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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PERFECT 10, INC.,)	
)	
PLAINTIFF,)	
)	
VS.)	CASE NO. CV 04-9484-AHM(SHX)
)	
)	
GOOGLE, INC., ET AL.,)	LOS ANGELES, CALIFORNIA
)	JULY 14, 2008
)	(1:27 P.M. TO 1:54 P.M.)
DEFENDANTS.)	
_____)	

HEARING
BEFORE THE HONORABLE STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:	SEE NEXT PAGE
COURT REPORTER:	RECORDED; COURT SMART
COURTROOM DEPUTY:	SANDRA BUTLER
TRANSCRIBER:	DOROTHY BABYKIN COURTHOUSE SERVICES 1218 VALEBROOK PLACE GLENORA, CALIFORNIA 91740 (626) 963-0566

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 APPEARANCES: (CONTINUED)

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I N D E X
CASE NO. CV 04-9484-AHM(SHX)
PROCEEDINGS: CONFERENCE.

JULY 14, 2008

1 LOS ANGELES, CALIFORNIA; MONDAY, JULY 14, 2008, 1:27 P.M.

2 THE CLERK: CALLING CASE NUMBER CV 04-9484, PERFECT
3 10 VERSUS GOOGLE.

4 COUNSEL, PLEASE ENTER YOUR APPEARANCE FOR THE
5 RECORD.

6 MS. HERRICK: RACHEL HERRICK AND THOMAS NOLAN OF
7 QUINN EMANUEL FOR DEFENDANT GOOGLE.

8 THE COURT: THANK YOU.

9 MR. MAUSNER: GOOD AFTERNOON, YOUR HONOR. JEFF
10 MAUSNER FOR PERFECT 10.

11 THE COURT: WHAT WERE YOU BEFORE JUDGE MATZ ON
12 TODAY? -- JUST BRIEFLY. WAS THAT A MOTION TO AMEND, OR?

13 MS. HERRICK: YES.

14 THE COURT: OKAY. AND WHAT DO YOU NEED MY PRECIOUS
15 TIME FOR?

16 MS. HERRICK: MAY I TAKE THE PODIUM, YOUR HONOR?

17 THE COURT: SURE.

18 MS. HERRICK: WE ARE HERE -- I'M HERE -- WE'RE HERE
19 ON A VERY LIMITED MATTER THAT SHOULDN'T TAKE MORE THAN ABOUT
20 FIVE OR TEN MINUTES I'M HOPING. THIS RELATES TO SOME
21 DOCUMENTS THAT GOOGLE -- SOME CATEGORIES OF DOCUMENTS THAT
22 GOOGLE HAS RECENTLY PRODUCED AND IS ABOUT TO PRODUCE PURSUANT
23 TO DISCOVERY REQUESTS AND COURT ORDERS.

24 AS YOUR HONOR I'M SURE RECALLS, ON DECEMBER 27TH,
25 2005 YOUR HONOR ISSUED AN ORDER IN RESPONSE TO A GOOGLE

1 MOTION TO LIMIT ACCESS TO CERTAIN MATERIALS TO A TRUE
2 ATTORNEY'S-EYES-ONLY DESIGNATION. YOUR HONOR DENIED THAT
3 REQUEST BUT DID GRANT GOOGLE LEAVE TO COME BACK TO YOUR HONOR
4 TO REVISIT THE ISSUE -- AND I'M QUOTING HERE --

5 "ON A VERY LIMITED BASIS WHEN AND IF THERE
6 ARE BUSINESS AND TECHNOLOGICAL TRADE SECRETS
7 ABOUT TO BE DISCLOSED, WHICH SECRETS DEFENDANTS
8 BELIEVE ARE CURRENTLY SO COMMERCIALY SENSITIVE
9 THAT PARTIAL RECONSIDERATION OF THE PROTECTIVE
10 ORDER IS JUSTIFIED."

11 THE COURT: I HAVE SOME MEMORY OF THAT, BUT IT'S
12 BEEN AWHILE. OKAY.

13 MS. HERRICK: AND, SO, WHAT HAPPENED HERE IS ON
14 APRIL 29TH, 2008 GOOGLE GAVE PERFECT 10 NOTICE THAT IT
15 BELIEVED IT WAS ABOUT TO PRODUCE CERTAIN LIMITED CATEGORIES
16 OF DOCUMENTS THAT WOULD RISE TO THE LEVEL OF THE NEED TO SEEK
17 RECONSIDERATION BECAUSE GOOGLE BELIEVED THESE WERE SO
18 SENSITIVE THAT A TRUE AEO DESIGNATION WAS WARRANTED FOR THEM.

19 OF COURSE, UNDERSTANDABLY, PERFECT 10 DISAGREED.
20 BUT THEY DID IN FACT AGREE IN WRITING ON A TEMPORARY BASIS TO
21 MAINTAIN A TRUE OUTSIDE COUNSEL'S ONLY DESIGNATION, WHICH I'M
22 CALLING OCEO --

23 THE COURT: MM-HMM.

24 MS. HERRICK: -- RATHER THAN AEO, SINCE AEO
25 CURRENTLY INCLUDES DR. ZADA -- FOR TWO NARROW CATEGORIES OF

1 DOCUMENTS ON A TEMPORARY BASIS UNTIL WE WERE ABLE TO COME
2 BACK TO YOUR HONOR AND DISCUSS THE ISSUE.

3 AND THOSE TWO CATEGORIES ARE, NUMBER ONE, DOCUMENTS
4 REGARDING TOTAL SEARCH COUNTS RUN ON GOOGLE, AND, NUMBER TWO
5 --

6 MR. MAUSNER: RACHEL, SOMEONE WHO'S DOING AN
7 INTERNSHIP IN MY OFFICE IS PRESENT IN THE COURT. IF YOU'RE
8 GOING TO BRING UP ANYTHING THAT IS CONFIDENTIAL, SHE CAN JUST
9 GO OUT IN THE HALL FOR A SECOND.

