

# Smith Declaration

## Exhibit KS3

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

API TECHNOLOGIES, LLC

v.

NO. 2:09-CV-00147

FACEBOOK, INC., et al.

**API'S INITIAL DISCLOSURES PURSUANT TO THE  
DISCOVERY ORDER**

Pursuant to the Court's Discovery Order, Plaintiff API Technologies, LLC ("API") hereby makes these disclosures relative to Defendants Yahoo! Inc. ("Yahoo"), Best Buy Co. Inc. ("Best Buy"), Google Inc. ("Google"), and Android, Inc. ("Android") specifically for this case only. API's Initial Disclosures are based on presently-known information obtained after a reasonable effort to locate pertinent information that may be used to support API's claims. API does not represent that these Initial Disclosures identify every witness, document, or thing that it may use to support its claims. API's investigation in this regard is on-going and incomplete. API's Initial Disclosures will be supplemented if and when information learned from further discovery necessitates the same. Accordingly, API reserves the right to supplement these Initial Disclosures to add additional information, witnesses, documents and things that become known. In addition, to the extent information in API's interrogatory responses or expert reports may be pertinent to API's Initial Disclosure obligations, such information is incorporated herein by reference.

By making these Initial Disclosures, API is not waiving its right to object to any discovery request or proceeding involving or relating to the subject matter of these Initial Disclosures, including, without limitation, on the basis of any applicable privilege, the work product doctrine, relevancy, undue burden, confidentiality or any other appropriate objection in

the above-captioned case or any other case. API further states that nothing in these Initial Disclosures is an admission on the part of API regarding any matter.

**A. NAMES OF THE PARTIES**

API Technologies, LLC is the correct name of the Plaintiff in this action. To API's knowledge, the Defendants are correctly named in API's most recent Complaint.

**B. POTENTIAL PARTIES**

At the present time, API is not aware of any potential additional parties to this action.

**C. LEGAL AND FACTUAL BASES OF API'S CLAIMS AND DEFENSES**

The legal theories and, in general, the factual bases of API's claims (without marshalling all evidence that may be offered at trial), is as follows:

**Yahoo:**

The claims asserted against Yahoo (see API's P.R. 3-1 Infringement Contention Disclosures, which are incorporated herein by reference) are directed to various claimed methods and/or systems, for example the Yahoo application programming interfaces identified below, for providing data over a data transmission network, for example the Internet, that comprise providing a user interface for soliciting selections of desired data, receiving an input signal representative of a selection of desired data, receiving and validating a product code associated with a specific device or system, generating a license code and transmitting the license code to a remote data processing system, and retrieving and transmitting the desired data to the remote data processing system, the license code being required to access the desired data (collectively "Yahoo application programming interfaces" or the "Accused Instrumentalities"). Such Accused Instrumentalities include the methods and/or systems identified in the additional supporting materials produced as part of API's P.R. 3-1 Infringement Contention Disclosures (collectively,

the Supporting Materials, and incorporated herein by reference) including the following Yahoo application programming interfaces and any method and/or system for providing data over a data transmission network used in connection with them: Search Marketing API, BOSS API, Site Explorer APIs, HotJobs API, Contacts API, Social Directory, MyBlogLog API, Status API, Updates API, Flickr Web Services, Music API, Answers API, Mail Web Service APIs, Local Search APIs, Maps AJAX API, Maps AS3 Component, Maps Image API, Geocoding API, Traffic REST API, Placemaker, APT from Yahoo!, Browser-Based Authentication (BBAuth), and OAuth.

The Accused Instrumentalities further include any methods, systems and/or apparatuses, comprising, linked with, functionally operational with and/or integrated with the Yahoo application programming interfaces identified in the paragraph above, including any insubstantially different versions thereof, and including predecessor versions thereof, and further including any of Yahoo's other methods, systems, and/or apparatuses that function in the same or similar fashion, since February 22, 2005.

In addition, upon information and belief, Yahoo has methods which are presently either not known or not understood by API, including application programming interface methods and systems whose operation is not publicly known. API cannot know how such systems function without discovery. API intends to take formal discovery of such methods. In addition, API expects that Yahoo will disclose any other methods and/or systems that function the same or similar to the Accused Instrumentalities or that otherwise fall within the scope of API's discovery requests and/or Yahoo's disclosure obligations. Accordingly, API reserves the right to supplement and/or amend these infringement contentions in accordance with P.R. 3-6.

