

# **EXHIBIT A**

Issued by the  
UNITED STATES DISTRICT COURT  
Western District of Texas

DELIVERED THIS 27 DAY OF SEP  
BY [Signature]  
PROFESSIONAL CIVIL PROCESS

AFFINITY LABS OF TEXAS, LLC,  
V.  
APPLE INC.,

SUBPOENA IN A CIVIL CASE

Case Number: 4:09-CV-4436-CW  
Northern District of California

TO: Larson Newman & Abel, LLP  
5914 West Courtyard Drive, Suite 200  
Austin, Texas 78730

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Ross Weidmann Inc. dba Affiliated Reporters 805 West 10th Street, Suite 400, Austin, Texas 78701-2029	DATE AND TIME 10/20/2010 9:00 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Attached Exhibit A

PLACE Ross Weidmann Inc. dba Affiliated Reporters 805 West 10th Street, Suite 400, Austin, Texas 78701-2029	DATE AND TIME 10/11/2010 9:00 am
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

ORIGINAL CHECK HAS A COLORED BACKGROUND PRINTED ON CHEMICAL REACTIVE PAPER - SEE BACK FOR DETAILS

NATIONWIDE LEGAL, INC.  
CLIENT ADVANCE ACCOUNT  
1609 JAMES M. WOOD BLVD, 2ND FLOOR  
LOS ANGELES, CA 90015  
(213) 249-9999

BANK OF AMERICA  
MANHATTAN VILLAGE BRANCH 1081 (310) 884-1870  
3016 SEPULVEDA BOULEVARD  
MANHATTAN BEACH, CA 90266  
16-66/1220

067732

DATE 9/24/10

PAY TO THE ORDER OF LARSON NEWMAN & ABEL, LLP

\$ 51.00

FIFTY ONE & 00/100

DOLLARS

DR# 193

CLIENT O'MELVENY & MYERS

CONTROL # 292916

NOT TO EXCEED \$1,500.00  
VOID AFTER 90 DAYS

[Signature]

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UNITED STATES DISTRICT COURT  
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V.

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PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Nicholas J. Whilt</i> Attorney for Defendant Apple Inc.	DATE 9/24/2010
---	-------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Nicholas Whilt, Esq., O'Melveny & Myers LLP, 400 South Hope Street  
Los Angeles, CA 90071, nwhilt@omm.com, (213) 430-7503

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

**Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:**

**(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) DUTIES IN RESPONDING TO A SUBPOENA.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) CONTEMPT.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

1 **EXHIBIT A**

2 **DEFINITIONS**

3 1. **"Affinity"** shall mean Plaintiff Affinity Labs of Texas, LLC, and anyone acting on  
4 behalf of Affinity.

5 2. **"Apple"** shall mean Defendant Apple Inc., and anyone acting on behalf of Apple.

6 3. The term **"date"** shall mean the exact date, if known, or the closest approximation to  
7 the exact date as can be specified, including without limitation, the year, month, week in a month,  
8 or part of a month.

9 4. **"Larson, Newman & Abel, LLP," "you,"** or **"your"** shall refer to the law firm of  
10 Larson, Newman & Abel, LLP, its predecessors, and anyone acting on behalf of Larson, Newman  
11 & Abel, LLP, including, without limitation, Jeffrey S. Abel, J. Gustav Larson, Timothy G.  
12 Newman, Paul J. Polansky, and John R. Schell.

13 5. **"Baker Botts LLP"** shall refer to the law firm of Baker Botts LLP, its predecessors,  
14 and anyone acting on behalf of Baker Botts LLP, including, without limitation, Roger J.  
15 Fulghum.

16 6. **"Trop, Pruner & Hu, P.C."** shall refer to the law firm of Trop, Pruner & Hu, P.C.,  
17 its predecessors, and anyone acting on behalf of Trop, Pruner & Hu, P.C., including, without  
18 limitation Mark J. Rozman.

19 7. **"Duane Morris LLP"** shall refer to the law firm of Duane Morris LLP, its  
20 predecessors, and anyone acting on behalf of Duane Morris LLP.

21 8. **"John R. Schell"** shall refer to the John R. Schell, and anyone acting on behalf of  
22 John R. Schell.

23 9. **"Paul J. Polansky"** shall refer to the Paul J. Polansky, and anyone acting on behalf  
24 of Paul J. Polansky.

25 10. **"Roger J. Fulghum"** shall refer to the Roger J. Fulghum, and anyone acting on  
26 behalf of Roger J. Fulghum.

27 11. **"Mark J. Rozman"** shall refer to the Mark J. Rozman, and anyone acting on behalf  
28 of Mark J. Rozman.

1           12. "Kevin R. Imes" shall refer to the Kevin R. Imes, and anyone acting on behalf of  
2 Kevin R. Imes.

3           13. "Russell W. White" shall refer to the Russell W. White, and anyone acting on  
4 behalf of Russell W. White.

5           14. "Harlie D. Frost" shall refer to the Harlie D. Frost, and anyone acting on behalf of  
6 Harlie D. Frost.

7           15. The terms "relate to," "related to," or "relating to" shall mean in whole or in part  
8 constituting, containing, embodying, reflecting, describing, analyzing, identifying, mentioning,  
9 stating, referring directly or indirectly to, dealing with, or in any way pertaining to.

10          16. Except where the context does not permit, the term "including" shall be without  
11 limitation.

12          17. Except where the context does not permit, the terms "and" and "or" shall be both  
13 conjunctive and disjunctive.

14          18. Except where the context does not permit, the terms "each" and "any" shall mean  
15 any and all.

