

Court of Appeals Docket No. 10-56316

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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PERFECT 10, INC.,

Plaintiff-Appellant

vs.

GOOGLE INC.,

Defendant-Appellee.

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On Appeal From The United States District Court, Central District Of  
California, Hon. A. Howard Matz, USDC No. CV 04-9484 AHM (SHx)

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**PERFECT 10'S OPPOSITION TO GOOGLE'S MOTION TO STRIKE  
PERFECT 10'S FURTHER EXCERPTS OF RECORD  
(DOCKET NO. 47)**

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## **I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

In an attempt to prevent this Court from readily verifying at least 22 factual errors in its Response Brief, Defendant-Appellee Google Inc. (“Google”) has moved to strike the entirety of the Further Excerpts of Record (“FER”) filed by Plaintiff-Appellant Perfect 10, Inc. (“Perfect 10”).<sup>1</sup> Google’s Motion to Strike (the “Motion”) (Docket No. 47) should be denied because it misstates both the applicable rules of this Court and the contents of Perfect 10’s FER.

Perfect 10’s FER was designed for the convenience of the Court to address 22 separate errors in Google’s Response Brief (“RB”), found at pages 2, 5, 7, 9, 10, 11, 18, 21, 25, 26, 32, 38, 44, 46, 47, 52, 53, 55, 59, 60, 62, and 64 of the RB. It consists of one volume of 272 pages, together with an index. Each page of evidence included in the FER to address these 22 errors is either from Perfect 10’s Excerpts of Record (“ER”), including pages printed from the evidence disk submitted as ER50000, or from other documents properly in the record. Perfect 10 could have cited to Google’s erroneous statements and the evidence found in Perfect 10’s ER demonstrating that these 22 statements are incorrect. However, providing the Court with such citations would have required the Court to search through multiple ER volumes and other documents to locate Google’s erroneous statements and the contrary evidence in the record. Instead, Perfect 10 printed out

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<sup>1</sup> The FER, served on Google on January 19, 2011, is filed under seal as Docket No. 40.

the documents corresponding to those citations and placed them in one volume for the Court's convenience. The FER thus includes pages from Google's Response Brief, with Google's erroneous assertions highlighted in green, followed by pages from the ER and other documents in the record showing that these assertions are incorrect, with the relevant evidence highlighted in blue. *See* Perfect 10's Reply Brief (Docket No. 42) at 3.

This Court's rules do not prohibit either the reprinting or the highlighting of documents already in the ER, particularly if that helps the Court understand the issues and reduces its burden. On the contrary, the Court's rules specifically encourage parties to submit excerpts of record that help the Court clearly understand the parties' positions. *See, e.g.*, Ninth Circuit Rule 30-1.1(a) (providing that excerpts of record should include "those parts of the record necessary to permit an informed analysis of [the parties'] positions"); Circuit Advisory Committee Note to Rule 30-1.6 ("Although presentation of the excerpts' contents in chronological order is the customary method to proffer the documents, *the parties may employ an alternative method of organization if that method seems better suited to the arguments offered in the brief.*") (emphasis added) [*see* Section II, below].

It is not surprising that Google would seek to strike the entire FER, since it clearly addresses 22 significant errors Google makes in its Response Brief. None

of the meritless assertions advanced by Google, however, provides any basis to strike any portion of the FER.

First, Google's contention that Perfect 10 cannot include documents from its ER in the FER *substantially misstates Ninth Circuit Rule 30-1.8(a)*. That rule nowhere states that Perfect 10's FER cannot include reprints of documents already in the ER, particularly if the inclusion of such documents reduces the Court's burden [*see* Section III.A, below].

Second, contrary to Google's mistaken claim, Perfect 10's FER does not constitute additional improper briefing. In fact, as set forth in Table 1, found at Section IV, below, Perfect 10 could have replaced citations to its FER with equivalent citations to Google's Response Brief, Perfect 10's ER, Google's Supplemental Excerpts of Record (the "SER"), and other documents in the record. Perfect 10 instead chose to simply print out the cited pages, provide those pages to the Court in one FER volume, and cite to the FER in its Reply Brief, so this Court would not have to search through numerous different ER volumes and documents to locate those same pages [*see* Section III.B, below].