10 MS. HERRICK: I APPRECIATE THAT. THANK YOU. I'LL
11 AVOID THAT IF AT ALL POSSIBLE.

12 THE COURT: SO, THE TOTAL SEARCH COUNTS RUN BY --
13 RUN ON GOOGLE?

14 MS. HERRICK: USERS. CORRECT.

15 THE COURT: OKAY. YOU MEAN --

16 MS. HERRICK: AND, SECONDLY --

17 THE COURT: -- GLOBAL TOTAL NOT PERFECT 10 SEARCHES
18 OR MODEL SEARCHES?

19 MS. HERRICK: BOTH. ANY ACTUAL CONCRETE NUMBERS OF
20 SEARCHES RUN, TOTAL SEARCHES RUN ON INDIVIDUAL TERMS AND
21 COLLECTIVELY. THERE ARE DOCUMENTS THAT HAVE BEEN CALLED FOR
22 THAT HAVE BEEN ORDERED PRODUCED THAT WOULD REQUIRE GOOGLE TO
23 DISCLOSE THAT INFORMATION.

24 THE COURT: OKAY.

25 MS. HERRICK: THE SECOND CATEGORY ARE DOCUMENTS

1 REGARDING IMAGE RECOGNITION TECHNOLOGY. SO --

2 THE COURT: YOU MEAN THE FEASIBILITY OF IMAGE
3 RECOGNITION TECHNOLOGY?

4 MS. HERRICK: JUST DOCUMENTS -- I BELIEVE THE ORDER
5 WAS DOCUMENTS REGARDING GOOGLE'S, I THINK IT WAS, USE OF
6 IMAGE RECOGNITION TECHNOLOGY WITH THE AVAILABILITY OF SUCH
7 TECHNOLOGY WITHIN GOOGLE.

8 THE COURT: I THINK IT WAS FEASIBILITY OF STUDIES
9 OF FEASIBILITY OR SOMETHING LIKE THAT.

10 MS. HERRICK: YOU KNOW, I WISH I COULD REMEMBER THE
11 EXACT WORDING --

12 THE COURT: I THINK WE'RE TALKING ABOUT THE SAME
13 THING.

14 MS. HERRICK: IT WAS NUMBER 196 I BELIEVE.

15 THE COURT: GOT IT.

16 MS. HERRICK: ANYWAY --

17 THE COURT: I THINK WE'RE TALKING ABOUT THE SAME
18 THING.

19 MS. HERRICK: I THINK WE ARE TOO. I THINK WE ARE
20 TOO.

21 AND SO ON APRIL 30TH, THE VERY NEXT DAY, PERFECT 10
22 AGREED IN WRITING, YOU KNOW, JUST TO MAINTAIN THIS OCEO
23 STATUS ON A TEMPORARY BASIS FOR THESE TWO CATEGORIES OF
24 DOCUMENTS.

25 WE HAVE ANOTHER PRODUCTION COMING UP IN GOOGLE ON

1 WEDNESDAY, THIS WEDNESDAY, JULY 16TH. AND THE DATE IS SET
2 PURSUANT TO COURT ORDER AND THE PARTIES' STIPULATIONS
3 EXTENDING DUE DATES THEREON.

4 WE NOTIFIED PERFECT 10 ON JULY 8TH, LAST WEEK, THAT
5 WE ASSUMED THAT PERFECT 10 WOULD CERTAINLY EXTEND ITS
6 AGREEMENT, ITS PRIOR AGREEMENT TO TREAT ANY SUCH CATEGORIES
7 OF DOCUMENTS AS OCEO ON A TEMPORARY BASIS, THAT WE ASSUMED
8 THAT THEY WOULD EXTEND THAT AGREEMENT TO ANY ADDITIONAL
9 DOCUMENTS PRODUCED ON JULY 16TH.

10 WE JUST SENT THEM AN EMAIL ASKING IF THEY COULD
11 CONFIRM THAT THAT WAS THE CASE. FOR REASONS UNKNOWN, PERFECT
12 10 REFUSED. SO, EVEN THOUGH WE ALREADY HAVE THIS AGREEMENT,
13 WE'RE TEEING UP THIS ISSUE TO BRING IT BEFORE YOUR HONOR,
14 WE'RE NOW KIND OF IN A CATCH 22 BECAUSE GOOGLE NEEDS TO MAKE
15 THIS PRODUCTION ON WEDNESDAY TO SATISFY A COURT ORDER, BUT
16 PERFECT 10 IS REFUSING TO MAINTAIN A TEMPORARY STATUS QUO OF
17 OCEO PENDING OUR ABILITY TO COME BEFORE YOUR HONOR IN FAIRLY
18 SHORT ORDER AND PRESENT THE ISSUE FOR YOUR HONOR'S
19 DISPOSITION. SO --

20 THE COURT: AND WAS IT MY PRODUCTION DEADLINE OR
21 JUDGE MATZ'S OR --

22 MS. HERRICK: JUDGE MATZ, YES.

23 AND, SO, ALL WE'RE ASKING TODAY -- WE'RE NOT -- YOU
24 KNOW, THE ISSUE IS NOT RIPE FOR YOUR HONOR. THE PARTIES NEED
25 TO SUBMIT SOMETHING OBVIOUSLY IN VERY SHORT ORDER.

1 BUT ALL WE'RE ASKING TODAY IS A VERY LIMITED
2 MAINTENANCE OF THE STATUS QUO FOR ONE TO TWO WEEKS JUST TO
3 GIVE THE PARTIES TIME TO PUT TOGETHER A QUICK JOINT
4 STIPULATION.