16          19. The term "document" shall be construed under the broadest possible construction  
17 under the Federal Rules of Civil Procedure and shall include without limitation any written,  
18 recorded, graphic, or other matter, whether sent or received or made or used internally, however  
19 produced or reproduced and whatever the medium on which it was produced or reproduced  
20 (whether on paper, cards, charts, files, or printouts; tapes, discs, belts, video tapes, audiotapes,  
21 tape recordings, cassettes, or other types of voice recording or transcription; computer tapes,  
22 databases, e-mails; pictures, photographs, slides, films, microfilms, motion pictures; or any other  
23 medium), and any other tangible item or thing of readable, recorded, or visual material of  
24 whatever nature including without limitation originals, drafts, and all non-identical copies of each  
25 document (which, by reason of any variation, such as the presence or absence of hand-written  
26 notes or underlining, represents a distinct version). By way of example, the term "document(s)"  
27 as used herein shall include, without limitation: correspondence; blueprints; memoranda; notes;  
28 diaries; letters; telegraphs; telegrams; telexes; e-mails; minutes; agendas; contracts; reports;

1 studies; checks; statements; receipts; returns; summaries; pamphlets; circulars; press releases;  
2 advertisements; books; inter-office and intra-office communications; handwritten or typewritten  
3 notes; notations or summaries of telephone conversations, meetings, or conferences; bulletins;  
4 computer printouts; databases; teletypes; telefax; invoices; worksheets; photographs; tape  
5 recordings; and all other tangible items of readable, recorded, or visual material of any kind.

6 20. The term **"thing"** shall be construed under the broadest possible construction under  
7 the Federal Rules of Civil Procedure.

8 21. The term **"communication"** shall mean any transmission of information in any  
9 context or situation by or between two or more persons by any means or medium whatsoever,  
10 whether in the form of an original, a draft, or a copy, whether stored in hard copy, electronically  
11 or digitally, or on tape, either orally or in writing, including without limitation but not limited to  
12 conversations, correspondence, electronic mails, telexes, facsimile transmissions, telecopies,  
13 recordings in any medium of oral, written, or typed communication, telephone or message logs,  
14 notes or memoranda relating to written or oral communications, and any translation thereof.

15 22. The term **"Patents-in-Suit"** shall mean the U.S. Patent No. 7,187,947, U.S. Patent  
16 No. 7,440,772, and U.S. Patent No. 7,486,926.

17 23. The term **"Other Patents"** shall mean: (a) U.S. Patent No. 7,251,454, U.S. Patent  
18 No. 7,062,225, and U.S. Patent No. 7,519,327, (b) any patent or patent application which claims  
19 priority from any of the Patents-in-Suit, U.S. Patent No. 7,251,454, U.S. Patent No. 7,062,225, or  
20 U.S. Patent No. 7,519,327, (c) any patents or patent applications that claim priority from any  
21 patent on which any of the Patents-in-Suit, U.S. Patent No. 7,251,454, U.S. Patent No. 7,062,225,  
22 or U.S. Patent No. 7,519,327 claims priority, (d) any patents or patent applications on which any  
23 of the Patents-in-Suit, U.S. Patent No. 7,251,454, U.S. Patent No. 7,062,225, or U.S. Patent No.  
24 7,519,327 depends for priority, (e) any reissues or reexaminations of any of the aforementioned  
25 patents or patent applications, and (f) any foreign counterparts of any of the aforementioned  
26 patents or patent applications—all whether or not abandoned and whether or not issued.

27 24. **"Complaint"** shall mean Affinity's Complaint for Patent Infringement filed on  
28 February 16, 2010, and any amendments thereto.





1 **DEPOSITION TOPIC NO. 7:**

2 The timing and circumstances of your receipt of prior art from anyone in connection with  
3 any of the Patents-in-Suit and Other Patents.

4 **DEPOSITION TOPIC NO. 8:**

5 The timing, circumstances, and reasons for any decisions to disclose or not disclose prior  
6 art or information material to the prosecution of any of the applications that led to the Patents-in-  
7 Suit and Other Patents to the United States Patent & Trademark Office, as required by 37 C.F.R.  
8 § 1.56.

9 **DEPOSITION TOPIC NO. 9:**

10 The timing, circumstances, and substance of all communications between you and anyone  
11 at the United States Patent & Trademark Office concerning the Patents-in-Suit and Other Patents.

12 **DEPOSITION TOPIC NO. 10:**

13 The timing, circumstances, and substance of all communications between you and Baker  
14 Botts LLP, Trop, Pruner & Hu, P.C., Duane Morris LLP, John R. Schell, Paul J. Polansky, Roger  
15 J. Fulghum, Mark J. Rozman, Kevin R. Imes, Russell W. White, Harlie J. Frost, and/or anyone  
16 involved in the prosecution of the Patents-in-Suit or Other Patents concerning the Patents-in-Suit  
17 or Other Patents.

18 **DEPOSITION TOPIC NO. 11:**

19 The timing, circumstances, and substance of all communications between you and  
20 Affinity or the named inventors to the Patents-in-Suit or Other Patents concerning the Patents-in-  
21 Suit and Other Patents.

22 **DEPOSITION TOPIC NO. 12:**

23 The timing, circumstances, and substance of all communications between you and any  
24 third party concerning the Patents-in-Suit and Other Patents.

25 **DEPOSITION TOPIC NO. 13:**

26 The identity of individuals at Affinity involved in or related to the preparation and  
27 prosecution of each of the applications that led to the Patents-in-Suit and Other Patents, and their  
28

1    respective roles in the preparation and prosecution of each of the applications that led to the  
2    Patents-in-Suit and Other Patents.

3    **DEPOSITION TOPIC NO. 14:**

4            All documents requested by this subpoena (including those requested in Exhibit B  
5    attached to this subpoena), as well as storage and retention of those documents.

6    **DEPOSITION TOPIC NO. 15:**

7            The source of information considered and/or used by you during the prosecution of the  
8    Patents-in-Suit and Other Patents.

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**EXHIBIT B**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendant Apple Inc. (“Apple”) request the following documents and things for inspection and copying by 9:00 a.m. on October 11, 2010, at Ross Weidmann Inc. (d/b/a Affiliated Reporters), 805 West 10<sup>th</sup> Street Suite 400, Austin, Texas 78701-2029, or at a time and location mutually agreeable to the parties.