The materials at API-IC0000221-996 within API's P.R. 3-1 Infringement Contention Disclosures contain representative examples of Yahoo's infringement of the asserted claims. However, it should be understood that such examples are illustrative in nature and not exhaustive, as here are many possible variations constituting infringement of the asserted claims.

**Best Buy:**

The claims asserted against Best Buy (see API's P.R. 3-1 Infringement Contention Disclosures, which are incorporated herein by reference) are directed to various claimed methods and/or systems, for example the Best Buy Remix application programming interface, for providing data over a data transmission network, for example the Internet, that comprise providing a user interface for soliciting selections of desired data, receiving an input signal representative of a selection of desired data, receiving and validating a product code associated with a specific device or system, generating a license code and transmitting the license code to a remote data processing system, and retrieving and transmitting the desired data to the remote data processing system, the license code being required to access the desired data (collectively "Best Buy Remix" or the "Accused Instrumentalities"). Such Accused Instrumentalities include the methods and/or systems identified in the Supporting Materials, which are incorporated herein by reference.

The Accused Instrumentalities further include any methods, systems and/or apparatuses, comprising, linked with, functionally operational with and/or integrated with Best Buy Remix, including any insubstantially different versions thereof, and including predecessor versions thereof, and further including any of Best Buy's other methods, systems, and/or apparatuses that function in the same or similar fashion, since February 22, 2005.

In addition, upon information and belief, Best Buy has methods which are presently either not known or not understood by API, including application programming interface methods and systems whose operation is not publicly known. API cannot know how such systems function without discovery. API intends to take formal discovery of such methods. In addition, API expects that Best Buy will disclose any other methods and/or systems that function the same or similar to the Accused Instrumentalities or that otherwise fall within the scope of API's discovery requests and/or Best Buy's disclosure obligations. Accordingly, API reserves the right to supplement and/or amend these infringement contentions in accordance with P.R. 3-6.

The materials at API-IC0000997-1041 within API's P.R. 3-1 Infringement Contention Disclosures contain representative examples of Best Buy's infringement of the asserted claims. However, it should be understood that such examples are illustrative in nature and not exhaustive, as here are many possible variations constituting infringement of the asserted claims.

**Google:**

The claims asserted against Google (see API's P.R. 3-1 Infringement Contention Disclosures, which are incorporated herein by reference) are directed to various claimed methods and/or systems, for example the Google application programming interfaces identified below, for providing data over a data transmission network, for example the Internet, that comprise providing a user interface for soliciting selections of desired data, receiving an input signal representative of a selection of desired data, receiving and validating a product code associated with a specific device or system, generating a license code and transmitting the license code to a remote data processing system, and retrieving and transmitting the desired data to the remote

data processing system, the license code being required to access the desired data (collectively “Google application programming interfaces” or the “Accused Instrumentalities”). Such Accused Instrumentalities include the methods and/or systems identified in the Supporting Materials, which are incorporated herein by reference, including the following Google application programming interfaces and any method and/or system for providing data over a data transmission network used in connection with them: Maps API, Static Maps API, Earth API, AdWords API, Base Data API, YouTube API, Client Login API, AuthSub API, Admin Settings API, Calendar Data API, Calendar Resources API, Email Migration API, Email Settings API, Contacts Data API, Shared Contacts API, User Profiles API, Finance Data API, Picasa Web Albums (PWA) API, Webmaster Tools API, Documents List Data API, Spreadsheets Data API, Provisioning API, Sites Data API, and Reporting API.

The Accused Instrumentalities further include any methods, systems and/or apparatuses, comprising, linked with, functionally operational with and/or integrated with the Google application programming interfaces identified in the paragraph above, including any insubstantially different versions thereof, and including predecessor versions thereof, and further including any of Google’s other methods, systems, and/or apparatuses that function in the same or similar fashion, since February 22, 2005.

In addition, upon information and belief, Google has methods which are presently either not known or not understood by API, including application programming interface methods and systems whose operation is not publicly known. API cannot know how such systems function without discovery. API intends to take formal discovery of such methods. In addition, API expects that Google will disclose any other methods and/or systems that function the same or

similar to the Accused Instrumentalities or that otherwise fall within the scope of API's discovery requests and/or Google's disclosure obligations. Accordingly, API reserves the right to supplement and/or amend these infringement contentions in accordance with P.R. 3-6.