5 THE COURT: I UNDERSTAND.

6 MS. HERRICK: WE CAN SUBMIT OUR EVIDENCE OF
7 CONFIDENTIAL AND PROPRIETARY AND -- YOU KNOW, THE BURNING
8 NEED THAT WE HAVE TO KEEP THESE DOCUMENTS AS CONFIDENTIAL AS
9 POSSIBLE. PERFECT 10 CAN OPPOSE THAT, AND YOUR HONOR CAN
10 RULE.

11 THE COURT: OKAY. GOT IT.

12 MS. HERRICK: THANK YOU.

13 THE COURT: THANK YOU.

14 MR. MAUSNER: THE MOTION THAT THEY'RE PROPOSING TO
15 MAKE TO MAKE IT SO THAT DR. ZADA CANNOT SEE THESE DOCUMENTS
16 IS COMPLETELY IMPROPER. THE MATTER WAS ALREADY LITIGATED AND
17 DECIDED IN THIS VERY CASE. YOUR HONOR DECIDED THAT DR. ZADA
18 SHOULD BE ABLE TO SEE BOTH CONFIDENTIAL AND HIGHLY
19 CONFIDENTIAL MATERIALS.

20 ALSO, YOU ORDERED THAT DOCUMENTS REGARDING SEARCH
21 FREQUENCY BE PRODUCED MORE THAN TWO YEARS AGO. AND GOOGLE
22 NEVER COMPLIED WITH THAT ORDER. THAT'S DOCUMENT REQUESTS 47
23 AND 48.

24 NOW, TWO YEARS LATER AFTER YOU'VE ORDERED THESE
25 DOCUMENTS PRODUCED AGAIN FOR THE SECOND TIME, AND JUDGE MATZ

1 HAS AFFIRMED THAT ORDER, THEY WANT TO PREVENT DR. ZADA FROM
2 SEEING THEM.

3 DR. ZADA SHOULD HAVE SEEN THESE DOCUMENTS TWO YEARS
4 AGO. SO, THEY VIOLATED A COURT ORDER FOR TWO YEARS AND NOW
5 THEY WANT TO PREVENT DR. ZADA FROM LOOKING AT THE DOCUMENTS
6 THAT HE CLEARLY COULD HAVE SEEN TWO YEARS AGO.

7 THEY HAVEN'T STATED WHAT ADDITIONAL EVIDENCE THERE
8 IS THAT THEY NOW HAVE TO LITIGATE THIS ISSUE AGAIN OR TO
9 PREVENT DR. ZADA FROM SEEING THESE DOCUMENTS.

10 YOU KNOW, WE CAN'T GO OVER THIS EVERY TIME THEY
11 WANT TO PRODUCE NEW DOCUMENTS.

12 JUST TO GO BACK OVER THE SUBSTANCE OF DR. ZADA
13 BEING ABLE TO SEE THESE DOCUMENTS, DR. ZADA -- FIRST, DR.
14 ZADA IS ESSENTIAL TO THE LITIGATION OF THE CASE. AND I
15 CANNOT DO IT WITHOUT HIM HAVING ACCESS TO ALL OF THE
16 DOCUMENTS.

17 THEIR SUGGESTION THAT DR. ZADA NOT HAVE ACCESS TO
18 THE DOCUMENTS REGARDING IMAGE RECOGNITION WOULD MAKE THE
19 PRODUCTION OF THESE DOCUMENTS MEANINGLESS SINCE I CANNOT
20 FULLY UNDERSTAND THEM WITHOUT HIS ASSISTANCE.

21 WE THINK THAT THEY MISREPRESENTED TO THE COURT
22 REGARDING THE AVAILABILITY OF IMAGE RECOGNITION TECHNOLOGY TO
23 LOCATE INFRINGING IMAGES IN THEIR IMAGE SEARCH INDEX.

24 BOTH THE DISTRICT COURT AND THE COURT OF APPEALS
25 RELIED ON THEIR STATEMENTS IN THE RULING ON THE MOTION FOR

1 PRELIMINARY INJUNCTION, FINDING THAT IMAGE RECOGNITION WAS
2 NOT AVAILABLE. AND WE BELIEVE IT WAS.

3 REGARDING THE SEARCH FREQUENCY DOCUMENTS, GOOGLE
4 HAS NEVER EXPLAINED WHY THIS IS SO SENSITIVE. OVERTURE,
5 WHICH IS ANOTHER SEARCH ENGINE, ACTUALLY MADE THIS EXACT
6 INFORMATION PUBLICLY AVAILABLE ON ITS WEBSITE.

7 I DON'T EVEN BELIEVE THAT THE FEW SEARCH NUMBERS
8 THAT GOOGLE HAS ALREADY PRODUCED ARE CORRECT. I THINK THIS
9 INFORMATION IS FALSE, AND I NEED TO SHOW IT TO DR. ZADA SO WE
10 CAN DETERMINE WHETHER THAT'S THE CASE OR NOT.

11 AND REMEMBER, THESE WERE THE DOCUMENTS THAT THEY
12 FALSELY STATED THAT THEY COULD NOT PRODUCE. AND JUDGE MATZ
13 SAID IN THE HEARING WE HAD THERE THAT IF THEY DIDN'T COME UP
14 WITH A REALLY GOOD REASON THAT THEY COULDN'T DO IT, THEY
15 SHOULD BE SEVERELY SANCTIONED.

