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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

BLUE SPIKE, LLC,

Plaintiff,

v.

GRACENOTE, INC., *et al*.

Defendant.

Case No. 4:15-cv-1494-YGR

STIPULATION AND ~~[PROPOSED]~~ ORDER TO STAY CASE

Judge: Hon. Yvonne Gonzalez Rogers

Defendants Gracenote, Inc., Tribune Company, Tribune Media Services, LLC and Plaintiff Blue Spike, LLC file this stipulation and proposed order to stay this case pending the resolution of Blue Spike's appeal of the judgment in *Blue Spike, LLC v. Google, Inc.*, Case No. 14-cv-01650-YGR (N.D. Cal.).

In the *Google* case, this Court ruled that certain claims of the five patents-in-suit—U.S. Patent Nos. 7,346,472, 7,660,700, 7,949,494, 8,214,175, and 8,712,728—fail to claim patent-

eligible subject matter and are therefore invalid under 35 U.S.C. § 101. *Id.*, Dkt. No. 83 (Oct. 1, 2015).

Blue Spike has appealed the judgment in the *Google* case. The parties agree that if the *Google* judgment of invalidity is affirmed, such affirmance is dispositive of this case. The parties therefore respectfully request that the Court stay this case pending the outcome of Blue Spike's Federal Circuit appeal. A stay will conserve the Court's and the parties' resources. The parties agree that during the stay, no damages, liability or enhancement thereof, or any collateral assessment, against any of the Defendants, their users, customers, affiliates, successors, and assigns, shall accrue, and shall start to potentially accrue, if at all, only if the *Google* Judgment is vacated or reversed and the matter returned to proceedings in this Court, and only for those returning claims.

Additionally, should the Federal Circuit affirm this Court's judgment that the five patents-in-suit in the *Google* case are invalid under 35 U.S.C. § 101, Blue Spike expressly agrees that the *Google* judgment of invalidity and its subsequent affirmance will collaterally estop Blue Spike from disputing the invalidity of the five asserted patents or asserting these patents against Defendants, including for patent claims not expressly recited in the *Google* judgment. Accordingly, Blue Spike agrees that should the Federal Circuit affirm the *Google* judgment, the Court should also dismiss this case with prejudice with each side to bear its own costs and fees. The parties will notify the Court within fourteen days of the outcome of the appeal in *Blue Spike, LLC v. Google, Inc.* If the *Google* judgment is affirmed, the parties will send a proposed form of judgment. If the *Google* judgment is affirmed-in-part or reversed, the parties shall address in their status update the significance, if any, of the outcome of the *Google* appeal to this case, and how this case should proceed.

Dated: November 9, 2015

FENWICK & WEST LLP

/s/ Darren E. Donnelly

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5.1

Pursuant to Civil L.R. 5.1 of the Northern District of California, I attest that concurrence in the filing has been obtained from Randall T. Garteiser.

DATED: November 9, 2015

FENWICK & WEST LLP

By: /s/ *Darren E. Donnelly*
Darren E. Donnelly

Attorneys for Defendants GRACENOTE INC., TRIBUNE COMPANY, and TRIBUNE MEDIA SERVICES, LLC

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

1. This action is hereby stayed pending the outcome of Blue Spike's appeal in *Blue Spike, LLC v. Google, Inc.*, Case No. 14-cv-01650-YGR (N.D. Cal.). The Parties will notify this Court of the outcome of Blue Spike's appeal within 14 days of after mandate issues.

2. If the Court of Appeals affirms the final judgment in *Blue Spike, LLC v. Google, Inc.*, Case No. 14-cv-01650-YGR (N.D. Cal.), then the Parties will submit a proposed form of judgment to dismiss this case with prejudice at the same time with the notice of the outcome of the appeal.

3. If the Court of Appeals vacates or reverses, in whole or in part, the final judgment in *Blue Spike, LLC v. Google, Inc.*, Case No. 14-cv-01650-YGR (N.D. Cal.), then the parties will submit a status update at the same time of the notice of the outcome of the appeal. The status update shall address the significance, if any, of the outcome of the *Google* appeal to this case, and how this case should proceed. No damages, liability, or collateral assessments shall accrue against any of the Defendants, their users, customers, affiliates, successors, and assigns during the period this case is stayed.

4. This Order terminates Docket Number 75.

Dated: November 10, 2015

Honorable Yvonne Gonzalez Rogers
United States District Court Judge