

# EXHIBIT A

**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**

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE (LETTER ROGATORY)  
WITH RESPECT TO INDIAN WITNESS – KSHITIJ BHATIA**

**TO THE APPROPRIATE CENTRAL AUTHORITY OF THE REPUBLIC OF INDIA:**

The United States District Court for the Eastern District of Texas presents its compliments to the Appropriate Central Authority of the Republic of India which in the present case is the High Court of Bombay at Mumbai and respectfully requests international judicial assistance to obtain evidence to be used in the above-captioned civil action proceeding before this Court. This Court has determined that it would further the interests of justice if by the proper and usual process of your Court, you summon the witness Kshitij Bhatia to appear before a person empowered under Indian law to administer oaths and take testimony forthwith, to give testimony under oath or affirmation by questions and answers upon oral examination in respect of the matters and issues identified in Schedule B, and permit the parties to create a written transcript and video recording of such testimony and you summon Kshitij Bhatia to produce copies of the documents in its possession, custody or control that are identified in Schedule A.

The applicant for this letter is Google Inc. Indian counsel is available to answer any questions the Indian Court may have.

This request is made pursuant to Rules 4(f) and 28 of the Federal Rules of Civil Procedure; the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Evidence Convention”); the All Writs Act, 28 U.S.C. §1651 and 28 U.S.C. §1781 (permitting the transmittal of letters rogatory through the district courts and the Department of State); and the Vienna Convention on Consular Relations. The United States District Court for the Eastern District of Texas, Marshall Division, is a competent court of law and equity which properly has jurisdiction over this proceeding, and has the power to compel the attendance of witnesses and production of documents both within and outside its jurisdiction. On information received from the Plaintiffs in the present case and believed to be true, Mr. Kshitij Bhatia resides and/or works in Mumbai, India. On information and belief, Mr. Kshitij Bhatia has or is likely to have possession of the documents specified in Schedule A and knowledge of the subject matter specified in Schedule B herein.

The testimony and production of documents are intended for use at trial or directly in the preparation of trial, and in the view of this Court, will be relevant to claims and defenses in the case, including Defendant Google Inc.’s defenses to the allegations of infringement of the asserted patents and to the calculation of alleged damages. The evidence sought in this Letter Rogatory goes to the heart of significant issues of fact and law that will influence the final determination of claims brought by the Plaintiffs.

This request is made with the understanding that it will in no way require any person to commit any offense, or to undergo a broader form of inquiry than he or she would if the litigation were conducted in an Indian court. The requesting Court is satisfied that the evidence

sought to be obtained through this request is relevant and necessary and cannot reasonably be obtained by other methods. Because this Court lacks authority to compel participation of this person and, such participation being necessary in order that justice be served in the above-captioned proceedings, this Court respectfully requests assistance from the Appropriate Central Authority of the Republic of India.

**1. SENDER**

Honorable Rodney Gilstrap  
United States District Court Judge  
United States District Court for the Eastern District of Texas  
100 East Houston Street  
Marshall, Texas 75670  
United States of America

**2. CENTRAL AUTHORITY OF THE REQUESTED STATE**

The Republic of India  
Central Authority  
Bombay High Court  
Fort, Mumbai -32

Through  
Dr. Mrs. Shalini S. Phansalkar-Joshi  
The Registrar General  
Bombay High Court  
Fort, Mumbai -32  
Telephone: 022-22617534  
Email: rg-bhc@nic.in

**3. PERSON TO WHOM THE EXECUTED REQUEST IS TO BE RETURNED**

David A. Perlson  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, California 94111-4788  
United States of America

**4. SPECIFICATION OF DATE BY WHICH THE REQUESTING AUTHORITY REQUIRES RECEIPT OF THE RESPONSE TO THE LETTER OF REQUEST**

A response is requested as soon as possible, in order to ensure that the evidence may be obtained before the deadline for discovery in this case, currently set for January 7, 2015 by the Court's May 13, 2014 Docket Control Order. *See* Ex. 1. In their Initial Disclosures, the Plaintiffs identified Lazard Freres & Co. LLC ("Lazard") and several of Lazard's former employees, including Mr. Bhatia, as likely to have information that is relevant to the parties' claims and defenses in the case. On August 6, 2014, Google served document subpoenas pursuant to Federal Rule of Civil Procedure 45 on Lazard Freres & Co. LLC ("Lazard") and three former Lazard employees currently residing in the United States: David Descoteaux, Colin Keenan, and Justin Lux. On August 20 and August 26, 2014, counsel for Lazard, Mr. Arthur Ruegger at the Dentons law firm, advised that he would also be representing Messieurs Descoteaux, Keenan, and Lux in connection with Google's Subpoenas. On August 27, 2014, Mr. Ruegger further advised that he would likely be able to accept service of a Rule 45 Subpoena on behalf of Mr. Bhatia as well, pending final confirmation from Lazard. However, on September 15, 2014, Mr. Ruegger advised that he would not be able to accept service on behalf of Mr. Bhatia.

**5. NAMES AND ADDRESSES OF THE PARTIES AND THEIR REPRESENTATIVES OF THE CASE (ARTICLE 3(B))**

The evidence requested relates to the action *Rockstar Consortium US LP and NetStar Technologies LLC v. Google Inc.*, Case No. 13-00893 (RG), United States District Court for the Eastern District of Texas.

**The parties and their representatives are listed herein as follows:**

**a. Plaintiffs:**

Rockstar Consortium US LP  
Legacy Town Center I  
7160 North Dallas Parkway  
Suite No. 250

Plano, TX 75024

NetStar Technologies LLC  
Legacy Town Center I  
7160 North Dallas Parkway  
Suite No. 250  
Plano, TX 75024

*Represented By:*

SUSMAN GODFREY L.L.P.  
Max L. Tribble, Jr.  
Alexander L. Kaplan  
John P. Lahad  
Shawn Blackburn  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002  
Telephone: (713) 651-9366  
Facsimile: (713) 654-6666

SUSMAN GODFREY L.L.P.  
Justin A. Nelson  
Parker C. Folse, III  
1201 Third Ave, Suite 3800  
Seattle, Washington 98101  
Telephone: (206) 516-3880  
Facsimile: (206) 516-3883

WARD & SMITH LAW FIRM  
T. John Ward, Jr.  
Claire Abernathy Henry  
P.O. Box 1231  
Longview, TX 75606-1231  
Telephone: (903) 757-6400  
Facsimile: (903) 757-2323

**b.     Defendant:**

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, California 94043

*Represented By (in requesting state):*

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Charles K. Verhoeven  
David A. Perlson

Carl G. Anderson  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, California 94111-4788  
(415) 875-6600

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Robert B. Wilson  
Michelle L. Ernst  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10010  
(212) 849-7000

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Andrea Pallios Roberts  
555 Twin Dolphin Dr., 5th Floor  
Redwood Shores, California 94065  
(650) 801-5000