16 AND I DON'T KNOW IF YOU'VE SEEN THAT TRANSCRIPT OR
17 NOT, YOUR HONOR.

18 THE COURT: NO. I THINK I'VE SEEN EXCERPTS OF IT.

19 MR. MAUSNER: JUDGE MATZ ASKED THAT WE GIVE IT TO
20 YOU.

21 MAY I HAND THIS UP?

22 THE COURT: UH-HUH.

23 MR. MAUSNER: LET ME GIVE YOU THIS ALSO.

24 THE COURT: BUT NOT IN CONNECTION WITH THIS NARROW
25 ISSUE, RIGHT?

1 MS. HERRICK: NO, YOUR HONOR.

2 THE COURT: OKAY.

3 MR. MAUSNER: DO YOU HAVE A COPY?

4 MS. HERRICK: I DON'T.

5 MR. MAUSNER: THIS IS A HEARING BEFORE JUDGE MATZ
6 ON APRIL 14TH, 2008, PAGE 8, LINES 2 TO 14.

7 JUDGE MATZ SAID:

8 "I WILL SAY THIS, MR. MAUSNER, AND I ASSUME
9 THAT A TRANSCRIPT WILL BE COMPILED, AND IT
10 WILL BE MADE AVAILABLE TO JUDGE HILLMAN."

11 THE COURT: I DID SEE THIS.

12 MR. MAUSNER: OKAY. AND HE --

13 THE COURT: IN SOME PLEADING SOMEONE QUOTED IT. I
14 GUESS YOU.

15 MR. MAUSNER: YES.

16 HE SAYS:

17 "IF GOOGLE DOESN'T PROVIDE -- AND YOU SHOULD
18 HEAR THIS LOUD AND CLEAR, MR. ZELLER -- AN
19 ABSOLUTELY COMPELLING CLOSE TO IRREFUTABLE BASIS
20 VERY PROMPTLY AS TO WHY THE INFORMATION THAT IS
21 ENCOMPASSED BY REQUESTS 135 TO 137 THAT JUDGE
22 HILLMAN ORDERED IS INACCESSIBLE WITHIN THE MEANING
23 OF RULE 26, THEN, NOT ONLY WILL THE INFORMATION
24 HAVE TO BE PROVIDED, BUT FOR HAVING PUT
25 PERFECT 10 TO THE ADDITIONAL EXPENSE AND

1 CONSUMPTION OF TIME IN ACHIEVING THAT RULING,
2 WHICH WOULD INITIALLY HAVE TO COME FIRST FROM
3 JUDGE HILLMAN, SANCTIONS SHOULD BE IMPOSED,
4 POSSIBLY INCLUDING PARTIALLY TERMINATING
5 SANCTIONS."

6 AND, THEN, ON PAGE 10 -- THIS IS LINES 10 THROUGH
7 16, HE GOES ON AND SAYS BASICALLY THAT THEY'RE GOING TO HAVE
8 TO EXPLAIN WHY THEY DIDN'T PRODUCE THIS BEFORE.

9 NOW, WE SHOULD HAVE GOTTEN MUCH OF THAT INFORMATION
10 EARLIER BECAUSE SOME OF IT WAS INCLUDED IN THE ORDER TWO
11 YEARS AGO THAT THEY NEVER PRODUCED DOCUMENTS ON. SO, NOW
12 THEY WANT TO PRECLUDE DR. ZADA FROM SEEING THIS. AND THEY'VE
13 GIVEN NO REASON FOR CHANGING WHAT'S ALREADY BEEN ORDERED.

14 DR. ZADA HAS BEEN PARTICIPATING IN LAWSUITS WITH
15 PROTECTIVE ORDERS AND HAS HAD ACCESS TO THE HIGHEST LEVEL OF
16 CONFIDENTIAL INFORMATION FOR SEVEN YEARS. THERE'S NEVER BEEN
17 A HINT THAT DR. ZADA HAS BREACHED A PROTECTIVE ORDER.

18 THIRD, GOOGLE'S CLAIM THAT GOOGLE IS A COMPETITOR
19 OF PERFECT 10 IN A WAY THAT WOULD ALLOW PERFECT 10 TO USE
20 GOOGLE'S TRADE SECRETS IS FRIVOLOUS. THEY MADE THIS EXACT
21 SAME ARGUMENT TO YOUR HONOR BEFORE. WHILE GOOGLE COMPETES
22 UNFAIRLY WITH PERFECT 10 IN OFFERING ADULT CONTENT, PERFECT
23 10 DOES NOT COMPETE WITH GOOGLE IN OFFERING SEARCH ENGINE
24 SERVICES OR IMAGE RECOGNITION TECHNOLOGY.

25 THERE'S BEEN NO BREACH OF CONFIDENTIALITY BY DR.

1 ZADA OR ANYTHING ELSE THAT WOULD JUSTIFY A CHANGE IN THE
2 PROTECTIVE ORDER.

3 GOOGLE'S ATTEMPT TO RELITIGATE THIS ISSUE WITH NO
4 NEW EVIDENCE GOES AGAINST THE SPECIFIC INSTRUCTIONS OF JUDGE
5 MATZ THAT HE MADE IN THE MICROSOFT CASE. AND HE SAYS I WANT
6 YOU TO -- WHAT WAS GOING ON IS ANDREW BRIDGES WAS SWITCHING
7 FROM REPRESENTING GOOGLE TO MICROSOFT. AND HE INSTRUCTED MR.
8 BRIDGES TO PROVIDE THE TRANSCRIPT TO GOOGLE. AND WE ALSO
9 PROVIDED THEM THIS PORTION OF THE TRANSCRIPT.

10 THIS IS THE OTHER TRANSCRIPT I HANDED YOU, YOUR
11 HONOR. PAGES 6 TO 8 WHERE JUDGE MATZ SAYS, DON'T RELITIGATE
12 ISSUES THAT HAVE ALREADY BEEN LITIGATED IN ANOTHER CASE.

