

# EXHIBIT 2

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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2014-147

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IN RE GOOGLE INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG  
ELECTRONICS AMERICA, INC., and SAMSUNG TELECOMMUNICATIONS  
AMERICA, LLC,  
*Petitioners.*

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On Petition for a Writ of Mandamus to the United States District Court for the  
Eastern District of Texas in Case Nos. 2:13-cv-894 and 2:13-cv-900,  
Judge Rodney Gilstrap.

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**OPPOSITION TO  
PETITION FOR WRIT OF MANDAMUS**

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Dated: August 22, 2014

standing alone, is not a product accused of infringement. The accused products are mobile devices with numerous hardware elements combined with software.<sup>2</sup>

**C. Rockstar Has Longstanding Ties to the EDTX.**

Rockstar and MobileStar are the assignees of patents that resulted from extensive research and development performed by Nortel Networks. A693. Although its worldwide headquarters was located in Canada, for twenty years the headquarters for Nortel's U.S. entity and its largest U.S. facility (with approximately 10,000 employees) was in Richardson, Texas. A729. Nortel conducted patent prosecution and licensing activities from Richardson. A720.

After confronting bankruptcy in 2009, in 2011 Nortel held an auction for its patents. A720. Google ultimately bid \$4.4 billion for the Nortel portfolio, but lost the auction to Rockstar Bidco LP, which bid \$4.5 billion. A720. Rockstar Bidco LP—an entity distinct from Rockstar—subsequently assigned a minority of the Nortel patents directly to some of its limited partners, and assigned the remaining Nortel patents (including the patents-in-suit) to Rockstar. RA41.

Rockstar is a Delaware limited partnership. Its limited partners are: Apple, BlackBerry, Ericsson, Microsoft, and Sony, each with a minority ownership percentage. A729. None of the above companies has a majority or controlling

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<sup>2</sup> Google thus does not have standing to seek an adjudication of Android open source because there is no evidence that anyone, even Google, uses the Android open source in a mobile device without substantial modification.

interest in Rockstar. Two of the limited partners have strong Texas connections: Ericsson's U.S. headquarters are located within the EDTX, and BlackBerry's headquarters are in Irving. The other limited partners are scattered, with Microsoft in Washington, Apple in California, and Sony in New Jersey. A730; RA42.

After receiving the assignments from Rockstar Bidco LP, Rockstar created subsidiary entities for the purpose of licensing its intellectual property in different markets. A1288; RA71. Rockstar then assigned certain patents corresponding to different market segments and technology areas to those newly-created subsidiaries. A1288; RA71. For example, MobileStar focuses on licensing patents related to mobile device technology, NetStar Technologies focuses on internet search technology, Bockstar Technologies focuses on technology for network components, and Constellation Technologies focuses on network technologies for telecommunications service providers to deliver cable, telecommunications, and other multimedia services. Rockstar owns two of the patents-in-suit. A729; RA42. MobileStar owns five of the patents-in-suit and is the exclusive licensee (from Rockstar) of the other two patents, within its field of use. A729.

Rockstar is based in the EDTX. Rockstar initially leased Nortel's Richardson office space—where many of Nortel's patent files were located, including files relevant to the patents-in-suit. A731-33. In August 2012, after Nortel sold its Richardson campus, Rockstar was forced to move and leased its

current offices in nearby Plano, within the EDTX. A731. Rockstar and MobileStar still maintain their principal place of business in Plano. A729-31. The Plano office is Rockstar's only U.S. office, although some employees also work out of their homes. A731. The office contains 8,125 square feet, with 10 assigned offices, 2 guest offices, 4 conference rooms, 7 work areas, and storage space. A731.

When Rockstar Bidco LP acquired the patents-in-suit from Nortel, the Rockstar entities also acquired former Nortel employees responsible for licensing and prosecuting the Nortel patents. A730-31. Rockstar now has 15 full-time employees in the U.S., including five full-time employees in Plano and others who spend significant time there. A731. No Rockstar or MobileStar executive or employee lives or works in California. A732. Eight of the U.S.-based employees likely have relevant information; three of them work full-time in the Plano office, one lives in Colorado, and the rest are on the east coast. A732-33. Additionally, two Rockstar board members are in the EDTX or nearby. Kasim Alfalahi (also Chief IP officer at Ericsson), works in the EDTX. A733. Randy Mishler (also Senior Director of IP Licensing at BlackBerry), works in nearby Irving. A733.