**DEFINITIONS**

1. “Affinity” shall mean Plaintiff Affinity Labs of Texas, LLC, and anyone acting on behalf of Affinity.
2. “Apple” shall mean Defendant Apple Inc., and anyone acting on behalf of Apple.
3. The term “date” shall mean the exact date, if known, or the closest approximation to the exact date as can be specified, including without limitation, the year, month, week in a month, or part of a month.
4. “Larson, Newman & Abel, LLP,” “you,” or “your” shall refer to the law firm of Larson, Newman & Abel, LLP, its predecessors, and anyone acting on behalf of Larson, Newman & Abel, LLP, including, without limitation, Jeffrey S. Abel, J. Gustav Larson, Timothy G. Newman, Paul J. Polansky, and John R. Schell.
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20          19. The term "document" shall be construed under the broadest possible construction  
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22 recorded, graphic, or other matter, whether sent or received or made or used internally, however  
23 produced or reproduced and whatever the medium on which it was produced or reproduced  
24 (whether on paper, cards, charts, files, or printouts; tapes, discs, belts, video tapes, audiotapes,  
25 tape recordings, cassettes, or other types of voice recording or transcription; computer tapes,  
26 databases, e-mails; pictures, photographs, slides, films, microfilms, motion pictures; or any other  
27 medium), and any other tangible item or thing of readable, recorded, or visual material of  
28 whatever nature including without limitation originals, drafts, and all non-identical copies of each

1 document (which, by reason of any variation, such as the presence or absence of hand-written  
2 notes or underlining, represents a distinct version). By way of example, the term "document(s)"  
3 as used herein shall include, without limitation: correspondence; blueprints; memoranda; notes;  
4 diaries; letters; telegraphs; telegrams; telexes; e-mails; minutes; agendas; contracts; reports;  
5 studies; checks; statements; receipts; returns; summaries; pamphlets; circulars; press releases;  
6 advertisements; books; inter-office and intra-office communications; handwritten or typewritten  
7 notes; notations or summaries of telephone conversations, meetings, or conferences; bulletins;  
8 computer printouts; databases; teletypes; telefax; invoices; worksheets; photographs; tape  
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15 or digitally, or on tape, either orally or in writing, including without limitation but not limited to  
16 conversations, correspondence, electronic mails, telexes, facsimile transmissions, telecopies,  
17 recordings in any medium of oral, written, or typed communication, telephone or message logs,  
18 notes or memoranda relating to written or oral communications, and any translation thereof.

19 22. The term "**Patents-in-Suit**" shall mean the U.S. Patent No. 7,187,947, U.S. Patent  
20 No. 7,440,772, and U.S. Patent No. 7,486,926.

21 23. The term "**Other Patents**" shall mean: (a) U.S. Patent No. 7,251,454, U.S. Patent  
22 No. 7,062,225, and U.S. Patent No. 7,519,327, (b) any patent or patent application which claims  
23 priority from any of the Patents-in-Suit, U.S. Patent No. 7,251,454, U.S. Patent No. 7,062,225, or  
24 U.S. Patent No. 7,519,327, (c) any patents or patent applications that claim priority from any  
25 patent on which any of the Patents-in-Suit, U.S. Patent No. 7,251,454, U.S. Patent No. 7,062,225,  
26 or U.S. Patent No. 7,519,327 claims priority, (d) any patents or patent applications on which any  
27 of the Patents-in-Suit, U.S. Patent No. 7,251,454, U.S. Patent No. 7,062,225, or U.S. Patent No.  
28 7,519,327 depends for priority, (e) any reissues or reexaminations of any of the aforementioned

1 patents or patent applications, and (f) any foreign counterparts of any of the aforementioned  
2 patents or patent applications—all whether or not abandoned and whether or not issued.

3 24. “Complaint” shall mean Affinity’s Complaint for Patent Infringement filed on  
4 February 16, 2010, and any amendments thereto.

5 25. The term “prior art” shall have the same meaning as used in 35 U.S.C. § 103, and  
6 includes any patent, printed publication, prior knowledge, prior use, prior sale or offer for sale, or  
7 other act or event defined in 35 U.S.C. § 102, taken singly or in combination.

8 26. The term “asserted claim” means any claim of the Patents-in-Suit that Affinity  
9 contends Apple has infringed or is infringing.

### 10 INSTRUCTIONS

11 1. These requests shall apply to all documents in your possession, custody, or control at  
12 the present time, or coming into your possession, custody or control prior to the date of the  
13 production. If you know of the existence, past or present, of any documents or things requested  
14 below, but are unable to produce such documents or things because they are not presently in your  
15 possession, custody, or control, you shall so state and shall identify such documents or things, and  
16 the person who has possession, custody or control of the documents or things.

17 2. If no documents are responsive to a particular request, you are to state in your  
18 response that no responsive documents exist.

19 3. If you withhold any document, or communication, or portion thereof, in response to  
20 any of the requests set forth below on grounds of privilege or any other claim of immunity from  
21 discovery, then for each document, communication, or portion thereof so withheld, provide a  
22 statement of the following: (a) the type of document (*e.g.*, letter, memorandum, contract, etc.); (b)  
23 its title; (c) its date; (d) its subject matter; (e) the name, address, and employer at the time of  
24 preparation of the individual(s) who authored, drafted, or prepared it; (f) the name, address, and  
25 employer at the time of dissemination of the individual(s) to whom it was directed, circulated, or  
26 copied, or who had access thereto; and (g) the grounds on which the document is being withheld  
27 (*e.g.*, “attorney-client privilege,” “work product doctrine,” etc.)

28

1           4. If you contend that a portion of a document contains information that is immune from  
2 discovery, then produce the document with the allegedly immune portion redacted therefrom and  
3 describe the redacted portion in a privilege log pursuant to the instructions in the paragraph  
4 above.

5           5. These requests seek all responsive documents in their original language, and, if such  
6 original language is not English, these requests also seek all English-language translations that  
7 may exist for any such documents.

