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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056816
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**REGISTRANT'S MOTION TO QUASH AS UNTIMELY PETITIONER'S NOTICE OF
DISCOVERY DEPOSITION BY WRITTEN QUESTION OF MILLER CHEN AND
REQUEST FOR TELEPHONE CONFERENCE PURSUANT TO 37 CFR § 2.120(i)(1)**

Registrant VIA Technologies, Inc. ("VIA") hereby moves to quash as untimely the Notice of Discovery Deposition By Written Question Of Miller Chen ("Notice") served by Petitioner Google, Inc. ("Google") during the final week of the discovery period which closed on June 2, 2015 by party consent.¹ VIA also respectfully requests that the Board resolve this motion on an expedited basis through telephone conference pursuant to 37 CFR § 2.120(i)(1) and TBMP §§ 413.01 and 502.06(a) as time is of the essence given that VIA's time to object and serve cross-examination questions in response to the Notice is presently running. To this same end, should the Board deny this motion, VIA respectfully requests that its time to object and serve cross questions in response to the Notice be reset to run as of the date of such denial or later.

The instant motion is based on this memorandum of points and authorities and the concurrently-filed declarations of Jean Rhee ("Rhee Decl.") and Irene Lee ("Lee Decl.") and any other matters that may properly come before the Board.

¹ On March 20, 2015, the Board issued an order granting Google's consented motion to extend the discovery period to May 3, 2015. Dkt. 28. On March 27, 2015, Google filed another consented motion seeking to extend the discovery period to June 2, 2015. Dkt. 29. As of the filing of the instant motion, the Board has not granted the March 27, 2015 extension motion.

I. INTRODUCTION

The sole issue before the Board on this straightforward motion is whether a notice of discovery deposition by written question that Google deliberately waited to serve by First Class Mail on May 26, 2015, **just one week prior to the discovery cutoff consented to by the parties**, is timely. Rhee Decl., Ex. 10, p. 3. VIA respectfully submits that it is not timely because it was impossible for the parties to complete (or to really even begin) the lengthy process of promulgating cross, redirect, and re-cross questions for the Notice and exchanging objections as to one another's questions in the limited time remaining in the discovery period, let alone actually take Miller Chen's deposition during that time as mandated by the Board's rules and regulations. Indeed, TBMP § 404.07(b) specifically provides that, "[d]iscovery depositions must be **both noticed and taken during the discovery period.**" (emphasis added). It continues to admonish that "[t]hus, it is recommended that a party, which desires to take a discovery deposition on written questions, initiate the procedure early in its discovery period." *Id.* (internal citations omitted).

Ignoring the Board's rules and regulations, Google has asserted that its Notice is timely. But when asked to provide authority to support this assertion, Google offered none. It is undisputed that Miller Chen's deposition by written question was not completed during the discovery period and, in fact, was incapable of being so completed at the time the Notice was served on May 26, 2015 as is required. Google nonetheless insists that, because it filed a motion to compel on May 28, 2015, these proceedings are suspended without tolling the time for Miller Chen to appear for his deposition. Rhee Decl. ¶¶ 2-3 & Ex. 1. Although VIA pointed out that the Board's policy that a motion to compel does not toll the time for parties to comply with duly served discovery requests cannot be used to salvage a deposition notice that was untimely when served, Google nevertheless refused to withdraw the Notice, leaving VIA no choice but to bring this motion to quash. *Id.*

Google also asserted that its own lack of diligence in waiting until the final week of discovery to serve a notice for a deposition that, by its very nature could take weeks if not

months to complete, is somehow excused because VIA did not provide Miller Chen's whereabouts at the outset of discovery in these proceedings and alleged deficiencies in VIA's document production as to Miller Chen. *Id.* But these excuses ring hollow. First, VIA explained and Google knew more than a year ago that Miller Chen was a VIA employee residing in Taiwan. Rhee Decl., Ex. 2-4. Google also knew since November 2014 that VIA did not have documents to produce for Miller Chen. Rhee Decl., Ex. 13 (I. Chen Depo. Tr.) at 76:21-77:1. Further, nothing prevented Google from preparing the Notice at issue without any documents from Miller Chen, and Google now insists that Miller Chen's deposition proceed pursuant to the Notice even while its motion to compel these very same documents (which it also inexplicably waited until the tail-end of the discovery cutoff to bring) is pending.

Lastly, Google asserted that, "to the extent VIA has concerns about the amount of time consumed by the process of completing a deposition by written question, it is free to consent to a deposition by video conference, which would go much more quickly," ignoring that the problem at hand was created by its own undue delay in servicing the Notice² not Miller Chen's exercise of his right as a foreign resident to appear for deposition by written question "unless the Board, on motion for good cause, orders, or the parties stipulate" otherwise. TBMP § 404.03(b).

In sum, because Google cannot refute that the parties neither completed nor could have completed Miller Chen's deposition by written question within the discovery period, the Board should grant this motion to quash the Notice. Alternatively, in the event the Board declines to grant this motion, VIA respectfully requests that it reset VIA's time to object and serve cross questions in response to the Notice.

² Indeed, the Notice would have been improper for failure to give reasonable notice even if it had been for a deposition by videoconference set for the last day of the discovery period considering that Google inexplicably and unexpectedly waited until just seven days prior to the discovery cutoff to serve it by First Class Mail and did not bother to provide an e-mail courtesy copy until the Friday just five days prior, which was already Saturday in Taiwan where Miller Chen lives. TBMP § 404.05.

II. FACTUAL BACKGROUND

A. Google Delayed In Serving The Notice Despite Having Known For Over A Year That Miller Chen Is A VIA Employee Living In Taiwan.

On February 25, 2011, Miller Chen signed a Statement of Use in support of a VIA trademark application that matured into Registration No. 3,951,287, which is one of the registrations at issue in these cancellation proceedings. As such, Google was aware of his existence before it even initiated these proceedings on February 19, 2013.

On March 26, 2014, VIA's counsel informed Google's counsel by letter that, "Miller Chen is a VIA employee and can be contacted through [VIA's counsel]." Rhee Decl., Ex. 2 at p. 2. Approximately six weeks later, Google's counsel emailed VIA's counsel on May 6, 2014, seeking to confirm that (1) Miller Chen could still be contacted through VIA's counsel as indicated in the aforementioned March 26, 2014 letter, and (2) VIA would make Miller Chen available for deposition. Rhee Decl., Ex. 3 at p. 3.

On May 16, 2014, VIA's counsel called Google's counsel to ask, *inter alia*, how "Google plans to proceed [with Miller Chen's deposition] given that he resides in Taiwan." *Id.* at 1. On May 17, 2014, VIA's counsel followed up on her May 16, 2014 call asking how Google intended to proceed with Miller Chen's deposition in light of his residence in Taiwan with an email regarding the same. *Id.* On May 23, 2014, VIA's counsel sent another email following up on her May 16 call and May 17 email asking how Google intended to proceed with Miller Chen's deposition in light of his residence in Taiwan. Rhee Decl., Ex. 4 at p. 1. On May 29, 2014, Google's counsel responded to the May 23, 2014 email sent by VIA's counsel with an email stating that "[w]e will get back to you on the other issues you raised [including about Miller Chen's deposition]." *Id.*

On June 11, 2014, VIA's counsel sent Google's counsel a letter asking that they "please advise by Friday, June 13, 2014 whether you plan to depose . . . Miller Chen" Rhee Decl., Ex. 5. On June 13, 2014, Google's counsel replied by letter claiming that "In the absence of the relevant universe of responsive documents and communications, as well as complete information

regarding the goods and services in connection with which VIA has used its CHROME mark, Google is not in a position to proceed with the deposition of any VIA witnesses, or to determine which witness(es) it will depose.” Rhee Decl., Ex. 6.

On June 24, 2014, Google filed a motion to compel without meeting and conferring with VIA. Dkt. 17-18. On June 27, 2014, the Board issued an order suspending proceedings pending disposition of this motion to compel providing, *inter alia*, that “[n]either the filing of the motion to compel nor this suspension order . . . excuse[s] a party’s appearance at any discovery deposition which had been **duly** noticed prior to the filing of the motion to compel.” Dkt. 19 (emphasis added).

VIA filed a timely opposition to Google’s June 24, 2014 motion to compel on July 9, 2014, to which the Board is referred for a further recounting of Google’s dilatory maneuvers all throughout these proceedings similar to the maneuvering that is the subject of this motion. Dkt. 18, 20. Thereafter, Google pleaded with VIA to resolve this motion to compel by agreement, Rhee Decl., Ex. 7, and, on July 28, 2014, in lieu of filing a reply in support of its motion to compel, Google submitted a Joint Motion For Extension Of All Deadlines In Order To Resolve The Parties’ Discovery Dispute (“Joint Motion”) seeking to extend all deadlines by 120 days purportedly to accommodate Google’s taking of depositions by written question of VIA’s 30(b)(6) deponent on the topic of VIA’s discovery efforts and VIA’s employee, Richard Brown, which Google inexplicably insisted that it had to start back-to-back and two weeks apart rather than simultaneously, and the in-person depositions of Dr. Ken Weng, Amy Wu, and Pat Meier, which Google also inexplicably insisted that it could not take simultaneously with Mr. Brown’s deposition by written question. Dkt. 21; Rhee Decl., Ex. 7, pp. 14-25. At no point during the parties’ discussion of the necessity for this 120-day extension did Google raise the need to depose Miller Chen. Rhee Decl., Ex. 7, pp. 14-25. Additionally, Google expressly acknowledged in the Joint Motion that “[t]he process of conducting depositions by written question will likely take at least 40-60 days because of the deadlines for each party to object, serve cross and redirect questions, and serve substitute questions. See 37 CFR § 2.124; TBMP 404.06.” Dkt. 21 at p. 1.

On August 2, 2014, the Board issued an order finding the motion to compel moot in light of the parties' Joint Motion and granting the 120-day extension requested therein. Dkt. 22.

On August 18, 2014, Google filed and served its notice of 30(b)(6) discovery deposition by written question concerning the topic of VIA's discovery efforts. Dkt. 23.

On September 26, 2014, the Board issued an order suspending all proceedings not germane to Google's 30(b)(6) discovery deposition by written question to allow for the orderly completion of such deposition. Dkt. 24.

On November 25, 2014, Google took the deposition by written question of Inky Chen, VIA's 30(b)(6) witness as to its document collection and production. Rhee Decl. ¶ 15. During this deposition, Inky Chen confirmed under oath on VIA's behalf that documents responsive to Google's document requests were not collected from Miller Chen because as CFO of VIA Taiwan, which owns many brands and not just CHROME, Miller Chen "never directly worked on any CHROME-related operations." Rhee Decl., Ex. 13 (I. Chen Depo. Tr.) at 76:21-77:1.

On February 4, 2015, the Board issued an order resuming proceedings in light of the completion of Inky Chen's deposition on written question as VIA's 30(b)(6) witness on its document collection and production efforts. Dkt. 26. Under this order, discovery was set to close on April 3, 2015. *Id.*

Despite having known since no later than November 25, 2014 that VIA did not have documents to produce for Miller Chen, Google waited until after the close of business on Friday, February 13, 2015 to send VIA's counsel a letter claiming that VIA's document productions were deficient because, *inter alia*, VIA had not produced documents from Miller Chen. Rhee Decl., Ex. 8 at pp. 1, 6. The parties met and conferred telephonically regarding this letter on February 26, 2015, during which VIA agreed, in a good faith effort to resolve Google's concerns and avoid burdening the Board with needless motion practice, that it would review its productions and supplement them as needed, if at all, by March 16, 2015, and consent to extend the discovery period by 30 days to May 3, 2015 to give Google ample time to review such supplemental documents, if any, and prepare for depositions. Rhee Decl., Ex. 9. VIA further

agreed that if it did not complete its supplemental production by March 16, 2015, it would consent to a second 30 day extension to June 2, 2015 to give Google still more time to review the supplemental documents and prepare for depositions. *Id.*

On March 4, 2015, Google filed a consent motion to extend the discovery period to May 3, 2015 as discussed by the parties during their February 26, 2015 meet and confer. Dkt. 27.

On March 16, 2015 and March 23, 2015, VIA made two small supplemental productions of 125 and 187 pages, respectively, for a grand total of 312 pages. Rhee Decl., ¶ 16.

On March 27, 2015, Google filed a consent motion to extend the discovery cutoff by another 30 days to June 2, 2015 that the Board has yet to approve. Dkt. 29. Also on March 27, 2015, the parties met and conferred by telephone. During this conference, Google's counsel asserted that VIA's supplemental productions had failed to address the alleged deficiencies they had complained of in their February 13, 2015 letter and asked VIA's counsel whether VIA would be producing any additional documents to address these alleged deficiencies. 5/28/15 Givner-Forbes Decl. ISO Mot. to Compel ¶ 53 (Dkt. 41); Lee Decl. ¶ 2. VIA's counsel responded in the negative. Lee Decl. ¶ 2. Thus, by no later than March 27, 2015, with 67 days remaining in the consented discovery period, Google had not only admittedly finished reviewing VIA's 312-page supplemental production, but knew that VIA would not be producing any additional documents, including any documents from Miller Chen.

Even with this knowledge, Google waited yet another two months to serve the Notice by First Class Mail on May 26, 2015. Rhee Decl., Ex. 10, p. 3. Not only was this just one week before the consented-to discovery cutoff of June 2, 2015, it was the very first time since May 2014 that Google had given VIA any indication of its intention to take the discovery deposition of Miller Chen. Rhee Decl. ¶ 12. Also on May 26, 2015, Google served 317 Requests for Admission by First Class Mail.³

³ VIA does not object to these Requests for Admission as untimely.

On May 28, 2015, Google filed a motion to compel that is currently pending before the Board. Dkt. 41. Because the Board has yet to enter an order suspending these proceedings in response to Google's filing of the Notice or this motion to compel, it appears that these proceedings are still open. Misc. Changes to Trademark Trial and Appeal Board Rules (Final Rule), 63 Fed. Reg. 48,081, 48,088 (Sept. 9, 1998) ("Misc. Changes to TTAB Rules") (explaining that proceedings are not automatically suspended upon the filing of a motion to compel, only upon the issuance of a suspension order).

Google's counsel then waited until mid-day on Friday, May 29, 2015, to email a courtesy copy of the Notice to VIA's counsel. Rhee Decl., Ex. 11. This was less than five days before discovery closed and, by this time, it was already Saturday in Taiwan where Miller Chen resides. Rhee Decl. ¶ 13. It was also the day after Google had filed its motion to compel, after which, at least under Google's unsupported theory, VIA's window for moving to quash the Notice as untimely had closed due to the pendency of such motion. This was the first that VIA's counsel had seen the Notice as the service copy of the Notice sent by First Class Mail did not arrive until Monday, June 1, 2015. *Id.*

On June 2, 2015, the discovery period consented to by the parties expired without the parties having completed Miller Chen's deposition. Based on the date (May 26, 2015) and method of service (First Class Mail) of the Notice, the time for VIA to serve objections and cross-examination questions in response to the Notice - *i.e.*, the time for completing only the second of a potentially endless number of exchanges of objections, questions, and substitute questions between the parties - does not run until June 22, 2015. *See* 37 CFR §§ 2.124(d)(1), 2.196; TBMP §§ 112, 113.05.

At no point during these proceedings has VIA stipulated or the Board ordered that Google could take Miller Chen's deposition after the close of discovery. Rhee Decl. ¶ 17.

B. VIA Tried In Vain To Resolve This Matter Without Board Intervention.

In an effort to avoid burdening the Board with an unnecessary motion to quash, counsel for VIA promptly wrote to Google's counsel on June 5, 2015, requesting that Google voluntarily withdraw the Notice for the reasons set forth in this motion, and inviting Google to meet and confer regarding the same. Rhee Decl., Ex. 12. VIA's counsel also invited Google to provide them with authority, if any, supporting that the Notice was timely. *Id.*

On June 8, 2015 Google's counsel responded by email to the June 5, 2015 letter sent by VIA's counsel, setting forth Google's contentions that: (1) even though the Notice was untimely when served because it gave notice of a deposition by written question that the parties could not possibly conclude within the time remaining in the discovery period, Google's subsequent filing a motion to compel had rendered it timely because it had the effect of suspending these proceedings without tolling the deadline for VIA to comply with the Notice; (2) VIA is to blame for Google's failure to timely serve the Notice because it did not confirm Miller Chen's status as a VIA employee and Taiwan resident until one year prior to Google serving the Notice and did not produce documents for Miller Chen because he never had any direct involvement in any CHROME-related operations; and (3) Miller Chen and not Google is to blame for the parties' inability to complete the deposition by written question within the discovery period as required because he can streamline the deposition process by waiving his right as a foreign resident to have his deposition taken by written question and appearing by video conference. Rhee Decl., Ex. 1. Google's counsel did not cite any authority for these contentions, but did agree to meet and confer with VIA's counsel on June 9, 2015. *Id.*

VIA's counsel responded to this email later on June 8, 2015, explaining that Google could not circumvent the discovery cutoff and the Board's rules requiring the completion of discovery depositions during the discovery period by filing a motion to compel, and reiterating VIA's position that the Notice was untimely because it purported to notice a deposition by written question that was not, and could not have been, completed during the discovery period.

Id. VIA's counsel again asked Google to provide authority supporting its contentions, if any, and further asked that it do so at least a couple of hours in advance of the parties' meet and confer the next day to help the parties engage in a meaningful meet and confer. *Id.* No such authority was provided. Rhee Decl. ¶ 2.

On June 9, 2015, the parties met and conferred by telephone and were unable to resolve their differences as to this motion to quash. The only contention that Google's counsel made during this call about the Notice that differed in any respect from those previously made by email – but equally unsupported and erroneous – was that the language of the suspension order issued by the Board when Google had filed its prior motion to compel purportedly supported Google's position. *Id.* at ¶ 3.

Hence VIA's promptly and respectfully submits the instant motion and request for telephonic conference pursuant to TBMP § 521.

III. ARGUMENT: GOOGLE CANNOT MANIPULATE THE BOARD'S MOTION TO COMPEL PROCEDURES TO DO AN END-RUN AROUND THE REQUIREMENT THAT DISCOVERY DEPOSITIONS BE TAKEN DURING THE DISCOVERY PERIOD.

The Board's rules, regulations, and precedents are clear that, absent a Board order or a stipulation, “[d]iscovery depositions must be **both** noticed **and** taken during the discovery period.” TBMP § 404.07(b) (emphasis added and internal citations omitted); *see also* 37 CFR § 2.120(a)(3) (“Discovery depositions must be taken . . . **on or before the closing date of the discovery period** as originally set or as reset.”) (emphasis added); TBMP § 403.01 (“[D]iscovery depositions . . . are available for use only during the discovery period.”); TBMP § 403.02 (“Discovery depositions must be not only noticed but also **taken during the discovery period** (unless the parties stipulate or the Board orders that the deposition may be taken outside of the period).”) (emphasis added); *Nat'l Football Leag. v. DNH Mgmt. LLC*, 85 USPQ2d 1852, 1855 (TTAB 2008) (granting motion to quash deposition notice as untimely where notice was served during, but purported to schedule the deposition for after, discovery period); *Valvoline*

Co. v. Vortech Eng'g, Inc., 1996 TTAB LEXIS 166, *4 n.2 (TTAB 1996) (non-precedential) (“Discovery depositions must be both noticed and taken prior to the expiration of the discovery period (unless the parties stipulate that the deposition may be taken outside of the period.)”); *Smith Int'l, Inc. v. Olin Corp.*, 201 USPQ 250 (TTAB 1978) (“Those [depositions] taken for purposes of discovery must be taken, if at all, during the discovery period.”); *Rhone-Poulenc Indus. v. Gulf Oil Corp.*, 198 USPQ 372, 373-74 (TTAB 1978) (notice of deposition served during discovery but scheduling the deposition scheduled for a date after discovery closed quashed as untimely). As such, TBMP § 404.07(b) goes so far as to explicitly “recommend[] that a party, which desires to take a discovery deposition on written questions, initiate the procedure early in its discovery period.”

Here, there is no Board order or stipulation allowing Google to take Miller Chen’s deposition on written question outside of the discovery period, which closed by party consent on June 2, 2015. Thus, even though Google served via mail the Notice seeking Miller Chen’s deposition by written question during the discovery period, the fact that it did not and, indeed, **knew** even when it served the Notice that it could not, complete such deposition by the time discovery closed a mere seven calendar days later renders the Notice untimely. *See* Joint Mot. (Dkt. 21) at p. 1 (acknowledging that “[t]he process of conducting depositions by written question will likely take at least 40-60 days because of the deadlines for each party to object, serve cross and redirect questions, and serve substitute questions. *See* 37 CFR § 2.124; TBMP 404.06.”); *see also supra* Section II.A (explaining that under 37 CFR §§ 2.124(d)(1) and 2.196 and TBMP §§ 112 and 113.05, VIA’s objections and cross questions in response to the Notice are not due until June 22, 2015, and that such objections and cross questions would only represent the second of potentially infinite rounds of objections and questions and substitute questions that could be exchanged by the parties under the Board’s rules).

