

# **EXHIBIT 1**

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**From:** Austin Curry [acurry@McKoolSmith.com]  
**Sent:** Tuesday, May 25, 2010 1:06 PM  
**To:** Evette Pennypacker  
**Cc:** Douglas A. Cawley; Ted Stevenson; Chris Bunt; Jonathan Yim; Mike Jones; Allen Gardner; Diane Hughes; Angela Ivy; Todd Briggs; Andrew Bramhall; Claude M. Stern; Jesse Geraci  
**Subject:** RE: Follow Up to Today's Meet and Confer

Evette,

As you know, Bedrock has already filed its motion for clarification. We considered your email but found it to be unsatisfactory for the following reasons.

1. The dispute over the Protective Order was due to Google's interpretation of the "intent" of the Protective Order. There is nothing in the Protective Order giving Google rights to limit the number of qualified people who can see Google's source code. Google's interpretation of the Protective Order dodged a question that I posed to Todd Briggs and Claude Stern on the first meet and confer as to whether each of Bedrock's experts can have his own printout of Google's source code.
2. Although Bedrock disagreed with Google's interpretation of the Protective Order, Bedrock was willing to compromise with Google and offered to limit its number of experts to three. Bedrock extended that offer on the first meet and confer. Todd Briggs and Claude Stern promised to check to see if Bedrock's compromise was acceptable to Google. Bedrock's offer was rejected when, instead of telling us whether Google would be ok or not ok with Bedrock's compromise, your partner, Todd Briggs, sent us a letter justifying your interpretation of the Protective Order.
3. After Bedrock's compromise was rejected, I asked Todd if his letter was an indication that Google was not ok with Bedrock having three experts.
4. You replied to my question for Todd, and you asked me if we had a "legitimate reason" for needing three experts.
5. I replied to your question giving our reason for needing three experts, and I asked you to tell me whether Google would be ok with Bedrock's having three experts, which is the third time that I had asked this question.
6. On our second meet and confer, you were not prepared to answer my question, despite your representations in your email below. Instead, you were only willing to check with Google whether it would be ok for Bedrock to have three experts. This was the third time our attempt at compromise had either been rejected or gone unanswered.
7. Regardless, your compromise below is unacceptable. First, you've already rejected our offer to have three experts. Second, at this point, if we were to compromise, it would include the following rights:
  - (i) our retention of another expert would not be conditioned on the death of one of our current experts but would include the firing of an expert, an expert's quitting, etc.;
  - (ii) other of Bedrock's experts could see Google's source code upon 3 days advance written notice to Google;
  - (iii) if Google objected to the additional expert's seeing its source code, Google would be required to provide, in writing, the basis for its objection;
  - (iv) if, after (iii), the dispute was not resolved in 3 business days, Google would be required to move the Court for Protective Order to disallow the additional expert to view Google's source code, after 3 days, Google's objection would be waived;
  - (v) Bedrock could make a photocopy of the printed code for each qualified expert as well as a copy for McKool Smith's retention; and
  - (vi) the agreement would extend to all of Google's source code.

Regards,  
Austin Curry

-----Original Message-----

From: Evette Pennypacker [mailto:evettepennypacker@quinnemanuel.com]

Sent: Tuesday, May 18, 2010 6:06 PM

To: Austin Curry

Cc: Douglas A. Cawley; Ted Stevenson; Chris Bunt; Jonathan Yim; Mike Jones; Allen Gardner; Diane Hughes; Angela Ivy; Todd Briggs; Andrew Bramhall; Evette Pennypacker; Claude M. Stern; Jesse Geraci

Subject: Follow Up to Today's Meet and Confer

Austin:

We write to confirm our representation to you during our teleconference today that Google would agree to allowing three experts to view its source code produced in the case, and we would also agree to allowing each expert to have his own copy of the printed source code so long as Bedrock would confirm that (1) only the three experts already identified by Bedrock would be allowed to see such code (barring death of one of the three experts, at which point the parties would discuss the issue further), (2) the protections afforded source code generally under the protective order would apply equally to printed source code, and (3) the source code we were discussing was the source code already produced in the case and not more.

With respect to the third item above, Bedrock has steadfastly refused to provide foundation for its position in the form of an expert declaration (or otherwise) that it needs the entire source code or to even articulate what additional portions Bedrock believes is necessary for its experts to complete their analysis. We made clear during our call that, if Bedrock told us which additional portions it wanted produced, we would go back to Google and see whether we could reach agreement to produce it. Bedrock indicated that it would not provide us with such a list and wanted all of the source code produced.

Because Google does not know the amount of source code at issue here, Google cannot agree to allow its code to be duplicated and sent all around the country. If Bedrock will provide a list of the additional code portions it believes it needs and why it needs them, we are happy to discuss this further.

Best,

Evette

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