

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

API TECHNOLOGIES, LLC,

Plaintiff

vs.

FACEBOOK, INC., et. al.

Defendants.

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NO. 2:09-cv-147

DECLARATION OF KEVIN A. SMITH

I, Kevin A. Smith, declare and state as follows.

1. I am an attorney with the firm Quinn Emanuel Urquhart & Sullivan LLP, counsel for Defendant Yahoo! Inc. in this matter. I make this declaration in support of Defendants' Motion to Transfer to the United States District Court for the Northern District of California. I am competent to testify as to the matters stated herein and base this declaration on my personal knowledge and my review of the discovery and pleadings served in this case.

2. Attached hereto as Exhibit KS1 are a true and correct copies of excerpts of pleadings filed in this court by thirteen entities identifying their place of business as 207C North Washington Avenue, Marshall, Texas – the same address that API Technologies purports to be located at. These entities include Clear With Computers LLC, Constellation IP LLC, Cushion Technologies LLC, FPX LLC, Gemini IP LLC, Orion IP LLC, PA Advisors LLC, Phoenix IP LLC, Polaris IP LLC, SFA Systems LLC, ST Sales Tech Holdings LLC, TQP Development LLC, and Triton IP LLC.

3. Attached hereto as Exhibit KS2 is a true and correct copy of a subpoena for prior art documents served by Yahoo! Inc. on Adobe Systems Inc. in this matter. Adobe Systems Inc.

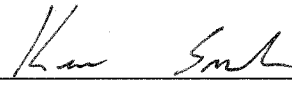
is located in San Jose, California, within the Northern District of California.

4. Attached hereto as Exhibit KS3 is a true and correct copy of API Technologies' initial disclosures in this case. API served those initial disclosures on April 20, 2010. Those disclosures identify the persons that API knows of that have knowledge of relevant facts. Prior to that date, API had not identified the persons it knew of that had knowledge of relevant facts.

5. Attached hereto as Exhibit KS4 is a true and correct copy of an email from API's counsel Andrew Weiss in which Mr. Weiss requests an extension to file its opposition to Defendant's Motion to Transfer. Mr. Weiss states "API will also not use any delay introduced by this extension as a basis for its opposition."

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

June 14, 2010



Kevin A. Smith