8           6. Each document is to be produced along with all drafts, without abbreviation or  
9 redaction.

10          7. All documents shall be produced in the order that they are kept in the usual course of  
11 business, and shall be produced in their original folders, binders, covers, or containers, or  
12 photocopies thereof.

13          8. In the event that you object to any request on the ground that it is overbroad and/or  
14 unduly burdensome for any reason, respond to that request as narrowed to the least extent  
15 necessary, in your judgment, to render it not overbroad/unduly burdensome and state specifically  
16 the extent to which you have narrowed that request for purposes of your response and the factual  
17 basis for your conclusion.

18          9. In the event that you object to any request on the ground that it is vague and/or  
19 ambiguous, identify the particular words, terms or phrases that are asserted to make such request  
20 vague and/or ambiguous and specify the meaning actually attributed to you by such words for  
21 purposes of your response thereto.

22          10. These requests shall be deemed continuing so as to require further and supplemental  
23 production in accordance with the Federal Rules of Civil Procedure.

24   **REQUESTS FOR PRODUCTION**

25   **REQUEST FOR PRODUCTION NO. 1:**

26           All documents and things that constitute, refer to, or relate to the Patents-in-Suit and Other  
27 Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.  
28

1 **REQUEST FOR PRODUCTION NO. 2:**

2 All patent applications and all corresponding prosecution and file histories regarding the  
3 Patents-in-Suit and Other Patents.

4 **REQUEST FOR PRODUCTION NO. 3:**

5 All documents and things that constitute, refer to, or relate to any prior art to the Patents-  
6 in-Suit and Other Patents, including, without limitation, any documents regarding any search for  
7 prior art and any documents created or discovered in connection with any prior art search.

8 **REQUEST FOR PRODUCTION NO. 4:**

9 All documents and things that constitute, refer to, or relate to translations of any prior art  
10 to the Patents-in-Suit and Other Patents, including, without limitation, translations of the prior art.

11 **REQUEST FOR PRODUCTION NO. 5:**

12 All documents and things that constitute, refer to, or relate to any communications  
13 between Larson, Newman & Abel, LLP and Affinity regarding the Patents-in-Suit and Other  
14 Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

15 **REQUEST FOR PRODUCTION NO. 6:**

16 All documents and things that constitute, refer to, or relate to any communications  
17 between Larson, Newman & Abel, LLP and any named inventor of a Patent-in-Suit or Other  
18 Patents regarding that patent, including, without limitation, the prosecution of the patent.

19 **REQUEST FOR PRODUCTION NO. 7:**

20 All documents and things that evidence, refer to, or relate to the conception of any of the  
21 alleged inventions disclosed in the Patents-in-Suit and Other Patents.

22 **REQUEST FOR PRODUCTION NO. 8:**

23 All documents and things that evidence, refer, to or relate to the reduction to practice of  
24 any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents.

25 **REQUEST FOR PRODUCTION NO. 9:**

26 All documents and things that evidence, refer to, or relate to diligence between the dates  
27 of conception and reduction to practice of any of the alleged inventions disclosed in the Patents-  
28 in-Suit and Other Patents.



1 **REQUEST FOR PRODUCTION NO. 10:**

2 All documents and things that evidence, refer to, or relate to any written description,  
3 disclosure, or best mode of practice of any of the alleged inventions disclosed in the Patents-in-  
4 Suit and Other Patents before the filing date of any patent application related to the Patents-in-  
5 Suit and Other Patents.

6 **REQUEST FOR PRODUCTION NO. 11:**

7 All documents and things that evidence, refer to, or relate to the design, development,  
8 testing, or manufacture of any of the alleged inventions disclosed in the Patents-in-Suit and Other  
9 Patents, including, without limitation, any invention disclosures and prototypes.

10 **REQUEST FOR PRODUCTION NO. 12:**

11 All documents and things that constitute, refer to, or relate to textbooks, articles, patents,  
12 dictionaries, or other sources consulted, gathered, or reviewed in drafting or prosecuting the  
13 patent application for the Patents-in-Suit and Other Patents.

14 **REQUEST FOR PRODUCTION NO. 13:**

15 All documents and things that constitute, refer to, or relate to any license agreements, draft  
16 license agreements, correspondence relating to license, licensing negotiations, or demand letters  
17 for any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents.

18 **REQUEST FOR PRODUCTION NO. 14:**

19 All documents and things that evidence, refer to, or relate to alleged infringement by any  
20 person of the Patents-in-Suit and Other Patents.

21 **REQUEST FOR PRODUCTION NO. 15:**

22 All documents and things that constitute, refer to, or relate to any analysis or consideration  
23 of the value of the Patents-in-Suit and Other Patents.

24 **REQUEST FOR PRODUCTION NO. 16:**

25 All documents and things that constitute, refer to, or relate to Larson, Newman & Abel,  
26 LLP attorney diaries, notebooks, notes, or time records for services regarding the Patents-in-Suit  
27 and Other Patents.

28

1 **REQUEST FOR PRODUCTION NO. 17:**

2 All documents and things that evidence, refer to, or relate to the named inventors of the  
3 Patents-in-Suits and Other Patents' compliance with their duty to disclose to the United States  
4 Patent & Trademark Office information material to the patentability of the Patents-in-Suit and  
5 Other Patents as required by 37 C.F.R. § 1.56.

6 **REQUEST FOR PRODUCTION NO. 18:**

7 All documents and things that evidence, refer to, or relate to Affinity's compliance with  
8 its duty to disclose to the United States Patent & Trademark Office information material to the  
9 patentability of the Patents-in-Suit and Other Patents as required by 37 C.F.R. § 1.56.

10 **REQUEST FOR PRODUCTION NO. 19:**

11 All documents and things that evidence, refer to, or relate to Larson, Newman & Abel,  
12 LLP's compliance with its duty to disclose to the United States Patent & Trademark Office  
13 information material to the patentability of the Patents-in-Suit and Other Patents as required by 37  
14 C.F.R. § 1.56.