Google offers three reasons why the deposition by written question that it noticed but did not even come close to completing within the discovery period should nevertheless be considered timely. But none of these have merit.

First, Google contends that its strategic filing of a motion to compel on May 28 retroactively rendered its untimely Notice of May 26 timely because the later filed motion had the effect of suspending proceedings without tolling the time for VIA to respond to previously served discovery requests. This argument entirely misses the point of the Board's policy of not tolling existing obligations to respond to discovery during suspensions. The no-tolling policy simply has no application where, as here, the responding party **never** had any obligation to respond to the discovery request in the first place because it was untimely. TBMP § 403.01 ("A party has no obligation to respond to an untimely request for discovery."). Stated another way, Google cannot use a policy that provides that existing discovery obligations are not tolled while proceedings are suspended to manufacture an obligation that would not otherwise exist.

This point is perhaps most clearly illustrated by the prior suspension order dated June 27, 2014 on which Google tries to rely; both this order and TBMP § 510.03(a) expressly state that only discovery depositions that were "**duly noticed**" (*i.e.*, noticed "properly" or "in the correct way or at the correct time"⁴) **before** the motion to compel giving rise to the suspension are subject to the no-tolling policy. *See* Dkt. 19 ("Neither the filing of the motion to compel nor this suspension order . . . excuse[s] a party's appearance at any discovery deposition which had been **duly** noticed **prior to** the filing of the motion to compel."); TBMP § 510.03(a) (same). Thus, the Board should reject Google's attempt to abuse the Board's policies relating to the suspension of proceedings during the pendency of a motion to compel to get around a discovery cutoff and the longstanding rule requiring parties to complete discovery depositions while discovery is open. *Cf.* Misc. Changes to TTAB Rules, 63 Fed. Reg. at 48,088 (expressing PTO's concern that the Board retain control over suspensions pending motions to compel because of this very risk that parties will file motions to compel "merely as a strategic move to gain time and/or delay proceedings").

⁴ For this definition of "duly," see Cambridge Dictionaries Online, *available at* <http://dictionary.cambridge.org/dictionary/british/duly>. *See also* Merriam-Webster Dictionary, *available at* <http://www.merriam-webster.com/dictionary/duly> ("Full Definition of DULY: in a due manner or time: PROPERLY.").

Second, while Google may try to make hay out of the fact that VIA did not identify Miller Chen as being a VIA employee living in Taiwan until early 2014 and the absence of documents for Miller Chen, neither of these factors excuses Google's undue delay in waiting to spring the Notice on VIA during the final week of discovery. As for Miller Chen's whereabouts, Google indisputably knew for over a year prior to mailing the Notice on May 26, 2015 that Miller Chen could be served through VIA's counsel, Rhee Decl., Ex. 2, and that it would have to make arrangements to depose him by written question as he lives in Taiwan, Rhee Decl., Ex. 3 at p. 1. In fact, VIA's counsel followed up with Google about Miller Chen's deposition on four separate occasions between May 16, 2014 and June 11, 2014, but Google chose not to proceed at that time. Rhee Decl., Exs. 3-5. Furthermore, although the parties subsequently discussed at length the discovery depositions that Google would take of VIA employees, including certain employees that it would have to depose by written question, before requesting on July 28, 2014 that the Board extend discovery and other case deadlines by another 120 days as proposed by Google, Google never once raised during these discussions that it still intended to depose Miller Chen. Dkt. 21; Rhee Decl., Ex. 7, pp. 14-25. The Notice itself is the first indication that VIA received from Google in over a year that it was seeking to take a discovery deposition of Miller Chen. Rhee Decl., ¶ 12.

As for the absence of Miller Chen documents, VIA confirmed for Google under oath that such documents do not exist on November 25, 2014, six months prior to the mailing of the Notice. Rhee Decl., Ex. 13 (I. Chen Depo. Tr.) at 76:21-77:1. Google then waited another 11 weeks to demand that VIA nevertheless produce such nonexistent documents. Rhee Decl., Ex. 8 at pp. 1, 6. At the absolute latest, Google knew as of March 27, 2015 that VIA would not be producing these nonexistent Miller Chen documents in response to its demand. 5/28/15 Givner-Forbes Decl. ISO Mot. to Compel ¶ 53 (Dkt. 41); Lee Decl. ¶ 2. Google also knew as of that day that discovery would close by consent on June 2, 2015. Dkt. 29. But instead of serving the Notice (or moving to compel) promptly at that juncture while there was still sufficient time to

complete a deposition by written question (*i.e.*, 67 days), Google inexplicably and inexcusably delayed another two months before taking any action.

Google's claim that the absence of Miller Chen documents somehow factored into its delay in noticing his deposition is further undercut by the fact that it was able to prepare the 506-question Notice at issue without any such documents. Rhee Decl., Ex. 10. Even more telling is the fact that Google is insisting that this deposition proceed as noticed instead of awaiting the outcome of its pending motion to compel the production of, *inter alia*, these very documents. If Google genuinely believed both that there is merit to its motion to compel VIA to produce these documents notwithstanding VIA's representations that they do not exist, and that such documents were necessary for Miller Chen's deposition, the logical thing would have been for it to include in its motion a request for additional time to take Miller Chen's deposition upon the Board's issuance of an order compelling their production.

Under these circumstances, Google cannot credibly and in good faith claim that its delay was occasioned by an absence of knowledge as to Miller Chen's whereabouts or documents. In this regard, it is also worth noting that the very fact that Google waited all the way until May 26, 2015 to serve the Notice by First Class Mail and then waited again until after May 28, 2015 when its motion to compel was on file and it apparently believed VIA would no longer be able to move to quash the Notice as untimely due to the pendency of such motion to provide VIA with an email courtesy copy reinforces that Google's delay (and motion to compel) were tactical.

Third, Google's effort to attribute the timing issues at hand to Miller Chen's exercise of his right to appear for a deposition by written question in this matter is the very height of circular reasoning and disingenuity. Again, Google knew for more than a year that, absent a Board order or stipulation, neither of which exists here, the only way it could take Miller Chen's deposition in Taiwan was through written questions. TBMP § 404.03(b); *Rhone-Poulenc*, 198 USPQ at 374 (“[T]he discovery deposition of a party domiciled in a foreign country may be taken only by way of written questions unless the parties stipulate otherwise.”) (emphasis added). It was therefore incumbent on Google to serve the Notice sufficiently in advance to complete such a deposition.

TBMP § 404.07(b) (“**Depositions on Written Questions: When Taken** - . . . Discovery depositions must be both noticed and taken during the discovery period. Thus, it is recommended that a party, which desires to take a discovery deposition on written questions, initiate the procedure early in its discovery period.”). Having squandered all of this time, Google cannot now be heard to complain that it was somehow the witness’ fault that Google waited to notice his deposition until it was too late to complete it in the time allotted.

IV. CONCLUSION: THE BOARD SHOULD GRANT THIS MOTION AND QUASH THE NOTICE AS UNTIMELY

WHEREFORE, VIA respectfully requests that the Board consider this matter on an expedited matter by telephone conference and grant the instant motion to quash on the grounds that Google’s Notice seeking to depose Miller Chen by written question after the close of discovery is untimely notwithstanding that it was served during the discovery period and Google’s subsequent filing of a motion to compel. However, if the Board should deny VIA the relief it seeks here, VIA respectfully requests that its time to object or otherwise respond to the Notice be reset as of or following the date of such denial.

Dated: June 11, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2015, one (1) true and correct copy of the foregoing document has been served on Petitioner by First Class Mail to Petitioner's counsel at the address below:

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Attorneys for Petitioner Google Inc.

/s/ Anne Zivkovic

Anne Zivkovic

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**DECLARATION OF IRENE Y. LEE IN SUPPORT OF REGISTRANT'S MOTION TO
QUASH AS UNTIMELY PETITIONER'S NOTICE OF DISCOVERY DEPOSITION BY
WRITTEN QUESTION OF MILLER CHEN AND REQUEST FOR TELEPHONE
CONFERENCE PURSUANT TO 37 CFR § 2.120(i)(1)**

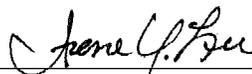
I, Irene Y. Lee, hereby declare as follows:

1. I am a partner at the law firm Russ, August & Kabat ("RAK"), counsel of record for Registrant VIA Technologies, Inc. ("VIA") in these cancellation proceedings. Unless otherwise stated herein, I make this statement in support of VIA's motion to quash as untimely the notice of discovery deposition by written question of Miller Chen ("Notice") served by petitioner Google, Inc. ("Google") and request for telephone conference pursuant to 37 CFR § 2.120(i)(1) based on my personal knowledge.

2. On March 27, 2015, my colleague, Nathan Meyer, and I met and conferred with counsel for Google by telephone. During this conference, Google's counsel asserted that VIA's recent supplemental productions did not address the alleged deficiencies they had complained of in their February 13, 2015 letter and asked us whether VIA would be producing any additional documents to address these alleged deficiencies. Mr. Meyer and I clearly stated that VIA would not be producing any additional documents in response to Google's complaints, including its complaints about the absence of Miller Chen documents.

Pursuant to 28 U.S.C. § 1746 and Rule 2.20 of the Trademark Rules of Practice, I hereby declare that all statements made herein on personal knowledge are true; and all statements made herein on information and belief are believed to be true.

Executed on June 11, 2015 at Los Angeles, California.

A handwritten signature in cursive script, appearing to read "Irene Y. Lee", is written above a horizontal line.

Irene Y. Lee

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**DECLARATION OF JEAN Y. RHEE IN SUPPORT OF REGISTRANT'S MOTION TO
QUASH AS UNTIMELY PETITIONER'S NOTICE OF DISCOVERY DEPOSITION BY
WRITTEN QUESTION OF MILLER CHEN AND REQUEST FOR TELEPHONE
CONFERENCE PURSUANT TO 37 CFR § 2.120(i)(1)**

I, Jean Y. Rhee, hereby declare as follows:

1. I am an attorney at the law firm Russ, August & Kabat ("RAK"), counsel of record for Registrant VIA Technologies, Inc. ("VIA") in these cancellation proceedings. Unless otherwise stated herein, I make this statement in support of VIA's motion to quash as untimely the notice of discovery deposition by written question of Miller Chen ("Notice") served by Petitioner Google, Inc. ("Google") and request for telephone conference pursuant to 37 CFR § 2.120(i)(1) based on my personal knowledge.

2. Attached as **Exhibit 1** is a true and correct copy of a series of emails that I exchanged with counsel for Google on June 8, 2015 regarding Google's contentions as to the timeliness of the Notice and scheduling a telephonic meet and confer to discuss the same. In the last email in this series, I requested for a second time that Google provide us with the authorities it was relying on to support its contentions regarding the timeliness of the Notice, if any. I further requested that Google provide such authority, if any, at least a couple of hours in advance of our telephone conference to help ensure that our meet and confer was meaningful, but did not receive anything in response to this request.

3. On June 9, 2015, my colleague, Irene Lee, and I met and conferred by telephone with Brendan Hughes, who is one of the attorneys representing Google in this matter, but neither side was amenable to changing the positions it had expressed in the letter and email correspondence exchanged leading up to the call. The only contention that Mr. Hughes made during this call about the Notice that differed in any respect from those previously made by email was that the language of the suspension order issued by the Board when Google had filed its prior motion to compel purportedly supported Google's position.

4. Attached as **Exhibit 2** is a true and correct copy of a letter in our correspondence clip that my former colleague, Robert Gookin, sent by email to Google's counsel, Katie Krajeck, on March 26, 2014.

5. Attached as **Exhibit 3** is a true and correct copy of a series of emails that my colleague, Irene Lee, exchanged with counsel for Google between April 30, 2014 and May 17, 2014.

6. Attached as **Exhibit 4** is a true and correct copy of a series of emails that my colleague, Irene Lee, exchanged with counsel for Google between April 30, 2014 and May 29, 2014.

7. Attached as **Exhibit 5** is a true and correct copy of a letter that I sent to Ms. Krajeck on June 11, 2014.

8. Attached as **Exhibit 6** is a true and correct copy of a letter that Ms. Krajeck sent to me on June 13, 2014.

9. Attached as **Exhibit 7** is a true and correct copy of a series of emails that I exchanged with counsel for Google between June 25, 2014 and July 28, 2014.

10. Attached as **Exhibit 8** is a true and correct copy of a letter that we received from Google's counsel by email on February 13, 2015.

11. Attached as **Exhibit 9** is a true and correct copy of a series of emails that my colleague, Nathan Meyer, exchanged with counsel for Google between March 4, 2015 and March 6, 2015.

12. Attached as **Exhibit 10** are true and correct copies of the May 26, 2015 Notice in dispute in the instant motion (which Google also filed with the Board at Docket No. 40), and Exhibit A thereto. This Notice represents the very first time since May 2014 that Google gave VIA any indication of its intention to take the discovery deposition of Miller Chen.

13. Attached as **Exhibit 11** is a true and correct copy of the cover email that Morgan Champion, counsel for Google, used to simultaneously serve on us courtesy copies of the Notice and Google's May 28, 2015 motion to compel on VIA at 11:36 am PDT on Friday, May 29, 2015. Due to the large time difference between Taiwan and the United States, it was already Saturday in Taiwan when this email arrived. This was the first time we saw the Notice as the service copy sent by First Class Mail did not arrive at our office until Monday, June 1, 2015.

14. Attached as **Exhibit 12** is a true and correct copy of a letter that I sent by email to Google's counsel on June 5, 2015 requesting that Google withdraw the Notice and inviting them to meet and confer regarding the same.

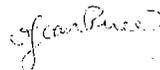
15. Attached as **Exhibit 13** is a true and correct copy of an excerpt from the November 25, 2014 deposition by written question of Inky Chen, VIA's 30(b)(6) designee as to its document collection and production efforts.

16. Based on my review of our files, I can state that on March 16, 2015, VIA produced 125 pages of documents in this matter, and on March 23, 2015, it produced 187 pages.

17. At no point during these proceedings has VIA stipulated or the Board ordered that Google could take Miller Chen's deposition after the close of discovery.

Pursuant to 28 U.S.C. § 1746 and Rule 2.20 of the Trademark Rules of Practice, I hereby declare that all statements made herein on personal knowledge are true; and all statements made herein on information and belief are believed to be true.

Executed on June 11, 2015 at Los Angeles, California.



Jean Y. Rhee

Ex. 1



From: Jean Rhee jrhee@raklaw.com
Subject: Re: Google v. VIA / Letter re Notice of Discovery Deposition of Miller Chen
Date: June 8, 2015 at 5:20 PM
To: Givner-Forbes, Rebecca rgivnerforbes@cooley.com
Cc: Cullum, Janet jcullum@cooley.com, Hughes, Brendan bhughes@cooley.com, Champion, Morgan mchampion@cooley.com, Irene Lee ilee@raklaw.com, Nathan Meyer nmeyer@raklaw.com

Dear Rebecca:

I write in response to your email below.

Although we are aware that compliance with a proper and timely deposition notice is not tolled during the pendency of a motion to compel, we are unaware of any authority providing that Google may manipulate the Board's motion to compel procedures to salvage a notice of deposition by written question that was untimely and improper on its face because it was incapable of being taken in the time remaining in the discovery period when served.

Further, while we disagree with and reserve all of our rights to refute your insinuations that VIA has attempted to use its presence in Taiwan as an excuse to deprive Google of necessary discovery or that VIA is somehow obligated to waive Mr. Chen's rights to appear for a deposition by written question when he works and resides in Taiwan, these statements are entirely beside the point on this motion to quash.

Here, the only issue at hand is whether Google's service of a notice of deposition by written question on a witness that it has been aware of since before it initiated these cancellation proceedings and has known for the past year that it could contact through VIA's counsel one week prior to the discovery cutoff by First Class Mail was timely under the Board's rules. As indicated in my letter of June 5, 2015, the rules expressly admonish that "a party, which desires to take a discovery deposition on written questions, initiate the procedure early in its discovery period" specifically because of the requirement that "[d]iscovery depositions must be both noticed and taken during the discovery period." See TBMP § 404.07(b) (2014); see also 37 CFR § 2.120(a)(3) ("Discovery depositions must be taken . . . on or before the closing date of the discovery period as originally set or as reset."); TBMP § 403.02 ("Discovery depositions must be not only noticed but also taken during the discovery period (unless the parties stipulate or the Board orders that the deposition may be taken outside of the period).").

We are available to meet and confer by telephone at 2:30 pm PST tomorrow. Please let us know what number we should call. Additionally, should you have authority to support your position that a party can do an end-run around the discovery cutoff by serving a deposition notice that is untimely on its face and then filing a motion to compel to suspend proceedings, we would ask that you please provide it at least a couple hours before the call so that we can meaningfully confer regarding the same.

Sincerely,
Jean

Jean Rhee
RUSS AUGUST & KABAT
12424 Wilshire Boulevard
12th Floor
Los Angeles, California 90025
Tel. 310.826.7474
jrhee@raklaw.com

On Jun 8, 2015, at 3:29 PM, Givner-Forbes, Rebecca <rgivnerforbes@cooley.com> wrote:

Jean,

We write in response to your June 5, 2015 letter requesting that Google withdraw its Notice of Discovery Deposition of Miller Chen. We disagree with your assertion that Google will be unable to take the deposition of Mr. Chen during the discovery period.

As you know, under the Board's rules, the filing of a motion to compel suspends a proceeding without delaying any depositions noticed prior to such suspension. In light of Google's recently filed Motion to Compel, we will have adequate time to conduct the discovery deposition of Miller Chen prior to the close of discovery.

Throughout this proceeding, VIA has attempted to use its presence in Taiwan as an excuse to deprive Google of necessary discovery. The fact that Miller Chen must be deposed upon written question, a

process that – as you point out – can take a good deal of time, is not Google’s fault or a matter within its control. Your argument that Google should have noticed Mr. Chen’s deposition early in discovery is inappropriate considering that for months VIA refused to disclose Mr. Chen’s whereabouts. VIA even claimed in its verified, amended response to Google’s Interrogatory No. 27 that “Registrant has no contact for Miller Chen.” Only after several requests from Google did VIA disclose that Miller Chen is a current VIA employee in Taiwan who Google could contact through your firm.

Since this disclosure, Google has attempted to obtain the documents and information it would need to properly prepare for a deposition for Mr. Chen. Ms. Inky Chen confirmed in November 2014 that VIA had collected no responsive documents or information from Mr. Chen. Thereafter, Google engaged in the meet & confer process again in an attempt to reach an agreement with VIA over, among other things, VIA’s failure to collect discovery from Mr. Chen and other custodians. This process has been unsuccessful; Google still does not have the discovery to which it is entitled prior to conducting Mr. Chen’s deposition. Thus, VIA is to blame for any delay in noticing Mr. Chen’s deposition, and continues to prejudice Google by withholding the discovery that would enable Google to properly prepare Mr. Chen’s deposition questions.

We also remind you that, to the extent VIA has concerns about the amount of time consumed by the process of completing a deposition by written question, it is free to consent to a deposition by video conference, which would go much more quickly. We doubt that a deposition would even last the full amount of time permitted under the Federal Rules.

Although we disagree with your assertion that Google’s Notice of Deposition is untimely for the foregoing reasons, we are free to meet & confer with you tomorrow after 2:30 pm PDT or later this week.

Best regards,

Rebecca

Rebecca Givner-Forbes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
(enter from 12th and E Streets)
Washington, DC 20004-2400
Direct: +1 202 776 2382 • Cell: +1 571 218 9479 • Fax: +1 202 842 7899
Email: rgivnerforbes@cooley.com • www.cooley.com

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Ex. 2



12424
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Los Angeles
California
90025

Tel 310.826.7474
Fax 310.826.6991
www.raklaw.com

March 26, 2014

Via Email

Katie Krajeck
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121

Re: Google/VIA: TTAB Proceeding No. 92056816

Dear Ms. Krajeck:

I am writing in response to your March 25, 2014 letter.

As a threshold matter, and as I discussed on a number of occasions with Jeff Norberg, the fact that VIA is based in Taipei, with an American base of operations in San Jose, has made the discovery process in this proceeding unusually difficult and cumbersome. VIA's investigations and productions need to be coordinated on two continents and are further complicated by language barriers. In spite of that, and in direct contrast to the assertions in your letter, VIA has diligently complied with its discovery obligations and will continue to do so.

With respect to the specific assertions in your letter, your assertion that VIA's most recent production "consists almost wholly of third-party website screenshots" is simply incorrect. Contrary to that assertion, the bulk of those documents are confidential internal VIA documents that clearly establish VIA's strategic partnerships with some of the largest computer manufacturers in the world, including but not limited to Fujitsu, HP, IBM, Sony, Toshiba, Dell, Sharp, Samsung and Lenovo. In fact, based on those documents, which we only just received, we have instructed our client to undertake additional investigation with respect to those corporate partners and are confident that VIA will discover and produce additional responsive documents prior to the discovery cut off.