MANN TINDEL THOMPSON  
J. Mark Mann  
G. Blake Thompson  
300 West Main Street  
Henderson, Texas 75652  
(903) 657-8540

*Represented By (in requested state):*

INTTL ADVOCARE  
Mr. Hemant Singh  
Mr. Himanshu Kane  
Mr. Ashutosh Kane  
Ms. Mamta Jha  
Mr. Manish Mishra  
Express Trade Tower  
1st Floor, Tower 1  
B-36, Sector – 132  
Noida Expressway, Noida 201303  
National Capital Region of Delhi, INDIA  
Phone +91 120 2470200 – 298 (Extn. 126) Fax +91 120 2470299  
mamta@inttladvocare.com | ipcare@inttladvocare.com | www.inttladvocare.com

**6. NATURE AND PURPOSE OF THE PROCEEDINGS AND SUMMARY OF THE FACTS**

**a. Nature and Purpose of the Claims**

The above-captioned case is a civil proceeding in the United States District Court for the Eastern District of Texas brought by Plaintiffs Rockstar Consortium US LP and Netstar Technologies LLC (“Plaintiffs” or “Rockstar”) against Defendant Google Inc. (“Defendant” or “Google”) alleging infringement of U.S. Patent Nos. 6,098,065<sup>1</sup>; 7,236,969; 7,469,245; 7,672,970; 7,895,178; 7,895,183; and 7,933,883 (the “patents-in-suit”) which generally relate to search and advertising on Internet search engines. In response to Rockstar’s allegations, Google has presented certain defenses, including non-infringement, invalidity, and unenforceability of the patents-in-suit.

The patents-in-suit were acquired by the Plaintiff through an auction conducted by Nortel Networks Corporation and its affiliates in 2011. In connection with bankruptcy proceedings and exploration of asset liquidation, Nortel decided to hold an auction for its patent portfolio of over 6,000 patents, including the patents-in-suit. Nortel hired several advisors to assist it with this endeavor, including but not limited to, Lazard Freres & Co. LLC, Global IP Law Group, and several individuals, including Mr. Kshitij Bhatia, a former employee of Lazard. The auction participants included shareholders of the plaintiff’s predecessor company and defendant Google. More specifically, in June 2011, Apple, Microsoft, and three other technology companies founded the Plaintiffs’ predecessor company, Rockstar Bidco, LP. In July 2011, Rockstar Bidco participated in Nortel’s patent auction, ultimately won, and subsequently transferred the patents to the Plaintiff, Rockstar Consortium US LP.

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<sup>1</sup> Rockstar has stated that it no longer accuses Google of infringing the ’065 patent but all other patents-in-suit claim priority to the ’065 patent and, to date, that patent is still included in the operative Complaint.



**b. Mr. Kshitij Bhatia's Role**

Mr. Kshitij Bhatia has been identified by the Plaintiffs as “advis[ing] Nortel in the auction of its intellectual property assets, and as such is likely to have information related to Nortel’s valuation and analysis of its patent assets and to the sale of the patents-in-suit.” Thus, upon information and belief, Mr. Bhatia has relevant information regarding analyses and evaluations of the patentability and value of the patents-in-suit, including Nortel’s efforts to sell, license, and otherwise monetize its patent assets, including through the 2011 auction. This information is directly relevant to the Plaintiffs’ allegations of patent infringement and Google’s defenses that the patents-in-suit are not infringed, invalid, and unenforceable. This information is also highly relevant to the determination of patent damages in the form of a reasonable royalty if the patents-in-suit are found valid, infringed, and enforceable.

**7. EVIDENCE TO BE OBTAINED AND PURPOSE**

The evidence to be obtained consists of documents and testimony for use at trial or in preparing for trial in this matter. Google has requested oral testimony from Mr. Bhatia who I conclude has information that is directly relevant to damages and Google’s defenses that the patents-in-suit are invalid, not infringed, and unenforceable and which Google cannot obtain by any other means.

The Court concludes that it is in the interests of justice for Mr. Bhatia to be examined on the topics listed in Schedule B and to produce the documents listed in Schedule A. I appreciate that some of the documents in Schedule A, and the testimony sought in Schedule B, may call for confidential, or trade secret information. I have entered a Protective Order in this case, attached as Exhibit 2, which extends to the document productions or testimony of third parties like Mr. Bhatia.

Mr. Bhatia resides and/or works in Mumbai, India, and is, upon information and belief, neither domiciled nor doing business in the United States. Thus, this Court cannot directly compel him to provide the requested testimony.

It is, therefore, respectfully requested that the Appropriate Central Authority of the Republic of India compel Mr. Bhatia to produce documents responsive to the requests for production in Schedule A to this Letter of Request, to the extent that they are in the possession, custody, or control of Mr. Bhatia, and are not privileged under the applicable laws of India or the United States. This Court also requests that the Appropriate Central Authority of the Republic of India compel the appearance of Mr. Bhatia to testify under oath, concerning the topics set forth in Schedule B to this Letter of Request.

The requested documents and testimony are needed for use at trial in connection with Google's defenses and counterclaims. The requested evidence will be particularly relevant, for example, to Google's defenses to the Plaintiffs' allegations of patent infringement, including non-infringement, invalidity, and unenforceability and to the calculation of damages. For example, in connection with Nortel Network Corporation's bankruptcy, Nortel retained Lazard to analyze Nortel's portfolio of over 6,000 patents and advise Nortel on the best ways to monetize these assets. Upon information and belief, Mr. Bhatia participated in this analysis of the Nortel portfolio in connection with his employment at Lazard. Upon information and belief, Lazard's analysis of the Nortel portfolio included an examination of the validity and enforceability of Nortel's patents, including a review of the prior art and patent prosecution histories. Upon information and belief, Lazard also analyzed third party products and services to determine whether they infringed Nortel's patents. Further, upon information and belief, Lazard conducted valuation analyses to determine the monetary value of Nortel's portfolio. Mr.

Bhatia's work on the Lazard analyses are directly relevant to Google's present investigation in support of its claims and defenses that the asserted patents are invalid, unenforceable, and not infringed, and to the calculation of damages.

While this Court expresses no view at this time as to the merits in the above-captioned case, it believes the evidence sought here will be relevant to and either probative or disprobative of material facts relevant to the parties' claims and defenses.

**8. IDENTITY AND ADDRESS OF THE ENTITIES AND PERSONS TO BE EXAMINED**

Kshitij Bhatia  
Warburg Pincus India Pvt. Ltd.  
7th Floor, Express Towers  
Nariman Point  
Mumbai 400 021, India  
(91) 22 6650 0000

**9. STATEMENT OF THE SUBJECT MATTER ABOUT WHICH THE PERSON WILL BE EXAMINED**

This Court requests that questioning be permitted of Mr. Kshitij Bhatia regarding the topics listed in Schedule B to this Letter of Request.