15 **REQUEST FOR PRODUCTION NO. 20:**

16 All documents and things that constitute, refer to, or relate to any communications with  
17 the United States Patent & Trademark Office, foreign patent agents, foreign patent counsel, or  
18 third parties regarding the Patents-in-Suit and Other Patents, including, without limitation, the  
19 prosecution of the Patents-in-Suit and Other Patents.

20 **REQUEST FOR PRODUCTION NO. 21:**

21 All documents and things that constitute, refer to, or relate to any communications with  
22 the United States Patent & Trademark Office, foreign patent agents, foreign patent counsel, or  
23 third parties regarding any prior art to the Patents-in-Suit and Other Patents.

24 **REQUEST FOR PRODUCTION NO. 22:**

25 All documents and things that constitute, refer to, or relate to any communications  
26 between Larson, Newman & Abel, LLP and Baker Botts LLP regarding the Patents-in-Suit and  
27 Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other  
28 Patents.

1 **REQUEST FOR PRODUCTION NO. 23:**

2 All documents and things that constitute, refer to, or relate to any communications  
3 between Larson, Newman & Abel, LLP and Trop, Pruner & Hu, P.C. regarding the Patents-in-  
4 Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and  
5 Other Patents.

6 **REQUEST FOR PRODUCTION NO. 24:**

7 All documents and things that constitute, refer to, or relate to any communications  
8 between Larson, Newman & Abel, LLP and Duane Morris LLP regarding the Patents-in-Suit and  
9 Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other  
10 Patents.

11 **REQUEST FOR PRODUCTION NO. 25:**

12 All documents and things that constitute, refer to, or relate to any communications  
13 between Larson, Newman & Abel, LLP and John R. Schell regarding the Patents-in-Suit and  
14 Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other  
15 Patents.

16 **REQUEST FOR PRODUCTION NO. 26:**

17 All documents and things that constitute, refer to, or relate to any communications  
18 between Larson, Newman & Abel, LLP and Paul J. Polansky regarding the Patents-in-Suit and  
19 Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other  
20 Patents.

21 **REQUEST FOR PRODUCTION NO. 27:**

22 All documents and things that constitute, refer to, or relate to any communications  
23 between Larson, Newman & Abel, LLP and Roger J. Fulghum regarding the Patents-in-Suit and  
24 Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other  
25 Patents.

26 **REQUEST FOR PRODUCTION NO. 28:**

27 All documents and things that constitute, refer to, or relate to any communications  
28 between Larson, Newman & Abel, LLP and Mark J. Rozman regarding the Patents-in-Suit and

1 Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other  
2 Patents.

3 **REQUEST FOR PRODUCTION NO. 29:**

4 All documents and things that constitute, refer to, or relate to any communications  
5 between Larson, Newman & Abel, LLP and Kevin R. Imes, Russell W. White, and/or Harlie D.  
6 Frost regarding the Patents-in-Suit and Other Patents, including, without limitation, the  
7 prosecution of the Patents-in-Suit and Other Patents.

8 **REQUEST FOR PRODUCTION NO. 30:**

9 All documents and things that refer to or relate to the current litigation in the Northern  
10 District of California between Affinity and Apple, Case No. CV 09-4436-CW.

11 **REQUEST FOR PRODUCTION NO. 31:**

12 All documents and things that refer to or relate to Apple.

13 **REQUEST FOR PRODUCTION NO. 32:**

14 All documents and things provided by Affinity or any of the named inventors of the  
15 Patents-in-Suit or Other Patents to Larson, Newman & Abel, LLP, or vice-versa, concerning the  
16 Patents-in-Suit or Other Patents.

17 **REQUEST FOR PRODUCTION NO. 33:**

18 All documents regarding, supporting, or refuting any objective indicia of nonobviousness  
19 of the alleged inventions disclosed in the Patents-in-Suit and Other Patents, including contentions  
20 of commercial success of the inventions and/or products embodying the invention, long-felt but  
21 unsolved needs met by those products and/or the invention, failure of others to meet these needs,  
22 the scope of licensing of the patent, industry recognition of the invention and/or products  
23 embodying the invention, and deliberate copying of the invention or laudatory statements by  
24 accused infringers.

25  
26  
27  
28

# **EXHIBIT B**



## Shipment Receipt

10-11-10

### Address Information

**Ship to:**  
Nicholas Whitt  
O'Melveny & Myers LLP  
400 S HOPE ST

LOS ANGELES, CA  
90071-2801  
US  
213-430-7503

### Ship from:

Timothy Newman  
Larson Newman Abel Polansky & White  
5914 West Courtyard Drive  
Suite 200  
Austin, TX  
78730  
US  
5124397100

### Shipping Information

Tracking number: 796330793220  
Ship date: 10/11/2010  
Estimated shipping charges: 21.97

### Package Information

Service type: Standard Overnight  
Package type: FedEx Envelope  
Number of packages: 1  
Total weight: 1LBS  
Declared value: 0.00USD  
Special Services:  
Pickup/Drop-off: Use an already scheduled pickup at my location

### Billing Information

Bill transportation to: Larson Newman & Abel, LLP-624  
Your reference: Subpoena-TGN  
P.O. no.:  
Invoice no.:  
Department no.:

Thank you for shipping online with FedEx ShipManager at [fedex.com](http://fedex.com).

### Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable [FedEx Service Guide](#) or the FedEx Rate Sheets for details on how shipping charges are calculated.