Please be advised that I have attached VIA's privilege log to this email.

With respect to VIA's responses to Google's Interrogatories, pursuant to your March 14, 2014 letter, there appear to be four interrogatories at issue: Numbers 10, 11, 26 and 27. Interrogatories 10 and 11 seek information regarding "any personal computer, desktop computer, portable computer, notebook computer, laptop computer, or any other computer device: on which the CHROME Marks are currently being used, or on which they have been used within the past four years. As set forth above, we continue to investigate the broad scope of VIA's strategic partnerships and are working to create a comprehensive list of computers and "computing devices," including model numbers, in response to those interrogatories. Be advised that we will amend our earlier response as soon as that information has been compiled. With



Katie Krajeck
March 26, 2014
Page 2

respect to Interrogatory No. 26, I can confirm that Jonathon Chang is a VIA employee who is currently on a leave of absence. Accordingly, Mr. Chang can be contacted through RAK. And finally with respect to Interrogatory No. 27, I can confirm that Miller Chen is a VIA employee and can be contacted through RAK.

Accordingly, and consistent with VIA's good faith efforts to comply with its discovery obligations and resolve any purported differences with Google, we do not believe that Google has any good faith basis to proceed with the threatened motion to compel at this time and we will so advise the Board if you decide to move to compel. *See, e.g., Hot Tamale Mama...and More, LLC v. SF Investments, Inc., Opposition No. 91209030 (March 20, 2014).*

While your March 25, 2014 letter does not address schedule of the upcoming depositions, we have spoken with our client and are attempting to clear dates for those depositions, as well as to determine the identity and location of VIA's 30(b)(6) deponent(s). That said, please be advised that Ken Weng has substantial duties with respect to VIA's tax reporting and, as such, will not be available on April 16, 2014, as noticed. Mr. Weng has indicated that the earliest he can be available is the last week in April or the first week in May. I will advise further as soon as we obtain additional information.

In light of all the above, and in order to avoid burdening the Board with an unnecessary Motion to Compel, VIA would suggest that the Parties request a continuance of all deadlines by 30 days, which extension will hopefully obviate the issues raised in your letters and allow the process to proceed smoothly and efficiently. Please advise if Google agrees to request that extension and VIA will prepare and file a consented motion with the Board.

As always, please feel free to contact me if you have any questions.

Sincerely,

Russ, August & Kabat

Robert F. Gookin

RFJ/jm

Enclosure.

cc: Irene Lee, Esq.

Ex. 3

From: Irene Lee ilee@raklaw.com
Subject: Re: Google v. VIA/ Discovery Issues
Date: May 17, 2014 at 5:39 PM
To: Krajeck, Katie kkrajeck@cooley.com
Cc: Hughes, Brendan bhughes@cooley.com, Cullum, Janet jcullum@cooley.com, Robert Gookin rgookin@raklaw.com, Josie Mercado jmercado@raklaw.com, Jean Rhee jrhee@raklaw.com



Hi Katie,

Thank you for taking my call yesterday.

1. As we discussed, we need to know if Google is taking Mr. Weng's deposition on June 19 or 20. We appreciate that you are working with your team to confirm a date and will let us know soon.
2. With respect to the deposition of Mr. Young Kwon, I understand you have yet to contact Mr. Kwon but will let us know if you plan to proceed with his deposition.
3. As for Mr. Jonathan Chang's deposition, I told you that he has not returned any of our voice messages and will let you know next week whether to have you contact him directly. Further, we are currently checking our client's records to see if we have any other contact information.
4. Finally, as for Mr. Miller Chen's deposition, I asked you how Google plans to proceed given that he resides in Taiwan. We look forward to hearing from you soon.

Regards,

Irene

--

Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Main: 001.310.826.7474
Direct: 001.310.979.8224

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On May 16, 2014, at 6:03 PM, Krajeck, Katie <kkrajeck@cooley.com> wrote:

Hi Irene,

As we discussed on the phone earlier, please see the attached Motion for Extension that Google Inc. submitted today.

Thank you,
-Katie

From: Irene Lee [<mailto:ilee@raklaw.com>]

FROM: Irene Lee [mailto:irene@ra.com]

Sent: Monday, May 12, 2014 2:32 PM
To: Krajeck, Katie; Hughes, Brendan; Cullum, Janet
Cc: Robert Gookin; Josie Mercado; Jean Rhee
Subject: Re: Google v. VIA/ Discovery Issues

Hi Katie and Brendan,

1. I confirm that Mr. Weng will be VIA's designee for all noticed 30(b)(6) topics.
2. For Mr. Weng's deposition, would you please advise whether June 19 or 20 works for you? He is keeping both dates open for now and needs to know his schedule soon.
3. With respect to the deposition of Mr. Young Kwon, he has just indicated to us that he would not appear for a deposition in this matter. If you wish to contact him, please do so directly. He can be reached at ykwonusa@yahoo.com.
4. We are in the process of getting the dates for the deposition of Mr. Jonathan Chang and Mr. Miller Chen in June and will let you know in the next few days.

Regards,

Irene

--

Irene Y. Lee
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Direct: 001.310.979.8224

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On May 9, 2014, at 1:07 PM, Krajeck, Katie <kkrajeck@cooley.com> wrote:

Dear Irene and Robert,

We would appreciate your response to the issues raised in our email to you on May 6. Once you have agreed to make these deponents available as outlined below, we will file the consent motion.

Thank you,
-Katie

From: Hughes, Brendan
Sent: Tuesday, May 06, 2014 5:15 PM
To: [Ilee@raklaw.com](mailto:ilee@raklaw.com)
Cc: Robert Gookin; jmercado@raklaw.com; Krajeck, Katie; Cullum, Janet
Subject: RE: Google v. VIA/ Discovery Issues

Irene –

I understand from our previous discussions that Mr. Weng will be VIA's designee for all noticed 30(b)(6) topics. Please confirm that my understanding is correct. CORRECT

We will let you know soon if either June 19 or 20 works for the deposition of Mr. Weng. Please keep those dates reserved.

With respect to the deposition of Mr. Young Kwon, I understand from you that he is no longer an employee of VIA, but that you have been in contact with him. Please provide us with his contact information. As I previously mentioned, we would like to depose him in June as well. If you are representing him, please confirm that he is available in June as well.

Finally, in your March 26, 2014 letter, you indicated that both Mr. Jonathan Chang and Mr. Miller Chen may be contacted through your firm. Please confirm this is still the case, and that you will make these individuals available for depositions in June as well.

Assuming that you will agree to make these deponents available for depositions in June (after VIA fully satisfies its discovery obligations by May 30), I will file the consent motion extending all deadlines by 30 days.

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: [Ilee@raklaw.com](mailto:ilee@raklaw.com) [<mailto:ilee@raklaw.com>]
Sent: Friday, May 02, 2014 8:42 PM
To: Hughes, Brendan
Cc: Robert Gookin; jmercado@raklaw.com; Krajeck, Katie; Cullum, Janet
Subject: Re: Google v. VIA/ Discovery Issues

Brendan,

VIA will produce outstanding documents and supplement interrogatory responses by May 30. Mr. Ken Weng is available for deposition on June 19 or 20. Would you let me know either date works for Google?

--

Irene Y. Lee
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12424 Wilshire Boulevard
Los Angeles, California 90025
Tel: 001.310.826.7474
Fax: 001.310.826.6991

On May 2, 2014, at 7:52 AM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Irene –

Following up on our call on Wednesday, please let me know if your client will commit to a date certain in May for satisfying its discovery obligations and will agree to make its deponents available for deposition in mid-June. We need to resolve this issue today.

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

On Apr 30, 2014, at 10:15 AM, Hughes, Brendan <bhughes@cooley.com> wrote:

Irene and Bob --

Following up on our call last week, please let me know if you are available any time this afternoon to discuss the proposed 30 day extension. Are you able to provide us with a date certain in May for VIA to commit to fully satisfying its discovery obligations?

I note that you previously stated that VIA intended to "(1) supplement its interrogatory responses, (2) produce additional documents, and (3) provide Google with dates as to the availability of VIA's deponents" by last Friday, April 25. Please let me know the status of those discovery efforts. While we discussed the availability of Mr. Weng for a deposition and VIA's efforts overall during our call. I do not believe that you supplemented your

interrogatories or produced any additional documents.

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP

1299 Pennsylvania Avenue, NW • Suite 700

Washington, DC 20004-2400

Direct: (202) 842-7826 • Fax: (202) 842-7899

Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

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<USPTO_ESTTA.pdf>

Ex. 4

From: Krajeck, Katie kkrajeck@cooley.com

Subject: RE: Google v. VIA/ Discovery Issues

Date: May 29, 2014 at 12:02 PM

To: Irene Lee ilee@raklaw.com

Cc: Hughes, Brendan bhughes@cooley.com, Cullum, Janet jcullum@cooley.com, Robert Gookin rgookin@raklaw.com, Jean Rhee jrhee@raklaw.com

KK

Hi Irene,

We will depose Mr. Weng on June 19, provided VIA produces the requested documents and otherwise cures its discovery deficiencies by May 30.

We will get back to you on the other issues you raised.

Thank you,

-Katie

From: Irene Lee [<mailto:ilee@raklaw.com>]

Sent: Friday, May 23, 2014 12:49 PM

To: Krajeck, Katie

Cc: Hughes, Brendan; Cullum, Janet; Robert Gookin; Jean Rhee

Subject: Re: Google v. VIA/ Discovery Issues

Hi Katie,

I'm writing to follow up on our 5/16 telephone conversation and my 5/17 follow-up email.

1. Can you let us know if Google is taking Mr. Weng's deposition on June 19 or 20?
2. With respect to the deposition of Mr. Young Kwon, please let us know how you plan to proceed. If you plan to take his deposition, please let us know your proposed dates.
3. As for Mr. Jonathan Chang's deposition, we have not heard from him. Here is his last known address. If you wish to contact him, please do so directly.

Jonathan Chang
22215 Rae Lane
Cupertino, CA 95014

4. Finally, as for Mr. Miller Chen's deposition, I asked you how Google plans to proceed given that he resides in Taiwan. Please advise.

Regards,

Irene

--

Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor
12424 Wilshire Boulevard

Los Angeles, California 90025
Main: 001.310.826.7474
Direct: 001.310.979.8224

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On May 16, 2014, at 6:03 PM, Krajeck, Katie <kkrajeck@cooley.com> wrote:

Hi Irene,

As we discussed on the phone earlier, please see the attached Motion for Extension that Google Inc. submitted today.

Thank you,
-Katie

From: Irene Lee [<mailto:ilee@raklaw.com>]
Sent: Monday, May 12, 2014 2:32 PM
To: Krajeck, Katie; Hughes, Brendan; Cullum, Janet
Cc: Robert Gookin; Josie Mercado; Jean Rhee
Subject: Re: Google v. VIA/ Discovery Issues

Hi Katie and Brendan,

1. I confirm that Mr. Weng will be VIA's designee for all noticed 30(b)(6) topics.
2. For Mr. Weng's deposition, would you please advise whether June 19 or 20 works for you? He is keeping both dates open for now and needs to know his schedule soon.
3. With respect to the deposition of Mr. Young Kwon, he has just indicated to us that he would not appear for a deposition in this matter. If you wish to contact him, please do so directly. He can be reached at ykwonusa@yahoo.com.
4. We are in the process of getting the dates for the deposition of Mr. Jonathan Chang and Mr. Miller Chen in June and will let you know in the next few days.

regards,

Irene

--

Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Main: 001.310.826.7474
Direct: 001.310.979.8224

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On May 9, 2014, at 1:07 PM, Krajeck, Katie <kkrajeck@cooley.com> wrote:

Dear Irene and Robert,

We would appreciate your response to the issues raised in our email to you on May 6. Once you have agreed to make these deponents available as outlined below, we will file the consent motion.

Thank you,
-Katie

From: Hughes, Brendan
Sent: Tuesday, May 06, 2014 5:15 PM
To: ilee@raklaw.com
Cc: Robert Gookin; jmercado@raklaw.com; Krajeck, Katie; Cullum, Janet
Subject: RE: Google v. VIA/ Discovery Issues

Irene –

I understand from our previous discussions that Mr. Weng will be VIA’s designee for all noticed 30(b)(6) topics. Please confirm that my understanding is correct. CORRECT

We will let you know soon if either June 19 or 20 works for the deposition of Mr. Weng. Please keep those dates reserved.

With respect to the deposition of Mr. Young Kwon, I understand from you that he is no longer an employee of VIA, but that you have been in contact with him. Please provide us with his contact information. As I previously mentioned, we would like to depose him in June as well. If you are representing him, please confirm that he is available in June as well.

Finally, in your March 26, 2014 letter, you indicated that both Mr. Jonathan Chang and Mr. Miller Chen may be contacted through your firm. Please confirm this is still the case, and that you will make these individuals available for depositions in June as well.

Assuming that you will agree to make these deponents available for depositions in June (after VIA fully satisfies its discovery obligations by May 30), I will file the consent motion extending all deadlines by 30 days.

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: ilee@raklaw.com [<mailto:ilee@raklaw.com>]
Sent: Friday, May 02, 2014 8:42 PM
To: Hughes, Brendan
Cc: Robert Gookin; jmercado@raklaw.com; Krajeck, Katie; Cullum, Janet
Subject: Re: Google v. VIA/ Discovery Issues

Brendan,

VIA will produce outstanding documents and supplement interrogatory responses by May 30. Mr. Ken Weng is available for deposition on June 19 or 20. Would you let me know either date works for Google?

--

Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Tel: 001.310.826.7474
Fax: 001.310.826.6991

On May 2, 2014, at 7:52 AM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

On May 2, 2014, at 7:52 AM, Hughes, Brendan <bhughes@cooley.com> wrote:

Irene –

Following up on our call on Wednesday, please let me know if your client will commit to a date certain in May for satisfying its discovery obligations and will agree to make its deponents available for deposition in mid-June. We need to resolve this issue today.

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

On Apr 30, 2014, at 10:15 AM, Hughes, Brendan <bhughes@cooley.com> wrote:

Irene and Bob --

Following up on our call last week, please let me know if you are available any time this afternoon to discuss the proposed 30 day extension. Are you able to provide us with a date certain in May for VIA to commit to fully satisfying its discovery obligations?

I note that you previously stated that VIA intended to "(1) supplement its interrogatory responses, (2) produce additional documents, and (3) provide Google with dates as to the availability of VIA's deponents" by last Friday, April 25. Please let me know the status of those discovery efforts. While we discussed the availability of Mr. Weng for a deposition and VIA's efforts overall during our call, I do not believe that you supplemented your interrogatories or produced any additional documents.

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

Ex. 5



June 11, 2014

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VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Katie Krajeck
Cooley LLP
Palo Alto—Hanover Campus
3175 Hanover Street
Palo Alto, California 94304-1130

Re: *Google, Inc. v. VIA Technologies, Inc.*
Cancellation No. 92056816

Dear Katie:

I write in response to your June 5, 2014 letter.

VIA'S INTERROGATORY RESPONSES

In response to Interrogatory No. 4, VIA served a full and complete response by identifying all of the products and services with which the CHROME MARKS have been or are currently being used. The fact that you may consider these products and services to be "basic" and that they are listed in the subject registrations does not render VIA's response deficient or incomplete. We are not aware of any legal authority requiring a party in cancellation proceedings to avoid using the names of the relevant goods and services in an interrogatory response simply because they also appear in the subject registrations, and you have not provided us with any. Although you cite to Federal Rule of Civil Procedure 33(b)(3), nowhere does that rule provision state that a party is precluded in any way from using the names of relevant goods and services in responding to an interrogatory. Rather, Rule 33(b)(3) provides that interrogatories should be answered separately and fully, to the extent not objected to, which VIA has done.

In response to Interrogatories Nos. 10 and 11, VIA identified the names of various computer devices on which the CHROME MARKS are currently being used and/or have been used in the last four years in the United States: ARTIGO series, AMOS series, ZOTAC and Fujitsu. We are puzzled by your assertion that VIA's response is deficient because Fujitsu is "a third party provider of IT services and products (and not a computer product)," as Fujitsu has long been a world leader in the field of computer devices. I therefore attach a screenshot from Fujitsu's website reflecting "Computing Products," and, specifically, "PCs and Notebooks" among its product offerings to clear up any confusion in this regard.

Although VIA believes its responses to Interrogatories Nos. 4, 10, and 11 to be adequate, in the interests of avoiding unnecessary motion practice, VIA is further supplementing to add additional computer devices to VIA's responses to Interrogatories Nos. 10 and 11. VIA is also supplementing to add Bates numbers for documents that contain information responsive to Interrogatories Nos. 4, 10, and 11 pursuant to Federal Rule of Civil Procedure 33(d). Accordingly, please find enclosed VIA's third amended responses to Interrogatories Nos. 4, 10, and 11 with this information.

VIA'S DOCUMENT PRODUCTION

Contrary to Google's assertions, VIA has produced more than two strings of internal communications in VIA's production and the produced communications are relevant to the goods and services with which the CHROME MARKS are used.

However, since our production of May 30, 2014, we have received additional documents from VIA. The bulk of these additional documents were previously in the custody of VIA's former Senior Paralegal, Donna Lee. Unfortunately, Ms. Lee passed away unexpectedly a few years ago, and thus her files were not reviewed, and were not brought to our attention until June 6, 2014. We are producing the additional documents today that we have gathered with the Bates Nos. VIA02095-2409, 2496-2532 and VIA02542-2576. Please note that documents with the Bates Nos. VIA02095-2409 are marked CONFIDENTIAL/ATTORNEYS' EYES ONLY and should be treated as such.

We have also noticed an irregularity with the Bates numbering in our May 30, 2014 production that we are correcting in today's production. Specifically, on May 30, 2014, we produced a DVD containing, *inter alia*, documents with the Bates numbers VIA01099-VIA01911. Also, on May 30, 2014, we produced some documents by email, including a second set of documents with the Bates numbers VIA01903-VIA01911 that was sent in an email at 6:16 PM. Because we inadvertently used the Bates numbers VIA01903-VIA01911 twice, we would ask that you delete all copies in your possession of the documents bearing Bates numbers VIA01903-VIA01911 that we sent by email at 6:16 PM on May 30, 2014. These same documents are being reproduced in today's supplemental production with the following new Bates numbers: VIA02533-02541. These documents are marked CONFIDENTIAL/ATTORNEYS' EYES ONLY and should be treated as such.

Lastly, VIA's May 30, 2014 DVD production included a subfolder containing documents (some of which are duplicates of one another) without any Bates numbering. These same documents are being reproduced today (sans duplicates) with the following Bates numbers: VIA02410-2495 and VIA02577-03018.

PRIVILEGE LOG

Enclosed please find VIA's supplemental privilege log.

With respect to the log served on May 30, 2014, please be advised that Donna Lee was a Senior Paralegal at VIA and Claire Lin is In-House Counsel for VIA.

DEPOSITION

Please advise when you plan to conduct the deposition of VIA's 30(b)(6) witness. As we previously indicated, Mr. Ken Weng will testify on behalf of VIA and in his individual capacity for up to seven hours.

Further, please advise by Friday, June 13, 2014 whether you plan to depose Young Kwon, Miller Chen, and Jonathan Chang.

GOOGLE'S DOCUMENT PRODUCTION

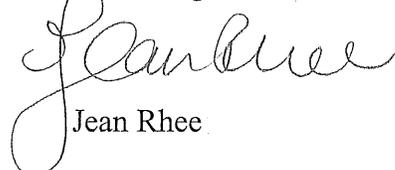
Finally, your colleagues have previously indicated that Google has no documents to produce in this proceeding. Particularly, contrary to Google's repeated assertions, Google does not have any documents to support its positions that VIA consented to Google's use of the CHROME mark or VIA has abandoned the CHROME mark. Please confirm in writing by Friday, June 13, 2014 that (i) Google has no such documents to support its position; and (ii) it has no documents to produce in this proceeding.

* * *

In sum, as we have previously indicated to Google on a number of occasions, VIA has consistently worked in good faith to fully comply with its discovery obligations, including by supplementing its productions and interrogatory responses. Accordingly, we do not believe that there are grounds for a motion to compel. If, however, Google continues to believe that a motion to compel is warranted, we are generally available this week to meet and confer regarding the issues Google intends to raise in such a motion.

Sincerely,

Russ, August & Kabat



Jean Rhee

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Ex. 6



Ka tie Kra je c k
T +1 650 849 7048
kkra je c k@c o o le y.c o m

BY EMAIL

June 13, 2014

Jean Rhee, Esq.
Russ, August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
jrhee@raklaw.com

RE: *Google Inc. v. VIA Technologies, Inc. - Discovery Deficiencies*

Dear Jean:

I write in response to your letter dated June 11, 2014. VIA's belated production of additional documents and Third Amended Interrogatory Responses fails to cure the deficiencies addressed in my prior letters dated February 11, 2014, March 25, 2014, April 11, 2014, and June 5, 2014.

