

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,)
) Civil Action No. 13-cv-00893-RG
v.)
)
GOOGLE INC.)
)
Defendant.)
)
)

DEFENDANT GOOGLE INC.’S INVALIDITY CONTENTIONS

I. INTRODUCTION

Pursuant to Rule 3-3 of the Local Patent Rules (“P.R.”) of the Eastern District of Texas and the Scheduling Order governing this action (D.I. 68), defendant Google Inc. (“Google”) hereby provides its Invalidity Contentions with respect to the asserted claims identified by plaintiffs Rockstar Consortium US LP and Netstar Technologies LLC (collectively “Rockstar”) in its Disclosure of Asserted Claims and Infringement Contentions dated March 24, 2014. The asserted claims are claim 1 of U.S. Patent No. 6,098,065 (“065 patent”); claims 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 of U.S. Patent No. 7,236,969 B1 (“969 patent”); claims 1, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, and 25 of U.S. Patent No. 7,469,245 B2 (“245 patent”); claims 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, and 47 of U.S. Patent No. 7,672,970 B2 (“970 patent”); claims 1, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, and 18 of U.S. Patent No. 7,895,178 B2 (“178 patent”); claims 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of U.S. Patent No. 7,895,183 B2 (“183 patent”);

and claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 28 of U.S. Patent No. 7,933,883 B2 (“883 patent”) (collectively the “asserted claims”).

With respect to each asserted claim and based on its investigation to date, Google hereby:

(a) identifies each currently known item of prior art that either anticipates or renders obvious each asserted claim; (b) specifies whether each such item of prior art (or a combination of several of the same) anticipates each asserted claim or renders it obvious; (c) submits a chart identifying where each element in each asserted claim is disclosed, described, or taught in the prior art, including for each element that is governed by 35 U.S.C. § 112 ¶ 6, the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and (d) identifies the grounds for invalidating asserted claims based on indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1).

In addition, pursuant to P.R. 3-4(a) and (b) and based on its investigation to date, Google has produced documents in its possession, custody, or control.

II. RESERVATIONS

Consistent with P.R. 3-6 and the Discovery Order in this case (D.I. 69), Google reserves the right to amend these Invalidity Contentions. The information and documents that Google produces is provisional and subject to further revision as follows. Google expressly reserves the right to amend the disclosures and document production herein should Rockstar provide any information that it failed to provide in its P.R. 3-1 and 3-2 disclosures or should Rockstar amend its P.R. 3-1 or 3-2 disclosures in any way, whether explicitly or implicitly. Further, because limited discovery has only recently begun and because Google has not yet completed its search for and analysis of relevant prior art, Google reserves the right to revise, amend, and/or supplement the information provided herein, including identifying and relying on additional

references, should Google's further search and analysis yield additional information or references, consistent with the Patent Rules and the Federal Rules of Civil Procedure. Moreover, Google reserves the right to revise its ultimate contentions concerning the invalidity of the claims of the asserted patents, which may change depending upon the Court's construction of the claims of the asserted patents, any findings as to the priority dates of the asserted patents, and/or positions that Rockstar or its expert witness(es) may take concerning claim interpretation, infringement, and/or invalidity issues.

Prior art not included in this disclosure, whether known or not known to Google may become relevant. In particular, Google is currently unaware of the extent, if any, to which Rockstar will contend that limitations of the asserted claims are not disclosed in the prior art identified by Google, particularly given that Rockstar has asserted 144 claims against Google. To the extent that such an issue arises, Google reserves the right to identify other references that would have made the addition of the allegedly missing limitation to the disclosed device or method obvious.

Moreover, the mere fact that Rockstar has raised so many claims and has refused to narrow the claims has prejudiced Google and hindered its ability to do a full and complete analysis. It is notable that Rockstar refused to reduce the number of asserted claims and provided no commitment to do so. If and when Rockstar ultimately does so, Google reserves its right to conduct a more targeted search and to provide further contentions as appropriate and needed.

Google's claim charts in Exhibits A-1 to A-39 cite to particular teachings and disclosures of the prior art as applied to features of the asserted claims. However, persons having ordinary skill in the art generally may view an item of prior art in the context of other publications,

literature, products, and understanding. As such, the cited portions are only examples, and Google reserves the right to rely on un-cited portions of the prior art references and on other publications and expert testimony as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that the prior art discloses a claim limitation. Google further reserves the right to rely on un-cited portions of the prior art references, other publications, and testimony to establish bases for combinations of certain cited references that render the asserted claims obvious.

The references discussed in the claim charts in Exhibits A-1 to A-39 may disclose the elements of the asserted claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. The suggested obviousness combinations are provided in the alternative to Google's anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not by itself anticipatory.