**IN THE UNITED STATES DISTRICT COURT  
Western District of Texas**

Affinity Labs of Texas, LLC	)	
Plaintiff,	)	
	)	
v.	)	<b>SUBPOENA IN A CIVIL CASE</b>
	)	<b>CIVIL ACTION NO. 4:09-CV-04436-CW</b>
Apple, Inc.	)	Northern District of California
Defendant,	)	

**RESPONSES AND OBJECTIONS OF LARSON NEWMAN & ABEL, LLP  
(LARSON NEWMAN) TO 3<sup>RD</sup> PARTY SUBPOENA OF APPLE, INC.**

Larson, Newman & Abel, LLP (Larson Newman), in accordance with Rule 45 of the Federal Rules of Civil Procedure, hereby responds and objects to the third party subpoena served by Apple, Inc. (Apple) as follows:

**GENERAL OBJECTIONS**

1. Larson Newman objects to each of Apple's deposition topics and document requests to the extent that it seeks to impose on Larson Newman obligations greater than or different from those imposed under the Federal Rules of Civil Procedure.
2. Larson Newman objects to each of Apple's deposition topics and document requests to the extent that it seeks privileged information.
3. Larson Newman objects to each of Apple's deposition topics and document requests to the extent that it is overly broad, unduly burdensome, oppressive, redundant, vague, and/or ambiguous.

4. Larson Newman objects to each of Apple's deposition topics and document requests to the extent that it seeks information or documents not relevant to this action, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise beyond the scope of permissible discovery in this action.
5. Larson Newman objects to each of Apple's deposition topics and document requests to the extent that it seeks information or documents not within Larson Newman's possession, custody, or control.
6. Larson Newman objects to each of Apple's deposition topics and document requests to the extent that it seeks the production of documents that are already within the possession, custody, or control of Apple, or that are as easily available to Apple.
7. Larson Newman objects to each of Apple's deposition topics and document requests to the extent that it seeks confidential and/or proprietary information.
8. Larson Newman's response to each of Apple's deposition topics and document requests is hereby made without in any way waiving or intending to waive, but rather, to the contrary, by preserving and intending to preserve:
  - (a) All questions as to the competence, relevance, materiality, and admissibility as evidence for any purpose of the information or documents, or the subject matter thereof, in any aspect of this or any other court action or judicial or administrative proceeding or investigation;
  - (b) The right to object on any ground to the use of any such information or documents, or the subject matter thereof, in any aspect of this or any other court action or judicial or administrative proceeding or investigation; and
  - (c) The right to object at any time for any further response to this or any other request for information or production of documents.



## **RESPONSES TO DEPOSITION TOPICS**

### **DEPOSITION TOPIC NO. 1:**

The preparation and prosecution of each of the applications that led to the Patents-in-Suit and other Patents.

### **RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

### **DEPOSITION TOPIC NO. 2:**

The identify of all persons involved in the preparation and/or prosecution of each of the applications that led to the Patents-in-Suit and Other Patents, and their respective roles in the preparation and prosecution of each application that led to the Patents-in-Suit and other Patents.

### **RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

### **DEPOSITION TOPIC NO. 3:**

The prior art cited during the prosecution of each of the applications that led to the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 4:**

Any prior art or information material to either the Patents-in-Suit or the Other Patents disclosed in any prior or ongoing litigations.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 5:**

The timing and circumstances under which Affinity provided you with any documents or other information pertaining to the preparation and prosecution of each of the applications that led to the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 6:**

The timing and circumstances of any searches for prior art in connection with any of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 7:**

The timing and circumstances of your receipt of prior art from anyone in connection with any of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 8:**

The timing, circumstances, and reasons for any decisions to disclose or not disclose prior art or information material to the prosecution of any of the applications that led to the Patents-in-Suit and Other Patents to the United States Patent & Trademark Office, as required by 37 C.F.R. § 1.56.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 9:**

The timing, circumstances, and substance of all communications between you and anyone at the United States Patent & Trademark Office concerning the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 10:**

The timing, circumstances, and substance of all communications between you and Baker Botts LLP, Trop, Pruner & Hu, P.C., Duane Morris LLP, John R. Schell, Paul J. Polansky, Roger J. Fulghum, Mark J. Rozman, Kevin R. Imes, Russell W. White, Harlie J. Frost, and/or anyone involved in the prosecution of the Patents-in-Suit and Other Patents concerning the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 11:**

The timing, circumstances, and substance of all communications between you and Affinity or the named inventors to the Patents-in-Suit and Other Patents concerning the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 12:**

The timing, circumstances, and substance of all communications between you and any third party concerning the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 13:**

The identify of individuals at Affinity involved in or related to the preparation and prosecution of each of the applications that led to the Patents-in-Suit and Other Patents, and their respective roles in the preparation and prosecution of each of the applications that led to the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 14:**

All documents requested by this subpoena (including those requested in Exhibit B attached to this subpoena), as well as storage and retention of those documents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

**DEPOSITION TOPIC NO. 15:**

The source of information considered and/or used by you during the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf regarding this topic.

## **RESPONSES TO SPECIFIC DOCUMENT REQUESTS**

### **REQUEST FOR PRODUCTION 1:**

All documents and things that constitute, refer to, or relate to the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

### **RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

### **REQUEST FOR PRODUCTION 2:**

All patent applications and all corresponding prosecution and file histories regarding the Patents-in-Suit and Other Patents.

### **RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

### **REQUEST FOR PRODUCTION 3:**

All documents and things that constitute, refer to, or relate to any prior art to the Patents-in-Suit and Other Patents, including, without limitation, any documents regarding any search for prior art and any documents created or discovered in connection with any prior art search.

### **RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 4:**

All documents and things that constitute, refer to, or relate to translations or any prior art to the Patents-in-Suit and Other Patents, including, without limitation, translations of the prior art.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 5:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Affinity regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 6:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and any named inventor of a Patent-in-Suit and Other Patent regarding that patent, including, without limitation, the prosecution of the patent.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 7:**

All documents and things that evidence, refer to, or relate to the conception of any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents.



