

STATEMENT REGARDING TAXING OF ADDITIONAL COSTS

In addition to the costs itemized in the accompanying standard form Bill of Costs, Defendant-Appellee Google Inc. (“Google”) respectfully requests that the additional costs described below be taxed against Plaintiff-Appellant Perfect 10, Inc. (“P10”) pursuant to Fed. R. App. P. 39 and Circuit Rule 39-1.

1. Costs for duplication of DVDs submitted with Google’s Supplemental Excerpts of Record in the amount of \$1,980.00

No. of Documents	DVDs per Document	Cost per DVD	TOTAL COST
6	22	\$15.00	\$1,980.00

Explanation

Circuit Rule 30-1 requires the parties to prepare excerpts of record in order “to provide each member of the panel with those portions of the record necessary to reach a decision.” 9th Cir. R. 30-1.1. The Rule further specifies that “the excerpts of record shall include ... those specific portions of the exhibits necessary to resolve the issue” where an issue on appeal is based on written exhibits. 9th Cir. R. 30-1.4. P10’s appeal was based in part on the contents of its purported DMCA notices to Google and Google’s internal records of processing DMCA notices received from P10 and other complainants. These written documents were included as exhibits in the record before the district court; however, P10 failed to include these critical exhibits in its Initial Excerpts of Record. Accordingly, Google was required to submit these documents to the Court under Circuit Rule 30-1. 9th Cir. R. 30-1.7 (“If the appellee believes that the excerpts of record filed by the appellant exclude items which are required under this rule ... the appellee shall ... submit supplemental excerpts of record, prepared pursuant to this rule, comprised of the omitted items.”).

Several of P10’s DMCA notices to Google included electronic files contained on DVDs submitted with the notices, and 21 of the 22 DVDs for which Google seeks to have duplication costs taxed were part of the original notices and the exhibits in the record before the district court. The other DVD contains full copies of several of Google’s internal records of processing DMCA notices received from P10 and other complainants, which were a further subject of P10’s appeal and included in an exhibit in the record before the district court. All 22 DVDs were required to be included in Google’s Supplemental Excerpts of Record under Circuit Rule 30-1, and P10 should be taxed for the reasonable cost Google incurred in duplicating them.

2. Costs for duplication of hard drive submitted with Google’s Supplemental Excerpts of Record in the amount of \$1,500.00

No. of Documents	Hard Drive per Doc.	Cost per Hard Drive	TOTAL COST
6	1	\$250.00	\$1,500.00

Explanation

Circuit Rule 30-1 requires the parties to prepare excerpts of record in order “to provide each member of the panel with those portions of the record necessary to reach a decision.” 9th Cir. R. 30-1.1. The Rule further specifies that “the excerpts of record shall include ... those specific portions of the exhibits necessary to resolve the issue” where an issue on appeal is based on written exhibits. 9th Cir. R. 30-1.4. P10’s appeal was based in part on the contents of its purported DMCA notices to Google. These written documents were included as exhibits in the record before the district court; however, P10 failed to include these critical exhibits in its Initial Excerpts of Record. Accordingly, Google was required to submit these documents to the Court under Circuit Rule 30-1. 9th Cir. R. 30-1.7 (“If the appellee believes that the excerpts of record filed by the appellant exclude items which are required under this rule ... the appellee shall ...

submit supplemental excerpts of record, prepared pursuant to this rule, comprised of the omitted items.”).

One of P10’s DMCA notices to Google came in the form of a collection of electronic files contained on a hard drive. The hard drive was an exhibit in the record before the district court. The hard drive was required to be included in Google’s Supplemental Excerpts of Record under Circuit Rule 30-1, and P10 should be taxed for the reasonable cost Google incurred in duplicating it.

Dated: August 16, 2011

Respectfully submitted,

By  _____

Bradley R. Love
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
Attorneys for Defendant Google 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 the Ninth Circuit by using the appellate CM/ECF system on August 16, 2011.

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: August 16, 2011

Respectfully submitted,

By _____



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