Interrogatory Responses

VIA's amended interrogatory responses are still evasive.

Google requested that VIA provide a detailed description all goods and services, including computers, with which the CHROME mark has been or is currently being used. (See Interrogatories No. 4, 10 and 11.) VIA's recitation of the generic goods and services set forth in its trademark registrations and reference to various series of products and third-party computer providers fail to fully answer Google's interrogatories and fall far short of the comprehensive list, including model numbers, promised by VIA in Mr. Gookin's March 26, 2014 letter.

In addition, while VIA claims that "the burden and expense of summarizing the contents" of the documents identified by VIA in response to Interrogatories Nos. 4, 10 and 11 is "substantially the same for VIA as for Google," this is not the case. Google has requested a discrete list of all goods and services on which the CHROME mark has been used. The documents cited in VIA's response consist of photographs, invoices, screenshots, product manuals and various other documents. The burden to Google to identify the relevant goods or service in each such document is manifestly greater than the burden to VIA to simply list the goods and services on which its own CHROME trademark has been used.



Jean Rhee, Esq.
June 13, 2014
Page Two

Moreover, even if Google were able to discern the goods and services at issue from the documents identified by VIA, VIA makes clear that this is not a complete list, but rather is “without limitation” to other unidentified products.

Finally, VIA purports to satisfy its obligation under Federal Rule of Civil Procedure 33(d) by reference to numerous third-party website screenshots and product manuals. However, it is well settled that third-party records “do not qualify as ‘business records of the party upon whom the interrogatory has been served.’” *E. & J. Gallo Winery v. Rallo*, No. 1:04cv5153 OWW DLB, 2006 U.S. Dist. LEXIS 84048, at *7-*8 (E.D. Cal. Nov. 8, 2006) (ordering that “clear and straightforward answers” be provided to interrogatories seeking “information . . . regarding . . . products which bear [certain] Trademark[s]”).

Document Production

We have reviewed the additional documents included in VIA’s most recent production. Despite the production of a handful of responsive communications, it remains evident that VIA has not undertaken a reasonable search of its hardcopy and electronic files and, in particular, its email files. For example, VIA’s document production to date contains almost no relevant communications authored or received by Mr. Ken Weng, the sole witness identified in VIA’s initial disclosures.

Moreover, Google notes that VIA’s most recent document production contains responsive documents authored by, among other individuals, Ms. Amy Wu, an Assistant Director of Product Marketing, who appears to be involved in the marketing of goods and services under the CHROME mark since at least 2011. VIA’s failure to identify Ms. Wu in its initial disclosures and interrogatory responses gives Google great concern that there are other witnesses with relevant information that Google will not be able to identify until VIA fully complies with its discovery obligations.

VIA has also failed to identify the document custodians whose files were searched, the nature of the files searched, the search terms run across VIA’s electronically stored data, or the number of documents retrieved in connection with its searches.

Depositions of VIA’s Witnesses

In the absence of the relevant universe of responsive documents and communications, as well as complete information regarding the goods and services in connection with which VIA has used its CHROME mark, Google is not in a position to proceed with the deposition of any VIA witnesses, or to determine which witness(es) it will depose.



Jean Rhee, Esq.
June 13, 2014
Page Three

Google's Document Production

Despite your assertion otherwise, VIA did not request and Google has not agreed to produce "documents to support its position that VIA consented to Google's use of the CHROME mark or [that] VIA has abandoned the CHROME mark." As set forth in its responses to VIA's document requests, Google will produce all documents it intends to rely upon in its case, as well as any documents that are relevant to the abandonment and non-use issues in this proceeding.

Google has repeatedly consented to extending deadlines in an effort to reach resolution of these discovery matters. However, each effort to compromise has been met with further delay, evasiveness and obfuscation. In light of the discovery deficiencies identified above and the upcoming deadline for the close of discovery, Google is left with no choice but to move to compel.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie M. Krajeck".

Katie M. Krajeck

cc: Janet L. Cullum, Brendan J. Hughes – *Counsel for Google Inc.*
Irene Lee, Robert Gookin – *Counsel for VIA Technologies, Inc.*

Ex. 7

From: Hughes, Brendan bhughes@cooley.com
Subject: RE: Google/VIA Cancellation Proceeding
Date: July 28, 2014 at 7:47 AM
To: Jean Rhee jrhee@raklaw.com
Cc: Irene Lee ilee@raklaw.com, Cullum, Janet jcullum@cooley.com, Krajeck, Katie kkrajeck@cooley.com



Hi Jean –

Thank you. We will file the joint motion. (Good luck with jury duty.)

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Monday, July 28, 2014 10:42 AM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

Yes, VIA has agreed to the language you circulated last Thursday. I authorize you to sign for me as Irene is on the road and I am at jury duty this morning.

Thanks
Jean

Jean Rhee
Russ August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025
310 826-7474
310 826-6991 Fax
jrhee@raklaw.com

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On Jul 27, 2014, at 8:18 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean—

Please let us know if VIA has agreed to the language of the joint motion. I note that it is currently 11:15 am on Monday in Taiwan. If so, please sign the joint motion and send it to us for filing.

On Friday afternoon, we decided to hold off on filing a notification of the parties' agreement with the Board given that you expected to hear back from VIA about the language of the joint motion on Monday CST.

Best regards,

Brendan

Brendan Joseph Hughes

Cooley LLP
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Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: Hughes, Brendan [mailto:bhughes@cooley.com]
Sent: Friday, July 25, 2014 4:16 PM
To: Jean Rhee
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: RE: Google/VIA Cancellation Proceeding

Jean –

I am trying to figure out a solution to this timing and logistical issue. We do not think that the parties should wait until Monday (or perhaps even later if you do not hear back from VIA) to notify the Board of our agreement to resolve this discovery dispute.

We will file a motion today notifying the Board that we understand the parties have agreed to terms to resolve this discovery dispute. The motion will look essentially the same as the joint motion you previously reviewed. In the motion, we will state that we expect that, due to timing and logistical issues, VIA will consent to the motion on Monday. That way, the Board will be informed of the deal and VIA's consent to the motion on Monday. I have a hunch that you will be happy with this

VIA can consent to the motion on Monday when you near back from them. I think that will resolve this issue.

Best regards,

Brendan

Brendan Joseph Hughes

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Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: Jean Rhee [<mailto:jrhee@raklaw.com>]
Sent: Friday, July 25, 2014 3:50 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Brendan:

I am not really sure how you expect me to respond to this because my answer cannot be different than it was yesterday; I cannot agree to file something as consented when I do not actually have my client's consent and with the knowledge that my client specifically stated that it wanted to review and sign off on this motion. We first received the draft from you yesterday mid-day and forwarded it to the client, but even without the 15 hour time difference, communications with VIA in Taiwan have been restricted because their offices were closed and their servers were affected by the storm. So I am doing what I can, but I cannot tell you that it is fine for you to do something that I was not authorized to do. If Google does not want to wait, it will have to file the motion as unconsented because I cannot consent.

Jean

Jean Rhee
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jrhee@raklaw.com

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On Jul 25, 2014, at 12:30 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

The parties should avoid waiting until Monday to inform the Board of their agreement to resolve this discovery dispute. Can you even guarantee that we will hear back from VIA by Monday?

If VIA has consented to the 120-day extension and other terms as you previously stated, Google can file a consent motion without VIA's signature. If we mischaracterize anything in our consent motion (which should not be the case because you already reviewed it and we are incorporating your revisions), then VIA can file a paper clarifying any points in our consent motion. Do you agree with that approach? I think that is how we are going to proceed.

If you would like, I would be happy to have a call to discuss this issue in more detail.

Best regards,
Brendan

Brendan Joseph Hughes

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Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: Jean Rhee [<mailto:jrhee@raklaw.com>]
Sent: Friday, July 25, 2014 1:34 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

I did not hear from the client at all yesterday. I have followed up, and can also offer to extend Google's reply deadline to Monday in the event that I don't hear back in time to get the joint motion on file today.

Jean

Jean Rhee

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310 826-6991 Fax
jrhee@raklaw.com

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On Jul 25, 2014, at 8:47 AM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

Please let us know if VIA approved the joint motion. If so, please sign it and send us a copy so that we can file it today.

Thanks,

Brendan

Brendan Joseph Hughes
Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400
Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: Hughes, Brendan [mailto:bhughes@cooley.com]
Sent: Thursday, July 24, 2014 7:33 PM
To: Jean Rhee
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: RE: Google/VIA Cancellation Proceeding

Jean –

Thank you for granting the one-day extension of our deadline to file a reply brief. We do not intend to

file a consent motion seeking the extension. Your written consent should suffice if we need to file a reply brief tomorrow.

Please find attached a copy of the revised joint motion to extend deadlines. Please sign it and send us a copy as soon as you receive VIA's approval. If VIA approves the motion this morning CST, we should be able to file it on time.

Best regards,

Brendan

Brendan Joseph Hughes

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Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: Jean Rhee [<mailto:jrhee@raklaw.com>]
Sent: Thursday, July 24, 2014 7:17 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

Yes, we can grant a one-day extension of the reply brief. Are you going to file a consent motion for this purpose?

Jean

Jean Rhee
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On Jul 24, 2014, at 4:03 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

In view of these timing circumstances, please let us know if you will consent to a one-day extension of Google's deadline to file a reply brief – in case the parties do not file a joint motion as anticipated. Of course, we assume that Google will not need to file a reply brief in light of the parties' negotiations to date.

Best regards,

Brendan

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From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Thursday, July 24, 2014 6:41 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

The proposed rewrite is fine.

I'm afraid I don't have authority to approve the submission of the motion in any capacity. The client was very clear about needing to see this motion before it was submitted and we expect to hear back when it has, but it was only 3 am Taipei time when we got the draft and still only 6 am Taipei time now.

Jean

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On Jul 24, 2014, at 3:16 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

Thank you for your revisions.

With respect to the sentence that begins with “specifically,” if you agree, we will revise that sentence to read simply: “Specifically, VIA’s 30(b)(6) deponent on the subject of its discovery efforts, as well as an individual fact witness, reside in Taiwan and thus will only be available for deposition by written question in Taiwan.” In other words, in the spirit of keeping this motion neutral, we will delete the “Google did not realize until recently” language that you added. Please let us know if that works. We will accept your other revisions.

With respect to the timing of filing the motion, we believe that we need to file it this evening given that our deadline to file a reply brief is today. Accordingly, please let us know if you will consent to the motion, instead of signing a “joint motion.” That may be a workable solution.

Thanks,

Brendan

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From: Jean Rhee [<mailto:jrhee@raklaw.com>]

Sent: Thursday, July 24, 2014 6:02 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

Here are some minor revisions we had in redline. We are still waiting, however, to get client approval on the draft as we were not given authority to sign off on our own. Because of the 15-hour time difference, we realistically expect to hear from the client later today or tomorrow morning on this.

Jean

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On Jul 24, 2014, at 2:15 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

Please let us know if you have any proposed revisions to the joint motion. If not, please execute the motion and send us back a copy.

To confirm, Google has approved it on our end.

Best regards,

Brendan

Brendan Joseph Hughes

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Direct: (202) 842-7826 • Fax: (202) 842-7899
Bio: www.cooley.com/bhughes • Practice: www.cooley.com/litigation

From: Hughes, Brendan [mailto:bhughes@cooley.com]
Sent: Thursday, July 24, 2014 3:16 PM
To: Jean Rhee
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: RE: Google/VIA Cancellation Proceeding

Hi Jean –

Thank you for the update. Please let us know if your plans change.

For your review, please find attached a copy of our draft joint motion requesting the 120-day extension in order to resolve the parties' discovery disputes. As discussed last evening, we drafted the motion with the intention of making it neutral in tone. If you would like to revise any language, please let us know. If possible, we would like to file the motion today before 6 pm EDT.

We sent the draft motion to Google for their review and approval a few minutes ago. In the interest of time, we did not want to wait for their review before sending it to you. If Google has any revisions, we will let you know.

Best regards,

Brendan

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From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Thursday, July 24, 2014 2:38 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

We really appreciate Google's willingness to grant the extension, but it turns out that we will be able to serve our responses today after all, and will do so later today.

Best
Jean

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On Jul 23, 2014, at 6:58 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

Thank you. We will prepare the consent motion tomorrow morning and send it to you for approval. We will be sure to make it neutral.

I just received confirmation that Google will consent to a one-week extension of VIA's deadline to respond to Google's RFAs – i.e., until next Thursday, July 31. Please confirm that VIA will extend Google the same courtesy if requested in the future.

Best regards,

Brendan

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From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Wednesday, July 23, 2014 8:56 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

In view of the assurances you offered today, including as to Google's willingness to forgo its challenge to VIA's response to Google's Interrogatory No. 4, VIA will agree to the 120-day extension and other terms of Google's July 18 proposal, subject, of course to the parties arriving at mutually-agreeable language for the consent motion to be filed with the Board.

We look forward to hearing back from you regarding the 1-week extension we have requested on the Requests for Admission.

Best,

Jean

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On Jul 23, 2014, at 4:29 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

Thank you for keeping us posted about the timing of your response. We hope that the parties can reach an agreement and move forward with discovery.

With respect to the extension request, I will reach out to our client and get back to you as soon as possible – most likely this evening.

Best regards,

Brendan

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From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Wednesday, July 23, 2014 7:22 PM
To: Hughes, Brendan
Cc: Irene Lee; Cullum, Janet; Krajeck, Katie
Subject: Re: Google/VIA Cancellation Proceeding

Hi Brendan:

Irene is out of the office for a mediation today and I have not been able to reach her. However, I do understand the urgency and will definitely try my best to get a response for you today. Hopefully, in the next hour or 2.

Also, VIA's Taiwan offices have been closed the past 2 days due to the typhoon and I was told that their servers are down. Due to these difficulties in getting through to our client to finalize our responses, I would like to request a one week extension on our responses to Google's RFAs due tomorrow, 7/24, making them due 7/31 instead.

Jean

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On Jul 23, 2014, at 2:44 PM, "Hughes, Brendan" <bhughes@cooley.com> wrote:

Jean –

I address each point you raised in turn below. It appears that the parties are close to resolving this discovery dispute, so I would appreciate your prompt response today – especially in light tomorrow’s filing deadline. I note that if the parties reach an agreement, we should file a consent motion to that effect tomorrow and should wait until the Board acts on the motion before we finalize the deposition schedule and relevant timing. For example, if the Board grants a shorter extension than requested, the parties may need to restructure the schedule.

With respect to the requested length of the extension, we think the process of taking a deposition by written question could take up to 60 days to complete. The Board itself notes in TBMP § 404.07(j) that “[a] deposition on written questions is a cumbersome, time-consuming procedure.” As previously discussed, we would like to complete the deposition of Ms. Chen before taking the other fact depositions, including the other deposition of Mr. Brown by written question. Accordingly, it appears that 120 days will be necessary to conduct two depositions by written question back-to-back, as well as the other depositions. Please let us know if VIA will consent to the 120 day extension.

With respect to the officer who will conduct the deposition, we simply want to ensure that the officer is a qualified third party. If Ms. Chen needs an interpreter, we will work with you to accommodate that need.

Finally, with respect to the Interrogatory No. 4, we are willing to forego that challenge in our motion to compel in the spirit of compromise only if VIA agrees to the terms set forth in our previous email.

Best regards,

Brendan

Brendan Joseph Hughes
Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
Washington, DC 20004-2400

From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Wednesday, July 23, 2014 5:08 PM
To: Krajeck, Katie
Cc: Hughes, Brendan; Cullum, Janet; Irene Lee
Subject: Re: Google/VIA Cancellation Proceeding

Katie:

VIA is amenable, as always, to trying to reach a resolution with Google, but Google's latest proposal raises some questions. First, it is unclear why Google needs 120 days even with the 2 depositions by written question and a 2 week gap between the first deposition by written question of Ms. Chen and the commencement of the remaining depositions. Given that other depositions can be taken simultaneous with the second deposition by written question of Mr. Brown, 120 days seems excessive.

Second, what does Google mean when it says it will have "final approval authority with respect to the officer who will conduct the deposition"? This is neither something that was previously discussed, nor contemplated by the Trademark Rules, and therefore we are unsure why it is necessary. Does Google have a specific deposition officer in mind? On a related note, it is possible that Ms. Chen will need an interpreter for the deposition, so that is something we will look into.

Third, we need to clarify whether this proposal means that Google is agreeing to forgo the existing dispute over Interrogatory No. 4 and will not continue to pursue additional supplementation for that interrogatory going forward.

Thank you
Jean

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On Jul 22, 2014, at 5:23 PM, "Krajeck, Katie" <kkrajeck@cooley.com> wrote:

Dear Jean,

It is not worthwhile for us to respond to the various mischaracterizations in your email. We are attempting to reach a compromise based primarily on terms that VIA has already agreed to in previous emails.

Please let us know when you expect to respond substantively to Google's proposal.

Thank you,
-Katie

From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Tuesday, July 22, 2014 4:28 PM
To: Krajeck, Katie
Cc: Irene Lee; Cullum, Janet; Hughes, Brendan
Subject: Re: Google/VIA Cancellation Proceeding

Katie:

As of right now, we are still conferring internally and with our client regarding Google's proposal made at 5:34 pm on Friday, July 18, and which again changed the terms of what Google is seeking from VIA. So while we are working to get you a response to the proposal as promptly as we can, I do not believe that it is going to be possible for us to do so by 5 pm PST today. In the meantime, I note that it is disingenuous for Google to insinuate that VIA taking 2 business days to consider and respond to Google's latest request is somehow indicative of a lack of genuineness on VIA's part in trying to amicably resolve this dispute given: (1) all of the well-documented efforts on VIA's part to do just that; (2) that Google filed this motion to compel without first having conducted this very meet and confer process we are currently engaged in; and (3) that Google waited an entire week and until the very last business day before VIA's response to the motion to compel was due to respond to the proposal made by VIA on July 1, which acquiesced to the only term that Google had represented it still needed as of the parties' meet and confer of June 25 and should not have been controversial for Google to accept.

Jean

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Rice August & Kabet

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On Jul 22, 2014, at 3:29 PM, "Krajeck, Katie" <kkrajeck@cooley.com> wrote:

Dear Jean,

We write once again to request that VIA respond to Google's July 18 proposal to resolve the parties' discovery dispute. If VIA genuinely wanted to reach an amicable resolution of this discovery dispute, it should have responded promptly to Google's proposal last week. None of the terms in the proposal are controversial. You have already stated that VIA is willing to extend deadlines to allow Google to take the depositions it needs to take and is willing to make Ms. Chen available as a 30(b)(6) witness on discovery issues prior to the other depositions. Most of the other terms reflect a proposed schedule necessitated by the fact that Google will need to take two depositions by written question.

In light of the forthcoming deadline this Thursday for Google's reply brief, please respond to Google's proposal by 5 pm PDT today.

Thank you,
-Katie

From: Krajeck, Katie
Sent: Monday, July 21, 2014 4:07 PM
To: 'Jean Rhee'
Cc: 'Irene Lee'; Cullum, Janet; Hughes, Brendan
Subject: RE: Google/VIA Cancellation Proceeding

Dear Jean,

I am writing to follow-up regarding Google's proposal to resolve the parties' discovery dispute. Please let us know if VIA is in agreement as soon as possible.

Thank you,
-Katie

From: Krajeck, Katie
Sent: Friday, July 18, 2014 5:34 PM
To: 'Jean Rhee'
Cc: Irene Lee; Cullum, Janet; Hughes, Brendan
Subject: RE: Google/VIA Cancellation Proceeding

Dear Jean,

In the interest of resolving this discovery dispute, Google proposes that the parties agree to the following terms:

PROPOSED TERMS TO RESOLVE DISCOVERY DISPUTE

- VIA will consent to an extension of all upcoming deadlines by **120 days**, which is necessary to conduct the remaining discovery including the two depositions by written question.

- Google will take the following depositions:
 - **30(b)(6) deposition on the topic of VIA's document preservation, collection, review, and production efforts.** The deponent will be **Ms. Inky Chen**, and the deposition will take place via written question. A schedule for this deposition is set forth below.
 - Pursuant to 37 CFR § 2.124, Google will serve a notice of this deposition, accompanied by a list of the deposition questions, by no later than **August 1, 2014**.

 - The parties will observe all of the following deadlines related to this deposition set forth in 37 CFR § 2.124.

 - The deposition will be concluded no later than **September 15, 2014**.

- Google will have final approval authority with respect to the officer who will conduct the deposition.

- **30(b)(6) deposition on all of the remaining topics identified in Google's 30(b)(6) deposition notice.** The deponent will be **Dr. Ken Weng**. This deposition will take place in person in San Jose, California at a mutually convenient time after September 15, 2014. Dr. Weng will also be deposed in his individual capacity on that date.

- Individual deposition of **Ms. Amy Wu**. Ms. Wu will be deposed in person in San Jose, California at a mutually convenient time after September 15, 2014.