**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 8:**

All documents and things that evidence, refer to, or relate to the reduction to practice of any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 9:**

All documents and things that evidence, refer to, or relate to diligence between the dates of conception and reduction to practice of any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 10:**

All documents and things that evidence, refer to, or relate to any written description, disclosure, or best mode of practice of any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents before the filing date of any patent application related to Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 11:**

All documents and things that evidence, refer to, or relate to the design, development, testing, or manufacture of any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents, including, without limitation, any invention disclosures and prototypes.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 12:**

All documents and things that constitute, refer to, or relate to textbooks, articles, patents, dictionaries, or other sources consulted, gathered, or reviewed in drafting or prosecuting the patent application for the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 13:**

All documents and things that constitute, refer to, or relate to any license agreements, draft license agreements, correspondence relating to license, licensing negotiations, or demand letters for any of the alleged inventions disclosed in the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 14:**

All documents and things that evidence, refer to, or relate to the alleged infringement by any person of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 15:**

All documents and things that constitute, refer to, or relate to any analysis or consideration of the value of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 16:**

All documents and things that constitute, refer to, or relate to Larson Newman & Abel, LLP attorney diaries, notebooks, notes, or time records for services regarding the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 17:**

All documents and things that evidence, refer to, or relate to the named inventors of the Patents-in-Suit and Other Patents' compliance with their duty to disclose to the United States

Patent & Trademark Office information material to the patentability of the Patents-in-Suit and Other Patents as required by 37 C.F.R. § 1.56.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 18:**

All documents and things that evidence, refer to, or relate to Affinity's compliance with its duty to disclose to the United States Patent & Trademark Office information material to the patentability of the Patents-in-Suit and Other Patents as required by 37 C.F.R. § 1.56.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 19:**

All documents and things that evidence, refer to, or relate to Larson Newman & Abel, LLP's compliance with its duty to disclose to the United States Patent & Trademark Office information material to the patentability of the Patents-in-Suit and Other Patents as required by 37 C.F.R. § 1.56.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 20:**

All documents and things that constitute, refer to, or relate to any communications with the United States Patent & Trademark Office, foreign patent agents, foreign patent counsel, or third parties regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 21:**

All documents and things that constitute, refer to, or relate to any communications with the United States Patent & Trademark Office, foreign patent agents, foreign patent counsel, or third parties regarding any prior art to the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 22:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Baker Botts LLP regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 23:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Trop, Pruner & Hu, P.C. regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 24:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Duane Morris LLP regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 25:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and John R. Schell regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 26:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Paul J. Polansky regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 27:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Roger J. Fulghum regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 28:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Mark J. Rozman regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 29:**

All documents and things that constitute, refer to, or relate to any communications between Larson, Newman & Abel, LLP and Kevin R. Imes, Russell W. White, and/or Harlie D. Frost regarding the Patents-in-Suit and Other Patents, including, without limitation, the prosecution of the Patents-in-Suit and Other Patents.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 30:**

All documents and things that refer or relate to the current litigation in the Northern District of California between Affinity and Apple, Case No. CV 09-4436-CW.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 31:**

All documents and things that refer to or relate to Apple.

**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 32:**

All documents and things provided by Affinity or any of the named inventors of the Patents-in-Suit or Other Patents to Larson Newman & Abel, LLP, or vice-versa, concerning the Patents-in-Suit or Other Patents.



**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

**REQUEST FOR PRODUCTION 33:**

All documents regarding, supporting, or refuting any objective indicia of nonobviousness of the alleged inventions disclosed in the Patents-in-Suit and Other Patents, including contentions of commercial success of the inventions and/or products embodying the invention, long-felt but unsolved needs met by those products and/or the invention, failure of others to meet these needs, the scope of licensing of the patent, industry recognition of the invention and/or products embodying the invention, and deliberate copying of the invention or laudatory statements by accused infringers.

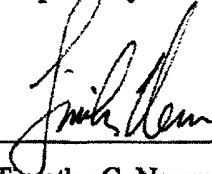
**RESPONSE:**

Subject to the foregoing General Objections, Larson Newman will produce all responsive documents at a time and place mutually convenient to the parties.

Dated: October 11, 2010

Respectfully submitted,

BY:

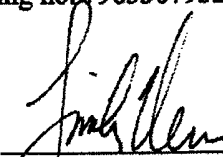


Timothy G. Newman  
LARSON NEWMAN & ABEL, LLP

5914 West Courtyard Drive, Ste. 200  
Austin, Texas 78730  
512-439-7100 (Phone)  
(512) 439-7199 (Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2010, a true and correct copy of the foregoing document was served via courier (Federal Express tracking no. 796330793220) on the following counsel of record as follows:

  
by: Timothy G. Newman

Nicholas Whilt, Esq.  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071  
Phone: (213) 430-7503  
Fax: (213) 430-6407  
Email: [nwhilt@omm.com](mailto:nwhilt@omm.com)  
**ATTORNEY FOR APPLE, INC.**

# **EXHIBIT C**

**IN THE UNITED STATES DISTRICT COURT  
Western District of Texas**

Affinity Labs of Texas, LLC	)	
Plaintiff,	)	
	)	<b>RE: MOTION TO QUASH</b>
v.	)	<b>SUBPOENA IN A CIVIL CASE</b>
	)	CIVIL ACTION NO. 4:09-CV-04436-CW
	)	Northern District of California
Apple Inc.	)	
Defendant,	)	

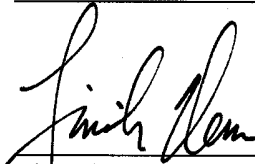
**DECLARATION OF TIMOTHY G. NEWMAN**

---

**I declare under penalty of perjury that the following information is true and correct to the best of my knowledge:**

- At 9:00 am on October 20, 2010, my partner Jeffrey Abel and I appeared for deposition at the offices of Ross Weidmann, Inc., located at 805 West 10<sup>th</sup> Street, Suite 400, Austin, Texas 78701 pursuant to subpoena issued by Apple, Inc. in the above-captioned lawsuit.
- At that time, no attorneys from either party appeared for the deposition.
- No one from Apple contacted me or my law firm on or prior to October 20, 2010 to propose alternate plans for the deposition.