Third, Google incorrectly asserts that the FER includes material that was not filed in the District Court. Google is wrong; the documents about which it complains were part of the record below. Google's actual objection is that these documents have been highlighted by Perfect 10. However, there is nothing in this

Court's rules that forbids highlighting, particularly when it helps the Court quickly locate the relevant portions relied upon by Perfect 10. [*see* Section III.C, below].

Fourth, Google mistakenly contends that the FER contains briefs and legal memoranda in violation of this Court's rules. Even Google concedes, however, that such documents may properly be included in the FER if they are "necessary to the resolution of an issue on appeal." Motion at 5, *quoting* Ninth Circuit Rule 30-1.5. Here, as explained below, the few excerpts from briefs and legal memoranda included in the FER are necessary to resolve issues pertaining to this appeal, including by demonstrating that Google has misrepresented Perfect 10's positions and that Perfect 10 has not waived certain arguments [*see* Section III.D, below].

Google's Motion is also untimely. Perfect 10 served its FER on January 19, 2011 (Docket No. 40). On February 3, 2011, this Court issued an Order stating that "[b]riefing is completed" (Docket No. 44). Google did not file its Motion until February 16, 2011 – almost two weeks later and four weeks after Google received the FER. This appeal has already been assigned to a panel and oral argument has been set for April 11, 2011. These circumstances further compel this Court not to strike any portion of the FER. This is particularly true here, where the FER is consistent with the purpose of excerpts of record set forth in this Court's rules and use of the FER would minimize this Court's burden. Accordingly, the Court

should deny the Motion in its entirety.<sup>2</sup>

**II. PERFECT 10'S FER COMPLIES WITH THIS COURT'S RULES AND IS DESIGNED TO MINIMIZE THIS COURT'S BURDEN.**

In reviewing Google's Response Brief, Perfect 10 found more than 20 substantive factual errors. In order to clearly and efficiently provide the evidentiary support to demonstrate these errors, and to spare this Court the need to move between multiple ER volumes, briefs, and disks in order to locate and review such evidence, Perfect 10 created and organized its FER as follows:

Each refutation of a particular statement made by Google in its Response Brief begins with a copy of the page from the Response Brief containing that statement. The erroneous statement is highlighted in green, which allows this Court to locate that statement more easily, because the pages from Google's Response Brief do not have line numbers. In certain cases, pages from Google declarations filed in the District Court, containing related erroneous statements, are also included. *See, e.g.*, FER2, FER11. Google's erroneous statements are followed by pages from Perfect 10's ER and/or other documents from the record containing Perfect 10's contrary evidence, with such evidence highlighted in blue.

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<sup>2</sup> If this Court chooses to grant the Motion and strike any part of the FER (and it should not, for all of the reasons set forth herein), Perfect 10 requests that the Court permit it to file a revised Reply Brief which replaces citations to any portion of the FER that is stricken with the equivalent citations set forth in Table 1, found at Section IV, below.

A significant number of the pages in the FER are reprinted from ER50000, the evidence disk submitted by Perfect 10 as part of its Excerpts of Record. *See, e.g.*, FER7-9, FER24-33, FER59-72, FER87-113, FER 210, FER230-233, FER265, FER269-271.

Because Perfect 10 organized the FER in this manner, it was able to cite to Google's erroneous statements and Perfect 10's contrary evidence in one convenient location. For example, at page 64 of its Response Brief, Google erroneously contends that "P10 argues that its notices identified AdSense repeat infringers, but pointed to no evidence that the webpages it identified displayed AdSense advertisements." In order to respond to this erroneous statement, Perfect 10 printed out pages from Perfect 10's DMCA notices that displayed AdSense advertisements (*i.e.*, "Ads by Google") from the disk submitted as ER50000, reprinted other exhibits in the ER that displayed such Google ads, added several arrows pointing to such ads, and included these pages as pages 39 through 77 of its FER. Perfect 10 then cited to FER34-77 on page 25 of its Reply Brief in support of its argument that "contrary to Google's assertions, Perfect 10 provided many webpages in its notices which displayed AdSense advertisements."

