

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**BEDROCK COMPUTER,
TECHNOLOGIES, LLC**

Plaintiff,

v.

**SOFTLAYER TECHNOLOGIES,
INC., ET AL.,**

Defendants.

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No. 6:09cv269 LED-JDL

JURY DEMANDED

ORDER

Before the Court is Defendants’ Opposed Motion to Strike Untimely Supplemental Expert Report of Dr. Mark Jones (Doc. No. 667). Bedrock filed a response (Doc. No. 681). Having heard argument on the matter at the hearing held on April 4, 2011, Defendants’ Motion is **DENIED**.

Also before the Court is Bedrock’s Motion to Preclude Reliance on Documents and Facts Related to Performance Testing Produced by Google (Doc. No. 693). Google filed a response (Doc. No. 699) and the Court heard argument on April 4, 2011.

Due to the lack of properly designated expert testimony regarding the documents at issue, the Court **GRANTS** Bedrock’s Motion. The Court finds that in order for this information to be helpful to the jury, the documents must be explained. As it stands right now, Google has not represented that its expert will explain the significance of the performance testing documents or the documents related to Google’s traffic loads. Therefore, these documents will be excluded, without prejudice to how events unfold at trial. The Court will consider a request to present an offer of proof at an

appropriate time during the course of trial, if necessary.¹

So ORDERED and SIGNED this 5th day of April, 2011.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

¹ The parties should continue to pursue the course of action outlined by the Court at the April 4th hearing where Google identifies any information it intends to offer at trial and Bedrock, in turn, may provide any conclusions by Dr. Jones on the matter.