13 NOW, THIS IS EVEN WORSE BECAUSE THEY'RE
14 RELITIGATING AN ISSUE THAT'S ALREADY BEEN LITIGATED IN THIS
15 CASE. THEY HAVEN'T STATED ANY REASON FOR CHANGING DR. ZADA'S
16 ACCESS TO THIS INFORMATION, AND THEY SHOULD NOT BE ALLOWED TO
17 DO THIS.

18 AND BY THE WAY, YOUR HONOR, MS. HERRICK STATED THAT
19 THEY FIRST BROUGHT THIS UP IN APRIL, THAT THEY WERE GOING TO
20 DO IT. AND THEY GOT ME TO AGREE ON A TEMPORARY BASIS TO HOLD
21 THIS SO THAT THEY COULD COME IN HERE AND ARGUE IT TO THE
22 COURT. AND HERE WE ARE IN THE MIDDLE OF JULY, AND THAT'S THE
23 FIRST TIME WE'RE DOING IT. THEY SHOULD HAVE DONE THIS LONG
24 AGO IF THEY THOUGHT THAT THIS WAS SO IMPORTANT.

25 WE CAN'T KEEP RELITIGATING THESE THINGS. IT'S JUST

1 TOO BURDENSOME FOR THE COURT AND FOR US.

2 THE COURT: WASN'T THERE AN EARLIER CASE AS WELL AS
3 THIS CASE IN WHICH THE ISSUE OF DR. ZADA'S ACCESS WAS
4 SQUARELY RAISED AND I PERMITTED HIM TO HAVE ACCESS? I DON'T
5 KNOW WHICH OF THE MANY IT WAS, BUT --

6 MR. MAUSNER: YES, IT WAS -- AT THE TIME ANOTHER --
7 WINSTRON & STRAWN WAS REPRESENTING GOOGLE.

8 THE COURT: YES.

9 MR. MAUSNER: THEY TOOK THE POSITION THAT THERE
10 SHOULD BE A CATEGORY OF DOCUMENTS THAT DR. ZADA COULD NOT
11 SEE. WE LITIGATED THAT, AND YOUR HONOR ISSUED A RULING THAT
12 DR. ZADA SHOULD BE ABLE TO SEE THAT. I HAVE THE ORDER HERE,
13 YOUR HONOR.

14 (PAUSE IN PROCEEDINGS.)

15 THE COURT: OKAY. ANYTHING ELSE, MR. MAUSNER?

16 MR. MAUSNER: NO, YOUR HONOR. THANK YOU.

17 THE COURT: I WILL SAY SINCE YOU'RE FAIRLY NEW TO
18 MY COURTROOM, LET ME -- I DO LIKE TO MAKE MYSELF AVAILABLE ON
19 SORT OF AN AS-NEEDED BASIS ON PERFECT 10 CASES BECAUSE SO
20 MUCH IS GOING ON.

21 ON THE OTHER HAND, THERE ARE THINGS THAT SOMETIMES
22 ARE NOT REALLY BEST FOR ME TO RULE ON JUST BY COMING OUT
23 HERE.

24 MS. HERRICK: I TOTALLY AGREE, YOUR HONOR.

25 THE COURT: SO, I DON'T KNOW WHERE THIS IS GOING TO

1 FOLLOW.

2 MS. HERRICK: IF I CAN BRIEFLY REPLY TO WHAT MR.
3 MAUSNER HAS JUST SAID.

4 THE COURT: YES, YES.

5 MS. HERRICK: I COMPLETELY AGREE, AND MR. MAUSNER
6 JUST SPENT ABOUT TEN MINUTES MAKING MY POINT. THIS IS A VERY
7 HOTLY CONTESTED ISSUE. YOUR HONOR RESERVED GOOGLE THE
8 OPPORTUNITY ON A LIMITED BASIS TO COME BACK REGARDING LIMITED
9 CATEGORIES OF DOCUMENTS IF AND WHEN GOOGLE BELIEVED THAT THEY
10 WERE SO HIGHLY PROPRIETARY THAT SPECIAL CONSIDERATION WAS
11 WARRANTED.

12 AND WHAT I'M SAYING IS THAT CASE HAS ARISEN. AND
13 WE NEED TO BRIEF THIS FOR YOUR HONOR SO YOUR HONOR MAY
14 CONSIDER IT. MR. MAUSNER IS TRYING TO FORCE YOUR HONOR TO
15 HEAR THIS ISSUE ON THE MERITS TODAY, WHICH I OPPOSE BECAUSE
16 THIS IS A COMPLEX ISSUE. WE DO HAVE ARGUMENTS TO PRESENT.
17 AND YOUR HONOR IS ENTITLED TO SEE SOMETHING BEFORE YOU HAVE
18 TO RULE.

19 THE COURT: TO MY KNOWLEDGE I HAVE NEVER IMPOSED
20 SORT OF A SPONTANEOUS CONFERENCE UNLESS BOTH SIDES AGREE. I
21 HAVEN'T INTENTIONALLY DONE THAT. AND I DON'T -- YOU KNOW, I
22 HAD ASSUMED WHEN I CAME OUT HERE THAT THIS WAS A MUTUAL
23 AGREEMENT.

24 MS. HERRICK: WE INFORMED PERFECT 10 LAST WEEK THAT
25 WE WANTED TO COME BEFORE YOUR HONOR TO IMPOSE A TEMPORARY

1 STATUS QUO --

2 THE COURT: OKAY.

3 MS. HERRICK: -- JUST SO THAT WE COULD GET THESE
4 DOCUMENTS PRODUCED PURSUANT TO JUDGE MATZ'S ORDER ON
5 WEDNESDAY. AND WE EVEN PROPOSED A BRIEFLY SCHEDULE.