Instead of citing to FER34-77, Perfect 10 could have provided the equivalent citation to RB64(lns14-16);ER20239-242¶¶74-76;ER40121,123,125,127,131-137,139-141,143-148;FER59-72;ER60222(lns12-13);ER60223(lns4-

24);ER80131-133. *See* Table 1, found at Section IV, below. It is obviously less burdensome for the Court to review FER34-77 than to find and examine all of the different documents identified in the above citation. As the above example demonstrates, the FER serves to minimize the Court’s burden of locating cited evidence. This purpose clearly complies with Ninth Circuit Rule 30-1.1(a), which provides, in relevant part, as follows:

The purpose of the excerpts of record is to provide each member of the panel with *those portions of the record necessary to reach a decision. The parties should ensure that* in accordance with the limitations of Circuit Rule 30-1, *those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts.*

Ninth Circuit Rule 30-1.1(a) (emphasis added).

A discussion of the following examples demonstrates how Perfect 10’s FER substantially reduces the burden on this Court while complying with the purpose set forth in Ninth Circuit Rule 30-1.1(a).

**A. Google’s Incorrect Statement At RB64, Reprinted At FER22.**

On page 64 of its Response Brief, Google makes the following mistaken assertion regarding repeat infringement on Google Groups: “P10 argues that Google had notice of a repeat infringer on Google Groups, but failed to identify any notices or other evidence regarding alleged infringement by that account holder. AOB, 65.” In fact, Perfect 10 identified at least 30 DMCA notices regarding alleged infringement by that repeat infringer and a Court Order against

that repeat infringer. Perfect 10 cited to that evidence on page 65 of its Opening Brief as ER20257(ln19-22);ER50182. ER20257(ln19-22) was a page from Dr. Zada's Declaration in support of Perfect 10's Motion for Preliminary Injunction in which Dr. Zada stated that he included more than thirty notices sent to Google regarding the same Google Groups repeat infringer in a disk submitted in support of the motion. That disk was included in Perfect 10's ER as ER50000. ER50182 was a page showing thirty of those notices in thumbnail size. Google ignored that evidence in its Response Brief. Therefore, in order to refute Google's misstatement in a way that was crystal clear and minimized the burden on the Court, Perfect 10 did the following:

- 1) Instead of citing to RB64(lns17-19), where Google's incorrect statement appeared in its Response Brief, Perfect 10 printed out page 64 of the Response Brief, highlighted the misstatement in light green so that the Court did not need to find the misstatement itself, and included the highlighted page as page 22 of Perfect 10's FER.

- 2) Instead of repeating the citation to ER20257(ln19-22), which Google apparently ignored, Perfect 10 printed out ER20257, highlighted the relevant language in blue, and included that highlighted page as page 23 of Perfect 10's FER.

- 3) Instead of citing once again to ER50182, the page showing 30

thumbnail-size notices regarding the same repeat infringer, Perfect 10 printed out ten full-size pages from the disk submitted in support of its preliminary injunction motion, which is in the record as ER50000. These pages included nine notices to Google regarding that same repeat infringer, dated from October 30, 2003 through June 3, 2005, and a portion of a Court Order against that repeat infringer that had been included with the notices. These ten pages, with the repeat infringer's name highlighted in each of the notices, were included as pages 24-33 of Perfect 10's FER.

4) Perfect 10 then cited to FER22-33 in support of its statement, at page 25 of its Reply Brief, that "Google did not terminate a repeat infringer from Google Groups, despite receiving at least 30 notices regarding that same infringer." By arranging its FER in this fashion, Perfect 10 provided the Court with all of the relevant evidence in support of its statement in a single location, so the Court did not need to find the various pieces of evidence in different ER volumes, the disk, and filings.

