

TED DANE (SBN 143195)  
ted.dane@mto.com  
PETER E. GRATZINGER (SBN 228764)  
peter.gratzinger@mto.com  
HEATHER E. TAKAHASHI (SBN 245845)  
heather.takahashi@mto.com  
ZACHARY M. BRIERS (SBN 287984)  
zachary.briers@mto.com  
BRIAN J. SPRINGER (SBN 309094)  
brian.springer@mto.com  
MUNGER, TOLLES & OLSON LLP  
350 South Grand Avenue  
Fiftieth Floor  
Los Angeles, California 90071-3426  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702

PETER A. DETRE (SBN 182619)  
peter.detre@mto.com  
MUNGER, TOLLES & OLSON LLP  
560 Mission Street  
Twenty-Seventh Floor  
San Francisco, California 94105-3089  
Telephone: (415) 512-4000  
Facsimile: (415) 512-4077

Attorneys for Google LLC and YouTube, LLC

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

REALTIME ADAPTIVE  
STREAMING LLC,

Plaintiff,

vs.

GOOGLE LLC, and YOUTUBE, LLC,  
Defendants.

Case No. 2:18-CV-03629-GW-JC

**DEFENDANTS' ELECTION OF  
ASSERTED PRIOR ART**

Pursuant to the Court’s May 23, 2019 Scheduling Order (ECF No. 67), Defendants Google LLC and YouTube, LLC (collectively “Google”) elect to assert the prior art references listed below. Google hereby incorporates by reference the objections, statements and reservations of rights made in its Invalidity Contentions regarding the deficiencies in Plaintiff Realtime Adaptive Streaming LLC’s (“Realtime”) infringement contentions. In particular, Google notes that Realtime’s infringement contentions fail to identify “the priority date to which each asserted claim allegedly is entitled,” N.D. Cal. Patent L.R. 3-1(f), stating only that each of the asserted claims is “entitled to priority dates *at least as early as*” the filing date of the first related patent application. *See* Invalidity Contentions at 3. In the event that Realtime makes arguments or produces evidence in support of conception and reduction to practice dates earlier than the effective filing dates shown on the face of the Asserted Patents, Google reserves the right to rely on earlier versions of the references listed below, or to modify its elected prior art references.

Google reserves the right to rely on any prior art references disclosed pursuant to N.D. Cal. Patent L.R. 3-4 and any admissions regarding the prior art or state of the art made in the Asserted Patents themselves for purposes of any tutorial, background explanation of the technology at issue, to show the state of the art relating to the inventions claimed in the Asserted Patents, including any motivation to combine the prior art, or to rebut any denial by Realtime that one or more claim elements were known in the prior art.

**A. The ’046 Patent<sup>1</sup>**

Google elects to assert the following prior art references with respect to U.S. Patent No. 7,386,046.

<sup>1</sup> The parties dispute whether Realtime has properly asserted claims from the ’046 patent. Realtime’s deadline to make its final election of asserted claims was August 2, 2019. ECF No. 67. On the deadline, Realtime sent its elections to Google. Its elections did not include any claims from the ’046 patent. On August 9, 2019, Realtime’s counsel emailed Google’s counsel, stating that it was “amending” its final election to assert claims from the ’046 patent. Google’s counsel

1. Beyda
2. Couwenhoven
3. Darwin (Gao-Takahashi) System
4. Pian
5. RealNetworks RealSystem
6. Rynderman

**B. The '535 Patent**

Google elects to assert the following prior art references with respect to U.S. Patent No. 8,934,535.

1. Chu
2. Dye
3. Hsu
4. Imai
5. Ishii
6. Microsoft NetMeeting

**C. The '477 Patent**

Google elects to assert the following prior art references with respect to U.S. Patent No. 9,769,477.

1. Brooks
2. Darwin (Gao-Takahashi) System
3. Imai
4. Microsoft NetMeeting
5. Pauls
6. RealNetworks RealSystem

informed Realtime that it could not amend its elections after the deadline without leave of Court. *See Finjan, Inc. v. Proofpoint, Inc.*, 2015 WL 7959890, at \*2 (N.D. Cal. Dec. 4, 2015) (holding that, in order to amend elections, “a party must make a timely showing of good cause and seek