For purposes of these Invalidity Contentions, Google identifies prior art references and provides element-by-element claim charts based in part on the apparent constructions of the asserted claims advanced by Rockstar in its Infringement Contentions, which Google has already detailed are inadequate. Nothing stated herein shall be treated as an admission or suggestion that Google agrees with Rockstar regarding either the scope of any of the asserted claims or the claim constructions advanced by it in its Infringement Contentions. Moreover, nothing in these Invalidity Contentions shall be treated as an admission that Google's accused technology meets any limitations of the claims. Further, nothing in these Invalidity Contentions shall be treated as an admission of the date of conception or reduction to practice for the asserted claims.

Depending on the Court's construction of the claims of the asserted patents, and/or positions that Rockstar or its expert witness(es) may take concerning claim interpretation, the

date of conception or reduction to practice of the asserted claims, infringement, and/or invalidity issues, different ones of the charted prior art references in Exhibits A-1 to A-39 may be of greater or lesser relevance and different combinations of these references may be implicated. Given this uncertainty, the charts may reflect alternative applications of the prior art against the asserted claims.

Pursuant to P.R. 3-3 and 3-4, Google has provided disclosures and related documents pertaining only to the asserted claims as identified by Rockstar in its Infringement Contentions. Google reserves the right to modify, amend, or supplement these Invalidity Contentions to show the invalidity of any additional claims that the Court may allow Rockstar to later assert. Google further reserves the right to supplement its P.R. 3-4 document production should it later find additional, responsive documents.

III. INVALIDITY CONTENTIONS

A. Identification of Prior Art Pursuant to P.R. 3-3(a)

In addition to the prior art identified in the prosecution history of the asserted patents, Google intends to rely upon the prior art identified pursuant to P.R. 3-3(a) in Exhibit C to these Invalidity Contentions. Exhibit C provides the full identity of each item of prior art, including: (1) each patent by its patent number, country of origin, and date of issue; (2) each non-patent publication by its title, date of publication, and, where feasible, author and publisher; (3) 35 U.S.C. § 102(b) prior art by the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known; and (4) 35 U.S.C. § 102(g) prior art by

the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant.

Google's identification of patents and publications as prior art herein and in the attached charts under 35 U.S.C. §§102(a), (b), (e), and/or (g) and §103 includes the publications themselves as well as the use of the products and systems, and use thereof, described therein. Although Google's investigation continues, information available to date indicates that such products and systems were (1) known or used in the country before the alleged invention of the claimed subject matter of the asserted claims, (2) were in public use and/or on sale in this country more than one year before the filing date of the patent, and/or (3) were invented by another who did not abandon, suppress, or conceal, before the alleged invention of the claimed subject matter of the asserted claim. Upon information and belief, these prior art products and systems and their associated references anticipate and/or render obvious each of the asserted claims.

Google reserves the right to assert that the asserted patents are invalid under 35 U.S.C. §102(f) in the event Google obtains evidence that Richard Prescott Skillen and Frederick Caldwell Livermore, the named inventors of the asserted patents, did not invent (either together or in conjunction with other parties) the subject matter claimed in the asserted patents. Should Google obtain such evidence, it will provide the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived.

Google further intends to rely on inventor admissions concerning the scope of the prior art relevant to the asserted patents found in, *inter alia*: the patent prosecution histories for the asserted patents and related patents, patent applications, and/or re-examinations; any deposition

testimony of the named inventors on the asserted patents; and the papers filed and any evidence submitted by Rockstar in conjunction with this litigation.

Discovery is ongoing, and Google’s prior art investigation and third party discovery is therefore not yet complete. Google reserves the right to present additional items of prior art under 35 U.S.C. § 102(a), (b), (e), and/or (g), and/or § 103 located during the course of discovery or further investigation. For example, Google expects to issue subpoenas to third parties believed to have knowledge, documentation and/or corroborating evidence concerning some of the prior art listed in Exhibit C and/or additional prior art. These third parties include the authors, inventors, or assignees of the references listed in Exhibit C. In addition, Google reserves the right to assert invalidity under 35 U.S.C. § 102(c), (d), or (f) to the extent that discovery or further investigation yield information forming the basis for such claims.

B. Disclosure of Invalidity Due to Anticipation Pursuant to P.R. 3-3(b) and (c)

In accordance with P.R. 3-3(b) and (c), prior art references anticipating some or all of the asserted claims of the asserted patents are listed in Table 1 below. A full citation to each reference is found in Exhibit C, along with the “Short Name” used to identify each reference throughout these disclosures, including the claim charts of Exhibits A-1 to A-39. Table 1 identifies the claims anticipated by each reference and the chart in Exhibits A-1 to A-39 that identifies specific examples of where each limitation of the anticipated claims is found in that reference.

Table 1: Prior Art References Anticipating Asserted Claims of the Patents in Suit.

Exhibit A Chart	Prior Art
A-1	Adapt/X Advertiser (“ADAPT/X”) and references cited therein.