**10. DOCUMENTS AND OTHER EVIDENCE TO BE EXAMINED**

It would further the interests of justice if you would summon Mr. Kshitij Bhatia to produce or make available for inspection the documents set forth in Schedule A to this Letter of Request.

**11. REQUIREMENT THAT THE EVIDENCE BE GIVEN ON OATH OR AFFIRMATION**

It would further the interests of justice if, by the proper and usual process of your Court, you summon Mr. Kshitij Bhatia to appear before a person empowered under Indian law to administer oaths and take testimony and give testimony under oath or affirmation on the topics

listed in Schedule B by questions and answers upon oral examination at a convenient location in Mumbai, India.

**12. SPECIAL PROCEDURES OR METHOD TO BE FOLLOWED**

The examinations shall be conducted pursuant to the discovery rules as provided for in the Federal Rules of Civil Procedure of the United States, except to the extent such procedure is incompatible with the internal laws of India. This Court further requests: (1) that the examination be taken orally on oath; (2) that the examination be taken before a duly appointed local commissioner assisted by a commercial stenographer and/or videographer as appointed by court; (3) that the videographer be permitted to record the examination by audiovisual means; (4) that the stenographer be allowed to record a verbatim transcript of the examination; (5) that the examination be conducted in English, or, if necessary, with the assistance of an interpreter selected by Google; (6) that, if the examination is conducted through an interpreter, verbatim transcripts of the proceeding in both English and Marathi or Hindi be permitted; and (7) that the witness be examined as soon as possible.

In the event that the evidence cannot be taken according to some or all of the procedures described above, this Court requests that it be taken in such manner as provided by local law for the formal taking of testimonial evidence.

**13. REQUEST FOR NOTIFICATION**

We respectfully request that any order made by the Court will require the examining party to send notice of the time and place for the taking of testimony, and to provide copies of the transcript and video recording of such deposition and copies of the documents produced to the parties' representatives as identified in Section 5 above and to:

Clerk of the United States District Court  
for the Eastern District of Texas  
100 East Houston Street

Marshall, Texas 75670  
United States of America

**14. REQUEST FOR ATTENDANCE OR PARTICIPATION OF JUDICIAL PERSONNEL OF THE REQUESTING AUTHORITY AT THE EXECUTION OF THE LETTER OF REQUEST**

None.

**15. SPECIFICATION OF PRIVILEGE OR DUTY TO REFUSE TO GIVE EVIDENCE UNDER THE LAW OF THE STATE OF ORIGIN**

Under the laws of the United States, a witness has a privilege to refuse to give evidence if to do so would disclose a confidential communication between the witness and his or her attorney that was communicated specifically for the purpose of obtaining legal advice and which privilege has not been waived. United States law also recognizes a privilege against criminal self-incrimination. Other limited privileges on grounds not applicable here also exist, such as communications between doctor and patient, husband and wife, and clergy and penitent. Certain limited immunities are also recognized outside the strict definition of privilege, such as the limited protection of work product created by attorneys during or in anticipation of litigation. The Central Authority of the requested state may form a confidentiality club for maintaining the confidentiality of the documents as per the law prevailing in the requested state.

**16. REIMBURSEMENT**

The fees and costs incurred in the execution of this Request which are reimbursable will be borne by the above-named Defendant, Google Inc.

Google Inc. is willing to reimburse the reimbursable fees and costs incurred by Mr. Kshitij Bhatia in complying with any order of the Appropriate Central Authority of the Republic of India giving effect to this Request for International Judicial Assistance.

Dated:

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Honorable Rodney Gilstrap  
U.S. District Court Judge

## **SCHEDULE A**

### **DOCUMENTS TO BE PRODUCED BY MR. KSHITIJ BHATIA**

It is respectfully requested that Mr. Kshitij Bhatia be directed to produce the following documents that are in his power and possession.

1. Documents and communications regarding your work at Lazard advising Nortel in connection with the Nortel bankruptcy, the valuation of Nortel's intellectual property assets, and/or the July 2011 auction of Nortel's patent portfolio, including your role evaluating Nortel's patents and your participation in the July 2011 auction.

2. Documents and communications regarding the Nortel bankruptcy, the valuation of Nortel's intellectual property assets, and/or the July 2011 auction of Nortel's patent portfolio that you prepared, received, analyzed, or obtained in connection with your work at Lazard.

3. Documents and communications provided in any clean room or electronic data room by you, Nortel, Lazard Freres & Co. LLC, or Global IP Law Group to potential investors or buyers in connection with the July 2011 auction for Nortel's intellectual property assets.

4. Documents and communications regarding the patents-in-suit ( namely, U.S. Patent Nos. 6,098,065; 7,236,969; 7,469,245; 7,672,970; 7,895,178; 7,895,183; and 7,933,883), any foreign counterparts thereof, and/or any patent or application that claims priority to the patents-in-suit.

5. Documents and communications regarding the valuation, analysis, or assessment of Nortel's patents or other intellectual property assets, including the patents-in-suit and any related patents/applications.

6. Documents and communications regarding meetings or discussions between you and Nortel regarding Nortel's patents or other intellectual property assets, including the patents-in-suit and related patents/applications.

7. Documents and communications regarding any meetings or discussions between you and any third party regarding Nortel's patents or other intellectual property assets, including the patents-in-suit and related patents/applications, including any Rockstar entity, any Rockstar shareholder (including Apple Inc., Microsoft Corporation, Sony Corporation of America, Ericsson, EMC Corporation or Blackberry Ltd.), Google, or other third parties interested in purchasing Nortel's intellectual property assets.

8. Documents and communications regarding Nortel's intellectual property segmentation process, consideration or development of an IP licensing and enforcement business model ("IPCo"), and/or IP Steering Committee and working group.

9. Documents and communications regarding efforts to license, sell, monetize, or otherwise generate revenue from Nortel's intellectual property assets, including the patents-in-suit and/or related patents/applications, including documents or other materials prepared by you, Lazard Freres & Co. LLC, or Global IP Law Group on behalf of Nortel and provided to potential investors or buyers interested in purchasing Nortel's intellectual property assets.

10. Documents sufficient to identify every attempt by Nortel or any party acting on behalf of Nortel, including you, Lazard Freres & Co. LLC, and Global IP Law Group, to enforce the patents-in-suit, either in the United States or abroad.

11. All agreements between you and Lazard Freres & Co. LLC, Global IP Law Group, and/or Nortel.



## **SCHEDULE B**

### **TOPICS FOR THE DEPOSITION OF MR. KSHITIJ BHATIA**

It is respectfully requested that Mr. Kshitij Bhatia be compelled to testify under oath or affirmation, on the following topics for use at trial:

1. Your work at Lazard advising Nortel in connection with the Nortel bankruptcy, the valuation of Nortel's intellectual property assets, and/or the July 2011 auction of Nortel's patent portfolio, including your role evaluating Nortel's patents and your participation in the July 2011 auction.