- Individual deposition of **Mr. Richard Brown**. Mr. Brown will be deposed via written question. Google will serve a notice of this deposition, with the deposition questions, at a mutually convenient time after September 15, 2014. The parties will observe the deadlines imposed by 37 CFR § 2.124. Google will have final approval authority with respect to the officer who will conduct the deposition.

- Individual deposition of **Ms. Pat Meier**. Google has served a deposition subpoena on Ms. Meier and will depose her at a mutually convenient time and location.

- Google will refrain from propounding any new discovery requests unless such requests stem from information acquired in the above-referenced depositions or constitute follow-up to previously served discovery requests.

- Google reserves the right to follow up with VIA regarding any gaps in VIA's document production discovered throughout the course of the remaining discovery period, as necessary.

Please let us know if VIA agrees to these terms as soon as possible.

Thank you,
-Katie

From: Jean Rhee [<mailto:jrhee@raklaw.com>]

Sent: Thursday, July 17, 2014 8:58 PM
To: Krajeck, Katie
Cc: Irene Lee; Cullum, Janet; Hughes, Brendan
Subject: Re: Google/VIA Cancellation Proceeding

Dear Katie:

VIA will produce Ms. Chen for a deposition by written questions in compliance with TBMP § 404.03(b). It is not going to subject Ms. Chen to an in-person deposition in Taiwan or a deposition by videoconference. If Google now intends to also notice the discovery depositions of Amy Wu and Richard Brown, Ms. Wu will be produced in person in San Jose, while Mr. Brown, who resides and works in Taiwan, will respond to a deposition by written questions in compliance with TBMP § 404.03(b). VIA disagrees that the process of deposition by written questions will be cumbersome and that it is in its interests or the interests of its employees who reside and work overseas to avoid this process, which the Board has specified is the default process for deposing foreign witnesses in explicit recognition of the fact that it “may be less expensive than the deposition on oral examination, and is usually more convenient for the witness.” TBMP 404.07(j). As for the time that might be required to complete these depositions, we have previously indicated to you on many occasions that VIA is willing to accommodate Google’s need for additional time as long as it uses the additional time solely for the purpose of completing depositions and follow up on outstanding discovery requests, but does not abuse it by propounding entirely new discovery.

Mr. Brown does not have responsive documents. Accordingly, VIA did not designate him as a custodian or collect documents from him.

Best,
Jean

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On Jul 17, 2014, at 2:30 PM, "Krajeck, Katie" <kkrajeck@cooley.com> wrote:

Dear Jean,

I am writing to follow up on the issues raised below. Please provide your responses to Google's questions as soon as possible.

Thank you,
-Katie

From: Krajeck, Katie
Sent: Monday, July 14, 2014 8:06 PM
To: 'Jean Rhee'
Cc: Irene Lee; Cullum, Janet; Hughes, Brendan
Subject: RE: Google/VIA Cancellation Proceeding

Dear Jean,

We are discussing your proposal with our client. In the meantime, we would like to confirm the manner in which VIA will agree to make Ms. Chen available for the 30(b)(6) deposition regarding VIA's discovery efforts, as well as how VIA will make Amy Wu and Richard Brown (*i.e.*, the new witnesses identified in VIA's Amended Initial Disclosures dated June 17, 2014) available for depositions.

TBMP 404.03(b) allows the parties to stipulate to taking the deposition of a witness located in a foreign jurisdiction by oral examination. Would VIA be willing to make Ms. Chen available for a deposition in person in Taiwan or via video conference? We do not believe that you have directly addressed that issue. In addition, please let us know where/how VIA will make Ms. Wu and Mr. Brown available for depositions. If they are both located in Taiwan, please let us know if VIA will make them available for depositions in person in Taiwan or via video conference. We want to make sure that we fully understand the options you are presenting to Google.

We note that the process for taking depositions by written questions will likely take 60 days to complete, if not longer. After the deposing party serves its written questions, 37 CFR § 2.124 provides an adverse party 20 days within which to serve cross questions; then, the deposing party has 10 days to serve redirect questions; and finally, within 10 days of receiving the deposing party's redirect questions, any party that served cross questions then has an opportunity to serve recross questions. Meanwhile, both parties have an opportunity to serve objections and substitute questions in response to objections.

As you can see, this process will be time-consuming and cumbersome for both parties. It is thus in both parties' interest to avoid this process – especially if the parties will also have to follow the same process for the depositions of Amy Wu and Richard Brown.

Furthermore, if VIA insists on Google taking the depositions of Ms. Chen, Ms. Wu, and Mr. Brown by written question, both parties will need much longer than a 60-day extension of time within which to

complete those depositions plus the deposition of Mr. Weng in his individual capacity and in connection with the remaining 30(b)(6) deposition topics.

Finally, we note that although VIA recently disclosed Mr. Brown in its Amended Initial Disclosures, VIA did not designate Mr. Brown as a custodian, or collect responsive documents from him. Please explain this decision.

We look forward to your response regarding these issues.

Thank you,
-Katie

From: Jean Rhee [<mailto:jrhee@raklaw.com>]
Sent: Thursday, July 10, 2014 11:46 AM
To: Krajeck, Katie
Cc: Irene Lee; Cullum, Janet; Hughes, Brendan
Subject: Re: Google/VIA Cancellation Proceeding

Katie:

When VIA designated Dr. Weng to testify regarding all of Google’s 30(b)(6) topics, it was understood by both sides that it would be a one-day deposition in June as is reflected in all of the scheduling-related correspondence exchanged by both sides. Just by way of example, Brendan assured us in his email of May 6, 2014 that Google would “soon” confirm one of two dates – “June 19 or 20” – for Dr. Weng’s deposition, and I wrote in my letter of June 11, 2014 that, “[a]s we had previously indicated, Mr. Ken Weng will testify on behalf of VIA and in his individual capacity for up to seven hours.” VIA is not going to produce Dr. Weng, who is the CEO of S3 Graphics, Inc., twice because Google has belatedly demanded that VIA split up the 30(b)(6) topics into two separate depositions. Instead, VIA is exercising its right to designate another witness to testify on its behalf regarding the document collection topics in Google’s 30(b)(6) notice – *i.e.*, Ms. Chen, who is the person most knowledgeable about these topics. So if Google wishes to resolve this purported discovery dispute, it can conduct Ms. Chen’s deposition on its document collection 30(b)(6) topics in the manner permitted by TBMP 404.03(b) two weeks in advance of its other depositions, and it can have the 60 days it believes it needs to complete these depositions and follow up on outstanding discovery (but not take entirely new discovery) running from the date of the consent motion.

Sincerely,
Jean

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On Jul 8, 2014, at 10:12 PM, "Krajeck, Katie" <kkrajeck@cooley.com> wrote:

Dear Jean,

We are disappointed by VIA's continued mischaracterizations of Google's position and VIA's conditions on the 30(b)(6) deposition regarding VIA's discovery efforts.

VIA previously designated Mr. Ken Weng to testify as a 30(b)(6) witness in California regarding all of the topics included in Google's 30(b)(6) notice, including topics relating to VIA's document preservation, collection, review, and production efforts. We understand from your emails that VIA is now willing to "split the 30(b)(6) deposition topics noticed by Google into two depositions to permit Google to inquire regarding the document production-related topics in advance of other witnesses and the remaining 30(b)(6) topics;" however, VIA is no longer willing to have Mr. Weng testify in California regarding VIA's discovery efforts and instead is requiring Google to seek testimony, presumably by written question, from a designee located in Taiwan. If Mr. Weng was previously able to testify as a 30(b)(6) witness in California regarding VIA's discovery efforts, there is no reason he cannot testify about them now. Please let us know what has caused VIA to change its designation and whether VIA will agree to keep Mr. Weng as the designee. Please also clarify whether Ms. Inky Chen, VIA's new 30(b)(6) designee regarding its discovery efforts, could be available for an oral deposition in Taiwan or via videoconference.

With respect to the proposed 60-day extension of all deadlines, VIA once again seeks to condition its consent upon limitations to Google's written discovery and Google's agreement to release VIA from its duty to respond fully to Interrogatory No. 4. Google cannot agree to those conditions on the 60-day extension. We again note that Google previously consented to four separate extensions of the discovery period totaling 180 days to allow VIA to produce documents and to respond to Google's interrogatories. It is surprising that VIA will not extend the same courtesy.

If you believe there is a way to resolve this discovery dispute, we remain willing to discuss any additional proposals. At this time, however, it appears that the parties are still at an impasse as they were before Google filed its motion to compel.

Thank you,
-Katie

Katie Krajeck

Katie Krajeck
Cooley LLP
3175 Hanover Street
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Direct: +1 650 849 7048 • Fax: +1 650 849 7400
Email: kkrajeck@cooley.com • www.cooley.com

From: Jean Rhee [mailto:jrhee@raklaw.com]
Sent: Tuesday, July 08, 2014 3:36 PM
To: Krajeck, Katie
Cc: Irene Lee; Cullum, Janet; Hughes, Brendan
Subject: Re: Google/VIA Cancellation Proceeding

Dear Katie:

Thank you for your reply. Unfortunately, it seems that Google has no interest in trying to resolve this dispute. Rather, it seems to be trying to extract additional concessions from VIA above and beyond what the rules require. Although Google's initial request, which it waited until the eve of the discovery cutoff to make, was unreasonable and unwarranted, VIA agreed in the spirit of cooperation to split the 30(b)(6) deposition topics noticed by Google into two depositions to permit Google to inquire regarding the document production-related topics in advance of other witnesses and the remaining 30(b)(6) topics. But Google is now further asking to depose this second witness, who resides and works in Taiwan, in the US. There was no cause for the original request, and likewise none for such an additional request. TBMP 404.03(b). In fact, what Google is now asking for is beyond what the Board would ever order irrespective of the showing made by Google. *Id.* VIA cannot agree to this additional condition that Google would impose.

Further, as we previously indicated, VIA does not have additional information to provide in response to Interrogatory No. 4 as it has already provided a complete list of the goods and services on which the CHROME marks were used. The motion to compel does not explain how VIA has failed to respond to the interrogatory as written. Instead, it simply rehashes arguments Google previously made, which misstate the substance of VIA's response, including by pretending as though VIA qualified its response using "without limitation" language when it plainly did not.

Jean

Jean Rhee
Russ August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025
310 826-7474
310 826-6991 Fax
jrhee@raklaw.com

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On Jul 7, 2014, at 10:58 PM, "Krajeck, Katie" <kkrajeck@cooley.com> wrote:

Dear Jean,

Google is inclined to agree to resolve this dispute, provided VIA confirms the following:

(1) That VIA will produce Ms. Inky Chen to testify as a 30(b)(6) witness on the issues of document preservation, collection, review and production two weeks in advance of all other depositions (including the deposition of VIA's 30(b)(6) deponent for all other noticed topics), and that Ms. Chen will be made available for deposition in the United States (not Taiwan);

(2) That the 60-day extension will begin from the date the parties' consent motion is filed; and

(3) That VIA will supplement Interrogatory No. 4 as set forth in Google's motion to compel.

If VIA confirms the foregoing, we will send a more formal email documenting the terms of the proposed agreement.

Thank you,

-Katie

From: Jean Dhee [jdhee@roklaw.com]

FROM: JEAN RHEE [jrhee@raklaw.com]

Sent: Tuesday, July 01, 2014 2:50 PM

To: Krajeck, Katie

Cc: Irene Lee; Cullum, Janet; Hughes, Brendan

Subject: Re: Google/VIA Cancellation Proceeding

Katie:

During our June 25 meet and confer, you and Brendan unequivocally indicated that the only concerns you have are to ensure that Google has sufficient time – i.e., 60 days – to complete its depositions, and is able to take a 30(b)(6) deposition regarding VIA's document preservation, collection, review, and production efforts in advance of its other depositions, including the deposition on the remaining 30(b)(6) topics that it noticed. In response, we indicated that we would go back to VIA and see whether it can agree to split the 30(b)(6) notice topics between two depositions that are staggered in the manner requested and agree to a 60-day extension, all to avoid needlessly burdening the Board with a discovery dispute.

Neither you nor Brendan raised during the call that Google required a supplemental response to Interrogatory No. 4 when we repeatedly asked whether there were any other outstanding issues the parties could try and resolve without Board intervention. Nevertheless, VIA's response to Interrogatory No. 4 is full and complete as is and VIA will not be supplementing to add any further information to it.

Thus, further to the discussions we actually had during the June 25, 2014 call, VIA is willing to produce two weeks in advance of other depositions, Inky Chen, as a witness regarding VIA's document preservation, collection, review, and production efforts. Ms. Chen is an employee in VIA's Taiwan office, which, as we previously informed you, led the document collection and production efforts for this matter with our direction.

VIA is also willing to agree to extend the existing discovery cut-off by an additional 60 days in order to allow Google to complete its depositions of Ms. Chen and other witnesses and any follow up relating to outstanding discovery requests (but not to pursue any entirely new discovery requests).

Please let us know by 5 pm PST on Thursday, July 3, 2014 whether Google still intends to pursue its motion to compel in light of the above.

Best,
Jean

Jean Rhee
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On Jun 27, 2014, at 1:16 PM, "Krajeck, Katie"
<kkrajeck@cooley.com<<mailto:kkrajeck@cooley.com>>> wrote:

Dear Jean,

We write to clarify a few matters set forth in your email below and discussed during our telephone conversation on June 25, 2014.

* After conducting a reasonable search, Google has produced all non-privileged, responsive documents in its possession, custody, or control that are known to Google at this time and that are relevant to the abandonment and non-use issues in this proceeding. Going forward, Google may rely upon some, all, or none of these documents in connection with this proceeding. Google will likely also rely upon documents produced by VIA.

In addition, we are in possession of an ARTiGO A1150 that Google may rely upon in connection with this proceeding. We will make the ARTiGO A1150 available for your inspection at a mutually agreeable time in the future, if you would like.

* As set forth in Google’s motion to compel dated June 24, 2014, Google is concerned that VIA has not undertaken adequate steps to preserve, collect, review, and produce internal documents and communications relevant to this proceeding. Google is also concerned that VIA has failed to list with particularity the goods and services with which the CHROME mark has been or is being used in response to Google’s Interrogatory No. 4.

Accordingly, Google requested in its motion to compel that the Board order VIA to produce a witness to testify regarding VIA’s document preservation, collection, review, and production efforts well in advance of any fact witness depositions. In light of VIA’s self-directed document collection and production, along with the holes in VIA’s document production to date, Google requires this testimony in order to assess whether it has the documents and information necessary to prepare for and take fact witness depositions, or whether there are additional relevant documents that VIA has not produced or other relevant witnesses that Registrant has not

1:--1--1

disclose.

The 60-day extension requested in Google's motion to compel is to allow time for Google to review documents and to prepare for and take depositions of VIA's witnesses after VIA provides a complete response to Interrogatory No. 4 and either: (1) Google is satisfied after conducting a separate 30(b)(6) deposition of VIA relating to document preservation, collection, review and production that all responsive documents have been produced; or (2) VIA fully satisfies its discovery obligations by producing additional documents (voluntarily or in response to an order by the Board). Google is not willing to limit its discovery efforts in exchange for a 60-day extension.

We look forward to hearing back from you regarding VIA's proposal to resolve this discovery dispute.

Thank you,
-Katie

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Email: kkrajeck@cooley.com <<mailto:kkrajeck@cooley.com>>
• www.cooley.com <<http://www.cooley.com>>

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

From: Jean Rhee [<mailto:jrhee@raklaw.com>]
Sent: Wednesday, June 25, 2014 5:00 PM
To: Hughes, Brendan; Krajeck, Katie
Cc: Irene Lee
Subject: Google/VIA Cancellation Proceeding

Dear Brendan and Katie:

Thank you for taking the time to meet and confer today. This confirms that:

- We agreed to serve revised interrogatories on behalf of VIA in an effort to resolve the parties' dispute over the excessiveness of VIA's initial set of interrogatories without the need for Board intervention. These revised interrogatories are attached.

- You have confirmed that Google's production of June 20, 2014 contains all of the documents that Google intends to rely on in these cancellation proceedings that Google is aware of as of today.

- We discussed Google's pending motion to compel. In view of your statements that your only concerns are to ensure that Google has sufficient time – i.e., 60 days – to complete its depositions, and is able to take a 30(b)(6) deposition regarding VIA's document preservation, collection,

review, and production efforts in advance of its other depositions, including the deposition on the remaining 30(b)(6) topics that it noticed, we said that we would go back to VIA and see whether it can agree to split the 30(b)(6) notice topics between two depositions that are staggered in the manner requested. We will get back to you regarding this next week.

Sincerely,

Jean

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Ex. 8

From: Givner-Forbes, Rebecca rgivnerforbes@cooley.com 
Subject: Google v. VIA Technologies (CHROME) TTAB Proceeding / meet & confer
Date: February 13, 2015 at 5:16 PM
To: ilee@raklaw.com, jrhee@raklaw.com
Cc: Hughes, Brendan bhughes@cooley.com, Champion, Morgan mchampion@cooley.com, Cullum, Janet jcullum@cooley.com



Irene and Jean,

Please see the attached correspondence regarding the above-referenced proceeding.

Best regards,
Rebecca

Rebecca Givner-Forbes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
(enter from 12th and E Streets)
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Letter to I. Lee and J.
Rhee re Dis...encies.pdf



Brendan J. Hughes
T +1 202 842 7826
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VIA EMAIL

February 13, 2015

Irene Lee, Esq.
Jean Rhee, Esq.
Russ, August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025

**RE: VIA Technologies's Deficient Discovery Efforts
Google Inc. v. VIA Technologies, Inc., Cancellation No. 92056818**

Dear Irene and Jean:

Based on the deposition testimony of Ms. Inky Chen and Ms. Amy Wu, as well as our review of the additional documents and discovery responses served by VIA Technologies, Inc. ("VIA"), we believe that VIA has still not satisfied its discovery obligations. Please let us know if you are available on Tuesday, February 17 to meet & confer regarding the various discovery deficiencies detailed below.

DOCUMENTS SUPPORTING VIA'S USE OF THE CHROME MARK IN CONNECTION WITH THE GOODS AND SERVICES IDENTIFIED IN ITS REGISTRATIONS

As you know, documents supporting VIA's claim of current and continuous use of the CHROME mark in connection with the goods and services identified in its trademark registrations are highly relevant in this proceeding. Google has repeatedly requested that VIA produce such documents. A review of the documents produced thus far, however, shows that VIA has fallen woefully short in fulfilling its discovery obligations.

Class 9

Computers, laptops, CPUs, motherboards, displays

VIA's document production to date does not include any documents demonstrating the use of the CHROME mark as the source identifier for a computer, laptop, CPU, motherboard, or display. Instead, it appears that VIA has only used the CHROME mark in connection with, at various times, graphics chips, cards, and processors that are a component of such goods, which are sold under third party marks. Please either (a) confirm that VIA has never sold a computer, laptop, CPU, motherboard, or display identified by the CHROME mark, or (b) produce documents demonstrating otherwise. Google's previously served document requests call for the production of any such documents.

In a few documents, a "CHROME" sticker has been affixed to a sample of the larger product. Specifically, documents reflect a "CHROME" sticker has been placed on (1) VIA's Artigo computer, (2) boxes containing EPIA motherboards, and (3) Fujitsu LifeBook laptops. To the



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extent that VIA purports to offer such images as evidence of use of the CHROME mark to identify computers, laptops, and motherboards, it needs to produce documents evidencing current and continuous use in U.S. commerce of these stickers on the goods. Because most of the other documents and images reflecting the very same product models show no sticker or other CHROME marking affixed to the product at all, we assume that the CHROME stickers have not been consistently used on such products.

With respect to the Fujitsu LifeBook, it appears that VIA's document production shows the LifeBook offered outside of the U.S., specifically through Fujitsu's China and Europe/Middle East/Africa online storefronts. The image of a Fujitsu LifeBook with a "CHROME" sticker has Japanese letters on its keys, suggesting it may not have been sold in U.S. commerce. Furthermore, we understand from Ms. Wu's testimony that the Fujitsu Lifebook is no longer sold in commerce.

Accordingly, we request that VIA produce documents evidencing when the practice of affixing "CHROME" stickers to laptops, computers, and boxes containing motherboards began, whether it extends to products imported and sold in United States commerce, and whether it has continued uninterrupted to date. Again, Google's previously served document requests call for the production of any such documents.

Operating systems

VIA's current document production and its response to Interrogatory No. 20 indicate that VIA has never used the CHROME mark to identify an operating system; instead, it appears that VIA has only used the mark in connection with software drivers that facilitate the use of CHROME-branded chipsets in connection with third-party operating systems. Please either (a) confirm that VIA has only used the CHROME mark in connection with such drivers, or (b) produce documents demonstrating that VIA has offered a CHROME-branded operating system in U.S. commerce.

