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Google Must Disclose 'Core' Docs In IP Tech Row, Judge Says

By **Dorothy Atkins**

Law360, San Jose (May 31, 2017, 8:42 PM EDT) -- A California magistrate judge overseeing discovery in Space Data Corp.'s trade secret and patent infringement suit against Google over balloon-based internet technology ordered the search giant to budge on discovery despite Google's objection that the requested information includes "core technical documents," saying Google doesn't have good cause to delay.

During a hearing in San Jose, U.S. Magistrate Judge Nathanael Cousins refused to grant Google Inc.'s request to delay disclosing its core technical documents until 14 days after Space Data asserts its trade secret claims. The judge said that in his experience, delaying even one part of discovery would have a domino effect, pushing back trial dates and driving up the costs of litigation by millions of dollars.

"At the moment, this might seem like a small thing and not a big deal, but it would have a multiplier effect," he said.

Judge Cousins said discovery deadlines set by the local patent rules are "battle tested and effective" at moving complex patent cases forward efficiently, and they should be followed. Therefore, he said, the best approach is to move ahead with the disclosures that the rules require.

The judge's ruling is the latest in a suit Space Data launched **in June 2016** that accuses Google, Google's spinoff Alphabet Inc. and Alphabet's subsidiary X of misappropriating its patented trade secrets and launching a rival wireless communication service called Project Loon. The suit claims Project Loon uses Space Data's system of placing a constellation of **balloons in the stratosphere** to create an aerial wireless network with up to 4G-LTE speeds.

During a hearing Wednesday, Google's attorney Matthew M. Werdegar of Kecker Van Nest & Peters LLP argued that U.S. District Judge Beth Freeman had stayed trade secret discovery and that her order should also suspend Google's disclosure obligations under the patent local rules.

Space Data's original trade secret allegations were so "vague and amorphous" that Google wasn't in a position to object to the requested documents, Werdegar said. But since, Judge Freeman tossed the trade secret claims and gave Space Data a chance to amend them. If the court requires Google to disclose its core technical documents under the patent rules now, Space Data would unfairly be allowed to formulate its trade secret claims based on those documents, Werdegar argued.

"That's exactly what's not supposed to happen under the local patent rules," Werdegar

said.

But Space Data attorney Lyndsey C. Heaton of Hosie Rice LLP disagreed, arguing that Google's patent disclosures are independent of any trade secret issue and must go forward. Heaton reasoned that despite filing two motions to dismiss, Google hasn't challenged Space Data's patent claims, and the claims will go forward no matter what happens with Google's trade secret dispute.

Heaton also said the company needs the documents to form its patent claim constructions, and Space Data is concerned that if the court grants Google's request, it would be the start of a "never-ending delay" of litigation.

Judge Cousins sided with Space Data and said if he were to grant Google's request it could "eviscerate" the purpose of the local patent rule deadlines. He also noted that Google can take its discovery dispute to Judge Freeman within 14 days if the company wants to challenge his ruling and have a "second bite at the apple."

Judge Freeman, who is presiding over the case, **dismissed** Space Data's trade secret claims with leave to amend in February, saying the wireless services company needs to be more specific about what trade secrets Google allegedly stole.

A trial date is tentatively scheduled for June 3, 2019.

The patents-at-issue are U.S. Patent Numbers 6,628,941 and 7,801,522.

Space Data is represented by Lyndsey C. Heaton of Hosie Rice LLP.

Alphabet and Google are represented by Matthew M. Werdegar of Kecker Van Nest & Peters LLP.

The case is Space Data Corp. v. X, et al., case number 5:16-cv-03260, in the U.S. District Court for the Northern District of California.

--Additional reporting by Y. Peter Kang. Editing by Alyssa Miller.

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