2. The valuation, analysis, or assessment of Nortel's patents or other intellectual property assets, including the patents-in-suit (namely, U.S. Patent Nos. 6,098,065, 7,236,969, 7,469,245, 7,672,970, 7,895,178, 7,895,183, and 7,933,883), any foreign counterparts thereof, and/or any patent or application that claims priority to the patents-in-suit.

3. Meetings, discussions, and communications with Nortel, any Rockstar entity, any Rockstar shareholder, Google, Lazard Freres & Co. LLC, Global IP Law Group, or any third party regarding the Nortel bankruptcy, Nortel's intellectual property assets, or the July 2011 auction of Nortel's intellectual property assets.

4. The July 2011 auction for Nortel's intellectual property assets, including your role or the role of Lazard Freres & Co. LLC in the July 2011 auction.

5. The valuation of Nortel's intellectual property assets, including the patents-in-suit, including analyses and valuations performed by you and/or Lazard Freres & Co. LLC.

6. Efforts to license, sell, monetize, or otherwise generate revenue from Nortel's intellectual property assets, including the patents-in-suit and related patents/applications.

7. Nortel's intellectual property segmentation process, consideration or development of an IP licensing and enforcement business model ("IPCo"), and/or IP Steering Committee and working group.

8. The documents produced in response to the letters rogatory.

# **EXHIBIT 1**

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.

Case No. 2:13-cv-00893-JRG-RSP

JURY TRIAL DEMANDED

**DOCKET CONTROL ORDER**

It is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

June 8, 2015	*Jury Selection – 9:00 a.m. in <b>Marshall, Texas</b>
April 27, 2015	*Pretrial Conference – 9:00 a.m. in <b>Marshall, Texas</b> before Judge Roy Payne
April 22, 2015	*Notify Court of Agreements Reached During Meet and Confer  The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i> . The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
April 20, 2015	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, and Responses to Motions <i>in Limine</i>
April 13, 2015	*File Notice of Request for Daily Transcript or Real Time Reporting.  If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.

April 6, 2015	File Motions <i>in Limine</i>  The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.
April 6, 2015	Serve Objections to Rebuttal Pretrial Disclosures
March 30, 2015	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
March 16, 2015	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
March 13, 2015	*File Dispositive Motions or Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)  No dispositive motion or motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.
March 9, 2015	Deadline to Complete Expert Discovery
February 16, 2015	Serve Disclosures for Rebuttal Expert Witnesses
January 19, 2015	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
January 12, 2015	Deadline to File Motions to Compel Discovery
January 7, 2015	Deadline to Complete Fact Discovery
December 22, 2014	*Deadline to File Letter Briefs Regarding Dispositive Motions
November 25, 2014	Deadline to Complete Mediation  The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation. <i>See</i> L.R. App. H.
November 18, 2014	Comply with P.R. 3-7 (Opinion of Counsel Defenses)
October 28, 2014	*Claim Construction Hearing – 9:00 a.m. in <b>Marshall, Texas</b> before Judge Roy Payne.
October 14, 2014	*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)

October 7, 2014	*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
September 30, 2014	Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)
September 26, 2014	Deadline to Exchange Privilege Logs
September 16, 2014	Comply with P.R. 4-5( a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any)
September 16, 2014	Deadline to Substantially Complete Document Production  Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.
September 2, 2014	Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
August 26, 2014	File Response to Amended Pleadings
August 12, 2014	*File Amended Pleadings  It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.
August 5, 2014	Comply with P.R. 4-3 (Joint Claim Construction Statement)
July 15, 2014	Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)
June 24, 2014	Comply with P.R. 4-1 (Exchange Proposed Claim Terms)
May 19, 2014	Comply with P.R. 3-3 & 3-4 (Invalidity Contentions)
April 28, 2014	*File Proposed Protective Order and Comply with Paragraphs 1 & 3 of the Discovery Order (Initial and Additional Disclosures)
April 21, 2014	*File Proposed Docket Control Order, Proposed Discovery Order, and Notice of Mediator  The Proposed Docket Control Order and the Proposed Discovery Order shall be filed as separate motions with the caption indicating whether or not the proposed order is opposed in any part.
April 14, 2014	Join Additional Parties
March 24, 2014	Comply with P.R. 3-1 & 3-2 (Infringement Contentions)

(\*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

### **ADDITIONAL REQUIREMENTS**

**Notice of Mediator:** The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

**Summary Judgment Motions:** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief in each of those matters shall be no longer than five (5) pages and shall be filed with the Court no later than the deadline for filing letter briefs. Answering letter briefs in each of those matters shall be no longer than five (5) pages and filed with the Court no later than fourteen (14) days thereafter. Reply briefs in each of those matters shall be no longer than three (3) pages and filed with the Court no later than five (5) days thereafter. The Court may decide the question on the submissions or hold a hearing or telephone conference to hear arguments and to determine whether the filing of any motion will be permitted. Letter briefs shall be filed without exhibits. Any requests to submit letter briefs after the deadlines outlined above must show good cause.

**Indefiniteness:** In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.

**Motions for Continuance:** The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**Amendments to the Docket Control Order (“DCO”):** Any motion to alter any date on the DCO shall take the form of motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

**IT IS SO ORDERED.**

**SIGNED this 12th day of May, 2014.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE



# **EXHIBIT 2**

**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**

**PROTECTIVE ORDER**

WHEREAS, Plaintiffs Rockstar Consortium US LP and Netstar Technologies LLC and Defendant Google Inc., hereafter referred to as "the Parties," believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party, or of any person who is not a Party to this Action ("Third Party") to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material ("Designated Material").

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order with the designation "Confidential" or "Confidential - Outside Attorneys' Eyes Only" shall receive the same treatment as if designated "RESTRICTED - ATTORNEYS' EYES ONLY" under this Order, unless and until such document is redesignated to have a different classification under this Order.
3. With respect to documents, information or material designated "CONFIDENTIAL," "RESTRICTED - ATTORNEYS' EYES ONLY," "RESTRICTED - ATTORNEYS' EYES ONLY – PROSECUTION BAR," or "RESTRICTED CONFIDENTIAL SOURCE CODE" ("DESIGNATED MATERIAL"),<sup>1</sup> subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.
4. A designation of Protected Material (*i.e.*, "CONFIDENTIAL," "RESTRICTED - ATTORNEYS' EYES ONLY," "RESTRICTED - ATTORNEYS' EYES ONLY – PROSECUTION BAR," or "RESTRICTED CONFIDENTIAL SOURCE CODE") may

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<sup>1</sup> The term DESIGNATED MATERIAL is used throughout this Order to refer to the class of materials designated as "CONFIDENTIAL," "RESTRICTED – ATTORNEYS' EYES ONLY," "RESTRICTED - ATTORNEYS' EYES ONLY – PROSECUTION BAR," or "RESTRICTED CONFIDENTIAL SOURCE CODE," both individually and collectively.

be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. With respect to documents, any Party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the Producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement DESIGNATED MATERIAL that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.