Software and hardware related to graphical and video display

In its Class 9 registration, VIA claims use of the CHROME mark in connection with "software and hardware for management, storage, communications and network management of digital media and enhancement of graphical and video display." VIA's document production appears to include evidence that it offers such goods only to facilitate the use of "CHROME" graphics chips or chipsets, video cards, and processors. Please either (a) confirm that VIA does not offer such software and hardware except to enable the use of its graphics chips, video cards, and processors, or (b) produce documents evidencing otherwise.

Hand-held computers and hand-held devices

VIA's production includes a document depicting the Samsung Q-Series handheld computer with a CHROME-branded graphics chipset. If it is VIA's position that this constitutes commercial use of the CHROME mark in connection with hand-held computers, please produce documents



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sufficient to show such use currently and continuously in U.S. commerce. The produced document (VIA 000911-923) is insufficient to demonstrate that this product was offered outside of Europe and Asia.

Electronic computer locks

VIA's production includes an agreement with a third party that seemed to contemplate some arrangement with respect to electronic computer locks. The agreement, however, does not demonstrate that electronic computer locks ever were sold in U.S. commerce under the CHROME mark. Accordingly, please confirm that VIA has never sold such products in the U.S. or produce documents evidencing otherwise.

Other goods and services

In addition, the production fails to show that VIA has ever shipped or sold any of the following goods under the CHROME mark in U.S. commerce:

- Electronic personal organizers, MP3 players
- Computer housing, computer casing, computer chassis, computer frames
- Computer memory cards, memory chips, blank magnetic data carriers
- Hard drives, disc drives
- Computer speakers, computer keyboards, computer printers, computer cables, disc and tape controller cards, scanners, computer mice, joysticks, microphones
- Pre-recorded computer discs featuring documentary programs, drama, musical entertainment;
- Portable computer carry bags; cases to carry CDs and DVDs
- GPS navigational displays and automotive visual displays
- Computer network adapters, networking switches
- Routers, modems, power adapters for computers
- Semiconductors, microprocessors, integrated circuits
- Computer interface boards, computer accelerator boards, circuit boards

Please provide documents demonstrating VIA's use of the CHROME mark with respect to each of the foregoing goods. If VIA has never shipped or sold such products under the CHROME



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mark in U.S. commerce, please confirm that VIA will amend its responses to Interrogatory Nos. 4, 6, 8, 9, and 16 accordingly.

Claimed Date of First Use

None of VIA's produced documents provide support for its claimed July 2001 date of first use in commerce, even with respect to its graphics chips, video cards and graphics processors. In fact, VIA's documents affirmatively contradict this assertion. An article and a VIA press release, each dated April 2005, explain how CHROME products "disappeared" from the U.S. market for a period of five years, only to be reintroduced in 2005. (See VIA 001247 and VIA 001257). Moreover, the only product initially available to the U.S. market was the GAMMACHROME video card, according to such documents. Accordingly, we request that VIA amend its response to Interrogatory Nos. 8 and 9 to accurately reflect the dates of first use and the dates of current and continuous use in US commerce, and to produce documents supporting such assertions.

Class 42

VIA's document production also fails to support its current and continuous use with respect to all of the services identified in its Class 42 registration for the CHROME mark. In fact, VIA's document production includes no evidence that VIA has ever provided the following services in U.S. commerce under the CHROME mark:

- Providing on-line information in the field of robotics
- Provision of computer systems analysis and computer diagnostic services
- Creating, designing, maintaining websites

With respect to "designing computer hardware, integrated circuits, computer networks and communications hardware for others," we note that VIA released an open source laptop hardware design in 2008 that included a CHROME9 graphics chipset. This open source hardware design is inadequate to show that VIA has continuously provided such services under the CHROME mark in U.S. commerce to the current date. Please produce documents sufficient to make this showing, or confirm that VIA has not provided such services to others.

INADEQUATE DOCUMENT COLLECTION & OBJECTIONS

Information provided during the recent depositions of Ms. Chen and Ms. Wu has heightened our concerns that VIA did not follow appropriate protocols when searching for documents or identifying persons who may have information responsive to Google's discovery requests. Please confirm that VIA will collect and produce responsive documents and information to rectify each of the deficiencies described below.



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Custodians

We have grave concerns regarding the limited number of custodians whose files VIA searched or who were otherwise consulted in connection with VIA's responses to Google's discovery requests. In particular, the absence of documents from senior management responsible for CHROME-branded products and from VIA's U.S.-based sales and marketing team suggests that VIA's production is missing a significant portion of relevant correspondence and documents. We also doubt that VIA's responses to Google's interrogatories could be complete without consulting these persons or their files.

Richard Brown and Ken Weng

In her deposition, Ms. Chen stated that Richard Brown and Ken Weng did not produce documents to Google because they were too senior to possess responsive documents. However, Ms. Wu provided information that calls this assertion into question. Specifically, Mr. Brown and Mr. Weng are two of the people most knowledgeable about the marketing of the CHROME products, according to Ms. Wu. Further, Mr. Brown is responsible for significant activities such as marketing, press releases, flyers, and advertisements for the Artigo products, and Mr. Weng's approval is required for the placement of CHROME stickers. Accordingly, we do not find it credible that these custodians do not possess responsive documents or communications. Further, while Mr. Weng and/or his files were consulted to provide VIA's responses to Google's interrogatories, Mr. Brown and his files were not. See VIA's response to Interrogatory No. 22.

Epan Wu

Ms. Chen stated that VIA searched Epan Wu's files when collecting documents responsive to Google's discovery requests. However, Ms. Wu's name appears on only a handful of documents VIA produced, and these include no emails or other correspondence. Because Ms. Wu was head of U.S. sales and marketing until a few months ago, she would logically possess a significant volume of responsive documents and correspondence.

Iming Pai

Mr. Pai is currently the head of U.S. sales and marketing. He has been with the company since 2001, according to documents included in VIA's production, and has held important positions such as vice president of software engineering. However, Mr. Pai is not listed among the custodians whose files VIA searched to locate responsive documents, nor the persons consulted to prepare VIA's responses to Google's interrogatories.

Miller Chen

Inky Chen stated that Miller Chen is the CFO of VIA-Taiwan and never worked directly on any CHROME-related operations, and so his files were not included in VIA's searches for responsive documents. Further, Miller Chen is also not listed among the persons consulted in



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the preparation of VIA's responses to Google's interrogatories. However, Mr. Chen signed the declaration supporting VIA's Statement of Use for its Class 42 registration on February 25, 2011. Accordingly, Mr. Chen would likely have documents and information relevant to this dispute.

Young Kwon

VIA's responses to Google's Interrogatory Nos. 2 & 3 identify Young Kwon as the only person with knowledge of the selection, adoption, and development of the CHROME marks, and detail a story about Mr. Kwon contemplating the meaning of the word "chrome" when he saw a motorcycle on his way home from work. However, Ms. Chen stated during her deposition that Mr. Kwon left the company in 2006, and "when [VIA's] counsel reached out to him, he refused to get involved." Mr. Kwon is also not listed among the persons consulted to prepare VIA's responses to Google's interrogatories. As it seems Mr. Kwon was not consulted in connection with this story about the origination of the CHROME mark, we request that VIA provide the source of the story, either in the form of documents supporting its veracity or the name(s) of the person(s) who can support it.

U.S. Sales & Marketing

From Ms. Wu's deposition and our review of some of the sales documentation provided in VIA's production, we understand that VIA has a U.S. sales and marketing team. However, the individuals comprising that team are not among the persons Ms. Chen identifies as custodians or among those consulted when VIA prepared its interrogatory responses. Such persons include, but may not be limited to, Audrey Tsai, David Allen Bailey, and Mike Dickey, as well as a person named "Ciran" whose last name Ms. Wu could not recollect.

Ms. Wu also identified individuals responsible for product planning who may also have knowledge of the sales and marketing of CHROME products in the U.S., including Vincent Tan and Kevin Wong. Due to their positions, such individuals are highly likely to have responsive documents and information, including information that Ms. Wu was unable to provide during her deposition because, as she stated, she had only focused on the U.S. market for the previous two months.

The foregoing may not represent a complete list of appropriate custodians omitted from VIA's efforts to respond to Google's discovery requests. For example, as described immediately below, individuals at other corporate entities affiliated with VIA may also likely possess responsive documents or information.

Companies

We understand from discovery to date and from the prosecution files for the CHROME marks that VIA's activities with respect to the CHROME marks have involved multiple related entities including, but not limited to, VIA Technologies, Inc. of California, S3 Graphics Co. Ltd., S3 Graphics, Inc., and a Shanghai-based S3 Graphics entity. However, we have reason to doubt



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that VIA's efforts to search for responsive documents and information fully extended to such entities. To the extent that VIA has relied on the activities of any such entities to support its trademark rights in the CHROME mark, those entities should fall within the scope of VIA's discovery efforts.

In its "General Objections" to Google's Requests for Admission ("RFAs"), VIA indicates that it relied upon "use by related companies within the meaning of the Trademark Act" to support its RFA responses. However, VIA's General Objections to Google's document requests and interrogatories include an objection to the definition of "YOU" on the grounds that the definition "purports to require Registrant to respond to, or on behalf of, persons or entities other than this answering Registrant" and "calls for information in the possession, custody or control of parties other than this answering Registrant." It is not reasonable for VIA to rely on use by related companies when responding to Google's RFAs – or when making statements regarding use to the PTO – and then fail to produce responsive documents and information from all such companies.

As such, we request that you confirm that VIA will produce documents sufficient to support any "use by related companies within the meaning of the Trademark Act" upon which VIA relied: (1) when responding to Google's RFAs, and (2) when submitting any Statements of Use or Declarations of Use to the PTO. Please further confirm that VIA has not relied upon its objection to the definition of "YOU," or upon similar grounds, to fail to search for or to withhold responsive documents and information from such companies or from any other current or past affiliates.

Scope of Search

In her deposition, Ms. Wu referenced a number of documents that are missing from Google's production, including Market Development Fund documents ("MDFs"), which include trademark licenses relating to the use of CHROME stickers discussed above, as well as "Roadmaps," or marketing documents produced on a quarterly or semi-quarterly basis, of which VIA has produced only one. The fact that these documents are missing from the production is cause for concern that other key documents may also be absent. Moreover, VIA has not produced even a fraction of the volume of responsive communications that are likely to exist in light of the long existence of CHROME-branded products and the extent of VIA's efforts to market, promote, and sell products under the CHROME mark.

The absence of such documents and correspondence from VIA's production may be attributable, in part, to the instructions and insufficient list of keywords provided to custodians. The keyword list consisted of only a handful of major customers for and products incorporating CHROME-branded chips or chipsets, as well as the words "CHROME," "Google," "trade show," and "thin client." Also, Ms. Wu's testimony suggests that custodians may have been instructed to inappropriately narrow the time period for their searches, and the majority of VIA's production is limited to the period between 2011 and 2013. Given these deficiencies, we would like to meet & confer regarding expanded search terms and search instructions that do not include an inappropriate date restriction.



Irene Lee, Esq.
Jean Rhee, Esq.
February 13, 2015
Page Eight

Finally, VIA's objections to several of Google's document requests suggest it may be withholding or have neglected to search for relevant documents based on various stated objections. We understand that members of your team discussed VIA's numerous objections with prior members of Cooley's team, and that VIA agreed to produce documents in spite of many of its stated objections.

To correct the foregoing issue, please confirm that VIA will serve amended responses to Google's document requests in order to confirm which objections VIA is maintaining. It is important that Google know whether VIA is withholding any documents on the basis of its general and specific objections, aside from privilege concerns, so that we may assess VIA's objections and whether VIA is appropriately withholding responsive documents. If VIA is maintaining all of the objections stated in its August 6, 2013 responses to Google's document requests and withholding documents on the basis thereof, please confirm as much in writing.

* * * *

Please let us know if you are available on Tuesday, February 17 to meet & confer regarding the issues described in this letter.

Sincerely,

/Brendan J. Hughes/

cc: Janet Cullum, Esq.
Morgan Champion, Esq.
Rebecca Givner-Forbes, Esq.

Ex. 9

From: Nathan Meyer nmeyer@raklaw.com
Subject: Fwd: Google v. VIA Technologies (CHROME) / March 16 supplemental discovery and extension
Date: June 1, 2015 at 4:27 PM
To: Jean Rhee jrhee@raklaw.com



Nathan D. Meyer
Russ August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025
310 826-7474
310 826-6991 Fax
nmeyer@raklaw.com

Begin forwarded message:

Subject: Re: Google v. VIA Technologies (CHROME) / March 16 supplemental discovery and extension
From: Nathan Meyer <nmeyer@raklaw.com>
Date: March 6, 2015 at 3:50:41 PM PST
Cc: Irene Lee <ilee@raklaw.com>, "Hughes, Brendan" <bhughes@cooley.com>, "Champion, Morgan" <mchampion@cooley.com>, "Cullum, Janet" <jcullum@cooley.com>
To: "Givner-Forbes, Rebecca" <rgivnerforbes@cooley.com>

Rebecca,

Thank you for your e-mail. However, your statement of the agreement does not fully comport with what we agreed. We agreed as follows (changes from your e-mail in **bold**):

1. For each good or service identified in our meet & confer letter: (a) produce **additional** specimens **showing** continuous use in U.S. commerce from the date of the applicable statement of use to the present day; **or** (b) confirm in writing that VIA has never used the CHROME mark in connection with providing the subject good or service, or has only used it for a specific, limited time period supported by specimens showing continuous use throughout such time period, **or** (c) **VIA will provide neither, which Google should take as VIA's assertion that it disagrees with Google's assertion that additional evidence is required to show continuous use.**
2. For each custodian identified in our meet & confer letter: **State whether additional searches have been conducted (and produce documents), or confirm that they have not been.**
3. Identify each related company or licensee upon whose use of "CHROME" VIA relied to support its Statements of Use and Section 8 & 15 declarations. **[REMAINDER OMITTED]**
4. To the extent any information produced pursuant to items 1-3, above, is inconsistent with VIA's current written responses to Google's Interrogatories, RFAs, or RFPs, VIA will serve amended written responses. VIA will also amend its objections to Google's RFPs to accurately reflect those objections on which VIA is currently relying to withhold documents.

The remainder of your e-mail was accurate.

Thank you,

Nate

Nathan D. Meyer
Russ August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025
310 826-7474
310 826-6991 Fax

On Mar 4, 2015, at 1:34 PM, Givner-Forbes, Rebecca <rgivnerforbes@cooley.com> wrote:

Irene and Nate,

During our meet & confer last Thursday, you agreed that VIA Technologies would produce additional documents and information requested in our meet & confer letter, as follows:

1. For each good or service identified in our meet & confer letter: (a) produce specimens sufficient to show continuous use in U.S. commerce from the date of the applicable statement of use to the present day (and if VIA believes it already has produced a relevant specimen, the bates number for that specimen); or (b) confirm in writing that VIA has never used the CHROME mark in connection with providing the subject good or service, or has only used it for a specific, limited time period supported by specimens showing continuous use throughout such time period.
2. For each custodian identified in our meet & confer letter: (a) search the custodian's files and serve all documents and information responsive to Google's RFPs and Interrogatories, as well as a description of the search protocols, including the key words or other processes used to identify responsive documents, whether emails were searched, any date-based restrictions or other restrictions on the scope of the search, and any RFPs or Interrogatories excluded from the scope of the search; or (b) confirm in writing that VIA Technologies will not search such custodian's files and state the reason.
3. Identify each related company or licensee upon whose use of "CHROME" VIA relied to support its Statements of Use and Section 8 & 15 declarations. For each such corporate entity: (a) search the entity's files and servers for documents and information responsive to Google's RFPs and Interrogatories, as well as a description of the search protocols, including any key words or other processes used to identify responsive documents, whether emails were searched, any date-based restrictions or other restrictions on the scope of the search, and any RFPs or Interrogatories excluded from the scope of the search; or (b) confirm in writing that VIA Technologies will not search the entity's files and state the reason. If the reason is that the entity is a third party or VIA does not have control over the entity, VIA will produce documents showing adequate control over the entity's use of the CHROME mark during the relevant time period, such as a trademark license or documents establishing that the company is a "related company" within the meaning of the Trademark Act, or confirm in writing that no such documents exist.
4. To the extent any information produced pursuant to items 1-3, above, is inconsistent with VIA's current written responses to Google's Interrogatories, RFAs, or RFPs, VIA will serve amended written responses. VIA will also amend its objections to Google's RFPs to accurately reflect those objections on which VIA is currently relying to withhold documents.

During the meet & confer, we agreed that VIA would serve all of the foregoing by March 16, and we further agreed to extend deadlines by 30 days to allow time for Google to review such discovery and prepare for depositions. Accordingly, please find attached a copy of the consent motion to extend deadlines by 30 days that we filed today with the TTAB. We also agreed that, if for some reason VIA

deadlines by 30 days that we filed today with the PTAB. We also agreed that, if for some reason VIA does not serve all of the above-described discovery by March 16, VIA consents to extend deadlines by another 30 days. In such case, VIA would also provide a date certain within a reasonable period of time before discovery closes for providing all of the above to Google.

If you believe our understanding is inaccurate in any way, please let us know as soon as possible.

Best regards,
Rebecca

Rebecca Givner-Forbes

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
(enter from 12th and E Streets)
Washington, DC 20004-2400
Direct: +1 202 776 2382 • Cell: +1 571 218 9479 • Fax: +1 202 842 7899
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<USPTO. ESTTA. Stipulated_Consent Motion..pdf>

Ex. 10

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,)	Cancellation No.: 92056816
)	
Petitioner,)	Registration No.: 3,360,331
)	Mark: CHROME
v.)	Issued: December 25, 2007
)	
VIA Technologies, Inc.,)	Registration No.: 3,951,287
)	Mark: CHROME
Registrant.)	Issued: April 26, 2011
_____)	

NOTICE OF DISCOVERY DEPOSITION BY WRITTEN QUESTION

NOTICE IS HEREBY GIVEN that, pursuant to Federal Rules of Civil Procedure 28, 30, and 31, as well as 37 CFR § 2.124, Petitioner Google Inc. (“Petitioner”), by and through its counsel, will depose Mr. Miller Chen (“Chen”) by written question in Taipei, Taiwan.

NOTICE IS FURTHER GIVEN that this deposition will take place before a court reporter employed by Planet Depos, LLC. As the parties have previously stipulated in connection with the first deposition by written question in this action, the court reporter has authority to administer an oath in connection with these proceedings and conduct the deposition pursuant to the Federal Rules of Civil Procedure and 37 CFR § 2.124.

Pursuant to 37 CFR § 2.124, Petitioner has attached its direct examination questions as Exhibit A to the service copy of this Notice.

Dated: May 26, 2015

COOLEY LLP

By: /Brendan J. Hughes/

Janet L. Cullum

Brendan J. Hughes

COOLEY LLP

1299 Pennsylvania Ave. NW, Suite 700

Washington, DC 20004

Tel.: 202-842-7826

Fax: 202-842-7899

Email: bhughes@cooley.com

jcullum@cooley.com

trademarks@cooley.com

Counsel for Petitioner Google Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing **NOTICE OF DISCOVERY DEPOSITION ON WRITTEN QUESTION** was served by U.S. mail on counsel for Registrant at the following address:

RUSS, AUGUST & KABAT
Twelfth Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
trademark@raklaw.com
ilee@raklaw.com
rgookin@raklaw.com
azivkovic@raklaw.com

Date: May 26, 2015

By: /Morgan Champion/
Morgan Champion
COOLEY LLP
1299 Pennsylvania Ave. NW, Suite 700
Washington, DC 20004
Tel.: 202-842-7826
Fax: 202-842-7899
Email: mchampion@cooley.com

Counsel for Petitioner Google Inc.

117104116 v2

Google Inc. v. VIA Technologies, Inc.
Cancellation No. 92056816

EXHIBIT A

Question 1: What is your full name?

Question 2: Are you employed by VIA Technologies, Inc. (“VIA”)?

Question 3: [If “no” to Question 2] Where are you currently employed?

Question 4: [If “no” to Question 2] What is your current position where you are currently employed?

Question 5: [If “yes” to Question 2] What is your current employment title at VIA?

Question 6: How long have you held that position?

Question 7: What was your position at VIA prior to the one you currently hold?

Question 8: Did you work anywhere prior to commencing your employment at VIA?

Question 9: [If “yes” to Question 8] Where did you work prior to VIA? (Please identify all places of employment.)

Question 10: What positions did you hold at the companies you worked for prior to coming to work for VIA (*i.e.*, all the entities you listed in response to Question 8)?

Question 11: What is your educational background?

Question 12: What are your current job duties at VIA?

Question 13: In what ways have you been involved with the current dispute between Google Inc. and VIA regarding the CHROME mark?

Question 14: Are you familiar with VIA's use of the CHROME trademark?

Question 15: How does VIA use the CHROME mark?

Question 16: What types of products does VIA identify with the CHROME mark?

Question 17: For each product identified in response to Question 16, please identify the month and year that VIA began selling that product in U.S. commerce under the CHROME mark.