6 PERFECT 10'S RESPONSE IS I'M NOT GOING TO
7 PARTICIPATE -- WE ARE NOT GOING TO PARTICIPATE IN THIS
8 PROCESS WITH YOU. WE BELIEVE YOUR MOTION IS IMPROPER AND
9 SANCTIONABLE, WHICH JUST RUNS DIRECTLY CONTRARY TO YOUR
10 HONOR'S ORDER WHERE YOU EXPRESSLY RESERVED THIS RIGHT TO
11 ALLOW GOOGLE TO COME BACK IN LIMITED CIRCUMSTANCES IF
12 WARRANTED.

13 THE COURT: WHAT IS THE -- WHAT IS THE PROBLEM WITH
14 JUST ENFORCING -- KEEPING THE STATUS QUO UNTIL THERE'S A
15 FORMAL MOTION WITHIN LET'S SAY TWO WEEKS? WHAT IS THE HARM?
16 I DON'T FEEL I CAN TINKER WITH JUDGE MATZ'S --

17 MS. HERRICK: AND THAT IS ALL WE'RE ASKING FOR.

18 THE COURT: -- ORDER, YOUR CLIENT'S STAYED ORDER.

19 MR. MAUSNER: THEY'VE KNOWN ABOUT THIS SINCE APRIL.
20 IT'S JUST ANOTHER WAY OF DELAYING EITHER PRODUCTION OF THE
21 DOCUMENTS OR DR. ZADA BEING ABLE TO SEE THEM.

22 AND THEY HAVE NOT STATED A SINGLE REASON WHY THERE
23 SHOULD BE ANY CHANGE AT ALL TO WHAT'S ALREADY BEEN DONE.
24 THEY WANTED TO COME DOWN HERE FOR THIS HEARING. YOU'D THINK
25 THAT THEY COULD STATE ONE REASON WHY THINGS SHOULD CHANGE.

1 YOU KNOW, DR. ZADA HAS BEEN VERY CAREFUL ABOUT KEEPING
2 CONFIDENTIAL INFORMATION CONFIDENTIAL. THERE'S NEVER EVEN
3 BEEN A HINT THAT THERE HAS BEEN ANY BREACH OF A PROTECTIVE
4 ORDER. WHAT BASIS DO THEY HAVE FOR COMING IN HERE AND SAYING
5 THINGS SHOULD CHANGE AT THIS POINT. THEY HAVEN'T STATED A
6 SINGLE THING.

7 THE COURT: ALL RIGHT. WELL -- ANYTHING ELSE FROM
8 EITHER SIDE?

9 MR. MAUSNER: EITHER WE -- WE THINK THIS COULD BE
10 DECIDED RIGHT NOW, OR THEY'RE JUST GOING TO HAVE TO GO WITH
11 THE WAY THINGS ARE. YOU KNOW, WE AGREED FOR, I DON'T KNOW,
12 WELL OVER A MONTH -- A MONTH AND A HALF TO HOLD OFF ON THIS
13 STUFF. THE DOCUMENTS I ALREADY HAVE I'M NOT SURE WHAT WE CAN
14 DO ABOUT IT. I THOUGHT IT WAS GOING TO BE A VERY SHORT
15 TEMPORARY AGREEMENT NOT TO SHOW THEM TO DR. ZADA. NOW THEY
16 WANT TO DELAY THIS FURTHER.

17 THEY'RE THE ONES WHO REQUESTED THIS HEARING, AND
18 THEY'RE COMING IN HERE, AND THEY'RE NOT GIVING YOU A SINGLE
19 BASIS FOR RULING THAT DR. ZADA, WHO'S ABSOLUTELY ESSENTIAL TO
20 THIS CASE, SHOULD NOT BE ABLE TO SEE THESE DOCUMENTS.

21 THE COURT: WHAT OTHER DOCUMENTS ARE GOING TO BE
22 PRODUCED ON MONDAY?

23 MS. HERRICK: ON WEDNESDAY --

24 THE COURT: ON WEDNESDAY.

25 MS. HERRICK: -- THERE ARE GOING TO BE ADDITIONAL

1 DOCUMENTS REGARDING ONE OF THE TWO CATEGORIES, DOCUMENTS
2 RELATED TO SEARCH, TOTAL SEARCH NUMBERS, TOTAL QUERY COUNTS.

3 AND I JUST WANT TO BE VERY STRIDENT ABOUT THIS,
4 YOUR HONOR. I AM INTENTIONALLY NOT ADDRESSING THE MERITS
5 BECAUSE THAT IS NOT WHY -- WE ARE HERE BECAUSE GOOGLE
6 REQUESTED YOUR HONOR'S TIME AND WE'RE VERY APPRECIATIVE THAT
7 YOU SAW US ON SUCH A SHORT NOTICE.

8 AND AS MY MEET-AND-CONFER EMAIL TO MR. MAUSNER MADE
9 EXTREMELY CLEAR LAST WEEK, I SAID WE ARE NOT COMING TO
10 ADDRESS THE MERITS. THESE ARE COMPLICATED ISSUES. THESE ARE
11 IMPORTANT CROWN JEWEL TRADE SECRETS. GOOGLE IS ENTITLED TO
12 BE HEARD ABOUT THIS MATTER PURSUANT TO YOUR HONOR'S ORDER
13 PERMITTING US TO SEEK LIMITED RECONSIDERATION. THAT'S WHY
14 YOU'RE NOT HEARING MERITS ARGUMENTS FROM ME.

15 ALL WE'RE ASKING IS FOR A TEMPORARY ONE- TO
16 TWO-WEEK STATUS QUO, WHICH MR. MAUSNER HAS NOT GIVEN YOU ANY
17 REASON WHY YOU SHOULDN'T IMPOSE OR WHY PERFECT 10 WOULD BE
18 PREJUDICED BY A ONE- OR TWO-WEEK IMPOSITION OF A STATUS QUO
19 WHILE WE QUICKLY PUT TOGETHER A JOINT STIPULATION.