5. For purposes of this Order, "CONFIDENTIAL" information shall mean all information or material produced for or disclosed in connection with this action to a Receiving Party that a Producing Party, considers to comprise confidential technical, sales, marketing, financial, or other commercially sensitive information, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated by the Producing Party. Any CONFIDENTIAL information obtained by any party from any person pursuant to discovery in this litigation may be used only for purposes of this litigation.
6. "CONFIDENTIAL" documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating Party, upon order of the Court, or as set forth in paragraph 17 herein:
  - (a) outside counsel of record in this Action for the Parties;

- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action and service vendors of such counsel (including outside copying services and outside litigation support services such as graphics design, jury consultants, translators and interpreters) assisting in the conduct of the Action;
- (c) Up to and including three (3) designated in-house counsel for each of the Parties who are members of at least one state bar in good standing, who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;
- (d) outside consultants or experts<sup>2</sup> retained for the purpose of this litigation, provided that: (1) such consultants or experts are not existing employees or presently employed by the Parties or their affiliates; (2) before receipt of or access to any DESIGNATED MATERIAL, the consultant or expert has completed the Undertaking attached as Exhibit A and the same is served upon the Producing Party with (a) a current curriculum vitae of the consultant or expert, (b) disclosure of the consultant's or expert's employment for at least the past four years, (c) disclosure of the consultant's or expert's publications for the last eight years, (d) disclosure of any legal action (by name and number of the case and court) in connection with which the consultant or expert was retained or testified at trial or by deposition during the past four years, and (e) a identification of any patents or

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<sup>2</sup> For the purposes of this paragraph, an outside consultant or expert is defined to include the outside consultant's or expert's direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall count as a disclosure to a single consultant or expert.

patent applications in which the consultant or expert is identified as an inventor or applicant, is involved in prosecuting or maintaining, or has any pecuniary interest, within 10 (ten) days of receiving the materials identified in the preceding sentence, the Producing Party may notify in writing the Party proposing the consultant or expert that it objects to that consultant's or expert's receipt of or access to DESIGNATED MATERIAL. The objection must be based on the Producing Party's good faith belief that disclosure of its DESIGNATED MATERIAL to the consultant or expert will result in specific business or economic harm to that party. The written objection must set forth in detail the grounds on which it is based.

- (i) The Parties agree to promptly meet and confer in good faith to resolve such objection. If after consideration of the objection, the party desiring to disclose the DESIGNATED MATERIAL to a consultant or expert refuses to withdraw the consultant or expert, that party shall provide notice to the objecting party. Thereafter, the objecting party shall move the Court, within seven (7) business days of receiving such notice, for a ruling on its objection. A failure to object within the 10-day period or subsequently file a motion within the seven business day period, absent an agreement of the parties to the contrary or for an extension, shall operate as an approval of disclosure of DESIGNATED MATERIAL to the consultant or expert. The parties agree to cooperate in good faith to shorten the time frames set forth in this paragraph if necessary to abide by any discovery or briefing schedules.

- (ii) The objecting party shall have the burden of showing to the Court "good cause" for preventing the disclosure of its DESIGNATED MATERIAL to the consultant or expert.
- (iii) A party who has not previously objected to disclosure of DESIGNATED MATERIAL to a consultant or expert or whose objection has been resolved with respect to previously produced information shall not be precluded from raising an objection to a consultant or expert at a later time with respect to materials or information that are produced after the time for objecting to such a consultant or expert has expired. Any such objection shall be handled in accordance with the provisions set forth above in Paragraphs 6(d)(i)-(ii) above. However, this objection shall not serve to suspend the consultant's or expert's receipt of or access to DESIGNATED MATERIAL which has already been produced;
- (e) independent litigation support services, including persons working for or as court reporters, stenographers, or videographers; graphics, translation or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the actions; and non-technical jury or trial consulting services including mock jurors (subject to § 33), and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and
- (f) the Court and any of its staff and administrative personnel, and stenographic reporters (under seal or with other suitable precautions determined by the Court).

7. Documents, information or material produced in this Action, and designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIAL and subject to all of the terms and conditions of this Order.
8. To the extent a Producing Party believes that certain DESIGNATED MATERIAL qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the Producing Party may designate such DESIGNATED MATERIAL "RESTRICTED -- ATTORNEYS' EYES ONLY."
9. The RESTRICTED-ATTORNEYS' EYES ONLY designation is reserved for information that constitutes (a) marketing, financial, sales, web traffic, research and development, or technical, data or information; (b) commercially sensitive competitive information, including, without limitation, information obtained from a nonparty pursuant to a current Nondisclosure Agreement ("NDA"); (c) information or data relating to future products not yet commercially released and/or strategic plans; and, (d) commercial agreements, settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the Producing Party. In determining whether information should be designated as RESTRICTED-ATTORNEYS' EYES ONLY, each party agrees to use such designation only in good faith. Technical



information such as would trigger the prosecution bar in paragraph below must be designated as "RESTRICTED - ATTORNEYS' EYES ONLY – PROSECUTION BAR."

The following documents and materials shall not be eligible for designation as "RESTRICTED - ATTORNEYS' EYES ONLY – PROSECUTION BAR": (i) documents and information related only to damages or reasonable royalty rates; (ii) publications, including patents and published patent applications; (iii) materials regarding third party systems or products that were publicly known, on sale, or in public use before June 6, 1996 unless such materials are designated "RESTRICTED - ATTORNEYS' EYES ONLY – PROSECUTION BAR" materials by a third party; and (iv) information that is publicly available.

10. For DESIGNATED MATERIAL designated RESTRICTED -- ATTORNEYS' EYES ONLY or "RESTRICTED - ATTORNEYS' EYES ONLY – PROSECUTION BAR," access to, and disclosure of, such DESIGNATED MATERIAL shall be limited to individuals listed in paragraphs 6 a, b, c, d, e, and f; provided, however, that access by in-house counsel pursuant to paragraph 6(c) be limited to in-house counsel who exercise no competitive decision-making authority on behalf of the client.
11. The RESTRICTED CONFIDENTIAL SOURCE CODE designation is reserved for documents containing confidential, proprietary and/or trade secret source code. The following restrictions govern the production, review and use of RESTRICTED CONFIDENTIAL SOURCE CODE information.
  - (a) Source code, to the extent any Producing Party agrees to provide any such information, shall ONLY be made available for inspection, not produced except as provided for below, and shall be made available in electronic format at one of

the locations identified in paragraph 11(d). Source Code will be loaded onto two non-networked computers that are password protected and maintained in a secure, locked area. To facilitate the taking of notes during the review of Source Code, persons admitted into the room containing Source Code shall be entitled to take a personal laptop computer that is not connected to any wired or wireless network; however, the use or possession of any input/output device (e.g., USB memory stick, cameras or any camera-enabled device (including camera-enabled personal laptops), CDs, floppy disk, portable hard drive, or any devices that can access the Internet or any other network or external system, etc.) separate from the laptop computer is prohibited while accessing the computer containing the Source Code. All persons entering the locked room containing the Source Code must agree to submit to reasonable security measures to insure they are not carrying any prohibited items before they will be given access to the locked room. The computers containing Source Code will be made available for inspection during regular business hours, upon reasonable notice to the Producing Party, which shall not be less than three business days in advance of the requested inspection;

- (b) The Receiving Party's outside counsel and/or experts or consultants may request that commercially available licensed software tools for viewing and searching Source Code be installed on the secured computer. The Receiving Party must provide the Producing Party with the CD or DVD containing such software tool(s), and any necessary licenses, at least four business days in advance of the date upon which the Receiving Party wishes to have the additional software tools available for use on the stand-alone computers.