Question 18: What types of services does VIA identify with the CHROME mark?

Question 19: For each service identified in response to Question 18, please identify the month and year that VIA began rendering that service to consumers in U.S. commerce under the CHROME mark.

Question 20: Are you familiar with the process of obtaining a federal trademark registration in the United States?

Question 21: Please describe your understanding of what it takes to obtain a federal trademark registration in the United States.

Question 22: Do you know what it means to use a trademark in U.S. commerce?

Question 23: Please describe your understanding of what it means to use a trademark in U.S. commerce.

Question 24: Are you aware that in order to obtain a trademark registration in the United States, under most circumstances, an applicant must claim to have used the trademark in U.S. commerce?

Question 25: Have you ever prepared any documents relating to a U.S. trademark application?

Question 26: What documents were those?

Question 27: Have you ever prepared any documents relating to a U.S. trademark registration?

Question 28: What documents were those?

Question 29: Have you ever signed any documents relating to a U.S. trademark application?

Question 30: What documents were those?

Question 31: Did you review those documents before you signed them?

Question 32: Who prepared those documents for you?

Question 33: What was explained to you about those documents?

Question 34: Have you ever signed any documents relating to a U.S. trademark registration?

Question 35: What documents were those?

Question 36: Did you review those documents before you signed them?

Question 37: Who prepared those documents for you?

Question 38: What was explained to you about those documents?

Question 39: Do you recognize the Statement of Use for VIA's trademark application Serial No. 77/566,090 for the CHROME mark, which is attached hereto as Exhibit A?

Question 40: How do you recognize this document?

Question 41: Is that your electronic signature at the bottom, dated February 25, 2011?

Question 42: Did you read this document before you signed it?

Question 43: (If "no" to above Question): Why not?

Question 44: Who prepared this document for your signature?

Question 45: Did you speak to that person about the document before you signed it?

Question 46: [If "yes" to Question 45]: What did you discuss?

Question 47: Were you aware that you were signing this document under penalty of perjury when you signed it?

Question 48: [If "yes" to Question 47]: How were you made aware?

Question 49: [If "no" to Question 47]: Why were you not aware that you were signing this document under penalty of perjury?

Question 50: Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer hardware**?

Question 51: Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and

wireless communication networks in the fields of the design, development and customization of **computer hardware**?

Question 52: [If yes to Question 50] How has VIA offered and rendered these services in U.S. commerce?

Question 53: [If yes to Question 50] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 54: [If yes to Question 53] To whom has VIA provided these services?

Question 55: [If yes to Question 53] Are any of the identified consumers located in the U.S.?

Question 56: [If yes to Question 55] If so, which of the identified consumers are located in the U.S.?

Question 57: [If yes to Question 53] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer hardware**?

Question 58: [If yes to Question 53] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer hardware**?

Question 59: [If no to Question 58] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 60: [If yes to Question 50] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 61: [If yes to Question 60] If so, what trademark(s) and when?

Question 62: Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer software**?

- Question 63:** Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer software**?
- Question 64:** [If yes to Question 62] How has VIA offered and rendered these services in U.S. commerce?
- Question 65:** [If yes to Question 62] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 66:** [If yes to Question 65] To whom has VIA provided these services?
- Question 67:** [If yes to Question 65] Are any of the identified consumers located in the U.S.?
- Question 68:** [If yes to Question 67] If so, which of the identified consumers are located in the U.S.?
- Question 69:** [If yes to Question 65] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer software**?
- Question 70:** [If yes to Question 65] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer software**?
- Question 71:** [If no to Question 70] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 72:** [If yes to Question 62] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 73:** [If yes to Question 72] If so, what trademark(s) and when?
- Question 74:** Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and

wireless communication networks in the fields of the design, development and customization of **computer graphics software**?

Question 75: Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer graphics software**?

Question 76: [If yes to Question 74] How has VIA offered and rendered these services in U.S. commerce?

Question 77: [If yes to Question 74] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 78: [If yes to Question 77] To whom has VIA provided these services?

Question 79: [If yes to Question 77] Are any of the identified consumers located in the U.S.?

Question 80: [If yes to Question 79] If so, which of the identified consumers are located in the U.S.?

Question 81: [If yes to Question 77] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer graphics software**?

Question 82: [If yes to Question 77] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **computer graphics software**?

Question 83: [If no to Question 82] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 84: [If yes to Question 74] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

- Question 85:** [If yes to Question 84] If so, what trademark(s) and when?
- Question 86:** Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **information technology**?
- Question 87:** Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **information technology**?
- Question 88:** [If yes to Question 86] How has VIA offered and rendered these services in U.S. commerce?
- Question 89:** [If yes to Question 86] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 90:** [If yes to Question 89] To whom has VIA provided these services?
- Question 91:** [If yes to Question 89] Are any of the identified consumers located in the U.S.?
- Question 92:** [If yes to Question 91] If so, which of the identified consumers are located in the U.S.?
- Question 93:** [If yes to Question 89] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **information technology**?
- Question 94:** [If yes to Question 89] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **information technology**?
- Question 95:** [If no to Question 94] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in

which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 96: [If yes to Question 86] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 97: [If yes to Question 96] If so, what trademark(s) and when?

Question 98: Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **wireless communication devices**?

Question 99: Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **wireless communication devices**?

Question 100: [If yes to Question 98] How has VIA offered and rendered these services in U.S. commerce?

Question 101: [If yes to Question 98] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 102: [If yes to Question 101] To whom has VIA provided these services?

Question 103: [If yes to Question 101] Are any of the identified consumers located in the U.S.?

Question 104: [If yes to Question 103] If so, which of the identified consumers are located in the U.S.?

Question 105: [If yes to Question 101] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **wireless communication devices**?

Question 106: [If yes to Question 101] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication

networks in the fields of the design, development and customization of **wireless communication devices**?

Question 107: [If no to Question 106] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 108: [If yes to Question 98] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 109: [If yes to Question 108] If so, what trademark(s) and when?

Question 110: Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **multimedia technology**?

Question 111: Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **multimedia technology**?

Question 112: [If yes to Question 110] How has VIA offered and rendered these services in U.S. commerce?

Question 113: [If yes to Question 110] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 114: [If yes to Question 113] To whom has VIA provided these services?

Question 115: [If yes to Question 113] Are any of the identified consumers located in the U.S.?

Question 116: [If yes to Question 115] If so, which of the identified consumers are located in the U.S.?

Question 117: [If yes to Question 113] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **multimedia technology**?

Question 118: [If yes to Question 113] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **multimedia technology**?

Question 119: [If no to Question 118] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 120: [If yes to Question 110] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 121: [If yes to Question 120] If so, what trademark(s) and when?

Question 122: Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **robotics, namely the design and development of new technology in the field of robotics**?

Question 123: Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **robotics, namely the design and development of new technology in the field of robotics**?

Question 124: [If yes to Question 122] How has VIA offered and rendered these services in U.S. commerce?

Question 125: [If yes to Question 122] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 126: [If yes to Question 125] To whom has VIA provided these services?

Question 127: [If yes to Question 125] Are any of the identified consumers located in the U.S.?

Question 128: [If yes to Question 127] If so, which of the identified consumers are located in the U.S.?

Question 129: [If yes to Question 125] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **robotics, namely the design and development of new technology in the field of robotics?**

Question 130: [If yes to Question 125] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **robotics, namely the design and development of new technology in the field of robotics?**

Question 131: [If no to Question 130] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 132: [If yes to Question 122] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 133: [If yes to Question 132] If so, what trademark(s) and when?

Question 134: Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **business computing?**

Question 135: Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **business computing?**

Question 136: [If yes to Question 134] How has VIA offered and rendered these services in U.S. commerce?

Question 137: [If yes to Question 134] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 138: [If yes to Question 137] To whom has VIA provided these services?

Question 139: [If yes to Question 137] Are any of the identified consumers located in the U.S.?

Question 140: [If yes to Question 139] If so, which of the identified consumers are located in the U.S.?

Question 141: [If yes to Question 137] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **business computing**?

Question 142: [If yes to Question 137] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **business computing**?

Question 143: [If no to Question 142] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 144: [If yes to Question 134] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 145: [If yes to Question 144] If so, what trademark(s) and when?

Question 146: Has VIA ever offered and rendered in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **environmentally-friendly computing**?

Question 147: Does VIA currently offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **environmentally-friendly computing**?

Question 148: [If yes to Question 146] How has VIA offered and rendered these services in U.S. commerce?

Question 149: [If yes to Question 146] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 150: [If yes to Question 149] To whom has VIA provided these services?

Question 151: [If yes to Question 149] Are any of the identified consumers located in the U.S.?

Question 152: [If yes to Question 151] If so, which of the identified consumers are located in the U.S.?

Question 153: [If yes to Question 149] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **environmentally-friendly computing**?

Question 154: [If yes to Question 149] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce on-line information services available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **environmentally-friendly computing**?

Question 155: [If no to Question 154] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 156: [If yes to Question 146] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 157: [If yes to Question 156] If so, what trademark(s) and when?

Question 158: Has VIA ever offered and rendered in U.S. commerce services for **in-person troubleshooting of computer hardware and software problems**?

Question 159: Does VIA currently offer and render in U.S. commerce services for **in-person troubleshooting of computer hardware and software problems**?

Question 160: [If yes to Question 158] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 161: [If yes to Question 158] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 162: [If yes to Question 161] To whom has VIA provided these services?

Question 163: [If yes to Question 161] Are any of the identified consumers located in the U.S.?

Question 164: [If yes to Question 163] If so, which of the identified consumers are located in the U.S.?

Question 165: [If yes to Question 161] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce services for **in-person troubleshooting of computer hardware and software problems?**

Question 166: [If yes to Question 161] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce services for **in-person troubleshooting of computer hardware and software problems?**

Question 167: [If no to Question 166] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 168: [If yes to Question 158] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 169: [If yes to Question 168] If so, what trademark(s) and when?

Question 170: Has VIA ever offered and rendered in U.S. commerce services for **computer hardware and software problem troubleshooting by telephone?**

Question 171: Does VIA currently offer and render in U.S. commerce services for **computer hardware and software problem troubleshooting by telephone?**

Question 172: [If yes to Question 170] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 173: [If yes to Question 170] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 174: [If yes to Question 173] To whom has VIA provided these services?

Question 175: [If yes to Question 173] Are any of the identified consumers located in the U.S.?

Question 176: [If yes to Question 175] If so, which of the identified consumers are located in the U.S.?

Question 177: [If yes to Question 173] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce services for **computer hardware and software problem troubleshooting by telephone**?

Question 178: [If yes to Question 173] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce services for **computer hardware and software problem troubleshooting by telephone**?

Question 179: [If no to Question 178] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 180: [If yes to Question 170] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 181: [If yes to Question 180] If so, what trademark(s) and when?

Question 182: Has VIA ever offered and rendered in U.S. commerce services for **computer hardware and software problem troubleshooting by electronic, computer and communications networks**?

Question 183: Does VIA currently offer and render in U.S. commerce services for **computer hardware and software problem troubleshooting by electronic, computer and communications networks**?

Question 184: [If yes to Question 182] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 185: [If yes to Question 182] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 186: [If yes to Question 185] To whom has VIA provided these services?

Question 187: [If yes to Question 185] Are any of the identified consumers located in the U.S.?

Question 188: [If yes to Question 187] If so, which of the identified consumers are located in the U.S.?

Question 189: [If yes to Question 185] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce services for **computer hardware and software problem troubleshooting by electronic, computer and communications networks**?

Question 190: [If yes to Question 185] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce services for **computer hardware and software problem troubleshooting by electronic, computer and communications networks**?

Question 191: [If no to Question 190] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 192: [If yes to Question 182] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 193: If yes to Question 192] If so, what trademark(s) and when?

Question 194: Has VIA ever offered and rendered in U.S. commerce **computer system analysis** services?

Question 195: Does VIA currently offer and render in U.S. commerce **computer system analysis** services?

Question 196: [If yes to Question 194] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 197: [If yes to Question 194] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 198: [If yes to Question 197] To whom has VIA provided these services?

Question 199: [If yes to Question 197] Are any of the identified consumers located in the U.S.?

Question 200: [If yes to Question 199] If so, which of the identified consumers are located in the U.S.?

- Question 201:** [If yes to Question 197] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer system analysis** services?
- Question 202:** [If yes to Question 197] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer system analysis** services?
- Question 203:** [If no to Question 202] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 204:** [If yes to Question 194] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 205:** If yes to Question 204] If so, what trademark(s) and when?
- Question 206:** Has VIA ever offered and rendered in U.S. commerce **computer diagnostic** services?
- Question 207:** Does VIA currently offer and render in U.S. commerce **computer diagnostic** services?
- Question 208:** [If yes to Question 206] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 209:** [If yes to Question 206] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 210:** [If yes to Question 209] To whom has VIA provided these services?
- Question 211:** [If yes to Question 209] Are any of the identified consumers located in the U.S.?
- Question 212:** [If yes to Question 211] If so, which of the identified consumers are located in the U.S.?
- Question 213:** [If yes to Question 209] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer diagnostic** services?
- Question 214:** [If yes to Question 209] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer diagnostic** services?

- Question 215:** [If no to Question 214] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 216:** [If yes to Question 206] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 217:** If yes to Question 216] If so, what trademark(s) and when?
- Question 218:** Has VIA ever offered and rendered in U.S. commerce **computer hardware design** services?
- Question 219:** Does VIA currently offer and render in U.S. commerce **computer hardware design** services?
- Question 220:** [If yes to Question 218] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 221:** [If yes to Question 218] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 222:** [If yes to Question 221] To whom has VIA provided these services?
- Question 223:** [If yes to Question 221] Are any of the identified consumers located in the U.S.?
- Question 224:** [If yes to Question 223] If so, which of the identified consumers are located in the U.S.?
- Question 225:** [If yes to Question 221] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer hardware design** services?
- Question 226:** [If yes to Question 221] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer hardware design** services?
- Question 227:** [If no to Question 226] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 228: [If yes to Question 218] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 229: If yes to Question 228] If so, what trademark(s) and when?

Question 230: Has VIA ever offered and rendered in U.S. commerce **integrated circuit design** services?

Question 231: Does VIA currently offer and render in U.S. commerce **integrated circuit design** services?

Question 232: [If yes to Question 230] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 233: [If yes to Question 230] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 234: [If yes to Question 233] To whom has VIA provided these services?

Question 235: [If yes to Question 233] Are any of the identified consumers located in the U.S.?

Question 236: [If yes to Question 235] If so, which of the identified consumers are located in the U.S.?

Question 237: [If yes to Question 233] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **integrated circuit design** services?

Question 238: [If yes to Question 233] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **integrated circuit design** services?

Question 239: [If no to Question 238] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 240: [If yes to Question 230] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 241: If yes to Question 240] If so, what trademark(s) and when?

- Question 242:** Has VIA ever offered and rendered in U.S. commerce **computer network design** services?
- Question 243:** Does VIA currently offer and render in U.S. commerce **computer network design** services?
- Question 244:** [If yes to Question 242] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 245:** [If yes to Question 242] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 246:** [If yes to Question 245] To whom has VIA provided these services?
- Question 247:** [If yes to Question 245] Are any of the identified consumers located in the U.S.?
- Question 248:** [If yes to Question 247] If so, which of the identified consumers are located in the U.S.?
- Question 249:** [If yes to Question 245] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer network design** services?
- Question 250:** [If yes to Question 245] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer network design** services?
- Question 251:** [If no to Question 250] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 252:** [If yes to Question 242] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 253:** [If yes to Question 252] If so, what trademark(s) and when?
- Question 254:** Has VIA ever offered and rendered in U.S. commerce **communications hardware and software design** services?
- Question 255:** Does VIA currently offer and render in U.S. commerce **communications hardware and software design** services?
- Question 256:** [If yes to Question 254] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 257: [If yes to Question 254] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 258: [If yes to Question 257] To whom has VIA provided these services?

Question 259: [If yes to Question 257] Are any of the identified consumers located in the U.S.?

Question 260: [If yes to Question 259] If so, which of the identified consumers are located in the U.S.?

Question 261: [If yes to Question 257] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **communications hardware and software design** services?

Question 262: [If yes to Question 257] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **communications hardware and software design** services?

Question 263: [If no to Question 262] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 264: [If yes to Question 254] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 265: If yes to Question 264] If so, what trademark(s) and when?

Question 266: Has VIA ever offered and rendered in U.S. commerce **computer software design consultancy** services?

Question 267: Does VIA currently offer and render in U.S. commerce **computer software design consultancy** services?

Question 268: [If yes to Question 266] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 269: [If yes to Question 266] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 270: [If yes to Question 269] To whom has VIA provided these services?

Question 271: [If yes to Question 269] Are any of the identified consumers located in the U.S.?

Question 272: [If yes to Question 271] If so, which of the identified consumers are located in the U.S.?

Question 273: [If yes to Question 269] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer software design consultancy** services?

Question 274: [If yes to Question 269] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer software design consultancy** services?

Question 275: [If no to Question 274] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 276: [If yes to Question 266] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 277: If yes to Question 276] If so, what trademark(s) and when?

Question 278: Has VIA ever offered and rendered in U.S. commerce **computer software development consultancy** services?

Question 279: Does VIA currently offer and render in U.S. commerce **computer software development consultancy** services?

Question 280: [If yes to Question 278] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 281: [If yes to Question 278] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 282: [If yes to Question 281] To whom has VIA provided these services?

Question 283: [If yes to Question 281] Are any of the identified consumers located in the U.S.?

- Question 284:** [If yes to Question 283] If so, which of the identified consumers are located in the U.S.?
- Question 285:** [If yes to Question 281] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer software development consultancy** services?
- Question 286:** [If yes to Question 281] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer software development consultancy** services?
- Question 287:** [If no to Question 286] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 288:** [If yes to Question 278] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 289:** [If yes to Question 288] If so, what trademark(s) and when?
- Question 290:** Has VIA ever offered and rendered in U.S. commerce **computer software configuration consultancy** services?
- Question 291:** Does VIA currently offer and render in U.S. commerce **computer software configuration consultancy** services?
- Question 292:** [If yes to Question 290] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 293:** [If yes to Question 290] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 294:** [If yes to Question 293] To whom has VIA provided these services?
- Question 295:** [If yes to Question 293] Are any of the identified consumers located in the U.S.?
- Question 296:** [If yes to Question 295] If so, which of the identified consumers are located in the U.S.?

- Question 297:** [If yes to Question 293] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer software configuration consultancy** services?
- Question 298:** [If yes to Question 293] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer software configuration consultancy** services?
- Question 299:** [If no to Question 298] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 300:** [If yes to Question 290] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 301:** [If yes to Question 300] If so, what trademark(s) and when?
- Question 302:** Has VIA ever offered and rendered in U.S. commerce **computer software installation consultancy** services?
- Question 303:** Does VIA currently offer and render in U.S. commerce **computer software installation consultancy** services?
- Question 304:** [If yes to Question 302] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 305:** [If yes to Question 302] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 306:** [If yes to Question 305] To whom has VIA provided these services?
- Question 307:** [If yes to Question 305] Are any of the identified consumers located in the U.S.?
- Question 308:** [If yes to Question 307] If so, which of the identified consumers are located in the U.S.?
- Question 309:** [If yes to Question 305] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer software installation consultancy** services?

- Question 310:** [If yes to Question 305] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer software installation consultancy** services?
- Question 311:** [If no to Question 310] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 312:** [If yes to Question 302] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 313:** [If yes to Question 312] If so, what trademark(s) and when?
- Question 314:** Has VIA ever offered and rendered in U.S. commerce **computer software updating consultancy** services?
- Question 315:** Does VIA currently offer and render in U.S. commerce **computer software updating consultancy** services?
- Question 316:** [If yes to Question 314] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 317:** [If yes to Question 314] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 318:** [If yes to Question 317] To whom has VIA provided these services?
- Question 319:** [If yes to Question 317] Are any of the identified consumers located in the U.S.?
- Question 320:** [If yes to Question 319] If so, which of the identified consumers are located in the U.S.?
- Question 321:** [If yes to Question 317] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer software updating consultancy** services?
- Question 322:** [If yes to Question 317] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer software updating consultancy** services?

- Question 323:** [If no to Question 322] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 324:** [If yes to Question 314] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 325:** [If yes to Question 324] If so, what trademark(s) and when?
- Question 326:** Has VIA ever offered and rendered in U.S. commerce **computer software upgrading consultancy** services?
- Question 327:** Does VIA currently offer and render in U.S. commerce **computer software upgrading consultancy** services?
- Question 328:** [If yes to Question 326] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 329:** [If yes to Question 326] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 330:** [If yes to Question 329] To whom has VIA provided these services?
- Question 331:** [If yes to Question 329] Are any of the identified consumers located in the U.S.?
- Question 332:** [If yes to Question 331] If so, which of the identified consumers are located in the U.S.?
- Question 333:** [If yes to Question 329] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer software upgrading consultancy** services?
- Question 334:** [If yes to Question 329] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer software upgrading consultancy** services?
- Question 335:** [If no to Question 334] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 336: [If yes to Question 326] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 337: [If yes to Question 336] If so, what trademark(s) and when?