**D. The EDTX is Samsung's Home Forum.**

Samsung Telecommunications America, LLC has its headquarters in Richardson—within the EDTX. A783-84. From the EDTX, Samsung “researches, develops and markets a variety of personal and business products throughout North

America including handheld wireless phones, wireless communications infrastructure systems and enterprise communications systems.” A785-86. The products developed in the EDTX by Samsung include the mobile devices at issue in this case. Samsung also has an office in Dallas, where its “Dallas Technology Labs (DTL) leads Samsung’s standardization initiatives in the IEEE, ITU, 3GPP, WiMAX and other major forums.” A787-88. These laboratories employ over 150 engineers, including Samsung’s Android software engineers. A787-88. The DTL is “highly regarded” by Samsung “as the thought leader and innovation engine for its wireless business units.” A787-88.

Because the EDTX is Samsung’s home forum, Samsung is no stranger to litigating there. When Samsung sues on its patents, it frequently selects the EDTX as its preferred venue. A789-94. Samsung has even opposed previous motions to transfer from the EDTX to the NDCA on the grounds that the EDTX was a more convenient forum. A897-901. EDTX and NDCA courts have each recognized that the EDTX is a convenient forum for litigation involving Samsung. A902-18.

**E. Google Also Has Connections to the EDTX.**

In 2012, Google opened an office in Frisco (in the EDTX). A670-71. Google later relocated that office to Dallas (in the NDTX). A761-74. Today Google maintains at least two Texas offices, in Dallas (approximately 20 miles from the EDTX) and in Austin. A761-76. Google’s Austin office focuses on developer

relations and technical solutions, among other issues. A777-79. Google’s Dallas office contains departments for design and engineering, as well as sales. A780-82. Publicly available information suggests that Google’s Texas employees work on the development of the Android platforms. Specifically, Jeff Hamilton, a software engineer on Google’s Android team who specializes in “[o]perating systems development for mobile devices,” lives in Austin, Texas. A1070-72.

**F. Rockstar Sues in the EDTX; Google Forum Shops to the NDCA.**

On October 31, 2013, Rockstar and MobileStar filed patent infringement lawsuits in the EDTX against Samsung, ASUS, HTC, Huawei, LG, Pantech, and ZTE—all mobile device manufacturers. A919-32. The EDTX was a logical forum because Rockstar, MobileStar, and Samsung are each headquartered there. Samsung has a huge mobile-device presence in the EDTX, and ZTE is also headquartered in Texas, only a few miles from the EDTX border. The other defendants are scattered in different locations around the country: California, Washington, New Jersey, and Georgia. But given that the EDTX had the strongest ties to Rockstar, as well as to the defendants as a whole, the EDTX was a logical central venue for all the suits. On December 23, rather than intervene in the EDTX case, Google filed its action for declaratory judgment in the NDCA. A933-35. On December 31, Rockstar and MobileStar added Google as a defendant to the Samsung case in the EDTX. A69-135. Neither Google nor EDTX-based Samsung

moved to sever their joinder in a single action in the EDTX.

On January 23, 2014, Rockstar and MobileStar filed a motion to dismiss the NDCA action. They maintained that the NDCA lacked jurisdiction over MobileStar and argued for dismissal under the first-to-file rule. A298-328; RA2-4. In an order issued April 17, the NDCA court denied the motion to dismiss. A300-28. Rockstar then filed a motion to transfer the NDCA action to the EDTX. RA29-63. There was a hearing on June 26, during which the NDCA court expressed the view that this suit should precede the NDCA case so the court “would have the benefit of looking at what the Texas judge had done with claim construction.” RA93. But in an order issued on August 20, the NDCA court reserved ruling on the motion to transfer pending the outcome of this mandamus proceeding, noting that if the EDTX court’s discretionary ruling stands, the better course would be to send the NDCA case to Texas for consolidation and a single trial. RA127-28.

#### **IV. STANDARD OF REVIEW**

Three requirements must be met before a writ of mandamus may issue:

(1) the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires ...; (2) the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable; and (3) even if the first two prerequisites have been met, the issuing court ... must be satisfied that the writ is appropriate under the circumstances.

*In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (internal quotes omitted). To show a “clear and indisputable” right to the writ, the petitioner must



Dated: August 22, 2014

Respectfully submitted,

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