**B. Google's Incorrect Statements At RB 5, 7, 46, and 53, and SER 199, 422, and 433.**

On the above pages, Google makes a series of flagrantly incorrect statements regarding Perfect 10's DMCA notices, including at least three statements made in declarations by Google employee Shantal Rands Poovala. In particular, Ms. Poovala erroneously states that: (1) "[t]he Group C Notices also failed to identify

the location of any allegedly infringing material” [SER422]; and (2) “none of P10’s notices contained the specific information necessary for Google to locate allegedly infringing material on a Blogger site ...” [SER433].

To address all of these critical errors without requiring the Court to find and retrieve the relevant documents, Perfect 10 reprinted all of the above pages containing such misstatements, highlighted the relevant portions in light green, followed each such misstatement with evidence refuting that statement, and included these pages as FER1-19. Perfect 10 then cited to FER1-19 on page 9 of its Reply Brief, rather than the following equivalent citation, which takes up almost four lines of text and would require this Court to search through numerous ER volumes, the disk submitted at ER50000, and other documents in the record to locate the relevant evidence: RB46(lns2-8);SER422(lns20-21);ER50007-8,11;RB7(lns19-21);FER7-9;RB5(lns2-6);SER199(lns13-14,22-24);ER20225(lns12-15,19-22);ER20235(lns1-10,14-18,20-23); ER40084;ER40100;RB53(lns2-4);SER433(lns17-19);ER50001,ER50003. *See* Table 1, found in Section IV, below, at line 3.

**III. GOOGLE PROVIDES NO LEGITIMATE BASIS FOR THIS COURT TO STRIKE ANY PORTION OF PERFECT 10’S FER, LET ALONE ALL OF THE FER.**

Google’s Motion raises four misleading assertions in support of Google’s

request to strike the entirety of Perfect 10's FER. None of these meritless contentions provides any basis for the relief sought by the Motion.<sup>3</sup>

**A. Ninth Circuit Rule 30-1.8(a) Does Not Prohibit Perfect 10 From Including Documents From The ER In Its FER.**

Google's erroneous assertion that it was improper for Perfect 10 to include in its FER copies of documents that were already in its ER [Motion at 5] is based entirely upon Google's substantial misstatement of Ninth Circuit Rule 30-1.8(a).

Rule 30-1.8(a) states, in relevant part, as follows:

*If the reply brief requires review of portions of the reporter's transcript or documents not previously included in previously filed excerpts*, appellant shall, ... at the time the reply brief is submitted, submit supplemental excerpts of record.

Ninth Circuit Rule 30-1.8(a) (emphasis added). Instead of quoting the above language, Google twists the rule around, mistakenly claiming that it provides that "further excerpts of record should only include 'portions of the reporter's transcript or documents *not included in previously filed excerpts.*'" (emphasis added by

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<sup>3</sup> None of the three cases cited by Google in the Motion supports the striking of Perfect 10's FER. Both *Barcamerica Intern. USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 595 (9th Cir. 2002), and *Lowry v. Barnhart*, 329 F.3d 1019, 1024-25 (9th Cir. 2003), stand for the unremarkable proposition that this Court may strike materials that are improperly included in excerpts of record because they were not filed in the district court. See *Barcamerica*, 289 F.3d at 594 (papers not filed in the district court are not part of the record on appeal); *Lowry*, 329 F.3d at 1024 (same). Here, Google is objecting to Perfect 10's FER not because it contains documents that were not filed in the District Court, but because some of the documents filed in the District Court have been highlighted. Therefore, neither case is applicable. The third case cited by Google, *G.F. Co. v. Pan Ocean Shipping Co.*, 23 F.3d 1498 (9th Cir. 1994), is inapposite for the reasons discussed in footnote 4, below.

Google).

That is not, however, what Rule 30-1.8(a) says. Google has improperly added its own language – “further excerpts of record should only include” – to a portion of Rule 30-1.8(a) to obtain a completely different meaning. *Nowhere in the actual language of Rule 30-1.8(a) is there any prohibition against including in the FER documents already in the ER*, particularly if that reduces the Court’s burden. *See* Section II, above. Ninth Circuit Rule 30-1.8(a) thus provides no basis for this Court to grant the Motion.

