

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

ROCKSTAR CONSORTIUM US LP	)	
AND NETSTAR TECHNOLOGIES LLC,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 13-cv-00893-RG
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
GOOGLE INC.	)	
	)	
Defendant.	)	
	)	
	)	

**GOOGLE’S RESPONSE TO ROCKSTAR’S MOTION TO SET HEARING ON  
OUTSTANDING ISSUES**

On October 30, 2014, Rockstar filed an “unopposed” motion to set hearing on outstanding issues. (Dkt. No. 234.) It is correct that Google does not oppose a hearing being set at a time convenient for the Court and the parties on outstanding issues before the Court, should the Court find a hearing necessary or useful. However, that is all Google agreed not to oppose. Google did not agree that a hearing be set “within the “next 2-3 weeks,” as Rockstar’s motion requests.<sup>1</sup>

Google opposes this short timeframe because it is simply not practicable given that briefing on the outstanding issues will likely not even be completed in this timeframe. For the Court’s convenience, below is a list of the issues currently outstanding and their status:

- Rockstar’s Motion for Extension of Time to Complete Discovery (Dkt. 233). Rockstar’s motion was filed on October 30. Under the Local Rules, Google’s response would not be due until November 17. Rockstar asked Google to agree to an expedited briefing schedule. Google has agreed to respond by November 11, 2014, but the parties have not agreed on the remaining schedule for replies and sur-replies, which would extend briefing at least into the following week.

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<sup>1</sup> Google asked Rockstar to withdraw its “unopposed” motion and refile it to properly reflect what Google agreed not to oppose. Rockstar would not do so.

- The issues covered in the expedited motions to compel the parties filed on October 24, 2014. (Dkt. Nos. 222, 228). Under the Local Rules, the parties' responses would be due on November 10. The parties agreed responsive briefs will be filed on November 5, and it is Google's understanding that the parties intend to separately file a proposed expedited briefing schedule. The parties explicitly agreed, however, to defer discussions on whether replies and sur-replies will be filed and if so, by when. Thus, there may be further briefing on this issue after November 5.
- Google's Motion for Leave to Amend Invalidity Contentions (Dkt. No. 220). Google's motion was filed on October 24. Under the Local Rules, Rockstar's responsive brief would be due on November 10. The parties have tentatively agreed on an expedited briefing schedule, under which briefing would be completed by November 14, and it is Google's understanding that the parties intend to separately file a proposed expedited briefing schedule. That said, Rockstar's agreement was subject to the caveat that it may ask for additional time depending upon when the Court sets a hearing.
- Protocol for searching Google senior executive non-email custodial ESI. (Dkt. Nos. 202-203.) The Court addressed this issue at the October 9 and 10 hearing and asked the parties to file their proposed protocols for searching the non-email custodial ESI of the five executives identified in Rockstar's motion to compel (Dkt. 126.) The parties did so on October 15.
- Whether Nortel waived privilege and work product protection by disclosing Nortel laptops to Rockstar. The Court addressed this issue at the October 9 hearing and asked the parties and Nortel to file supplemental briefs on this issue. Nortel and Rockstar filed their supplemental briefs on October 20. (Dkt. Nos. 210, 211.) Google filed its supplemental brief on October 30. (Dkt. Nos. 235, 240.) Rockstar omits this issue in its request for a hearing.

In sum, Google does not object to a hearing being set on outstanding issues after they are all fully briefed, if the Court believes that a hearing is necessary. Google does object to a hearing on an issue being set before these issues are fully briefed.

DATED: October 31, 2014

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By /s/ David A. Perlson

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's ECF system.

*/s/ Andrea Pallios Roberts*

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Andrea Pallios Roberts