- (c) The Receiving Party's outside counsel and/or expert or consultant shall be entitled to take notes relating to the Source Code but may not copy any portion of the Source Code into the notes. No copies of all or any portion of the Source Code may leave the room in which the Source Code is inspected except as otherwise provided herein. Further, no other written or electronic record of the Source Code is permitted except as otherwise provided herein.
- (d) The Producing Party shall make the Source Code Material available at one of the following locations chosen at the sole discretion of the Producing Party: (1) the offices of the Producing Party's primary outside counsel of record in this action; or (2) a location mutually agreed upon by the receiving and producing parties (e.g. an escrow company). Any location under (1) or (2) above shall be in the continental United States.
- (e) In order to verify that its Source Code Material has not later been altered, the Producing Party may benchmark the materials to confirm that the materials have not been altered before and after they are provided but shall not install any keystroke or other monitoring software on the stand-alone computer.
- (f) The Producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer in order to access the produced Source Code Material on the stand-alone computer.
- (g) No person shall copy, e-mail, transmit, upload, download, print, photograph or otherwise duplicate any portion of the designated Source Code, except as the Receiving Party may request a reasonable number of pages of Source Code to be printed by the Producing Party, but only if and to the extent necessary for use in

this action. Within 5 business days or such additional time as necessary due to volume requested, the Producing Party will provide the requested material on watermarked or colored paper bearing Bates numbers and the legend “RESTRICTED CONFIDENTIAL - SOURCE CODE” unless objected to as discussed below. The printed pages shall constitute part of the Source Code produced by the Producing Party in this action. At the Receiving Party’s request, up to two additional sets (or subsets) of printed Source Code may be requested and provided by the Producing Party in a timely fashion.

- (h) If the Producing Party objects that the printed portions are not reasonably necessary to any case preparation activity, the Producing Party shall make such objection known to the Receiving Party within five business days. If after meeting and conferring the Producing Party and the Receiving Party cannot resolve the objection (where such meet-and-confer need not take place in person), the Producing Party shall be entitled to seek a Court resolution of whether the printed Source Code in question is reasonably necessary to any case preparation activity. Contested Source Code print outs need not be produced to the requesting party until the matter is resolved by the Court. If the Producing Party does not seek a Court resolution, then the printouts shall be provided.
- (i) Any printed pages of Source Code, and any other documents or things reflecting Source Code that have been designated by the Producing Party as “RESTRICTED CONFIDENTIAL SOURCE CODE” may not be copied, digitally imaged or otherwise duplicated, except in limited excerpts necessary to attach as exhibits to depositions, expert reports, or court filings as discussed below.

- (j) Any paper copies designated “RESTRICTED CONFIDENTIAL SOURCE CODE” shall be stored or viewed only at (i) the offices of outside counsel for the Receiving Party, (ii) the offices of outside experts or consultants who have been approved to access Source Code; (iii) the site where any deposition is taken (iv) the Court; or (v) any intermediate location necessary to transport the information to a hearing, trial or deposition or between locations (i) through (iv). Any such paper copies shall be maintained at all times in a secure location under the direct control of an expert or consultant who has been approved to access Source Code (if stored at the expert or consultant’s office) or counsel responsible for maintaining the security and confidentiality of the designated materials. Nothing herein shall preclude the Receiving Party from mailing, shipping, or delivering source code between locations (i) through (v), provided that the Receiving Party uses at least a tracking number (e.g. a FedEx tracking number) and signed delivery confirmation in mailing, shipping, or delivering between such locations. Should such a shipment go missing, the Receiving Party shall timely notify the Producing Party and the Court with specifics.
- (k) A list of names of persons who will view the Source Code will be provided to the Producing Party in conjunction with any written (including email) notice requesting inspection. The Receiving Party shall maintain a daily log of the names of persons who enter the locked room to view the Source Code and when they enter and depart, and the Producing Party shall be entitled to request a copy of the daily log. In the alternative, if the Receiving Party prefers, the Producing Party may retain the copy of the daily log that is maintained by the Receiving

Party. The Producing Party shall be entitled to have a person observe all entrances and exits from the Source Code viewing room.

- (l) Unless otherwise agreed in advance by the parties in writing, following each inspection, the Receiving Party's outside counsel and/or experts shall remove all notes, documents, and all other materials from the room that may contain work product and/or attorney-client privileged information. The Producing Party shall not be responsible for any items left in the room following each inspection session.
- (m) The Receiving Party will not copy, remove, or otherwise transfer any portion of the Source Code from the Source Code Computer including, without limitation, copying, removing, or transferring any portion of the Source Code onto any other computers or peripheral equipment. The Receiving Party will not transmit any portion of the Source Code in any way from the location of the Source Code inspection.
- (n) Access to DESIGNATED MATERIAL designated RESTRICTED CONFIDENTIAL - SOURCE CODE shall be limited to:
  - (i) Outside counsel of record for the parties to this action, including any attorneys, paralegals, technology specialists and clerical employees of their respective law firms;
  - (ii) Up to five (5) outside experts or consultants per party, pre-approved in accordance with Paragraph 6(d) and specifically identified as eligible to access Source Code;

(iii) The Court, its technical advisor (if one is appointed), the jury, court personnel, and court reporters or videographers recording testimony or other proceedings in this action. Court reporters and/or videographers shall not retain or be given copies of any portions of the Source Code. If used during a deposition, the deposition record will identify the exhibit by its production numbers;

(iv) While testifying at deposition or trial in this action only: (a) any current or former officer, director or employee of the Producing Party or original source of the information; (b) any person designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; and/or (c) any person who authored, previously received (other than in connection with this litigation), or was directly involved in creating, modifying, or editing the Source Code, as evident from its face or reasonably certain in view of other testimony or evidence. Persons authorized to view Source Code pursuant to this sub-paragraph shall not retain or be given copies of the Source Code except while so testifying.

(o) The Receiving Party's outside counsel shall maintain a log of all copies of the Source Code (received from a Producing Party) that are delivered by the Receiving Party to any qualified person under Paragraph 11(n) above. The log shall include the names of the recipients and reviewers of copies and locations where the copies are stored. Upon request by the Producing Party, the Receiving Party shall provide reasonable assurances and/or descriptions of the security

measures employed by the Receiving Party and/or qualified person that receives a copy of any portion of the Source Code.