**B. Including Pages Of Exhibits In The FER Does Not Constitute Improper Additional Argument.**

Google contends that Perfect 10’s FER constitutes “almost 300 pages of additional argument” which attempts to circumvent this Court’s limitations on the length of Perfect 10’s Reply Brief. Motion at 2. Google is wrong. As the discussion in Section II, above, makes clear, instead of providing the long equivalent citations to the ER and other documents in the record shown in Table 1, Perfect 10 simply printed out the cited documents and included them in its FER for the convenience of the Court. Perfect 10 then cited to the evidence compiled in the FER in its Reply Brief to support arguments made in that brief. There is no rule which prevents the FER from being organized by “Incorrect Statements from Google’s Response Brief” followed by “Examples of Contrary Evidence submitted by Perfect 10.” On the contrary, the Circuit Advisory Committee Note to Rule 30-

1.6 specifically provides that Perfect 10 may use this “alternative method of organization” for its FER, because this “method seems better suited to the arguments offered in the [reply] brief.”<sup>4</sup>

**C. Perfect 10’s FER Properly May Include Highlighting.**

Google incorrectly contends that the FER contains “materials that are not part of the record below” because certain pages have been marked up and highlighted by Perfect 10. Motion at 3. Google concedes that these documents were filed below. Instead, Google’s actual objection is to Perfect 10’s highlighting of the relevant language.

Once again, Google misconstrues this Court’s rules. Ninth Circuit Rule 10-2

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<sup>4</sup> *G.F. Co. v. Pan Ocean Shipping Co.*, 23 F.3d 1498 (9th Cir. 1994), the only case cited by Google in support of its contention that the FER constitutes improper additional argument [Motion at 2], simply does not support Google’s claim. In *G.F. Co.*, this Court struck two affidavits of expert witnesses that explained the legislative history of the statute at issue in the case and opined that a prior decision of this Court was inconsistent with that legislative history. *Id.* at 1507 n.6. The *G.F. Co.* court explained that it was striking the affidavits because matters of law for the court’s determination “[a]re inappropriate subjects for expert testimony” and “the interpretation of legislative history and the application of a statute to a particular case are uniquely questions for the court.” *Id.* (quotation and citation omitted). Subsequent opinions have noted that *G.F. Co.* merely stands for the proposition that “expert testimony is inappropriate in matters of law that are reserved for the court’s determination.” *McHugh v. United Service Automobile Assn.*, 164 F.3d 451, 458 (9th Cir. 1999) (Graber, J., dissenting), *citing G.F. Co.*, 23 F.3d at 1507 n.6. *See also In re McKesson HBOC, Inc. Securities Litigation*, 126 F.Supp.2d 1239, 1247 (N.D. Cal. 2000) (stating that, in *G.F. Co.*, this Court “held that expert affidavits on questions of law are improper, and that they should be stricken”). Accordingly, *G.F. Co.* is inapposite and in no way supports striking any portion of the FER.

does not prohibit highlighting, particularly if it is done for the convenience of the Court.<sup>5</sup> In fact, a standing order of the District Court specifically provides that “[t]he parties should use colored markers to highlight the testimony or portions of exhibits that they are relying on.” Scheduling and Case Management Order of Judge A. Howard Matz, at 6, found at [www.cacd.uscourts.gov/CACD](http://www.cacd.uscourts.gov/CACD).<sup>6</sup> Google does not dispute, and cannot dispute, that the documents and pleadings highlighted by Perfect 10 were filed with the District Court. Accordingly, Google’s complaint about highlighting provides no basis to strike the FER.

**D. Portions Of Briefs Necessary To Respond To Google’s Erroneous Assertions Were Properly Included In Perfect 10’s FER.**

Google asserts that the FER should be stricken to the extent it contains briefs or other memoranda of law. Motion at 5. Even Google concedes, however, that Ninth Circuit Rule 30-1.5 allows such documents to be included in excerpts of

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<sup>5</sup> Ninth Circuit Rule 10-2 merely provides that the complete record on appeal consists of the official transcript of proceedings before the district court and “the district court clerk’s record of original pleadings, exhibits and other papers filed with the district court.” It says nothing about highlighting.

