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August 20, 2002

VIA FEDERAL EXPRESS

Honorable Douglas F. Eaton
United States Magistrate Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1360
New York, NY 10007-1312

RE: *GM Network, Ltd. v. e-gold Ltd.*
Civil action no. 01-Civ.-9621 (S.D.N.Y.) (RMB)(DFE)
Our file: 158133

Dear Judge Eaton:

Defendants' Introduction

Defendants ("E-gold") move the Court to compel discovery on Plaintiffs' improperly withheld documents and non-responses to Interrogatories. Many of the issues now before the Court are familiar; Plaintiffs' moved for production of these same documents previously, and E-gold produced documents and source code following the court's order. Plaintiffs do not think they are so obligated.

E-gold's non-infringement defense to Plaintiffs' claims in suit necessitate some of the discovery contested in this letter. E-gold's counterclaims for unfair competition and product disparagement are the basis for the other discovery sought. E-gold has evidence to support its counterclaims, and which suggests the existence of other evidence that may be in Plaintiff's possession. Thus, E-gold seeks production of other withheld documents.

Plaintiffs' founder (James Turk) made misleading statements about E-gold and his own company that harmed E-gold. He has loosed an email flood that paints E-gold as a criminal organization. (The email at Tab 4 is typical of many emails Mr. Turk sent) Plaintiffs recently hired a disgruntled, former officer of one of the Defendants.¹ (Tab 5) All of this (and possibly more) appears to be motivated by Plaintiffs' intent to "drive [e-gold] out of business." (Tab 6) Despite all of this, Plaintiffs' downplay E-gold's counterclaims as merely an attempt to harass Plaintiffs, and have flatly refused to produce the discovery materials detailed herein.

¹ E-gold has sued this former employee, its former Vice President of Business, Charles Evans, for defamation, tortious interference with prospective economic advantage, unfair business practices, breach of the duty of loyalty, and civil conspiracy. That he would become a director for a competitor of E-gold is a grave concern.

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Several categories of responses are disputed: 1) Plaintiffs' source code, and documents related to the software design implemented by the source code; 2) internal correspondence related to Plaintiffs' employee and former E-gold director and shareholder, Charles Evans; and 3) Plaintiffs' relevant responsive internal correspondence.

Plaintiffs' Introduction

In support of their request for discovery of Plaintiffs' highly proprietary source code and commercially sensitive internal correspondence, Defendants repeatedly cite the relevance of this information to Defendants' unfair competition counterclaims. But the discovery Defendants seek is not at all relevant to the counterclaims Defendants have actually pled in this case. As Defendants' Answer clearly demonstrates, those unfair competition counterclaims are product disparagement claims, not claims for misappropriation of trade secrets or other proprietary information.² By contrast, most of Defendants' arguments in favor of discovery seek information to support a baseless misappropriation claim not pled in Defendants' Answer. Defendants are not entitled to extend discovery beyond the scope of their pleaded counterclaims in a futile attempt to develop additional claims. *See* Fed. R. Civ. P. 26(b)(1).

Recent amendments to Fed. R. Civ. P. 26(b)(1) clearly limit the proper scope of discovery to "any matter, not privileged, that is relevant to the claim or defense of any party. . ." Fed. R. Civ. P. 26(b)(1). This change to Rule 26 "signals to the Court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings." *See* Advisory Committee Notes to the 2000 Amendments to Fed. R. Civ. P. 26(b)(1)(emphasis added); *PAJ, Inc. v. Barons Gold Mfg. Corp.*, No. 02 Civ. 1465 (VM)(KNF), 2002 WL 1792069, at *3 (S.D.N.Y. Aug. 2, 2002) ("Defendant may not seek documents . . . merely because information may be revealed therein upon which to base an amended pleading in the future."). This is precisely what the Defendants are asking the Court to do.

Defendants have asserted counterclaims for common law product disparagement, and for unfair competition under both common law and the Lanham Act, 15 U.S.C. § 1125(a). According to Defendants' Answer, each of those counterclaims is based on two public statements by Counterclaim Defendant James Turk that have allegedly

² Tellingly, while Defendants repeatedly rely on their counterclaims as the basis for the discovery they now seek, they fail to attach their Answer and Counterclaims as an Exhibit to this motion. This is no surprise since even a cursory review of those counterclaims demonstrates that they have nothing to do with misappropriation. Plaintiffs have attached a copy at Tab 12.

