

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

API TECHNOLOGIES, LLC  
Plaintiff,

v.

FACEBOOK, INC., ET AL,  
Defendants.

Civil Action No. 2:09-CV-00147  
JURY TRIAL DEMANDED

**DECLARATION OF ANDREW W. SPANGLER  
IN SUPPORT OF API TECHNOLOGIES, LLC'S RESPONSE TO  
DEFENDANTS' MOTION TO TRANSFER VENUE**

My name is Andrew W. Spangler. I am a member of the State Bar of Texas and practice with my firm, Spangler Law, P.C. in Longview, Texas and am lead and local counsel for API Technologies, LLC ("API") in the above-referenced action. The facts recited below are true and correct and based on my personal knowledge as lead counsel in this case and local counsel for other parties and litigants in numerous litigation proceedings in this District. If called upon to testify I would testify truthfully to the following facts.

1. I have been practicing law since 2003 in this District and have been involved in some capacity, as lead counsel or local counsel, with approximately over 100 cases in that time.
2. I am familiar with the scheduling orders and custom and practice in this District based on my years of practice in this District and have witnessed the fact that the Courts in this District are reluctant to change the date of a Markman hearing. I have heard Courts in this District state from the bench that parties have flexibility on all dates in a Scheduling Order but moving the Markman date and Trial date are fixed. Some adjustments to the date and time once a scheduling ordered is entered may occur based on the Court's schedule or the parties' request, but I have rarely seen a change occur that resulted in a change in that setting more than a matter

of two weeks - absent an extremely unusual event. In my professional opinion API would be extremely prejudiced in staying the proceedings in this Court at this late juncture and starting anew in another forum. The Court and staff have already expended the resources typically expended in placing a case in line and on the docket and ordering other cases and proceedings in light of that scheduling. I have first-hand knowledge of the resources expended once a case is filed and assigned to a particular judge or magistrate judge based on my experience in this District as a judicial clerk, from 2005 to 2006.

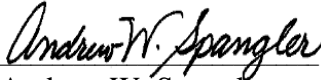
3. I have reviewed the pleading filed by Defendants seeking a transfer to the Northern District of California based primarily on the allegation of a large number of witnesses, such as employees of Yahoo, Google, or Best Buy, or Mashery reside in California or in the Northern District of California. In my experience of litigation patent infringement cases in this District and preparing those cases for trial, I have witnessed over approximately 25 trial proceeding (and have been involved in even more pre-trial activities) and can state that, based on that experience, in my opinion such a large number of witnesses as Defendants argue would be attending trial in person to provide testimony is extremely exaggerated and speculative. In fact, as many of the trials in this District are more focused in time compared to others across the country, limiting to a small number of fact witnesses is the standard practice. In my experience, Courts often assign between 10 and 17 hours per side, which requires the parties to focus on the important merits of the case and that gives little time to call live numerous fact witnesses (the vast majority of the time is spent in expert testimony). Not only do most such fact witnesses typically appear only by video deposition, but when those depositions are taken, it is my practice, and as will be the case here too, that the professional courtesy will be extended to take those

witnesses deposition at a convenient place and time. Typically the convenient place and time for the deposition of an employee of a party is in the city in which the witness resides.

4. I also am lead counsel for the plaintiff, Bright Response, LLC, a Texas company, in a matter styled *Bright Response, LLC v. Google Inc., et al.*, No. 2:07-cv-371-CE, in which Defendants Yahoo! Inc. and Google Inc. are defendants. I have first-hand knowledge then of Google's determination in the Bright Response case that other Texas companies, affiliated or not, with Mr. Spangenberg or Mr. Spangenberg's consulting company IP Navigation Group, LLC are relevant entities - according to Google and Yahoo - with relevant evidence for purposes of a patent infringement lawsuit however remotely or directly a company owned or managed by Mr. Spangenberg. For example, in Bright Response, Google and Yahoo also have subpoenaed a non-affiliated Texas company, Acclaim Financial Group, whose CEO, Audrey Spangenberg, also is a Texas resident, in addition to the consulting company owned by API's manager Erich Spangenberg, IP Navigation Group, LLC.

I declare under penalty of perjury that the above information is true and correct.

Executed this 2nd day of June, 2010, in Longview, Texas.

  
Andrew W. Spangler