<sup>6</sup> Perfect 10 highlighted portions of exhibits that were submitted to the District Court. However, certain erroneous statements made by Google in its Response Brief were not made in the District Court. For example, although page 64 of Google’s Response Brief makes erroneous claims relating to rapidshare.com and megaupload.com, Google never mentioned these terms in its memorandum of points and authorities in opposition to Perfect 10’s motion for preliminary injunction filed in the District Court. Perfect 10 therefore added highlighting to identify responsive portions of documents that address the new erroneous assertions raised in Google’s Response Brief.

record when they are “necessary to the resolution of an issue on appeal.” *Id.*, quoting Ninth Circuit Rule 30-1.5. Because Google made a series of incorrect assertions in its Response Brief that Perfect 10 waived certain issues by failing to raise them in the District Court [*see, e.g.*, FER141; FER150; FER181; FER219-220; FER237], it was necessary for Perfect 10 to include certain pages from its briefs in its FER, in order to demonstrate to the Court that Perfect 10 had properly raised these arguments below. *See, e.g.*, FER142; FER152-153; FER185-190; FER223-225; FER238-239; FER 242. Google itself admits that briefs and memoranda that “prove that a certain argument was not waived” are “necessary” on appeal. Motion at 5.

Furthermore, because Google mistakenly contended in its Response Brief that certain key issues were undisputed [*see, e.g.*, FER175; FER194], it was necessary for Perfect 10 to include certain pages from its briefs in the FER to demonstrate that these issues in fact were disputed. *See, e.g.*, FER176-177; FER195-196. Finally, because Google incorrectly claimed that Perfect 10 provided no evidence in support of certain arguments [*see, e.g.*, FER122; FER130], it was necessary for Perfect 10 to include in the FER pages from its briefs showing that Perfect 10 had provided such evidence. *See, e.g.*, FER124-129; FER131-138. Google’s erroneous contention thus provides no basis to strike any portion of the FER.

**IV. TABLE 1: ALTERNATIVE CITATIONS**

<b>PAGE FROM PERFECT 10'S REPLY BRIEF</b>	<b>FER PAGES CITED</b>	<b>EQUIVALENT CITATION TO DOCUMENTS IN THE RECORD (FER IS CITED IF NO EQUIVALENT HARD-COPY CITATION EXISTS)</b>
2	FER143-145	ER20201(lns3-14);ER30077-78
4	78-113	RB32(lns1-4);ER20193(lns14-27);ER30024-27;ER20247(lns24-28);ER20248(lns5-13,26-28);ER40196;FER87-113
9	1-19	RB46(lns2-8);SER422(lns20-21);ER50007-8,11;RB7(lns19-21);FER7-9;RB5(lns2-6);SER199(lns13-14,22-24);ER20225(lns12-15,19-22);ER20235(lns1-10,14-18,20-23);ER40084;ER40100;RB53(lns2-4);SER433(lns17-19);ER50001,ER50003.
11	184	ER20023
11	185-186	ER60169(lns(11-12,15-19));ER60170
14	21	ER20013
16	78-113	RB32(lns1-4);ER20193(lns14-27);ER30024-27;ER20247(lns24-28);ER20248(lns5-13,26-28);ER40196;FER87-113
18	141-149	RB59(lns4-5);FER142;ER20201(lns3-14);30077-78;ER60072(lns8-11,13-15);ER60082;ER30105;ER90006
18	194-206	RB44(lns16-19);OB48(ln14)-OB49(ln6);ER20213(lns2-6);ER30153,159;ER90089;ER90091;ER60238(lns19-21);ER80208;ER60212(lns3-12);ER80026;ER80019
20	150-153	RB44(lns3-4);RB55(lns5-6,18-19);OB27;FER153
20	19	ER50003
20	158	ER30102
20	193	ER80056
20	228	ER80073
20	237-242	RB25(lns8-9,n2),FER238-