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“misrepresented the nature and characteristics of Counterclaim Plaintiffs’ products and services.” (See Tab 12 at 8 ¶ 20.) The statements are as follows:

(1) The purpose of the patents is very simple. Because GoldMoney is the inventor of digital gold currency, we have been working very hard to establish prudent standards to ensure that the concept of electronic gold is safe for users. . . . The point is that we are willing to consider licensing the patent to qualified providers of digital gold currency who pass our criteria for system reliability and integrity as well as user protections. The last thing we want to happen is for the concept of electronic gold currency to be damaged by some operator who crashes.

(2) Given the recent news that e-gold’s ‘almost’ 400 oz. bars evidently have an average weight of 395 oz., I wouldn’t accept grams of e-gold at par with GoldGrams.

(See Tab 12 at 7-8.)

Thus, Defendants’ unfair competition counterclaims are based solely on alleged disparagement of Defendants’ products and services. They do not include any claim for misappropriation of trade secrets or other proprietary information. Nevertheless, Defendants believe they can evade the requirements of Fed. R. Civ. P. 15 and, without amending their pleadings, conduct a harassing fishing expedition into Plaintiffs’ proprietary and sensitive commercial information unrelated to any counterclaim in their answer. Defendants are wrong. If Defendants wish to assert new counterclaims, they must move to amend their pleadings pursuant to Fed. R. Civ. P. 15. Plaintiffs would of course oppose any such motion because, as demonstrated below, any such counterclaims would be completely baseless.

Issue No. 1) Plaintiffs’ source code, documents related to Plaintiffs’ conception of the source code

E-gold’s Position

E-gold requests this Court to compel production on Defendants’ First Request For Documents And Things Nos. 8, 19, 20, and 48-50 (Tab 1).

E-gold filed counterclaims under 15 U.S.C. 1125(a) for unfair competition by Plaintiffs/Counterclaim Defendants. Plaintiffs’ source code and its underlying documentary support are relevant to E-gold’s claims at least because of several public

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statements by Plaintiffs. Those statements and actions and their relevance are listed below.

1) James Turk, the Founder and Managing Director of GM Network Limited³, states that within the GoldMoney system, the currency *is* gold, and that the user actually owns gold. (Tab 7) Mr. Turk further represents to the public that the E-gold system is inferior because it does not meet the "standard" of the Goldmoney system. E-gold believes that these statements are misleading, and since E-gold and GoldMoney are competitors, the statements are at least misleading unfair competition under 15 U.S.C. 1125(a). Mr. Turk's representations about E-gold's inferiority (that is, product disparagement) would evaporate if it is discovered that the GoldMoney system operates in a manner more similar to E-gold than not.

If Mr. Turk's statements are true, then there should be a record of how much gold each user owns, where such gold is stored, and an identification of the bar of gold that the user owns. Further, when a user spends the GoldMoney currency (GoldGrams) to another user, there should be a transfer of ownership that takes place, and the transaction should record such transfer of ownership. The software, specifications, and drawings will inform e-gold's counsel and experts (and a jury) whether or not Mr. Turk's claim is proper. Programmer's correspondence may show how the system works. At the moment, E-gold's counsel believes Turk's claim is improper, and the source code, specifications, and drawings will help make E-gold's case that Mr. Turk's statements are false and/or misleading under 1125(a).

E-gold seeks access to the source code under the same conditions that Plaintiffs have access to E-gold's source code. Specifically, E-gold wants to view the source code in Plaintiffs' attorneys' offices with only E-gold's counsel and/or designated experts and Plaintiffs' representative present. Again, E-gold just asks for fairness. If Plaintiffs can view E-gold's source code, E-Gold should be allowed to view Plaintiffs' source code under the same controlled conditions.

2) GoldMoney wants to insure that other digital currency companies are living up to its standard. (Tab 8)

Mr. Turk talks about a nebulous standard that he expects of companies in the gold-backed digital currency business, but has never published such standards. He states the he will only enforce the patents against companies that do not meet his standards. (Tab 11) Since he has not published his standards, we have only the GoldMoney software to use as a measuring stick. If E-gold's system is superior or identical to GoldMoney's

³ "GoldMoney" is one of the Plaintiffs/Counterclaim Defendants.

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software, Mr. Turk's statements will be proved false and misleading under 1125(a). Only a definitive comparison between the programs' source code will resolve Mr. Turk's claim.