- (p) Except as provided in this paragraph, the Receiving Party may not create electronic images, or any other images, of the Source Code from the paper copy for use on a computer (e.g., may not scan the source code to a PDF, or photograph the code). The Receiving Party may create an electronic copy or image of limited excerpts of Source Code only to the extent necessary in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, or any drafts of these documents ("SOURCE CODE DOCUMENTS"). The Receiving Party shall only include such excerpts as are reasonably necessary for the purposes for which such part of the Source Code is used. Images or copies of Source Code shall not be included in correspondence between the parties (references to production numbers shall be used instead) and shall be omitted from pleadings and other papers except to the extent permitted herein. The Receiving Party may create an electronic image of a selected portion of the Source Code only when the electronic file containing such image has been encrypted using commercially reasonable encryption software including password protection. The communication and/or disclosure of electronic files containing any portion of Source Code shall at all times be limited to individuals who are authorized to see Source Code under the provisions of this Protective Order. The Receiving Party shall maintain a log of all SOURCE CODE DOCUMENTS in its possession or in the possession of its retained consultants, including the names of the recipients and reviewers of any SOURCE CODE DOCUMENTS and the



locations where they are stored. Additionally, all SOURCE CODE DOCUMENTS must be labeled "RESTRICTED CONFIDENTIAL - SOURCE CODE."

- (q) A receiving Party may include excerpts of Source Code Material in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, provided that the Source Code Documents are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures and orders;
- (r) To the extent portions of Source Code Material are quoted in a Source Code Document, either (1) the entire Source Code Document will be stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE or (2) those pages containing quoted Source Code Material will be separately stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE;
- (s) All copies of any portion of the Source Code in whatever form shall be securely destroyed if they are no longer in use. Copies of Source Code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers.
- (t) The Receiving Party's outside counsel may only disclose a copy of the Source Code to individuals specified in Paragraph 11(n) above (e.g., Source Code may not be disclosed to in-house counsel).

- (u) If the receiving Party's outside counsel, consultants, or experts obtain printouts or photocopies of Source Code Material, the receiving Party shall ensure that such outside counsel, consultants, or experts keep the printouts or photocopies in a secured locked area in the offices of such outside counsel, consultants, or expert. The receiving Party may also temporarily keep the printouts or photocopies at:
  - (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); (iii) the Court for any filing(s) related to the Source Code Material, filed under court seal; and (iv) any intermediate location reasonably necessary to transport the printouts or photocopies (*e.g.*, a hotel prior to a Court proceeding or deposition).
- 12. Non-parties may be examined or testify concerning any document containing DESIGNATED MATERIAL of a producing party which appears on its face or from other documents or testimony to have been received from or communicated to the non-party as a result of any contact or relationship with the producing party or a representative of the producing party. Any person other than the witness, his or her attorney(s), or any person qualified to receive DESIGNATED MATERIAL under this Order shall be excluded from the portion of the examination concerning such information, unless the producing party consents to persons other than qualified recipients being present at the examination. If the witness is represented by an attorney who is not qualified under this Order to receive such information, then prior to the examination, the attorney must provide a signed statement, in the form of Attachment A

hereto, that he or she will comply with the terms of this Order and maintain the confidentiality of DESIGNATED MATERIAL disclosed during the course of the examination. In the event that such attorney declines to sign such a statement prior to the examination, the producing party, by its attorneys, may seek a protective order from the Court prohibiting the attorney from disclosing DESIGNATED MATERIAL.

13. Any attorney representing a Party, whether in-house or outside counsel, and any person associated with a Party and permitted to receive the other Party's Protected Material that is designated RESTRICTED -- ATTORNEYS' EYES ONLY and/or RESTRICTED CONFIDENTIAL SOURCE CODE (collectively "HIGHLY SENSITIVE MATERIAL"), who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's HIGHLY SENSITIVE MATERIAL under this Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit on behalf of the receiving Party or its acquirer, successor, predecessor, or other affiliate during the pendency of this Action and for one year after its conclusion, including any appeals. To ensure compliance with the purpose of this provision, each Party shall create an "Ethical Wall" between those persons with access to HIGHLY SENSITIVE MATERIAL and any individuals who, on behalf of the Party or its acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the field of invention of the patent-in-suit. For the avoidance of doubt, nothing in this provision shall preclude any person who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's Protected Material under this Order from participating in any post-grant proceeding, except that

such persons may not directly or indirectly assist in drafting, amending or proposing for substitution patent claims in any post-grant proceeding. Nothing in this Section shall prevent any attorney from sending non-confidential prior art to an attorney involved in patent prosecution for purposes of ensuring that such prior art is submitted to the U.S. Patent and Trademark Office (or any similar agency of a foreign government) to assist a patent applicant in complying with its duty of candor. Nothing in this provision shall prohibit any attorney of record in this litigation from discussing any aspect of this case that is reasonably necessary for the prosecution or defense of any claim or counterclaim in this litigation with his/her client. The parties expressly agree that the Prosecution Bar set forth herein shall be personal to any attorney who review DESIGNATED MATERIAL marked RESTRICTED ATTORNEYS' EYES ONLY – PROSECUTION BAR or RESTRICTED CONFIDENTIAL SOURCE CODE and shall not be imputed to any other persons or attorneys at the attorneys' law firm. Individuals who work on this matter without reviewing protected material marked RESTRICTED ATTORNEYS' EYES ONLY – PROSECUTION BAR or RESTRICTED CONFIDENTIAL SOURCE CODE shall not be restricted from engaging in Prosecution Activity on matters that fall within the Prosecution Bar. This prosecution bar may not be applied to operate retroactively against any person who receives an inadvertently mis-designated or undesignated document that is later corrected pursuant to paragraph 4 above.

14. Nothing in this Protective Order shall require production of information that a party contends is protected from disclosure by the attorney-client privilege, the work product immunity, or other privilege, doctrine, right or immunity. Pursuant to Federal Rule of Evidence 502(d), the production of a privileged or work-product-protected document is

not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privilege or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or any other federal or state proceeding. A Producing Party may assert privilege or production over produced documents at any time by notifying the receiving party in writing of the assertion of privilege or protection. In addition, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been advertently produced. When a Producing Party or Receiving Party identifies such privileged or protected information, a Receiving Party: (1) shall not use, and shall immediately cease any prior use of, such information; (2) shall take reasonable steps to retrieve the information from others to which the receiving Party disclosed the information; (3) shall within five business days of the Producing Party's request return to the Producing Party or destroy the information and destroy all copies thereof; and (4) shall confirm to the Producing Party the destruction under (3) above of all copies of the information not returned to the Producing Party. No one shall use the fact or circumstances of production of the information in this Action to argue that any privilege or protection has been waived. Notwithstanding this provision, no Party shall be required to return or destroy any information that may exist on their firm's electronic back-up systems that are over-written in the normal course of business.

15. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents,

information and material to protect against disclosure to any unauthorized persons or entities.

16. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating Party, (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information, (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL, (iv) a current or former officer, director or employee of the Producing Party or a current or former officer, director or employee of a company affiliated with the Producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraphs 6, 10, and 11(n) of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of this litigation; (vii) court reporters and videographers; (viii) the Court; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the Producing Party or from the Court.
17. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as "CONFIDENTIAL," "RESTRICTED - ATTORNEY' EYES ONLY," "RESTRICTED - ATTORNEYS' EYES ONLY - PROSECUTION BAR," or

"RESTRICTED CONFIDENTIAL SOURCE CODE" pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as RESTRICTED ATTORNEYS' EYES ONLY.

18. Native Files. Where electronic files and documents are produced in native electronic format, such electronic files and documents shall be designated for protection under this Order by appending to the file names or designators information indicating whether the file contains CONFIDENTIAL, RESTRICTED ATTORNEYS' EYES ONLY, RESTRICTED - ATTORNEYS' EYES ONLY - PROSECUTION BAR or RESTRICTED CONFIDENTIAL SOURCE CODE material, or shall use any other reasonable method for so designating DESIGNATED MATERIAL produced in electronic format. When electronic files or documents are printed for use at deposition, in a court proceeding, or for provision in printed form to an expert or consultant pre-approved pursuant to Paragraph 6(d), or for any other reason consistent with the provisions of this Protective Order, the party printing the electronic files or documents shall affix a legend to the printed document corresponding to the designation of the Designating Party and including the production number and designation associated with the native file.

19. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER" above the caption and conspicuously on each page of the filing. Exhibits to a filing shall

conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

20. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rules of Civil Procedure 37, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be met. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.
21. No DESIGNATED MATERIAL may leave the territorial boundaries of the United States of America. Without limitation, this prohibition extends to DESIGNATED MATERIAL (including copies) in physical and electronic form. The viewing of DESIGNATED MATERIAL through electronic means outside the territorial limits of the United States of America is similarly prohibited. Notwithstanding this prohibition, DESIGNATED MATERIAL, exclusive of material designated RESTRICTED CONFIDENTIAL - SOURCE CODE, and to the extent otherwise permitted by law, may be taken outside the territorial limits of the United States if it is reasonably necessary for a deposition taken in a foreign country. The restrictions contained within this paragraph may be amended



through the consent of the producing Party to the extent that such agreed to procedures conform with applicable export control laws and regulations.

22. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A. It is expressly contemplated that the protections and obligations provided under this Order apply to non-parties who produce or otherwise provide DESIGNATED MATERIAL.
23. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as "CONFIDENTIAL," "RESTRICTED - ATTORNEYS' EYES ONLY - PROSECUTION BAR," or "RESTRICTED -- ATTORNEYS' EYES ONLY" any documents, information or other material, in whole or in part, produced or give by such Third Parties. The Third Parties shall have ten (10) days after production of such documents, information or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as "RESTRICTED ATTORNEYS' EYES ONLY" in accordance with this Order.
24. Within 60 days after a final non-appealable judgment or order, or the complete settlement of all claims asserted against all parties in this action, each Party must return all materials designated by any other Producing Party or Third Party under this Order to the Producing Party or Third Party, or destroy such material, including all copies thereof, and provide to

the Producing Party or Third Party a written certification of compliance with this provision. Notwithstanding this provision, outside counsel of record are entitled to retain archival copies of all pleadings, filings, or other documents served by or on any Party or Third Party, trial, deposition, and hearing transcripts, legal memoranda, correspondence, expert reports, attorney work product, and consultant and expert work product, and exhibits to any of these materials, even if such materials reflect materials designated under this Order. Notwithstanding this provision, outside litigation counsel shall not be required to delete information that may reside on their firm's electronic back-up systems that are over-written in the normal course of business. Any such archival and/or backup copies of materials designated under this Order shall remain subject to the provisions of this Order.

25. The failure to designate documents, information or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.
26. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall

discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

27. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.
28. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.
29. If at any time documents containing DESIGNATED MATERIAL are subpoenaed by any court, arbitral, administrative or legislative body, or are otherwise requested in discovery, the person to whom the subpoena or other request is directed shall immediately give written notice thereof to every party who has produced such documents and to its counsel and shall provide each such party with an opportunity to object to the production of such documents. If a Producing Party does not take steps to prevent disclosure of such documents within ten days of the date written notice is given, the party to whom the referenced subpoena is directed may produce such documents in response thereto, but shall take all reasonable measures to have such documents treated in accordance with terms of this Protective Order.
30. The United States District Court for the Eastern District of Texas is responsible for the interpretation and enforcement of this Agreed Protective Order. After termination of this litigation, the provisions of this Agreed Protective Order shall continue to be binding except with respect to those documents and information that become a matter of public

record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the DESIGNATED MATERIAL for enforcement of the provision of this Agreed Protective Order following termination of this litigation. All disputes concerning DESIGNATED MATERIAL produced under the protection of this Agreed Protective Order shall be resolved by the United States District Court for the Eastern District of Texas.

31. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL. In the event such an application is made, all persons described therein shall be bound by the terms of this Order unless and until it is modified by the Court. This Order is also subject to revocation or modification by written agreement of the Parties (or, as applicable, the Parties and non-parties).
32. Mock jurors hired by jury consultants in connection with this litigation may not view or receive any DESIGNATED MATERIALS; but may view presentations or summaries derived from DESIGNATED MATERIALS, not including Source Code Material provided: (1) they are not affiliated with any party to this case or their direct competitor; (2) they agree in writing to be bound by confidentiality and not to disclose the content or substance of any such derivative materials to any other person outside the jury research exercise; and (3) they are not themselves given custody of any DESIGNATED MATERIALS or of any derivative materials, nor permitted to remove any presentations, questionnaires or notes taken during the exercise from any room in which the research is conducted. For purposes of this paragraph, excerpts from depositions shall not be

considered DESIGNATED MATERIALS, so long as the excerpts do not contain more than five minutes of testimony from any single witness's deposition.

**SIGNED this 19th day of June, 2014.**

  
\_\_\_\_\_  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE

**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**

**APPENDIX A**

**UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING  
PROTECTIVE ORDER**

I, \_\_\_\_\_ declare that:

1. My address is \_\_\_\_\_. My current employer is \_\_\_\_\_. My current occupation is \_\_\_\_\_.
2. I have received a copy of the Protective Order in this Action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this Action any information designated as "CONFIDENTIAL," "RESTRICTED -- ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" that is disclosed to me.

4. Promptly upon termination of these actions, I will return all documents and things designated as "CONFIDENTIAL," "RESTRICTED -- ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the Party by whom I am employed.
5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this Action.

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

Signature \_\_\_\_\_

Date \_\_\_\_\_