<b>PAGE FROM PERFECT 10'S REPLY BRIEF</b>	<b>FER PAGES CITED</b>	<b>EQUIVALENT CITATION TO DOCUMENTS IN THE RECORD (FER IS CITED IF NO EQUIVALENT HARD-COPY CITATION EXISTS)</b>
		239;ER30038;ER20122;FER242
20	FER143-145	ER20201(lns3-14);ER30077-78
20	1-19	RB46(lns2-8);SER422(lns20-21);ER50007-8,11;RB7(lns19-21);FER7-9;RB5(lns2-6);SER199(lns13-14,22-24);ER20225(lns12-15,19-22);ER20235(lns1-10,14-18,20-23);ER40084;ER40100;RB53(lns2-4);SER433(lns17-19);ER50001,ER50003.
23	265	FER265
23	266	CCBill, 488 F.3d at 1109
24	142-145, 149	FER142;ER20201(lns3-14);ER30077-78;ER90006(lns17-27)
24	266	CCBill, 488 F.3d at 1109
24	211-218	FER211n13;ER60206(lns13-16);ER60208(lns22-28);ER60209(lns1-4,11-17);ER70197-198);ER70205-206)
25	22-33	RB64(lns17-19);ER20257(lns20-22);FER24-33
25	23	ER20257
25	34-77	RB64(lns14-16);ER20239-242¶¶74-76;ER40121,123,125,127,131-137,139-141,143-148;FER59-72;ER60222(lns12-13);ER60223(lns4-24);ER80131-133
25	37-38	ER20241;ER20242(lns1-12)
25	53-58	ER540143-148
25	269-272	FER269-271;ER90148
26	172-174	RB10(lns12-14);ER20244(lns26-27);ER20245(lns(8-17)
27	160-171	RB60(lns12-13);ER60099(lns18-28);FER162-169;ER60009;ER60010(lns17-26);
27	161	ER60099(lns18-28)

<b>PAGE FROM PERFECT 10'S REPLY BRIEF</b>	<b>FER PAGES CITED</b>	<b>EQUIVALENT CITATION TO DOCUMENTS IN THE RECORD (FER IS CITED IF NO EQUIVALENT HARD-COPY CITATION EXISTS)</b>
27	FER164	FER164
28	211-218	FER211n13;ER60206(lns13-16);ER60208(lns22-28);ER60209(lns1-4,11-17);ER70197-198);ER70205-206)
28	266	CCBill, 488 F.3d at 1109
30	114-121	RB21(lns6-8);ER20191(ln26)-ER20193(ln3);ER30017-20
30	224(lns14-23)	FER224(lns14-23)
33	268	ER50107
36	268	ER50107
40	122-129	RB2(lns4-5);ER20086(lns8-11);FER124-129
42	122-140	RB2(lns4-5);ER20086(lns8-11);FER124-129;RB18(lns3-4,16);FER131-138;ER20076-77¶2

**V. CONCLUSION.**

For all of the above reasons, Perfect 10 respectfully requests that this Court deny Google's motion to strike the entirety of Perfect 10's FER or any portion thereof. In the event that this Court grants any portion of Google's motion (and it should not, for all of the reasons discussed above), Perfect 10 respectfully requests permission to file a revised Reply Brief that replaces any citations to stricken portions of the FER with the equivalent citations shown in Table 1, above.

Dated: February 25, 2011

Respectfully submitted,  
LAW OFFICES OF JEFFREY N. MAUSNER

By: Jeffrey N. Mausner  
Jeffrey N. Mausner  
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Attorneys for Plaintiff Perfect 10, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for Ninth Circuit by using the appellate CM/ECF system on February 25, 2011:

**PERFECT 10'S OPPOSITION TO GOOGLE'S MOTION TO STRIKE  
PERFECT 10'S FURTHER EXCERPTS OF RECORD (DOCKET NO. 47)**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 25, 2011

  
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Brittany Rosen