3) Mr. Turk said, "Doug Jackson⁴ and related parties are defendants in a suit we brought against them last year in US federal court in New York City for patent infringement. Therefore, I've had reason to learn a lot about his operation...." (Tab 9)

E-gold is concerned about what Mr. Turk has learned about E-gold's operation, especially since E-gold's software and other proprietary information has been made available to Plaintiffs. The only way to find out if Mr. Turk has taken any of the proprietary information he may have seen during this litigation and incorporated it into his own software is for E-gold to review Mr. Turk's software.

4) Plaintiffs' contacts with Charles Evans and Ian Grigg

Plaintiffs' directors contacted two people who had access to E-gold's source code: Messrs. Evans and Grigg. Mr. Turk hired a disgruntled former director of E-gold, Charles Evans. Mr. Evans and E-gold did not part amicably: E-gold sued Charles Evans for defamation, tortious interference with prospective economic advantage, unfair business practices, breach of the duty of loyalty, and civil conspiracy. Mr. Turk's son, co-inventor of one of the patents in suit, suggested purchasing software from Ian Grigg, a former software developer for defendant DigiGold.net. (Tab 10) DigiGold.net sued Mr. Grigg for delivery of the source code to the software that Mr. Grigg developed for DigiGold. For both of these reasons, E-gold has a right to investigate the source code to see if Mr. Grigg, or perhaps Mr. Evans, gave trade secrets to the Plaintiffs (a form of common law unfair competition, which is pleaded in the Counterclaim).

Plaintiffs' Position

First, Defendants claim that they are entitled to review Plaintiffs' highly proprietary source code and related documentation because that information is relevant to Defendants' counterclaims. As discussed above, each of those counterclaims is based on public statements by Counterclaim Defendant James Turk that have allegedly "misrepresented the nature and characteristics of Counterclaim Plaintiffs' products and services." (See Tab 12 at 8 ¶ 20.) Defendants also contend that it is only fair they should be permitted to review Plaintiffs' source code because Plaintiffs' have been able to review Defendants' source code. Defendants are wrong. The e-gold source code is directly relevant to Plaintiffs' patent infringement claim because that code operates the

⁴ Mr. Jackson is a defendant in the current action.

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accused e-gold system. In contrast, as shown below, Plaintiffs' source code is completely irrelevant to Defendants' counterclaims.

In support of their request for Plaintiffs' source code, Defendants first cite a statement by James Turk where Mr. Turk states that "owners of GoldGrams⁵ . . . always own their metal." (See Tab 7.) But the statement complained of by Defendants makes no mention of e-gold whatsoever. (See Tab 7.) Nevertheless, Defendants contend that this statement is part of their counterclaim for "misleading unfair competition under 15 U.S.C. 1125(a)," and that Defendants must review Plaintiffs' source code to determine if Mr. Turk's statement about ownership of gold by GoldMoney account holders is true. Defendants are wrong on both accounts.

First, Defendants §1125(a) counterclaims are based upon statements that have allegedly "misrepresented the nature and characteristics of Counterclaim Plaintiffs' products and services," *e.g.*, the e-gold system. (See Tab 12 at 8 ¶ 20.) But this first statement identified by Defendants refers only to the GoldMoney system – it does not mention or even allude to the e-gold system or any other product or service offered by Defendants. Therefore, this statement does not fall within the scope of Defendants' counterclaims and cannot form the basis for the discovery Defendants seek.

Moreover, even if Defendants were entitled to discovery concerning the statements by Mr. Turk concerning ownership of gold by GoldMoney users (*see* Tab 7), Plaintiffs' source code would still be irrelevant. Source code will offer no insight into the legal status of gold held in GoldMoney accounts and whether title in such gold resides with the account holders. This legal status is laid out in the GoldMoney User Agreement,⁶ which clearly states that "[t]itle to the pool of gold in allocated storage at a Vault shall at all times vest in the various GoldMoney Users." (See Tab 13 § VIII ¶ C.) Defendants already have the discovery necessary to confirm Mr. Turk's statement – review of Plaintiffs' proprietary source code would be pointless.

Next, Defendants complain of a press release concerning Plaintiffs' patent licensing standards (Tab 8) and an e-mail discussing Plaintiffs' efforts to establish standards of integrity for digital gold currency (Tab 11) and argue that they need to evaluate GoldMoney's source code to determine those standards. In support of this argument, Defendants state that Plaintiffs have not published their standards for digital

⁵ A GoldGram is the unit of account in Plaintiffs' GoldMoney system.

⁶ The GoldMoney User Agreement is available on the GoldMoney Web site at www.goldmoney.com and was produced to Defendants more than five months ago.

