

# UNITED STATES DISTRICT COURT

for the  
Eastern District of Virginia

Rosetta Stone Ltd.

v.

Google Inc.

)  
)  
)  
)  
)

Case No.: 1:09cv736 (GBL/TCB)

## BILL OF COSTS

Judgment having been entered in the above entitled action on 08/03/2010 against Rosetta Stone Ltd.,  
*Date*  
the Clerk is requested to tax the following as costs:

|  |                     |
|--|---------------------|
| Fees of the Clerk .....  | \$ 0.00             |
| Fees for service of summons and subpoena .....   | 0.00                |
| Fees for printed or electronically recorded transcripts necessarily obtained for use in the case .....                                       | 406.05              |
| Fees and disbursements for printing .....  | 0.00                |
| Fees for witnesses ( <i>itemize on page two</i> ) .....  | 0.00                |
| Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case ..... | 6,655.80            |
| Docket fees under 28 U.S.C. 1923 .....   | 20.00               |
| Costs as shown on Mandate of Court of Appeals .....  | 0.00                |
| Compensation of court-appointed experts .....  | 0.00                |
| Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....   | 0.00                |
| Other costs ( <i>please itemize</i> ) .....  | 72,429.62           |
| <b>TOTAL</b>   | <b>\$ 79,511.47</b> |

**SPECIAL NOTE:** Attach to your bill an itemization and documentation for requested costs in all categories.

### Declaration

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

- Electronic service
- First class mail, postage prepaid

Other:

s/ Attorney: /s/ Stephen A. Cobb

Name of Attorney: Stephen A. Cobb

For: Google Inc.  
*Name of Claiming Party*

Date: 08/17/2010

### Taxation of Costs

Costs are taxed in the amount of \_\_\_\_\_ and included in the judgment.

\_\_\_\_\_  
*Clerk of Court*

By: \_\_\_\_\_  
*Deputy Clerk*

\_\_\_\_\_  
*Date*

# UNITED STATES DISTRICT COURT

## Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)

| NAME, CITY AND STATE OF RESIDENCE | ATTENDANCE |            | SUBSISTENCE |            | MILEAGE |              | Total Cost Each Witness |
|-----------------------------------|------------|------------|-------------|------------|---------|--------------|-------------------------|
|                                   | Days       | Total Cost | Days        | Total Cost | Miles   | Total Cost   |                         |
|                                   |            |            |             |            |         |              | \$0.00                  |
|                                   |            |            |             |            |         |              | \$0.00                  |
|                                   |            |            |             |            |         |              | \$0.00                  |
|                                   |            |            |             |            |         |              | \$0.00                  |
|                                   |            |            |             |            |         |              | \$0.00                  |
|                                   |            |            |             |            |         |              | \$0.00                  |
|                                   |            |            |             |            |         |              | \$0.00                  |
|                                   |            |            |             |            |         | <b>TOTAL</b> | <b>\$0.00</b>           |

### NOTICE

**Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:**

“Sec. 1924. Verification of bill of costs.”

“Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.”

**See also Section 1920 of Title 28, which reads in part as follows:**

“A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.”

**The Federal Rules of Civil Procedure contain the following provisions:**

**RULE 54(d)(1)**

Costs Other than Attorneys’ Fees.

Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney’s fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 day’s notice. On motion served within the next 7 days, the court may review the clerk’s action.

**RULE 6**

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

**RULE 58(e)**

Cost or Fee Awards:

Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney’s fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)

ROSETTA STONE LTD.

Plaintiff,

v.

GOOGLE INC.

Defendant.

CIVIL ACTION NO. 1:09cv736  
(GBL / TCB)

**DEFENDANT GOOGLE INC.'S BILL OF COSTS  
AGAINST PLAINTIFF ROSETTA STONE LTD.**

Pursuant to 28 U.S.C. §§ 1920 and 1924, Fed. R. Civ. P. 54(d)(1), and E.D. Va. Local Rule 54(D)(1), and in accordance with this Court's August 3, 2010 Final Judgment (Dkt. No. 228) ("Final Judgment"), Defendant Google Inc. ("Google") hereby submits this Bill of Costs against Plaintiff Rosetta Stone Ltd. ("Rosetta Stone").

Google is the "prevailing party" with respect to all claims brought by Rosetta Stone. *See* Final Judgment. Thus, pursuant to 28 U.S.C. § 1920, Google is entitled to recover certain costs from Rosetta Stone. As described in the attached Declaration of Margret M. Caruso, Google necessarily incurred taxable costs for the defense of the claims in this case in the amount of \$79,511.47. *See* Declaration of Margret M. Caruso, attached as Exhibit 1. As set forth below, these costs are comprised of: costs incident to depositions necessary for trial preparation or admitted into evidence in defense of the claims in this case, docket fees, exemplification costs and copying costs.

A. Costs Incident To Depositions Necessarily Used In Defense Of The Claims In This Case (28 U.S.C. § 1920(2)): \$72,429.62 for 44 depositions. *See Caruso Decl., ¶ 5, Ex. A.*

B. Fees Of The Court Reporter For Transcripts Necessarily Obtained For Use In Defense Of The Claims In This Case (28 U.S.C. § 1920(2)): \$406.05 for transcripts of hearings on Google's motion to dismiss, Rosetta Stone's motion to compel, and the parties' cross-motions for summary judgment. *See Caruso Decl., ¶ 6, Ex. B.*

C. Docket Fees Under 28 U.S.C. 1923: \$20.00. *See Caruso Decl., ¶ 7.*

D. Fees For Exemplification And Copies Of Papers Necessarily Obtained For Use In Defense Of The Claims In This Case (28 U.S.C. § 1920(4)): \$6,655.80, including \$1,404.40 for copies of deposition exhibits furnished to opposing counsel and witnesses during depositions by Google and \$5,251.40 for copies of video of depositions from other cases that Rosetta Stone expressed an intent to use at trial. *See Caruso Decl., ¶¶ 8-9, Exs. C, D.*

Accordingly, Google respectfully requests that the Clerk of Court approve its Bill of Costs in the amount of \$79,511.47 against Plaintiff Rosetta Stone Ltd.

Dated: August 16, 2010

Respectfully Submitted,

GOOGLE INC.  
By counsel

/s/

Jonathan D. Frieden, Esquire (VSB No. 41452)  
Stephen A. Cobb, Esquire (VSB No. 75876)  
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Margret M. Caruso, Esquire (Admitted *Pro Hac Vice*)  
Jonathan B. Oblak, Esquire (Admitted *Pro Hac Vice*)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of August 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Warren Thomas Allen, II. Esquire  
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wtallen@skadden.com  
*Counsel for Plaintiff Rosetta Stone Ltd.*

\_\_\_\_\_/s/\_\_\_\_\_

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