20 PERFECT 10 CAN MAKE ALL THE ARGUMENTS THAT JUST
21 MAYBE YOU'LL HEAR. WE WILL MAKE ALL OF OUR ARGUMENTS TO YOU
22 AS WELL. AND THE COURT CAN IN DUE COURSE RENDER ITS RULING.
23 BUT WE WANT TO MAKE SURE THAT WE COMPLY WITH JUDGE MATZ'S
24 ORDER REQUIRING DISCOVERY ON WEDNESDAY WITHOUT HAVING TO GO
25 IN EX PARTE --

1 THE COURT: I UNDERSTAND. I UNDERSTAND.

2 MS. HERRICK: YES. THANK YOU, YOUR HONOR.

3 THE COURT: LET ME SAY THIS. SINCE COUNSEL ARE NOT
4 GETTING TO THE MERITS IT WOULD BE INAPPROPRIATE FOR ME TO GET
5 TO THE MERITS. BUT WHEN I GET THAT JOINT STIPULATION PLEASE
6 BE AWARE THAT THIS GROUND HAS BEEN PLOWED AND REPLOWED I
7 THINK TWO OR THREE TIMES ON DIFFERENT CASES. AND THERE HAS
8 NEVER BEEN ANY ALLEGATION THAT DR. ZADA HAS BREACHED THE
9 DUTIES IMPOSED BY A CONFIDENTIALITY ORDER.

10 HE IS -- I'VE SAID THIS SEVERAL DIFFERENT WAYS. HE
11 IS A UNIQUE PERSON. AND THERE ARE TIMES WHERE HE WILL STATE
12 THINGS THAT REALLY ARE BEYOND HIS KIN, AND THEN THERE ARE
13 OTHER TIMES WHEN HE IS ACTUALLY HELPFUL TO THE COURT IN
14 DECIDING WHAT THE RULING SHOULD BE.

15 BUT I HAVE BEEN CONVINCED OVER HOWEVER MANY YEARS
16 IT'S BEEN THAT HE IS ESSENTIAL TO THE PROSECUTION OF THESE
17 CASES.

18 SO, I WILL LOOK AT THE ARGUMENT FRESHLY BECAUSE I
19 CLEARLY DID GIVE YOU THE OPPORTUNITY -- OR GIVE GOOGLE THE
20 OPPORTUNITY TO COME BACK ON A LIMITED BASIS. AND YOU BEING
21 NEW TO THE CASE I WANT TO GIVE YOU EVERY BENEFIT OF THE
22 DOUBT.

23 BUT PLEASE BE AWARE OF THE WATER THAT HAS GONE
24 UNDER THE BRIDGE. BECAUSE IF I DON'T HEAR SOMETHING FRESH
25 AND ALARMING OR WHATEVER, IT'S LIKELY TO HAVE THE SAME

1 RESULT. AND I SAY THAT WITH NO ANIMUS OR ANNOYANCE
2 WHATSOEVER. I WANT TO GIVE YOU THE PRESUMPTION OF GOOD WILL.

3 BUT OTHER PARTIES AND OTHER CASES AND GOOGLE IN
4 THIS CASE HAVE RAISED THE SAME ISSUES. AND I'VE BEEN
5 CONSISTENT, NOT FOR THE SAKE OF JUST BEING CONSISTENT, BUT I
6 DON'T SEE -- AND I ANTICIPATE WHAT THE ARGUMENT IS GOING TO
7 BE THIS TIME, BUT I JUST DON'T KNOW HOW DIFFERENT IT WILL BE.

8 HAVING SAID THAT, I AM GOING TO GRANT THE REQUEST
9 TO EXTEND THE STATUS QUO REGARDING OUTSIDE ATTORNEY'S EYES
10 ONLY FOR A PERIOD OF 14 DAYS. AND I'LL EXPECT A -- 14 DAYS
11 IS --

12 MS. HERRICK: JULY 28TH, YOUR HONOR.

13 THE COURT: WELL, MIGHT AS WELL GIVE YOU UNTIL THE
14 END OF THAT WEEK. I'LL BE AT THE NINTH CIRCUIT CONFERENCE
15 UNTIL THE 1ST.

16 MS. HERRICK: AUGUST 2ND I BELIEVE WOULD BE --

17 THE COURT: THAT'S A SATURDAY.

18 MS. HERRICK: SO, AUGUST 1ST. WOULD BE A FRIDAY.

19 THE COURT: RIGHT.

20 I'LL ORDER A JOINT STIPULATION WITH NO SUPPLEMENTAL
21 MEMORANDA. AND I'M GOING TO SAY TEN PAGES PER SIDE.

22 DOES THAT SOUND REASONABLE?

23 MS. HERRICK: I THINK THAT SHOULD WORK JUST FINE,
24 YOUR HONOR.

25 MR. MAUSNER: YOUR HONOR, I HAVE STUFF THAT'S

1 COMING UP STARTING ON THE 29TH. SO, I WOULD LIKE TO GET THE
2 JOINT STIPULATION SUBMITTED BY THE 28TH IF THAT'S POSSIBLE.

