

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

NORTHEASTERN UNIVERSITY and  
JARG CORPORATION,

*Plaintiffs,*

v.

GOOGLE INC.,

*Defendant.*

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CIVIL ACTION NO. 2:07-CV-486-CE

**AGREED ORDER REGARDING PRIVILEGE CLAIMS**

The plaintiffs, Northeastern University and Jarg Corporation (collectively, *Plaintiffs*), the defendant, Google Inc. (*Google*), and two third-parties Google served with subpoenas *duces tecum*, Kevin Fiur and IP Knowledge Ventures Inc., doing business as IP Tactics (collectively, the *Subpoenaed Non-Parties*) have agreed to the procedures and protections below to assist in resolving privilege disputes in this litigation. To that end, Kevin Fiur and IP Knowledge Ventures Inc., doing business as IP Tactics, submit to this Court's jurisdiction for the limited purpose of resolving disputes over their privilege assertions in response to Google's subpoenas in this litigation. Finding that such procedures and protections should be given controlling effect according to FED. R. EVID. 502(d), (e) & (f), the Court orders as follows:

1. To permit Google to assess the asserted privileges and discovery exemptions, the Plaintiffs and Subpoenaed Non-Parties may make available for Google's counsel of record's inspection (hereafter, *Google's Inspection*) some or all of the materials (the documents so produced are hereafter the *Review Documents*) appearing on the Plaintiffs' and Subpoenaed Non-Parties' privilege logs (collectively, the *Privilege Logs*), and Google's Inspection shall not constitute a waiver of privileges or exemptions that may apply to (a) any of the Review Documents, (ii) any of the information, communications, or mental impressions in the Review

Documents, or (iii) any documents, tangible things, electronically stored information, communications, mental impressions, or any other things listed in the Privilege Logs, but not made available for Google's Inspection (the *Withheld Documents*). Making the Review Documents available for Google's Inspection also does not constitute a concession by the Plaintiffs and/or Subpoenaed Non-Parties that the Review Documents or the information in them are not privileged or exempt from discovery.

2. Google's Inspection shall not limit its right to contest any privilege or discovery exemption claims with respect to the Review Documents or the Withheld Documents. The Plaintiffs and/or the Subpoenaed Non-Parties, as the proponents of any claim of privilege or discovery exemption, retain the burden of proving its applicability to any of the Review Documents or the Withheld Documents contested by Google.

3. The Review Documents shall be made available in a reasonable manner and location to facilitate the efficient review of Plaintiffs and Subpoenaed Non-Parties' disputed privilege assertions, including (a) providing the Review Documents for Google's Inspection in Vinson & Elkins L.L.P's (*V&E's*) Palo Alto office, (b) providing the Review Documents in text searchable electronic form, and (c) marking or otherwise identifying each Review Document so that it may be correlated with the Privilege Logs.

4. The Plaintiffs and the Subpoenaed Non-Parties may impose reasonable restrictions for the disclosure of the Review Documents, including (a) limiting Google's Inspection to V&E's Palo Alto office (or such other secure location agreed upon by counsel) during normal business hours, (b) prohibiting verbatim notes or photocopies of the Review Documents, and (c) prohibiting removal of the Review Documents from V&E's Palo Alto office (or such other secure location agreed upon by counsel).

5. Other than to raise the question of privilege or discovery exemption with the Plaintiffs or Subpoenaed Non-Parties or submit to the question to the Court, Google may not use for any purpose any of the Review Documents or any information gleaned from Google's Inspection without first (a) obtaining a written statement from Plaintiffs and/or the Subpoenaed Non-Parties (whichever holds the privilege) that they do not assert any privilege or discovery exemption as to the Review Document; (b) obtaining a Court ruling that the Review Document is not subject to any privilege or discovery exemption; or (c) otherwise obtaining or receiving a Court ruling that Google may use the Review Document. Any motion filed by Google contesting the applicability of any privilege or discovery exemption to a Review Document shall be filed under seal pursuant to Civil Local Rule 4(7). The parties, the Subpoenaed Non-Parties, or the Court on its own motion may request production of the disputed Review Document(s) and/or the Withheld Documents to the Court, under seal, for in camera review.

6. Other than in response to a privilege or discovery exemption question raised by Google or a motion filed by Google under paragraph 5 above, the Plaintiffs and/or the Subpoenaed Non-Parties may not use any Review Document or any of the information gleaned from any Review Document for any purpose whatsoever in this litigation without first: (a) relinquishing their claims to all privileges and discovery exemptions over that Review Document; or (b) receiving a Court ruling that the Review Document is not subject to any privileges or discovery exemption; or (c) otherwise obtaining or receiving a Court ruling that Plaintiffs may use the Review Document.

7. No provision of this agreed order shall be construed as a waiver of Google's right to seek relief under FED. R. CIV. P. 37 or FED. R. CIV. P. 30(d)(I).

8. Pursuant to FED. R. EVID. 502(d), (e) & (f), this order is enforceable against other parties and litigants, in this proceeding or any other proceeding of any kind in any forum, court, or

jurisdiction. The order shall survive and remain in full force and effect after the termination of this case.

**SO ORDERED.**