblank@velaw.com
cryan@velaw.com
mvalek@velaw.com
[sstout@velaw.com](mailto:ss Stout@velaw.com)
jshead@velaw.com
nglauser@velaw.com
zderose@velaw.com

Bernard C. Shek (CA Bar No. 191365)
VINSON & ELKINS LLP
525 University Avenue, Suite 410
Palo Alto, California 94301-1918
Tel: (650) 687-8200
Fax: (650) 618-1970
bshek@velaw.com

***ATTORNEYS FOR PLAINTIFFS
NORTHEASTERN UNIVERSITY AND
JARG CORPORATION***

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email and/or fax, on this the 4th day of March 2011.

/s/ Nicole E. Glauser

Nicole E. Glauser