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RICHARDS LAYTON & FINGER

March 28, 2024

VIA CM/ECF
The Honorable Jennifer L. Hall
J. Caleb Boggs Federal Building
844 North King Street
Wilmington, DE 19801

Re: *Robocast, Inc. v. YouTube, LLC et al.*, C.A. No. 22-304-JLH ("*Robocast v. Google*")
Robocast, Inc. v. Netflix, Inc., C.A. No. 22-305-JLH ("*Robocast v. Netflix*")

Dear Judge Hall:

Defendants YouTube, LLC and Google LLC ("Google") submit this letter for the conference on April 5, 2025 (*see* C.A. No. 22-304, D.I. 145), which Google understands to be a scheduling conference with respect to *Robocast v. Google*, and a scheduling and discovery conference with respect to *Robocast v. Netflix*. Google responds to the letters filed by Plaintiff Robocast, Inc. ("Robocast") in both cases because both discuss Google. *See* Ltr., *Robocast v. Google*, D.I. 146; Ltr., *Robocast v. Netflix*, D.I. 218.

Regarding the letter filed in this action, Robocast is correct that Google has agreed to a negotiated 3.5-month extension. *See* Ltr., *Robocast v. Google*, D.I. 146. Google does not agree with Robocast's characterization that they "believe this extension will allow [the parties] to work through many of the discovery disputes they have been navigating through." *Id.* Rather, the following occurred. The Scheduling Order (D.I. 53) provided for a joint *Markman* Hearing in both this and the *Netflix* action on Jan. 17, 2024. On January 2, 2024, Judge Andrews canceled the scheduled Markman Hearing; D. I. 126 ("The Markman hearing scheduled for 1/17/2024, is CANCELED and will be rescheduled for a date to be determined."). The case was then re-assigned to Your Honor on January 9, 2024.

In February (after the original date for the *Markman* hearing) Robocast asked Google to agree to an extension of 6 months to accommodate additional time to complete discovery as well as in view of the currently unscheduled *Markman* hearing. After protracted negotiations, Google agreed to a 3.5-month extension as part of a compromise that included resolving certain discovery issues as between Google and Robocast. In addition, Google is mindful that Your Honor has been reassigned hundreds of cases, creating not only a very full docket for the Court but possible scheduling conflicts as well. Accordingly, Google did not agree to the extension to "allow [the parties] to work through many of the discovery disputes they have been navigating through" but rather agreed to a compromise to avoid discovery disputes and in view of the lack of a *Markman* date. In that sense, Google and Robocast *have already* worked through several discovery disputes in order to arrive at a negotiated agreement to extend the case schedule by 3.5 months.

An extension will further give the Court additional time to decide Google's renewed motion to dismiss (D.I. 109). If granted, the motion would shorten the alleged damages window from around four-and-a-half years to only one-and-a-half years and eliminate at least two claim terms requiring construction by the Court. D.I. 122 (Joint Claim Construction Brief in *Google* case, identifying "displaying" and "performing an on-line search" as only disputed for the '451 patent, which is the patent subject to Google's renewed motion to dismiss).

Second, Google is compelled to correct the record as to certain statements in the letter Robocast filed in *Robocast v. Netflix*. Google does not agree with Robocast's reading of the Scheduling Order. That Order, in relevant part, requires only that "Defendants shall coordinate with each other to ensure depositions of Plaintiff and third parties are conducted in an efficient manner such that, for example, depositions of the same witness are scheduled on the same day or on consecutive days or on mutually agreeable days to the parties and the witness." JSO §3.e.i. The JSO is aimed at "conduct[ing]" "depositions … in an efficient manner," but it does not purport to require that depositions always occur at the same time, or forbid the same witness from being deposed twice if the two cases are at different stages of development. *Id.* Robocast's position is that the JSO entitles it to withhold properly noticed depositions in the *Netflix* action simply because they have not yet been noticed in the *Google* action. *See* Ltr., *Robocast v. Netflix* at 2. That position is Robocast's alone, not a position of Google. Contrary to Robocast's arguments, Netflix and Google continue to coordinate as appropriate under the Scheduling Order.

In terms of coordination between the two cases and their schedules, Google contends at least the *Markman* date needs to remain on the same schedule since Netflix and Google shared joint briefing. *See* D.I. 122 (Joint Claim Construction Brief in *Google* case). Google is also not opposed to the same coordination as required in the current scheduling order but takes no position otherwise on the various disputes between Netflix and Robocast. However, Google opposes any situation where Google does not get discovery it is otherwise entitled to because of discovery occurring without its involvement in the *Netflix* action. For example, if Netflix hypothetically deposed the inventor of the asserted patents without Google present or involved, Google should not be limited in its time or questioning of the inventor in its case. It was Robocast's choice to sue two unrelated defendants at the same time, and it must provide discovery in both cases as a result.

Respectfully,

/s/ Frederick L. Cottrell, III

Frederick L. Cottrell, III (#2555)

cc: All Counsel of Record (via email)