

**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

ROCKSTAR'S MOTION TO EXTEND FACT DISCOVERY CUT-OFF

Rockstar respectfully requests an extension of the fact discovery cut-off by 30 days, from the current date of January 7, 2015 until February 6, 2015. Such an extension would allow Rockstar to more effectively complete fact discovery. Due to Google's delays in producing documents, Rockstar has been unable to take depositions of Google witnesses. At least four separate categories of Google's delay exist that necessitate this motion, any one of which would be sufficient.

First, despite this Court's Order at the October 9, 2014 hearing that Google should produce additional categories of documents, Google has not yet produced a single additional document. *Second*, Google has not even started its search of its custodian non-email documents for senior executives, despite the fact that the parties agreed on search terms. Instead, Google has raised the argument that it simply does not want to search its custodians' entire file and wants to limit the search—an issue that it did not raise at the previous hearing. *Third*, Rockstar has attempted to meet and confer in good faith with Google on search terms for email custodians. Rockstar hoped to complete that process the week after the hearing. Once again, the parties do not dispute the substance of the terms. Instead, the issue is about how many documents result from the search. Google has taken a long time to get back to Rockstar on even basic questions such as the hit count for each search term. It now states that it will not even have a hit count on the proposed terms until next week—the week of November 3. *Fourth*, Google has not undertaken a proper search of custodian non-email documents. Rockstar's Motion filed on October 24, 2014 outlines these extensive flaws (Dkt. No. 222). For any of these reasons—let alone a combination of all of them—a one-month extension of fact discovery is appropriate.

Google will argue prejudice in extending the deadline. This argument is incorrect for two separate reasons. *First*, no prejudice will result. The parties can negotiate a schedule that moves

each of the deadlines by a small amount and together result in a schedule that keeps the trial date while still permitting this additional month. *Second*, in the unlikely event any prejudice does result, it is due to Google’s own inadequate search and document collection.

Rockstar has proposed a draft schedule below that moves the fact discovery deadline by one month while still keeping the trial date. Rockstar of course remains open to conferring with Google on any changes it may have. The fundamental point, however, is that it is possible to propose a schedule with a 30-day fact discovery extension and the current trial date.

	CURRENT DATE	PROPOSED DATE
Deadline to Complete Fact Discovery	January 7, 2015	February 6, 2015
Deadline to File Motions to Compel Discovery	January 12, 2015	February 9, 2015
Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof	January 19, 2015	February 16, 2015
Serve Disclosures for Rebuttal Expert Witnesses	February 16, 2015	March 9, 2015
Deadline to Complete Expert Discovery	March 9, 2015	March 23, 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 13, 2015	March 27, 2015
Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof	March 16, 2015	March 30, 2015
Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures	March 30, 2015	April 9, 2015

Serve Objections to Rebuttal Pretrial Disclosures	April 6, 2015	April 13, 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	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 13, 2015	April 20, 2015
*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, and Responses to Motions <i>in Limine</i>	April 20, 2015	April 27, 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 22, 2015	April 29, 2015
*Pretrial Conference – 9:00 a.m. in Marshall, Texas before Judge Roy Payne	April 27, 2015	May 4, 2015
*Jury Selection – 9:00 a.m. in Marshall, Texas	June 8, 2015	June 8, 2015

This schedule above demonstrates that it is more than feasible to design a schedule that is not prejudicial and still extends the discovery deadline. Rockstar opposes any move of the trial

date. Rockstar believes a 30-day fact discovery extension is appropriate and will not affect the trial date. And to the extent any conflict between moving the trial date and moving the discovery deadline exists—which it does not, Rockstar prefers to keep the trial date. In short, Rockstar should have adequate time to conduct discovery despite Google’s stalling tactics and still keep the original trial date.

DATED: October 30, 2014

Respectfully submitted,

By: /s/ Justin A. Nelson

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*Attorneys for Rockstar Consortium US LP and
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CERTIFICATE OF CONFERENCE

I hereby certify that the parties have met and conferred on the 30th day of October, 2014 and counsel for Defendants are opposed as to the disposition of the matters raised in this motion.

/s/ Justin A. Nelson _____

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 30th day of October, 2014 with a copy of this document via the Court's CM/ECF system per Local Rule CD-5(a)(3).

/s/ Justin A. Nelson _____