

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

IP INNOVATION L.L.C. AND	)	
TECHNOLOGY LICENSING	)	
CORPORATION,	)	CASE NO. 2:07cv503-LED
	)	
Plaintiffs,	)	
	)	JURY TRIAL DEMANDED
v.	)	
	)	
GOOGLE, INC.,	)	
	)	
Defendant.	)	

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**PLAINTIFFS' MOTION TO EXTEND EXPERT REPORT DEADLINES**

Plaintiffs hereby move this Court to extend the expert witness report deadlines in this matter because (1) it would benefit expert discovery to have a *Markman* ruling in hand, and (2) Plaintiffs recently learned that their primary technical expert can no longer work on the case. In support of such motion Plaintiffs state as follows:

1. Expert witness reports for which each party has the burden are currently due on **November 25, 2009**.
2. Rebuttal expert reports are currently due on **December 16, 2009**.
3. The parties claim construction positions have been fully briefed and a *Markman* hearing was held on October 1, 2009. The Plaintiffs respectfully submit that it would benefit expert discovery to have a *Markman* ruling in hand in order to avoid multiplication of expert discovery. The Plaintiffs further believe that 30 days from the as yet undetermined *Markman* ruling date would be best in order to focus such expert discovery.
4. Having to the parties prepare the expert witness reports in the absence of a *Markman* ruling would unnecessarily multiply the proceedings and increase costs as each side

would have to supplement the reports after entry of the order. As there are at least 15 claims in dispute, including some claims where the Court has suggested constructions, it would be very difficult for the experts to anticipate the Court's constructions and to compile meaningful expert reports prior to entry of such order.

5. In addition, Plaintiffs recently learned on or about November 3, 2009, that their technical expert, Dr. Ophir Frieder, a professor at the Illinois Institute of Technology, has accepted a new teaching position on the east coast, and therefore is no longer able to provide an expert report or testify as an expert in this matter. (See Exhibit A, Mahalek Declaration, at ¶¶ 3 and 4).

6. Plaintiffs' counsel immediately undertook finding a replacement expert. On November 5, 2009, Plaintiffs' counsel retained and disclosed Dr. Tal Lavian, and on November 6, 2009, Plaintiffs' counsel retained and disclosed Peter Martin. (See Exhibit A, Mahalek Declaration, at ¶ 5). Nonetheless, subject to the protective order, neither expert will be able to begin reviewing confidential documents for at least 10 business days from when they were disclosed.

7. Thus, in light of the foregoing, Plaintiffs seek an extension of the expert witness report deadlines in this case. Plaintiffs believe that 30 days after entry of the *Markman* ruling is a reasonable amount of time. However, as Plaintiffs would prefer to set firm dates that do not affect any of the other dates in the case, Plaintiffs ask that the initial expert reports be due on **December 22, 2009** and the rebuttal expert reports be due on **January 12, 2010**.

8. Plaintiffs do not seek to change any other due dates under the Court's schedule for this case. Discovery is currently set to close on January 15, 2010.

9. Counsel for Plaintiffs contacted Google's counsel on November 4, 2009, regarding the substance of this motion. Google's counsel indicated they are not amenable to the short extension for expert reports sought by this motion.

10. Therefore, for the reasons stated herein, Plaintiffs respectfully request this Court extend the initial expert reports until **December 22, 2009** and the rebuttal expert reports until **January 12, 2010**. A proposed order is attached.

Respectfully submitted,

/s/ Douglas M. Hall

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **PLAINTIFFS' MOTION TO EXTEND EXPERT REPORT DEADLINES** was served electronically on the below listed on November 9, 2009.

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