Question 338: Has VIA ever offered and rendered in U.S. commerce **computer software maintenance consultancy** services?

Question 339: Does VIA currently offer and render in U.S. commerce **computer software maintenance consultancy** services?

Question 340: [If yes to Question 338] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 341: [If yes to Question 338] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 342: [If yes to Question 341] To whom has VIA provided these services?

Question 343: [If yes to Question 341] Are any of the identified consumers located in the U.S.?

Question 344: [If yes to Question 343] If so, which of the identified consumers are located in the U.S.?

Question 345: [If yes to Question 341] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **computer software maintenance consultancy** services?

Question 346: [If yes to Question 341] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **computer software maintenance consultancy** services?

Question 347: [If no to Question 346] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 348: [If yes to Question 338] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 349: [If yes to Question 348] If so, what trademark(s) and when?

Question 350: Has VIA ever offered and rendered in U.S. commerce **research and development of 3D content**?

Question 351: Does VIA currently offer and render in U.S. commerce **research and development of 3D content**?

Question 352: [If yes to Question 350] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 353: [If yes to Question 350] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 354: [If yes to Question 353] To whom has VIA provided these services?

Question 355: [If yes to Question 353] Are any of the identified consumers located in the U.S.?

Question 356: [If yes to Question 355] If so, which of the identified consumers are located in the U.S.?

Question 357: [If yes to Question 353] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **research and development of 3D content**?

Question 358: [If yes to Question 353] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **research and development of 3d content**?

Question 359: [If no to Question 358] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 360: [If yes to Question 350] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 361: [If yes to Question 360] If so, what trademark(s) and when?

Question 362: Has VIA ever offered and rendered in U.S. commerce **research and development of 3d technology and processes**?

Question 363: Does VIA currently offer and render in U.S. commerce **research and development of 3d technology and processes**?

- Question 364:** [If yes to Question 362] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 365:** [If yes to Question 362] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 366:** [If yes to Question 365] To whom has VIA provided these services?
- Question 367:** [If yes to Question 365] Are any of the identified consumers located in the U.S.?
- Question 368:** [If yes to Question 367] If so, which of the identified consumers are located in the U.S.?
- Question 369:** [If yes to Question 365] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **research and development of 3d technology and processes?**
- Question 370:** [If yes to Question 365] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **research and development of 3d technology and processes?**
- Question 371:** [If no to Question 370] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 372:** [If yes to Question 362] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 373:** [If yes to Question 372] If so, what trademark(s) and when?
- Question 374:** Has VIA ever offered and rendered in U.S. commerce **research and development of 3d animation technology?**
- Question 375:** Does VIA currently offer and render in U.S. commerce **research and development of 3d animation technology?**
- Question 376:** [If yes to Question 374] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 377:** [If yes to Question 374] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

- Question 378:** [If yes to Question 377] To whom has VIA provided these services?
- Question 379:** [If yes to Question 377] Are any of the identified consumers located in the U.S.?
- Question 380:** [If yes to Question 379] If so, which of the identified consumers are located in the U.S.?
- Question 381:** [If yes to Question 377] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **research and development of 3d animation technology**?
- Question 382:** [If yes to Question 377] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **research and development of 3d animation technology**?
- Question 383:** [If no to Question 382] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 384:** [If yes to Question 374] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 385:** [If yes to Question 384] If so, what trademark(s) and when?
- Question 386:** Has VIA ever offered and rendered in U.S. commerce **research and development of 3d processing power**?
- Question 387:** Does VIA currently offer and render in U.S. commerce **research and development of 3d processing power**?
- Question 388:** [If yes to Question 386] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 389:** [If yes to Question 386] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 390:** [If yes to Question 389] To whom has VIA provided these services?

- Question 391:** [If yes to Question 389] Are any of the identified consumers located in the U.S.?
- Question 392:** [If yes to Question 391] If so, which of the identified consumers are located in the U.S.?
- Question 393:** [If yes to Question 389] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **research and development of 3d processing power?**
- Question 394:** [If yes to Question 389] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **research and development of 3d processing power?**
- Question 395:** [If no to Question 394] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 396:** [If yes to Question 386] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 397:** [If yes to Question 396] If so, what trademark(s) and when?
- Question 398:** Has VIA ever offered and rendered in U.S. commerce **research and development of 3d techniques?**
- Question 399:** Does VIA currently offer and render in U.S. commerce **research and development of 3d techniques?**
- Question 400:** [If yes to Question 398] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 401:** [If yes to Question 398] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 402:** [If yes to Question 401] To whom has VIA provided these services?
- Question 403:** [If yes to Question 401] Are any of the identified consumers located in the U.S.?

- Question 404:** [If yes to Question 403] If so, which of the identified consumers are located in the U.S.?
- Question 405:** [If yes to Question 401] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **research and development of 3d techniques?**
- Question 406:** [If yes to Question 401] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **research and development of 3d techniques?**
- Question 407:** [If no to Question 406] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 408:** [If yes to Question 398] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 409:** [If yes to Question 408] If so, what trademark(s) and when?
- Question 410:** Has VIA ever offered and rendered in U.S. commerce **research and development of flexible forward projection?**
- Question 411:** Does VIA currently offer and render in U.S. commerce **research and development of flexible forward projection?**
- Question 412:** [If yes to Question 410] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 413:** [If yes to Question 410] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 414:** [If yes to Question 413] To whom has VIA provided these services?
- Question 415:** [If yes to Question 413] Are any of the identified consumers located in the U.S.?
- Question 416:** [If yes to Question 415] If so, which of the identified consumers are located in the U.S.?

- Question 417:** [If yes to Question 413] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **research and development of flexible forward projection**?
- Question 418:** [If yes to Question 413] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **research and development of flexible forward projection**?
- Question 419:** [If no to Question 418] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 420:** [If yes to Question 410] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 421:** [If yes to Question 420] If so, what trademark(s) and when?
- Question 422:** Has VIA ever offered and rendered in U.S. commerce **website creation** services?
- Question 423:** Does VIA currently offer and render in U.S. commerce **website creation** services?
- Question 424:** [If yes to Question 422] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 425:** [If yes to Question 422] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 426:** [If yes to Question 425] To whom has VIA provided these services?
- Question 427:** [If yes to Question 425] Are any of the identified consumers located in the U.S.?
- Question 428:** [If yes to Question 427] If so, which of the identified consumers are located in the U.S.?
- Question 429:** [If yes to Question 425] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **website creation** services?

- Question 430:** [If yes to Question 425] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **website creation** services?
- Question 431:** [If no to Question 430] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.
- Question 432:** [If yes to Question 422] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?
- Question 433:** [If yes to Question 432] If so, what trademark(s) and when?
- Question 434:** Has VIA ever offered and rendered in U.S. commerce **website design** services?
- Question 435:** Does VIA currently offer and render in U.S. commerce **website design** services?
- Question 436:** [If yes to Question 434] Where and how has VIA offered and rendered these services in U.S. commerce?
- Question 437:** [If yes to Question 434] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?
- Question 438:** [If yes to Question 437] To whom has VIA provided these services?
- Question 439:** [If yes to Question 437] Are any of the identified consumers located in the U.S.?
- Question 440:** [If yes to Question 439] If so, which of the identified consumers are located in the U.S.?
- Question 441:** [If yes to Question 437] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **website design** services?
- Question 442:** [If yes to Question 437] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **website design** services?
- Question 443:** [If no to Question 442] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in

which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 444: [If yes to Question 434] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

Question 445: [If yes to Question 444] If so, what trademark(s) and when?

Question 446: Has VIA ever offered and rendered in U.S. commerce **website maintenance** services?

Question 447: Does VIA currently offer and render in U.S. commerce **website maintenance** services?

Question 448: [If yes to Question 446] Where and how has VIA offered and rendered these services in U.S. commerce?

Question 449: [If yes to Question 446] Has VIA used or displayed the CHROME mark in the sale or advertising of such services?

Question 450: [If yes to Question 449] To whom has VIA provided these services?

Question 451: [If yes to Question 449] Are any of the identified consumers located in the U.S.?

Question 452: [If yes to Question 451] If so, which of the identified consumers are located in the U.S.?

Question 453: [If yes to Question 449] When did VIA begin using the CHROME mark in connection with offering and rendering in U.S. commerce **website maintenance** services?

Question 454: [If yes to Question 449] Has VIA continuously used the CHROME mark to offer and render in U.S. commerce **website maintenance** services?

Question 455: [If no to Question 454] When did VIA ever cease offering and rendering those services in connection with the CHROME mark? Please identify any periods in which VIA ceased offering and rendering the services in connection with the CHROME mark.

Question 456: [If yes to Question 446] Has VIA ever provided these services in connection with any trademark other than the CHROME mark?

- Question 457:** [If yes to Question 456] If so, what trademark(s) and when?
- Question 458:** Why did you claim that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **information technology** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use attached as Exhibit A?
- Question 459:** Did you know that statement was false when you made it?
- Question 460:** Do you understand that the statement was false now?
- Question 461:** What was the basis for your belief that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **information technology** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use?
- Question 462:** Did anyone tell you that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **information technology** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use?
- Question 463:** If so, who?
- Question 464:** Why did you claim that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **wireless communication devices** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use attached as Exhibit A?
- Question 465:** Did you know that statement was false when you made it?
- Question 466:** Do you understand that the statement was false now?
- Question 467:** What was the basis for your belief that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **wireless communication devices** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use?

Question 468: Did anyone tell you that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **wireless communication devices** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use?

Question 469: If so, who?

Question 470: Why did you claim that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **robotics, namely the design and development of new technology in the field of robotics** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use attached as Exhibit A?

Question 471: Did you know that statement was false when you made it?

Question 472: Do you understand that the statement was false now?

Question 473: What was the basis for your belief that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **robotics, namely the design and development of new technology in the field of robotics** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use?

Question 474: Did anyone tell you that VIA was providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of **robotics, namely the design and development of new technology in the field of robotics** to U.S. consumers in connection with the CHROME trademark at the time you signed the Statement of Use?

Question 475: If so, who?

Question 476: Why did you claim that VIA was providing **research and development of flexible forward projection** services in U.S. commerce in connection with the CHROME trademark at the time you signed the Statement of Use attached as Exhibit A?

Question 477: Did you know that statement was false when you made it?

Question 478: Do you understand that the statement was false now?

- Question 479:** What was the basis for your belief that VIA was providing **research and development of flexible forward projection** services in U.S. commerce in connection with the CHROME trademark at the time you signed the Statement of Use?
- Question 480:** Did anyone tell you that VIA was providing **research and development of flexible forward projection** services in U.S. commerce in connection with the CHROME trademark at the time you signed the Statement of Use?
- Question 481:** If so, who?
- Question 482:** Why did you claim that VIA was providing **website creation, design, and maintenance** services in U.S. commerce in connection with the CHROME trademark at the time you signed the Statement of Use attached as Exhibit A?
- Question 483:** Did you know that statement was false when you made it?
- Question 484:** Do you understand that the statement was false now?
- Question 485:** What was the basis for your belief that VIA was providing **website creation, design, and maintenance** services in U.S. commerce in connection with the CHROME trademark at the time you signed the Statement of Use?
- Question 486:** Did anyone tell you that VIA was providing **website creation, design, and maintenance** services in U.S. commerce in connection with the CHROME trademark at the time you signed the Statement of Use?
- Question 487:** If so, when and why?
- Question 488:** Have you made any other false statements in connection with any other U.S. trademark applications? If so, which ones?
- Question 489:** If so, when and why?
- Question 490:** Have you made any other false statements in connection with any other U.S. trademark registrations? If so, which ones?
- Question 491:** If so, when and why?
- Question 492:** Did you bring any documents with you today?

Question 493: If so, what documents did you bring with you?

Question 494: Did you bring any notes with you today?

Question 495: If so, what notes did you bring?

Question 496: What did you do to prepare for this deposition?

Question 497: With whom did you speak in order to prepare for this deposition?

Question 498: Without disclosing any confidential attorney-client communications, what did you discuss?

Question 499: Has anyone asked you if you might possess any documents responsive to the Requests for Production that Google served in connection with this action?

Question 500: If so, who and when?

Question 501: Did you search for any documents responsive to Google's Requests for Production served in connection with this action?

Question 502: [If "yes" to Question 501]: How did you perform that search?

Question 503: [If "yes" to Question 501]: Did you find any documents in your possession, custody, or control that were responsive to Google's Requests for Production?

Question 504: [If "yes" to Question 503]: What types of documents?

Question 505: [If "yes" to Question 503]: Did you provide those documents to your attorneys?

Question 506: [If "yes" to Question 503]: Do you know if those documents were produced to Google?

Ex. 11

From: **Champion, Morgan** mchampion@cooley.com 
Subject: Google/VIA--Courtesy Copies of Deposition Notice for Miller Chen, Second Set of RFAs, and Motion to Compel
Date: May 29, 2015 at 11:36 AM
To: Irene Lee ilee@raklaw.com, Nathan Meyer nmeyer@raklaw.com
Cc: Jean Rhee jrhee@raklaw.com, Anne Zivkovic azivkovic@raklaw.com, Hughes, Brendan bhughes@cooley.com, Givner-Forbes, Rebecca rgivnerforbes@cooley.com, Cullum, Janet jcullum@cooley.com



Irene and Nate,

Please find attached courtesy copies of Google's (a) deposition notice of Miller Chen; and (b) Second Set of Requests for Admission, which were both served by mail on Tuesday, May 26. In addition, please find attached a courtesy copy of Google's Motion to Compel and related exhibits, which were filed and served yesterday, May 28.

As you know, while the filing of a motion to compel suspends the proceeding, it does not toll the time for VIA to respond to outstanding discovery or suspend previously noticed depositions. To that end, we will expect to receive responses to our recent set of RFAs and will proceed with the depositions of Mr. Chang, Mr. Chen, and Fujitsu. Please let us know if Mr. Chang can be available for a deposition any time other than the week immediately before the July 4 holiday as that week does not work for us. In addition, please let us know when you are available in the coming weeks for a deposition of Fujitsu (which will not be going forward on June 2).

Best regards,

Morgan

Morgan A. Champion

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(enter from 12th and E Streets)
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Miller Chen Depo Notice
and Second...f RFAs



Exhibits.zip



P's MOTION TO
COMPEL.pdf

Ex. 12



From: Anne Zivkovic azivkovic@raklaw.com 
Subject: Google/VIA (Cancellation 92056816) [3329-US2]
Date: June 5, 2015 at 12:31 PM
To: Janet Cullum jcullum@cooley.com, bhughes@cooley.com, mchampion@cooley.com, rgivnerforbes@cooley.com
Cc: Irene Lee ilee@raklaw.com, Nathan Meyer nmeyer@raklaw.com, Jean Rhee jrhee@raklaw.com, Danielle Joseph djoseph@raklaw.com

Dear Counsel,

Please find attached Jean Rhee's letter of today's date. Should you have any issues opening the attachment, please let us know. Thank you.

Sincerely,

Anne Zivkovic
 Litigation & Intellectual Property Paralegal
 Russ August & Kabat
 12424 Wilshire Blvd., Suite 1200
 Los Angeles, CA 90025
 (310) 826-7474

IRS Circular 230 Notice: This communication is not intended to be used and cannot be used, for the purpose of avoiding U.S. federal tax-related penalties or promoting, marketing or recommending to another party any tax-related matter addressed herein.

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 Google re M...INAL].pdf



Jean Rhee
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June 5, 2015

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VIA ELECTRONIC MAIL

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mchampion@cooley.com
rgivnerforbes@cooley.com

Re: *Google, Inc. v. VIA Technologies, Inc.*
TTAB Proceeding No. 92056816

Dear Counsel:

We write to request that Google withdraw its Notice of Discovery Deposition by Written Question of Miller Chen (“Miller Chen Notice”) served by First Class Mail on May 26, 2015, just one week prior to the June 2, 2015 discovery cutoff consented to by the parties. As you are aware, having already taken one deposition by written question in this matter, the deposition by written question process is one that takes weeks, if not months, to complete, even assuming no substitute questions from either party. *See* 37 CFR § 2.124. Therefore, the Miller Chen Notice is untimely under the Board’s rules, regulations, and precedents providing that “[d]iscovery depositions **must be both noticed and taken during the discovery period**” and that it is thus “recommended that a party, which desires to take a discovery deposition on written questions, initiate the procedure early in its discovery period.” TBMP § 404.07(b) (2014) (emphasis added and internal citations omitted); *see also* 37 CFR § 2.120(a)(3) (“Discovery depositions **must be taken . . . on or before the closing date of the discovery period** as originally set or as reset.”) (emphasis added); TBMP § 403.02 (“Discovery depositions **must be not only noticed but also taken during the discovery period** (unless the parties stipulate or the Board orders that the deposition may be taken outside of the period).”) (emphasis added).

Of course, if you have any authority to the contrary, we would be happy to consider it. We are generally available on Monday, June 8, 2015 and Tuesday, June 9, 2015 to meet and confer regarding this issue. If we do not hear from you by 5 pm Pacific Standard Time on Tuesday, June 9, 2015, VIA will have to move to quash the notice as untimely.



Janet Cullum
Brendan Joseph Hughes
Morgan Champion
Rebecca Givner-Forbes
June 5, 2015
Page 2

We look forward to hearing from you soon.

Very truly yours,

Russ, August & Kabat

//Jean Y. Rhee

Jean Y. Rhee

cc: Irene Y. Lee (via Electronic Mail)
Nathan D. Meyer (via Electronic Mail)

Ex. 13

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----x
Google Inc., : Cancellation No.:
Petitioner, : 92056816
v. : Registration Nos.:
VIA Technologies, Inc. : 3,360,331
Registrant. : 3,951,287
-----x

Videotaped Deposition By Written Questions of
VIA TECHNOLOGIES, INC.,
By and through its Corporate Designee,
CHI-YING (INKY) CHEN
Taipei, Taiwan
Tuesday, November 25, 2014
9:18 a.m.

Job No.: 70311
Pages: 1 - 95
Reported by: Renee Kelch, RPR, CLR, CA CSR 5063

1	so, who?	13:23:35
2	MS. LEE: Objection. Compound.	13:23:48
3	THE WITNESS: Jonathan Chang did not	13:23:53
4	respond to any of VIA's efforts to contact him	13:23:55
5	regarding these proceedings. However, he would not	13:23:58
6	have any documents responsive to Google's document	13:24:01
7	requests. He's a very high level executive.	13:24:04
8	Although his name may appear on some paperwork, he	13:24:09
9	never directly worked on any CHROME-related	13:24:12
10	operations.	13:24:17
11	Q. Question 307: Is VIA in possession of	13:24:18
12	Mr. Chang's custodial files from his employment with	13:24:26
13	VIA?	13:24:32
14	MS. LEE: Objection. Vague as to the term	13:24:37
15	"custodial files."	13:24:39
16	THE WITNESS: Yes.	13:24:43
17	Q. Question 308: Did anyone ask Miller Chen	13:24:45
18	if he possesses documents responsive to Google's	13:24:50
19	Requests for Production of Documents? If so, who?	13:24:54
20	MS. LEE: Objection. Compound.	13:25:08
21	THE WITNESS: No, because Miller Chen would	13:25:13
22	not have any documents responsive to Google's	13:25:15
23	document requests. He's the CFO of VIA-Taiwan.	13:25:18
24	Although his name may appear on some paperwork, he	13:25:23
25	never directly worked on any CHROME-related	13:25:28

1	operations -- operations.	13:25:33
2	Q. Question 311: Is VIA in possession of	13:25:35
3	Mr. Chen's custodial files from his employment with	13:25:40
4	VIA?	13:25:44
5	MS. LEE: Objection. Vague as to	13:25:54
6	"custodial files."	13:25:55
7	THE WITNESS: Yes.	13:26:00
8	Q. Question 312. Looking at Exhibit 5, what	13:26:02
9	steps did VIA take to search for and collect	13:26:08
10	documents responsive to Google's Request for	13:26:11
11	Production Number 33?	13:26:17
12	A. This request asks for documents sufficient	13:26:43
13	to show sales in the U.S. by volume and dollars	13:26:44
14	amount of all products, all services relating to	13:26:49
15	CHROME, but VIA does not maintain such documents in	13:26:54
16	its normal course of business. VIA did create and	13:26:57
17	produce documents sufficient to show sales of certain	13:27:01
18	CHROME products over -- over certain time frames.	13:27:04
19	Q. Question 313: Looking at Exhibit 5, what	13:27:08
20	steps did VIA take to search for and collect	13:27:12
21	documents responsive to Google's Request for	13:27:16
22	Production Number 30?	13:27:22
23	A. VIA does not maintain any summary lists of	13:27:29
24	all purchasers and users of CHROME products and	13:27:40
25	services in the normal course of its business.	13:27:44