3 THE COURT: I WON'T BE LOOKING AT IT UNTIL THE
4 FOLLOWING WEEK.

5 MS. HERRICK: AND, YOUR HONOR, I HAVE A CONFLICT
6 FROM ABOUT APPROXIMATELY THE 23RD THROUGH THE 28TH. SO, I
7 WOULD PREFER TO GO WITH YOUR HONOR'S --

8 THE COURT: LET'S SAY THE 1ST. I JUST DON'T HAVE
9 MY LAW CLERK WORK ON THESE CASES, SO -- OUT OF POCKET.

10 MS. HERRICK: THANK YOU.

11 MR. MAUSNER: WELL, I NEED TO GET IT FROM THEM SO
12 THAT I CAN GET MY PARTS BACK TO THEM --

13 THE COURT: OH, RIGHT.

14 MR. MAUSNER: -- BY THE 28TH. SO --

15 THE COURT: OH, YES.

16 MR. MAUSNER: SO, WHAT I --

17 MS. HERRICK: RIGHT. WE'LL SPLIT THE TIME.

18 THE COURT: YES.

19 MS. HERRICK: WE'LL WORK IT OUT.

20 THE COURT: YES.

21 MR. MAUSNER: WOULD YOU GIVE ME YOUR PART BY THE
22 21ST?

23 MS. HERRICK: WE'LL HAVE TO LOOK AT A CALENDAR, BUT
24 I THINK WHAT WE SHOULD DO IS SPLIT THE TIME SO THAT YOU HAVE
25 AN EQUAL AMOUNT OF TIME TO WRITE --

1 MR. MAUSNER: I NEED A WEEK BEFORE -- I NEED A WEEK
2 BEFORE THE 28TH SO I CAN GET A --

3 THE COURT: WHY DON'T YOU FILE IT ON THE 4TH,
4 MONDAY, THE 4TH.

5 MS. HERRICK: OKAY.

6 THE COURT: THAT'S THE FIRST DAY I COULD LOOK AT
7 IT.

8 MS. HERRICK: THAT SOUNDS GOOD. THAT WILL --

9 MR. MAUSNER: BUT I NEED IT PRIOR TO THE -- A WEEK
10 PRIOR TO THE 28TH --

11 MS. HERRICK: RIGHT.

12 MR. MAUSNER: -- SO I CAN HAVE TIME TO DO OUR PART.

13 THE COURT: OR A WEEK PRIOR TO THE 4TH.

14 MS. HERRICK: I'M SORRY. WHICH DAYS ARE YOU
15 UNAVAILABLE?

16 MR. MAUSNER: I'M UNAVAILABLE STARTING ON THE 29TH.

17 THE COURT: I'LL LET YOU WORK IT OUT. JUST SPLIT
18 THE TIME.

19 MS. HERRICK: YES, WE SHOULD WORK IT OUT.

20 THE COURT: OKAY.

21 MS. HERRICK: SO, WE'LL FILE ON AUGUST 4TH A
22 10-PAGE PER SIDE JOINT STIPULATION.

23 IS THAT CORRECT, YOUR HONOR?

24 THE COURT: NO ADDITIONAL BRIEFING.

25 MS. HERRICK: THANK YOU.

1 THE COURT: AND DON'T NOTICE IT FOR A HEARING DATE.
2 I MIGHT BE ABLE TO RESOLVE IT WITHOUT DELAYING, YOU KNOW, FOR
3 A HEARING.

4 MS. HERRICK: WILL DO.

5 THE COURT: IF I NEED A HEARING, I'LL LET YOU KNOW.

6 MS. HERRICK: THANK YOU.

7 MR. MAUSNER: JUST BEFORE YOU LEAVE, YOUR HONOR.

8 THE COURT: YES.

9 MR. MAUSNER: I NEEDED A WEEK BEFORE THE 28TH SO
10 THAT I CAN GET THEM MY PART --

11 THE COURT: SHE'S AGREED TO THAT.

12 MS. HERRICK: I'M AGREEING THAT WE SHOULD SIT DOWN
13 AND LOOK AT A CALENDAR AND WORK OUT A DATE. AND TODAY IS THE
14 14TH. YOU'RE ASKING ME TO GIVE IT TO YOU IN A WEEK AND GIVE
15 YOU THREE WEEKS TO --

16 MR. MAUSNER: NO. GIVE ME ONE WEEK. YOU GIVE IT
17 TO ME ON THE 21ST, AND I'LL GIVE IT BACK TO YOU ON THE 28TH.

18 MS. HERRICK: AND I'M SAYING THAT I WILL TRY TO
19 WORK WITH YOU, BUT I DON'T HAVE MY CALENDAR IN FRONT OF ME
20 RIGHT NOW. SO, I NEED TO MAKE SURE THAT I CAN DO THAT FOR
21 YOU.

22 MR. MAUSNER: OKAY. BUT IF YOU CAN'T, WHAT ARE YOU
23 GOING TO DO?

24 MS. HERRICK: WELL, WHAT DAYS ARE YOU UNAVAILABLE?

25 MR. MAUSNER: I'M AVAILABLE STARTING ON THE 29TH.

1 MS. HERRICK: THROUGH?

2 MR. MAUSNER: THE 5TH.

3 MS. HERRICK: JULY 29TH TO AUGUST 5TH. OKAY. YES,
4 I THINK WE CAN DEFINITELY WORK THAT OUT. LET'S MAYBE NOT
5 TAKE UP YOUR HONOR'S TIME WITH IT.

6 THE COURT: ALL RIGHT. MR. MAUSNER, DO YOU NEED
7 THESE BACK, OR MAY I KEEP THESE?

8 MR. MAUSNER: NO, YOU MAY KEEP THOSE.

9 THE COURT: ALL RIGHT.

10 MR. MAUSNER: THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU ALL.

12 MS. HERRICK: THANK YOU VERY MUCH.

13 THE CLERK: COURT IS ADJOURNED.

14 (PROCEEDINGS CONCLUDED AT 1:54 P.M.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

DOROTHY BABYKIN

JULY 21, 2008

FEDERALLY CERTIFIED TRANSCRIBER_____
DATED

DOROTHY BABYKIN