Dated: 06 DECEMBER 2010

BY:   
Timothy G. Newman

# **EXHIBIT D**

# LARSON ▸ NEWMAN

Intellectual Property Law

5914 West Courtyard Drive, Suite 200

Austin, TX 78730

Phone: 512-439-7100

Fax: 512-439-7199

www.LNAlaw.com

November 18, 2010

*VIA FACSIMILE (213) 430-6407*

Mr. Ryan Yagura  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071

RE: 3<sup>rd</sup> Party Subpoena to Larson, Newman & Abel, LLP  
in Affinity Labs of Texas, LLC v Apple, Inc.

Dear Mr. Yagura:

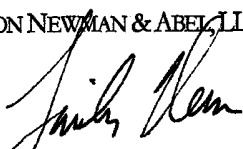
Larson, Newman & Abel, LLP (LNA) received your 3<sup>rd</sup> party subpoena in the above-referenced litigation. In compliance with that subpoena, LNA produced documents at the time and place commanded by you, and appeared for deposition at the time and place commanded by you. No one from your firm or from Duane Morris appeared for the deposition.

LNA's obligations under the subpoena were fulfilled. As a 3<sup>rd</sup> party, LNA considers your insistence on another deposition to be an unreasonable burden. In the interests of compromise, however, LNA is willing to appear for a telephonic deposition.

Please let me know if this proposal is satisfactory.

Sincerely,

LARSON NEWMAN & ABEL, LLP



Timothy G. Newman  
TGN/la

p.s. Since dictating this, I have been served with another subpoena, this time commanding my personal appearance on December 13, 2010. Please let me know which subpoena Apple intends to pursue.

cc: Thomas W. Sankey

\* \* \* Communication Result Report ( Nov. 18. 2010 4:05PM ) \* \* \*

1) Larson Newman & Abel, LLP  
2) Fax# 512-439-7199

Date/Time: Nov. 18. 2010 4:04PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2988 Memory TX	G3-AT :812134306407	P. 2	OK	

Reason for error

- E. 1) Hang up or line fail
- E. 2) Busy
- E. 3) No answer
- E. 4) No facsimile connection
- E. 5) Exceeded max. E-mail size

**LARSON & NEWMAN**

Intellectual Property Law

300 West Campbell Drive, Suite 200  
Aurora, IL - 60506  
Phone: 630-439-7100  
Fax: 630-439-7199  
www.lan.com

Date: **November 18, 2010**

To: Ryan Yagua O'Melveny & Myers, LLP	Fax No.: (213) 430-6407
From: Tim Newman (512) 439-7100	No. of pages: 2

LARSON  
& NEWMAN  
LLP

**CONFIDENTIALITY NOTICE**  
This page containing the intellectual property information is the property of Larson Newman & Abel, LLP and is confidential and privileged. The information is intended to be used by the individual(s) or entity(ies) named on this cover sheet only. If you are not the intended recipient, please do not disseminate, distribute or use the contents of this communication in any way. Please notify us immediately if you have received this transmission in error or the sender has not named the document as the recipient and



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1504 SAN ANTONIO STREET  
AUSTIN, TX 78701

11/18/2010

\$ 55.00

DOLLARS

PAY  
TO THE  
ORDER OF

Fifty-Five and 00/100

VOID AFTER 60 DAYS



AUTHORIZED SIGNATURE

MEMO

WITNESS FEE

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OTIT 11/18/10 @ 2:50pm

Delivered 11-18-20 10/33/m

Timothy Newman SCH 2133

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Western District of Texas

AFFINITY LABS OF TEXAS
Plaintiff
v.
APPLE INC.
Defendant

Civil Action No. 4:09-CV-4436-CW

(If the action is pending in another district, state where: Northern District of California

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Timothy G. Newman
5914 West Courtyard Drive, Suite 200, Austin, Texas 78730

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place and Date and Time. Place: Ross Weidmann Inc. dba Affiliated Reporters, 805 West 10th Street, Suite 400, Austin, Texas 78701-2029. Date and Time: 12/13/2010 9:00 am

The deposition will be recorded by this method: Stenographic and Video

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/18/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk OR [Handwritten Signature] Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Apple Inc., who issues or requests this subpoena, are:

Nicholas Whit, Esq., O'Melveny & Myers LLP, 400 South Hope Street Los Angeles, CA 90071, nwhit@omm.com, (213) 430-7503

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**

**(c) Protecting a Person Subject to a Subpoena.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

Civil Action No. 4:09-CV-4436-CW

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* 11/18/2010.

I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because \_\_\_\_\_; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# **EXHIBIT E**



**O'MELVENY & MYERS LLP**

BEIJING  
BRUSSELS  
CENTURY CITY  
HONG KONG  
LONDON  
LOS ANGELES

610 Newport Center Drive, 17th Floor  
Newport Beach, California 92660-6429

TELEPHONE (949) 760-9600  
FACSIMILE (949) 823-6994  
WWW.OMM.COM

NEW YORK  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY  
TOKYO  
WASHINGTON, D.C.

OUR FILE NUMBER  
027559-00179

WRITER'S DIRECT DIAL  
(949) 823-6952

WRITER'S E-MAIL ADDRESS  
dglasser@omm.com

November 19, 2010

**VIA FAX NO. 512-439-7199 AND U.S. MAIL**

Timothy G. Newman  
Larson Newman & Abel LLP  
5914 West Courtyard Drive, Suite 200  
Austin, TX 78730


Re: *Affinity Labs of Texas v. Apple Inc., et al.*  
*Third Party Subpoenas*

Dear Mr. Newman:

I write in response to your November 18, 2010 facsimile to my colleague, Ryan Yagura. Your facsimile correctly notes that Apple served a deposition subpoena commanding your appearance on December 13, 2010. Apple is willing to consider your appearance on December 13th as fulfilling both your and Larson, Newman & Abel's obligations pursuant to the two outstanding subpoenas.

Please let us know if December 13th is acceptable. Pursuant to the notice provided in the subpoena, the deposition will be recorded both by a stenographer and videographer.

Sincerely,



Darin J. Glasser  
for O'MELVENY & MYERS LLP

cc: Matthew C. Gaudet, counsel for Affinity

NBI:807959.1