A-2	Alta Vista Search Engine (“ALTA VISTA”) and references cited therein.
A-3	Chris Buckley, “Implementation of the SMART Information Retrieval System,” Department of Computer Science, Cornell University (May 1985) (“BUCKLEY”)
A-4	U.S. Patent No. 5,901,287 (“BULL”)
A-5	U.S. Patent No. 5,761,662 (“DASAN”)
A-6	Rick Dedrick, <i>Interactive Electronic Advertising</i> , IEEE 1994 (“DEDRICK 1994”)
A-7	Rick Dedrick, <i>A Consumption Model for Targeted Electronic Advertising</i> , IEEE 1995 (“DEDRICK 1995”)
A-8	U.S. Patent No. 5,710,884 (“DEDRICK PATENT”)
A-9	DoubleClick system (“DoubleClick”) and references cited therein.
A-9	U.S. Patent No. 5,948,061 (“MERRIMAN I”)
A-9	U.S. Patent No. 7,844,488 (“MERRIMAN II”)
A-10	Excite Search Engine (“EXCITE”) and references cited therein.
A-11	U.S. Patent No. 7,072,849 (“FILEPP”)
A-12	Fuzzy Query Modelling Assistant System (“FMQA”)
A-13	Edward Fox, <i>Development of the Coder System: A Testbed for Artificial Intelligence Methods in Information Retrieval</i> (Fox)
A-14	Katherine Gallagher and Jeffrey Parsons, <i>A Framework for Targeting Banner Advertising on the Internet</i> , Proceedings of the Thirtieth Annual Hawaii International Conference on System Sciences, 1997 IEEE (“GALLAGHER”)

A-15	HEALTHGATE and references cited therein.
A-16	Hotbot Search Engine (“HOTBOT”) and references cited therein.
A-17	Infoseek Search Engine (“INFOSEEK”) and references cited therein.
A-18	Kohda, <i>Ubiquitous Advertising on the WWW: Merging Advertisement on the Browser,</i> Computer Networks and ISDN Systems, Vol. 28, Nos. 7-11, pp. 1493-1499 (May 1996) (“KOHDA ‘96”)
A-19	U.S. Patent No., 7,136,853 (“KOHDA”)
A-20	Henrik Larsen and Ronald Yager, “Query Fuzzification for Internet Information Retrieval,” (1996) (“LARSEN”)
A-21	Gary Mooney, “Intelligent information retrieval from the World Wide Web using fuzzy user modelling,” Information Research News, Vol. 21, No. 67 (Winter 1996) (“MOONEY”)
A-22	Sung Myaeng and Robert Korfhage, “Integration of User Profiles: Models and Experiments in Information Retrieval,” Information Processing & Management, Vol. 26, No. 6 (1990) (“MYAENG”)
A-23	WO9721183A1 (NAQVI WO)
A-24	NetGravity Ad Server (“NetGravity”) and references cited therein.
A-25	Open Text Search Engine (“OPEN TEXT”) and references cited therein.
A-26	Profile-Based System (“PBS”) and references cited therein.
A-27	U.S. Patent No. 6,119,101 (“PECKOVER”)
A-28	“Study: Search Engine Vendors Adopt New Strategies,” <i>Phillips Business Information’s Internet Week</i> , Aug. 5, 1996 (“PHILLIPS BUSINESS”)

A-29	<i>Make Sure Search Engines Find Your Site</i> , PR News, May 6, 1996 (“PR NEWS”)
A-30	Tadeusz Radecki, “Fuzzy Set Theoretical Approach to Document Retrieval” <i>Information Processing & Management</i> , Vol. 15, pp. 247-259 (1979) (“RADECKI”)
A-31	U.S. Patent No. 6,374,237 (“REESE”)
A-32	System for the Mechanical Analysis and Retrieval of Text (“SMART”)
A-33	SUBMIT-IT and references cited therein.
A-34	U.S. Patent No. 5,886,683 (“TOGNAZZINI”)
A-35	Turpeinen, <i>Architecture for Agent-Mediated Personal News Service</i> (“TURPEINEN”).
A-36	Lycos Search Engine (“LYCOS”) and references cited therein.
A-37	WebCrawler Search Engine (“WEBCRAWLER”) and references cited therein.
A-38	Wilms, <i>A Natural Language Interface For An Intelligent Document Information And Retrieval System</i> (1988) (“WILMS”)
A-39	Yahoo! Search Engine (“YAHOO!”) and references cited therein.

The art cited in Exhibits A-1 to A-39 are illustrative and not exhaustive. Further, these claim charts provide illustrative citations to where each element may be found in the prior art references. The cited references may contain other disclosures of each claim element as well. Furthermore, as noted above, the cited references under 35 U.S.C. §§102(a), (b), (e), and/or (g) include the publications themselves as well as the use of the products and systems described therein. Although Google’s investigation continues, information available to date indicates that such products and systems were (1) known or used in the country before the alleged invention of

identified above and/or in the attached charts in connection with Google's P.R. 3-3(a) disclosures.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record are being served via electronic mail with a copy of this document on May 23, 2014.

/s/ Andrea Pallios Roberts

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