

Exhibit A

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 ROCKSTAR CONSORTIUM US LP,) (

5 ET AL.) (CIVIL DOCKET NO.

6) (2:13-CV-893-JRG-RSP

7 VS.) (MARSHALL, TEXAS

8) (

9 GOOGLE, INC.) (OCTOBER 9, 2014

10) (1:10 P.M.

11 MOTIONS HEARING

12 BEFORE THE HONORABLE JUDGE ROY S. PAYNE

13 UNITED STATES MAGISTRATE JUDGE

14

15 APPEARANCES:

16 FOR THE PLAINTIFFS: (See sign-in sheets docketed in
17 minutes of this hearing.)

18 FOR THE DEFENDANT: (See sign-in sheets docketed in
19 minutes of this hearing.)

20 COURT REPORTER: Ms. Shelly Holmes, CSR-TCRR
21 Official Reporter
22 United States District Court
23 Eastern District of Texas
24 Marshall Division
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Marshall, Texas 75670
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25 (Proceedings recorded by mechanical stenography, transcript
produced on a CAT system.)

1 middle of the production of the transferred items.

2 With respect to the non-transferred items, we don't
3 even know what's on those computers, Your Honor. We haven't
4 had an opportunity to review them.

5 THE COURT: And frankly, I'm a lot less concerned
6 about the non-transferred items, because if that definition is
7 properly applied, I don't think non-transferred items would be
8 of any relevance to Google in this litigation. And so we
9 should not have a problem with privilege on those other than
10 designing a system that won't constitute a waiver of any
11 privilege that exists.

12 But I -- from what I'm hearing, it sounds like you're
13 relying on this common interest agreement to take care of the
14 issue about whether you -- whether Nortel waived privilege by
15 transferring these computers in the way they did. Certainly if
16 the common interest agreement doesn't get there, I think
17 there's a serious issue about whether or not Nortel acted
18 diligently to preserve that privilege if there was no follow-up
19 after the transfer of the computers to see that the -- to see
20 that the protocol was carried out.

21 But in any event, I'll -- we can delay that until we
22 see this common interest agreement. The -- but I -- I thank
23 you, Mr. Supko, and I'll give you another chance to be heard if
24 you've got more issues to raise before today.

25 MR. SUPKO: All right. And I would note I was only

1 transferred data is defined in -- I think in the definitions,
2 and then it refers to Section D3 -- that's on Page 6 -- which
3 then refers to some other sections.

4 THE COURT: I went through that earlier today.

5 MR. PERLSON: Yeah. And -- and so I think that there
6 are -- there's considerable material on -- that would be
7 non-transferred data. These are people involved in licensing
8 discussions and valuations. They were talking -- you know, the
9 hypothetical -- person in a hypothetical negotiation within
10 this case is going to be Nortel. And so their licensing
11 policies, discussions about licensing generally will be
12 relevant. Licenses with other entities regarding other patents
13 could potentially be relevant.

14 So this notion that only the transferred documents
15 could have relevance to this case I just don't think is
16 correct. And so we have both categories of documents, both the
17 non-transferred documents and the transferred documents that
18 have highly relevant material in them. They should have been
19 searched long ago, and we just -- and under the current
20 schedule, we just can't wait any longer for them.

21 THE COURT: All right. Thank you.

22 I'm -- I'm going to say that I interpret this
23 transition services agreement as defining the transferred data
24 or documents as any data or documents relevant to the patents
25 that were assigned.

1 MR. PERLSON: That's -- that's fine. And I think
2 that -- that might be the time in which we would get the
3 privilege log anyways which might help us with the briefing, as
4 well.

5 THE COURT: That should be actually a little after you
6 get the privilege log.

7 MR. PERLSON: Right, exactly.

8 THE COURT: Okay. And if Plaintiff and Nortel want to
9 file a joint brief on that, that's fine. I don't care how
10 y'all proceed.

11 MR. KELLER: Hopefully the last point of
12 clarification, Your Honor.

13 THE COURT: All right.

14 MR. KELLER: The briefing, are we focusing on the
15 transfer materials, the non-transferred materials, or both?

16 THE COURT: I don't see any reason why it shouldn't
17 focus on both. I'm more concerned at this point with the
18 transferred materials because those are the ones that will be
19 on the privilege log. But to the extent you want to protect
20 your position as to non-transferred materials, I -- I don't see
21 why you shouldn't address it at the same time.

22 MR. KELLER: Thank you.

23 MR. PERLSON: I -- I apologize, Your Honor. But I
24 mean, just to be clear, I think that there is a dispute about
25 whether the -- related to the patents or not is within the

1 transfer and non-transferred items, and it would be our
2 position that to the extent that there are documents regarding
3 licensing that would be relevant to licensing general, theories
4 or other -- other licenses that Nortel has -- has entered into
5 that are comparable, to the extent that they are withholding
6 those documents, that those would need to be logged, too. And
7 I -- you know, we can maybe have that fight later, but that's
8 our position that there are non-transferred documents that
9 should either be produced or logged.

10 THE COURT: And you see, I am hoping to somewhat avoid
11 that issue by defining transferred as relevant. And certainly
12 the other licenses can be relevant. But I guess we'll -- we'll
13 have to cross that bridge when we get there.

14 MR. NELSON: Yes. Your Honor, Justin Nelson. We
15 interpret it the same way that -- to the extent that
16 Mr. Perlson, the categories that he mentioned, I think, fall
17 under what Your Honor just stated. And our intention is either
18 to produce or log all those documents.

19 THE COURT: Okay. Thank you. And -- and I would ask
20 if Plaintiff and Defendant would both look further at this
21 question about whether or not the common interest agreement
22 itself is privileged. And if you're able to work that out,
23 fine. If not, then you should include that in your briefing.

24 MR. NELSON: Thank you, Your Honor.

25 THE COURT: Okay. So if -- if counsel for Nortel