

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

**ROCKSTAR CONSORTIUM US LP
AND NETSTAR TECHNOLOGIES
LLC,**

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 2:13-cv-893

JURY TRIAL DEMANDED

**PLAINTIFFS' SUR-REPLY IN OPPOSITION TO
GOOGLE'S MOTION FOR THE COURT TO ENTER ITS [MODEL] ORDER
FOCUSING PATENT CLAIMS AND PRIOR ART TO REDUCE COSTS, TO LIMIT
THE NUMBER OF ASSERTED CLAIMS, AND TO EXTEND THE DEADLINE FOR
THE PARTIES TO COMPLY WITH P.R. 4-2**

Plaintiffs Rockstar Consortium US LP and Netstar Technologies LLC ("Rockstar") submit this sur-reply to raise three points, but otherwise rest on their prior briefing.

First, Google argues that by demanding that Google identify a reasonable number of obviousness combinations, Rockstar is "seeking to foreclose Google from having the very 'flexibility to develop the appropriate combinations as discovery proceeds' that the Model Order contemplates." (Doc. 119 at 3). The "flexibility" afforded by the Model Order must be reconciled with the notice of function of the Patent Rules, which as described in Rockstar's Motion to Strike, Doc. 117, is absent from Google's purported obviousness disclosure. Google's position effectively amounts to having the flexibility to use whatever art it wants, however it wants to use it, and whenever it wants to use it.

Second, Google's Reply appears to belittle Rockstar's complaint regarding the outrageous number of potential obviousness combinations. But as several courts in this District have held, asserting hundreds or thousands of potential obviousness combinations does not provide the notice required by the Local Patent Rules. See *LML Patent Corp. v. J.P. Morgan Chase & Co.*, No. 2:08-cv-448, 2011 WL 5158285, at *4 (E.D. Tex. Aug. 11, 2011); *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, 2009 WL 4782062, at *2 (E.D. Tex. Dec. 8, 2009).

Finally, nothing supports Google's argument that a reduction in claims results in a reduction in the number of obviousness combinations. Google still may – and likely will – assert the same prior art references against 32 claims as it does against 141 claims. And Google still may – and likely will – employ the same combined-in-any-way-we-want approach to obviousness after a reduction in claims. Google refers to its offer to limit the universe of references to 30. (Doc. 119 at n.2). Tellingly, Google does not say that it will limit the universe of *combinations*, which is the real dispute between the parties. Rockstar should not be forced to endure discovery in the shadow of thousands of potential prior art combinations. That is entire point of the Patent Rules and the Model Order.

Entry of the Model Order should not come at the price of Rockstar having to surrender its right to notice of specific obviousness combinations as required by the Local Rules. That is what Google is attempting to do. Thus, Rockstar asks that the Court deny Google's Motion.

DATED: August 11, 2014

Respectfully submitted,

By: /s/ John P. Lahad
Max L. Tribble, Jr. – Lead Counsel
State Bar No. 20213950
Alexander L. Kaplan, State Bar No. 24046185
John P. Lahad, State Bar No. 24068095
Shawn Blackburn, State Bar No. 24089989
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
mtribble@susmangodfrey.com
akaplan@susmangodfrey.com
jlahad@susmangodfrey.com
sblackburn@susmangodfrey.com

Justin A. Nelson, State Bar No. 24034766
Parker C. Folse, III, WA State Bar No. 24895
Kristin Malone, WA State Bar No. 46251
SUSMAN GODFREY L.L.P.
1201 Third Ave, Suite 3800
Seattle, Washington 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
jnelson@susmangodfrey.com
pfolse@susmangodfrey.com
kmalone@susmangodfrey.com

Amanda K. Bonn, CA State Bar No. 270891
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
abonn@susmangodfrey.com

T. John Ward, Jr., State Bar No. 00794818
Claire Abernathy Henry, State Bar No. 24053063
WARD & SMITH LAW FIRM
P.O. Box 1231
Longview, TX 75606-1231
Telephone: (903) 757-6400
Facsimile: (903) 757-2323
jw@wsfirm.com
claire@wsfirm.com

S. Calvin Capshaw, State Bar No. 03783900
Elizabeth L. DeRieux, State Bar No. 05770585
D. Jeffrey Ramin, State Bar No. 00791478
CAPSHAW DERIEUX, LLP
114 E. Commerce Ave.
Gladewater, TX 75647
Telephone: (903) 236-9800
Facsimile: (903) 236-8787
ccapshaw@capshawlaw.com
ederieux@capshawlaw.com
jrambin@capshawlaw.com

*Attorneys for Rockstar Consortium US LP and
NetStar Technologies LLC*

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 11th day of August, 2014 with a copy of this document via the Court's CM/ECF system per Local Rule CD-5(a)(3).

/s/ John P. Lahad

John P. Lahad