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gold currency,⁷ and that Plaintiffs' source code is therefore the only "measuring stick" available to determine these standards. Defendants are again wrong on all accounts.

Contrary to Defendants' assertion, Plaintiffs standards are publicly available at the Governance page of the GoldMoney Web site.⁸ (See Tab 14.) These standards include, *inter alia*, system review by an independent auditor to ensure 100% backing by physical gold, regulations involving the addition and removal of gold from the storage facility, and a strict prohibition on fractional reserve banking. (See Tab 14.) In addition, Defendants have other communications in their possession that clearly state that Plaintiffs' standards relate, at least in part, to auditing and the prohibition on fractional reserve banking – "the patent is available for licensing if certain standards are met (e.g., auditing to make certain there are no fractional reserves)...." (See Tab 6.) Thus, Defendants again have all the information they need to evaluate Plaintiffs' patent licensing standards. Again, review of Plaintiffs' source code to determine these standards would be pointless.

Third, Defendants claim that they must inspect Plaintiffs' source code to "find out if Mr. Turk has taken any of the proprietary information he may have seen during this litigation and incorporated it into his own software." In essence, Defendants are accusing Plaintiffs' attorneys of violating the Stipulated Protective Order in this case by disclosing proprietary information to Mr. Turk. This allegation is completely baseless and offensive to Plaintiffs' counsel. Plaintiffs' counsel has never disclosed Defendants' proprietary information to Mr. Turk or anyone else in violation of the Protective Order.

In support of their baseless claim, Defendants cite a January 25, 2002 e-mail by Mr. Turk stating that he has "had reason to learn a lot about" Defendants' operation. (See Tab 9.) This e-mail was written three days after Defendants first document production, which was produced on an Attorney's Eyes Only basis and therefore not shown to Mr. Turk.⁹ This e-mail was also written more than two months before Defendants even made their source code available for inspection under controlled conditions at their attorney's offices. Therefore, even though Mr. Turk did not have access to any of Defendants' production at the time he wrote the e-mail in question, even though Defendants had not made their source code available for inspection at the time that e-mail was written, and

⁷ While they have served three sets of document requests and three sets of interrogatories upon Plaintiffs, Defendants have never asked Plaintiffs to identify the standards that they now find so elusive.

⁸ A hard copy of this page was also produced to Defendants more than five months ago.

⁹ This production was conducted on an Attorney's Eyes Only basis pending negotiation and execution of a protective order. The parties eventually executed a Stipulated Protective Order on March 19, 2002.

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even though Mr. Turk has never had any access whatsoever to Defendants' source code, Defendants are somehow concerned that Mr. Turk has stolen their proprietary information during this litigation. Thus, without any support, Defendants are impermissibly attempting to broaden the scope of discovery by alluding to some type of claim for misappropriation of trade secrets that they have never pleaded in this action. Discovery based on such pure speculation to support claims that have never been pleaded is not permitted under the Federal Rules. *Barons Gold*, 2002 WL 1792069, at *3 ("Defendant may not seek documents . . . merely because information may be revealed therein upon which to base an amended pleading in the future.")

Finally, Defendants argue that they have "a right to investigate the source code to see if Mr. Grigg, or perhaps Mr. Evans, gave trade secrets to Plaintiffs." But, as noted, Defendants have never pleaded a misappropriation claim. As discussed above, Defendants cannot obtain discovery concerning claims that they have never pleaded. In addition, while Defendants cite a communication that allegedly "suggests purchasing software from Ian Grigg," Plaintiffs have already explicitly informed Defendants that they have never received any source code from either Mr. Grigg or Mr. Evans.¹⁰ (See Tab 15 at Rsp. To Req. 60-61.) Still further, Defendants are aware that Mr. Evans executed a written agreement explicitly stating that he would not reveal any of e-gold's proprietary information to Plaintiffs during his role as a consultant for Plaintiffs' subsidiary. (See Tab 16.) This is simply another poor attempt by Defendants to misdirect the Court in hopes of impermissibly expanding the scope of discovery.

For the above reasons, Plaintiffs respectfully request that the Court deny Defendants' request for access to Plaintiffs' commercially sensitive source code and related documentation.

Issue No. 2) internal correspondence related to Plaintiffs' employee and ex E-gold director and shareholder, Charles Evans

E-gold's position

E-gold requests this Court to compel production on Defendants' First Set of Document Requests Nos. 10, 11, 12, 13, and 14 (Tab 1).

