

Exhibit 5

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

4 NORTHEASTERN UNIVERSITY,)(
5 ET AL)(CIVIL DOCKET NO.
6)(2:07-CV-486-CE
7 VS.)(MARSHALL, TEXAS
8)(
9 GOOGLE, INC., ET AL)(MARCH 29, 2011
10)(9:00 A.M.

11 PRE-TRIAL HEARING

12 BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM
13 UNITED STATES MAGISTRATE JUDGE

14
15 APPEARANCES:

16
17 FOR THE PLAINTIFFS: (See attached sign-in sheet.)

18
19 FOR THE DEFENDANT: (See attached sign-in sheet.)

20
21 COURT REPORTER: MS. SHELLY HOLMES, CSR
22 Deputy Official Court Reporter
23 2593 Myrtle Road
24 Diana, Texas 75640
25 (903) 663-5082

(Proceedings recorded by mechanical stenography,
transcript produced on a CAT system.)

1 MR. CORDELL: Maybe it's more than
2 housekeeping.

3 This case was filed by Jarg, this Jarg
4 Corporation. Northeastern University was included
5 because they happened to still be the title owner of the
6 patent. They have some interest in the patent. I
7 acknowledge all of that. But this case was filed by
8 Jarg. Jarg is really personified by one person, Michael
9 Belanger. He was the CEO. He owns most of the interest
10 in the company, or at least did at one time. We're not
11 really sure about now, but the fact of the matter is
12 he's been -- he's been pointed to by everybody in the
13 case as the company. He testified at his deposition
14 that he was the company. We've heard it time and time
15 again. This man availed himself of this Court's
16 jurisdiction when he chose to file the case here.

17 Last Friday, we got plaintiffs' final
18 witness list, and they dropped Mr. Belanger from their
19 witness list. We have him on ours. We called him up
20 and said, gee, that's a little strange. You're not
21 calling your own client to -- at trial. And they said,
22 that's right, we're not calling him. And I then asked
23 them this morning whether or not they would accept a
24 trial subpoena, and they have told me, no, that he's not
25 coming to trial and that they're not going to take a

1 trial subpoena.

2 We think that it's fundamentally unfair for
3 this man to, again, avail himself of this Court's
4 jurisdiction and then not show up. And so I guess what
5 I would like to do is to have the Court order them to
6 have their client show up. He is the corporation. He
7 has represented them all the way through this case, and
8 he ought to be here.

9 MR. SCHICK: Your Honor, Bob Schick on
10 behalf of the plaintiff.

11 If anyone is the face of Jarg, it's the
12 inventor of this patent who is Dr. Ken Baclawski.
13 Dr. Baclawski, when he gave his deposition, was
14 presented as the corporate representative. On March the
15 11th, we sent a letter to counsel letting them know that
16 for trial purposes, Dr. Baclawski would be the Court
17 representative on behalf of Jarg.

18 Mr. Belanger is the president of what today
19 is essentially a nonoperating company. He did give his
20 deposition. And counsel -- we gave counsel two days to
21 take Mr. Belanger's deposition. Mr. Belanger lives in
22 Massachusetts for part of the year, but at the moment,
23 he's living at Florida where he's taking care of his ill
24 father.

25 We let counsel know that we were not going

1 to bring him to trial. But they have the corporate
2 representative, the man who is the -- owns the second
3 most outstanding shares of Jarg, and that's the
4 inventor, Dr. Ken Baclawski. And we think it's unfair,
5 regardless of what Rule 45 says about service of a
6 subpoena, it is nowhere contemplated that the moving
7 party, the party attempting to subpoena a witness, gets
8 to tell us who our corporate representative is, which is
9 why we told them on March the 11th that our corporate
10 representative would be Dr. Baclawski.

11 MR. CORDELL: Your Honor, they can designate
12 their corporate rep for purposes of the rule so they can
13 hear all the witnesses. That's -- that's a procedural
14 device. I -- you know, I guess they could pick -- you
15 know, they could pick my grandmother if they wanted to
16 be their corporate rep.

17 That's a different matter about whether or
18 not he's going to stand before this Court and before
19 this jury and defend the case that he's filed. And I
20 asked Dr. Baclawski about his relationship to Jarg at
21 his deposition on I guess it was December 13 of this
22 year, and I asked him point blank -- if I can find it --

23 MR. SCHICK: He holds no offices, if that's
24 what you're looking for.

25 MR. CORDELL: He has no relationship. He

1 told me he had no relationship. He resigned from the
2 board of directors in 2006 -- 2005, excuse me, and --
3 and has -- and he was asked point blank, "Do you have
4 any relationship?"

5 "No."

6 "Have you consulted for Jarg?"

7 "No."

8 "Do you do anything for Jarg?"

9 The answer was "No."

10 Over and over and over again. Dr. Baclawski

11 left Las Vegas with respect to Jarg. He has no
12 relationship with them whatsoever. We're entitled to
13 have the man who decided to file this case and -- and
14 made -- made decisions about -- about communicating
15 with -- with Google. Their entire willfulness
16 allegation is borne out of Mr. Belanger's attempt to
17 reach out to Google. This -- this phantom e-mail that
18 was sent to a machine and got a machine response, that
19 was Mr. Belanger. That wasn't Dr. Baclawski at all.

20 So we're entitled to have the man who is the
21 persona of Jarg here in the courtroom and sit in the
22 witness stand and testify.

23 MR. SCHICK: Baclawski, Your Honor --

24 THE COURT: Well, I've heard enough. I'm
25 denying the request to have plaintiff bring a particular

1 representative or witness to trial.

2 MR. SCHICK: Thank you, Your Honor.

3 THE COURT: Anything further?

4 MR. SCHICK: No, Your Honor.

5 MR. DAWSON: No, Your Honor.

6 THE COURT: All right. I'll get you some
7 guidelines on your interim statements, and I'll get you
8 some rulings on your exhibits that you've got
9 outstanding as quickly as I can. If I can get it to you
10 before jury selection, I will, but that's not a
11 warranty, okay?

12 With that, is there anything further?

13 MR. DAWSON: No, Your Honor.

14 MR. CORDELL: Not from defendants. Thank
15 you, Your Honor.

16 THE COURT: All right. Thank y'all.

17 LAW CLERK: All rise.

18 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

SHELLY HOLMES
Deputy Official Reporter
State of Texas No.: 7804
Expiration Date: 12/31/12

Date

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