The materials at API-IC0001041-1643 within API's P.R. 3-1 Infringement Contention Disclosures contain representative examples of Google's infringement of the asserted claims. However, it should be understood that such examples are illustrative in nature and not exhaustive, as here are many possible variations constituting infringement of the asserted claims.

**Android:**

The claims asserted against Android (see API's P.R. 3-1 Infringement Contention Disclosures, which are incorporated herein by reference) are directed to various claimed methods and/or systems, for example the MapView class within the com.google.android.maps package, for providing data over a data transmission network, for example the Internet, that comprise providing a user interface for soliciting selections of desired data, receiving an input signal representative of a selection of desired data, receiving and validating a product code associated with a specific device or system, generating a license code and transmitting the license code to a remote data processing system, and retrieving and transmitting the desired data to the remote data processing system, the license code being required to access the desired data (collectively "the Android MapView class" or the "Accused Instrumentalities"). Such Accused Instrumentalities include the methods and/or systems identified in the Supporting Materials, which are incorporated herein by reference.



The Accused Instrumentalities further include any methods, systems and/or apparatuses, comprising, linked with, functionally operational with and/or integrated with the Android MapView class, including any insubstantially different versions thereof, and including predecessor versions thereof, and further including any of Android's other methods, systems, and/or apparatuses that function in the same or similar fashion, since February 22, 2005.

In addition, upon information and belief, Android has methods which are presently either not known or not understood by API, including application programming interface methods and systems whose operation is not publicly known. API cannot know how such systems function without discovery. API intends to take formal discovery of such methods. In addition, API expects that Android will disclose any other methods and/or systems that function the same or similar to the Accused Instrumentalities or that otherwise fall within the scope of API's discovery requests and/or Android's disclosure obligations. Accordingly, API reserves the right to supplement and/or amend these infringement contentions in accordance with P.R. 3-6.

The materials at API-IC0001644-1667 within API's P.R. 3-1 Infringement Contention Disclosures contain representative examples of Android's infringement of the asserted claims. However, it should be understood that such examples are illustrative in nature and not exhaustive, as there are many possible variations constituting infringement of the asserted claims.

API contends that the asserted claims are directly infringed by at least the making and using, including hosting, of the Accused Instrumentalities. Additionally, or in the alternative if Defendants are deemed not to directly infringe the asserted claims, then API contends the Defendants indirectly infringe such claims. Without limitation, API contends that Defendants indirectly infringe the asserted claims by actively and knowingly aiding and abetting others –

including without limitation any contractors who host the Accused Instrumentalities on behalf of Defendants – to directly infringe the asserted claims of the ‘699 patent once the Defendants knew of the ‘699 patent. Additionally, or in the alternative, API contends on information and belief that Defendants indirectly infringe the asserted claims by contributing to the infringement by others, including without limitation by contractors who host the Accused Instrumentalities on behalf of Defendants, because Defendants knew that the combination for which their components were especially made was both patented and infringing and that Defendants’ components have no substantial non-infringing uses. Additionally, or in the alternative, if Defendants are deemed not to directly infringe the asserted claims, then API contends that Defendants jointly infringe such claims, including without limitation with end users of the Accused Instrumentalities, and/or, on information and belief, any contractors who host the Accused Instrumentalities on behalf of Defendants, under Defendants’ direction and/or control.

Based on the information presently available, it appears that each element of each asserted claim is literally infringed by the Accused Instrumentalities, and further that each such element is also infringed by the Accused Instrumentalities under the doctrine of equivalents.

To the extent that facts learned in discovery show that Defendants’ infringement is or has been willful, API reserves the right to request such a finding at time of trial.

The ‘699 patent is presumed valid by law. API is aware of no prior art that anticipates or renders obvious any of the asserted claims of the ‘699 patent.

API is aware of no meritorious defenses or counterclaims possessed by any Defendant.

API is entitled to relief from the Defendants comprising the following: (1) a judgment in favor of API that Defendants have infringed, directly, jointly, and/or indirectly, by way of

inducing and/or contributing to the infringement of the '699 patent; (2) a permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '699 patent; (3) a judgment and order requiring Defendants to pay API its damages, including without limitation reasonable royalties, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '699 patent as provided under 35 U.S.C. § 284; and (4) a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to API its reasonable attorneys' fees.