¹⁰ Defendants also misrepresent the communication they cite. In that document, Geoff Turk states only that Mr. Grigg was "interested in licensing his software . . . to other parties like us so we've agreed to keep in touch about possible partnerships in the future." (See Tab 10.) Mr. Turk does not suggest purchasing software from Mr. Grigg.

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Charles Evans, the former Vice President of business development for one of the Defendants, is President of a closely related subsidiary of the Plaintiffs, G.M. Network Ltd.¹¹ E-gold is concerned that Mr. Evans may have shared prohibited or proprietary information with Plaintiffs that may have served as the basis for Mr. Turk's previously discussed public comments. Therefore, E-gold seeks internal communications with Mr. Evans relevant to E-gold's unfair competition counterclaims.

Mr. Evans had access to the E-gold's most sensitive internal information. The dissemination of this information to Plaintiffs would severely damage E-gold's competitive position in the marketplace. Plaintiffs have taken the position that they will produce internal correspondence with Mr. Evans that mentions e-gold, but that is inadequate. Mr. Evans could easily be sharing E-gold's proprietary information with Plaintiffs without mentioning E-gold.

E-gold wants all relevant responsive information in response to the above Document Requests. E-gold is pushing for internal communication with Mr. Evans due to his unique role as a director of both Plaintiffs and Defendants. E-gold asks this court to compel production of all of Plaintiff's internal correspondence with Charles Evans.

Plaintiffs' Position

Defendants seek the production of all of Plaintiffs' commercially sensitive internal correspondence with Charles Evans, a former employee of Defendants who consulted briefly for one of Plaintiffs' subsidiary companies,¹² on the grounds that Plaintiffs may have received Defendants' proprietary information from Mr. Evans. This request is again purportedly relevant to Defendants' unfair competition counterclaims even though those claims are not based upon any alleged misappropriation or use of Defendants' proprietary information. (See Tab 12.) As they seek to do throughout this letter, Defendants are again attempting to expand the scope of discovery and fish for information to support causes of action that they have never pleaded. Defendants also try to mislead the Court by overstating Mr. Evans position while he consulted for Plaintiffs' subsidiary. While he was given the title of President of Plaintiffs' subsidiary (see Tab 8), he was never a "director of Plaintiffs," as Defendants incorrectly assert. And Defendants once again fail to mention that Mr. Evans executed an explicit agreement stating that he

¹¹ Plaintiffs state that Mr. Evans is a consultant to Plaintiffs' subsidiary, and have produced a consultant's agreement. The goldmoney.com website contradicts this. (Tab 5) Whether Mr. Evans is a consultant or Director is irrelevant for purposes of this document request. He is at least an agent of Plaintiffs, and at most a Director of a subsidiary.

¹² Mr. Evans was a consultant for Net-Gold Services Ltd. from October 2001 until May 2002. Net Gold Services Ltd. is not a party to this case.

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would not disclose e-gold's trade secrets or proprietary information to Plaintiffs. (See Tab 16.)

Defendants also appear to be attempting to use discovery in this case to further e-gold's pending lawsuit against Mr. Evans in California. In that suit, which includes claims for unfair business practices, e-gold would have to identify any trade secrets that Mr. Evans allegedly misappropriated. It is Plaintiffs' understanding that Defendants have been unable to identify any such trade secrets. Defendants should not be able to use discovery in this case to conduct a fishing expedition in an attempt to conjure misappropriated trade secrets where none exist.

Plaintiffs have already agreed to produce and have produced documents concerning Mr. Evans that either (i) mention the patents, or (ii) mention Defendants, the e-gold system, the e-gold Web site, the DigiGold system or the DigiGold Web site to the extent they relate to Defendants' infringement, Plaintiffs' damages, Counterclaim Plaintiffs' Counterclaims or any party's affirmative defenses. The additional internal business communications that Defendants seek are commercially sensitive and completely irrelevant to Defendants' counterclaims. Accordingly, Plaintiffs respectfully request that the Court deny Defendants' request for all internal correspondence with Mr. Evans.

Issue No. 3) Plaintiffs' relevant responsive internal correspondence.

E-gold's Position

E-gold requests this Court to compel production on Defendants' First Request For Documents And Things Nos. 10 and 11 (Tab 1), Gold & Silver Reserve, Inc.'s First Set of Interrogatory No. 10 (Tab 3), and Defendants' Second Request For Documents And Things No. 54 (Tab 2).