**D. NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSONS HAVING KNOWLEDGE OF RELEVANT FACTS**

The names, addresses, and telephone numbers for persons presently understood to have knowledge of relevant facts, and a brief, fair summary of the substance of the information known by such person, is below. In making this identification, API reserves all objections that may properly lie with any testimony obtained from the identified persons.

| <b>Name</b>       | <b>Address/Telephone</b>  | <b>Brief Statement</b>   |
|-------------------|---|--|
| Baird, Michael L. | c/o API's Counsel, addresses and telephone numbers below.   | Co-inventor of '699 patent. Knowledgeable regarding matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent. |
| Becker, Stephen   | MCDERMOTT WILL & EMERY<br>LLP<br>600 13 <sup>th</sup> Street, NW<br>Washington, DC 20005-3096<br>Phone: 202-756-8608<br>Fax: 202-757-8087 | A prosecuting attorney for '699 patent.  |
| Carroll, Anthony  | c/o API's Counsel, addresses and telephone numbers below.   | Co-inventor of '699 patent. Knowledgeable regarding  |

|                                  |  |  |
|----------------------------------|--|--|
|                                  |  | matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent.   |
| deBuelleuille, Jean              | c/o API's Counsel, addresses and telephone numbers below.    | Co-inventor of '699 patent. Knowledgeable regarding matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent. |
| Gibbs, Joe                       | c/o API's Counsel, addresses and telephone numbers below.    | Co-inventor of '699 patent. Knowledgeable regarding matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent. |
| Gill, George M.                  | c/o API's Counsel, addresses and telephone numbers below.    | Co-inventor of '699 patent. Knowledgeable regarding matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent. |
| Kling, Michael J., III           | c/o API's Counsel, addresses and telephone numbers below.    | Co-inventor of '699 patent. Knowledgeable regarding matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent. |
| McAuliffe, Brian                 | c/o API's Counsel, addresses and telephone numbers below.    | Co-inventor of '699 patent. Knowledgeable regarding matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent. |
| MCDERMOTT<br>WILL & EMERY<br>LLP | 600 13 <sup>th</sup> Street, NW<br>Washington, DC 20005-3096 | A law firm involved in the prosecution of the '699 patent.   |
| O'Sullivan, Brian                | c/o API's Counsel, addresses and telephone numbers below.    | Co-inventor of '699 patent. Knowledgeable regarding  |

|                      |  |  |
|----------------------|--|--|
|                      |  | matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent.   |
| Rogers, Steven W.    | c/o API's Counsel, addresses and telephone numbers below.  | Co-inventor of '699 patent. Knowledgeable regarding matters including the conception and reduction to practice of the invention of the '699 patent and the prosecution of the '699 patent. |
| Snap-On Incorporated | Snap-on Incorporated<br>P.O. Box 1410<br>Kenosha, WI 53141-1410, U.S.A.<br>Phone: 262-656-5200                           | Original assignee of the '699 patent.  |
| Spangenberg, Erich   | c/o API's Counsel, addresses and telephone numbers below.  | Manager of API. Knowledgeable regarding matters including API's history including its acquisition of the patent-in-suit.   |
| Wooden, Sean         | Andrews Kurth LLP<br>1350 I Street, NW<br>Suite 1100<br>Washington, DC 20005<br>Phone: 202-662-2738<br>Fax: 202-662-2739 | Current patent counsel for '699 patent.  |

In addition to the persons who are identified above, API incorporates by reference: (i) any person properly identified by Defendants in their Initial Disclosures; and (ii) any person properly identified in any answer to an interrogatory and (iii) any experts identified by API.

**E. INSURANCE OR INDEMNITY AGREEMENTS**

API is unaware of any indemnity or insurance agreements under which any person or entity carrying on an insurance business may be liable to satisfy all or part of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

**F. SETTLEMENT AGREEMENTS**

API does not believe that it has any settlement agreements relevant to the subject matter of this action, because litigation settlements are irrelevant to this action. However, in an abundance of caution, API is producing prior litigation settlements in its possession, custody or control.

**G. ANY STATEMENT OF ANY PARTY TO THE LITIGATION**

API is not aware of any at this time. API will produce any such statements that, in the future, come within its possession, custody or control.

Date: April 20, 2010

Respectfully submitted,

API TECHNOLOGIES, LLC

By: /s/ Adam C. Saxon

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COUNSEL FOR PLAINTIFF API  
TECHNOLOGIES, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that this document is being served upon counsel for Yahoo, Best Buy, Google, and Android via e-mail on this date.

Dated: April 20, 2010

/s/ Adam C. Saxon  
Adam C. Saxon