The parties differ as to what documents are relevant to unfair competition. Plaintiffs and E-gold struggled with this issue to no avail during three telephone calls before writing this letter. E-gold is concerned that Plaintiffs are withholding documents relevant to its unfair competition counterclaims. This concern stems from Plaintiffs' narrow view of E-gold's unfair competition counterclaims. Plaintiffs contend that E-gold has too broad an interpretation of what might be relevant to unfair competition.

Since this is discovery, E-gold urges this Court to adopt E-gold's position and deal with matters of admissibility of responsive communications at a later date. As it

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stands, Plaintiffs' unilateral determination of relevance is the measure of what documents it will produce. Their prejudice *not* to find documents relevant to E-gold's counterclaims surely influenced that determination.

E-gold has requested various documents related to communications, internal notes, and meeting notes that mention any of Defendants. In fairness to Plaintiffs, *some* incidental discussion of E-gold, that is, where E-gold is mentioned in a context unrelated to competition between the parties, could be excluded (for example, if there was a mere email forward of an article mentioning e-gold).

Many documents are, however, relevant. Documents discussing E-gold in the context of E-gold as a competitor, Plaintiffs' business practices that compete with E-gold in the marketplace, differences and similarities between the E-gold's and Plaintiffs' systems, E-gold's system compared with the patents in suit, damages to Plaintiffs as a result of the e-gold alleged infringement, operational features of E-gold, E-gold's business practices, E-gold's reputation, E-gold's market share, or lawsuits by or against E-gold, are all relevant to E-gold's unfair competition and product disparagement claims. At the very least, such documents could lead to the discovery of other admissible information and E-gold requests this court to compel discovery concerning these documents.

E-gold requests that this Court compel production for the above mentioned requests. If the Court has any questions, or would like to schedule a telephone hearing, counsel for Defendants E-gold et al. will be available to participate.

Plaintiffs' Position

Defendants seek access to all of Plaintiffs' internal correspondence and other documents that mention any of the Defendants regardless of the context of those documents.¹³ Since Defendants document requests in this area were overly broad,¹⁴ and because Plaintiffs and Defendants are clearly in commercial competition, Plaintiffs agreed to produce documents concerning e-gold and the other Defendants to the extent those documents related to "Defendants' infringement, Plaintiffs' damages,

¹³ Defendants claim that they only seek documents "discussing E-gold in the context of E-gold as a competitor," but this is not a meaningful limitation on the scope of Defendants' overly broad request. It is undisputed that Plaintiffs and e-gold are competitors, so all of Plaintiffs' correspondence mentioning e-gold are in the "context" of competition.

¹⁴ For example, one such request seeks "[a]ll document concerning the Defendants . . ." without any subject matter limitations. (See Tab 2 at Req. No. 10.)

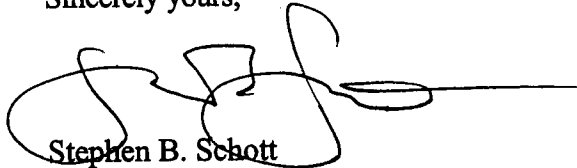
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Counterclaim-Plaintiffs' counterclaims or any party's affirmative defenses." (*See, e.g.*, Tab 2 at Rsp. to Req. 10.) Plaintiffs have also agreed to produce all documents that mention the patents in suit and all public statements by any of the Plaintiffs concerning any of the Defendants. (*See* Tab 2 at Rsp. To Req. 1; Rsp. to Req. 15.). This production includes documents concerning "E-gold's system compared with the patents-in-suit" and "damages to Plaintiffs as a result of the e-gold alleged infringement."

Despite Plaintiffs' production, Defendants claim that they are particularly concerned that Plaintiffs have unduly limited their document production because of Plaintiffs' "narrow view of E-gold's unfair competition counterclaims." But Plaintiffs have agreed to produce and have produced documents relevant to the counterclaims that Defendants have pled, *i.e.*, those based on alleged misrepresentation of Defendants' products or services. (*See* Tab 12.) Once again, Defendants are trying to expand the scope of discovery and delve into Plaintiffs' commercially sensitive internal documents and communications in hopes of finding evidence to support counterclaims never pled in this case. Such abuse of the discovery process is simply not permitted under Fed. R. Civ. P. 26(b)(1).

Accordingly, Plaintiffs respectfully request that the Court deny Defendants request for this irrelevant, commercially sensitive information.

Sincerely yours,

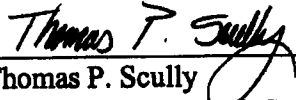


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