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8 Attorneys for Plaintiff Perfect 10, Inc.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 PERFECT 10, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 GOOGLE INC., a corporation; and
16 DOES 1 through 100, inclusive,

17 Defendants.

Master Case No.: 04-9484 AHM (SHx)

DECLARATION OF JEFFREY N.
MAUSNER IN OPPOSITION TO
GOOGLE'S MOTION TO
RECONSIDER PROTECTIVE ORDER

DISCOVERY MOTION BEFORE
JUDGE HILLMAN

Discovery Cut-Off Date: None Set
Pretrial Conference Date: None Set
Trial Date: None Set

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19 AND CONSOLIDATED CASE
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DECLARATION OF JEFFREY N. MAUSNER

I, Jeffrey N. Mausner, declare as follows:

1. I am a member of the State Bar of California and admitted to practice before this Court. I am counsel of record for Plaintiff Perfect 10, Inc. (“Perfect 10”) in this action. All of the matters stated herein are of my own personal knowledge, except where otherwise stated, and if called as a witness, I could and would testify competently thereto. I make this declaration in opposition to Google’s Motion to reconsider the protective order.

2. Attached hereto as Exhibit 3 is a true and correct copy of portions of the Reporter’s Transcript Of Proceedings on April 14, 2008, before Judge Matz, on Objections to Judge Hillman’s Discovery Order.

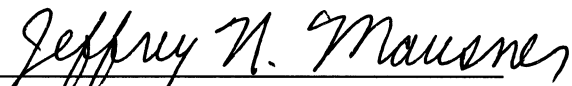
3. Attached hereto as Exhibit 4 is a true and correct copy of Judge Matz’s May 13, 2008 Order on Objections to Magistrate Judge’s Order.

4. Attached hereto as Exhibit 5 is a true and correct copy of portions of the transcript of the Scheduling Conference in *Perfect 10 v. Microsoft*, held on February 11, 2008.

5. Attached hereto as Exhibit 6 is a true and correct copy of Judge Hillman’s previous ruling on the protective order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on July 28, 2008, at Woodland Hills, California.



Jeffrey N. Mausner

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

- - -

COPY

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PERFECT 10, INC., A CALIFORNIA)	
CORPORATION,)	
)	
PLAINTIFF,)	
)	
vs.)	No. CV04-09484-AHM(SHx)
)	
GOOGLE, INC., ET AL.,)	
)	
DEFENDANTS.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, APRIL 14, 2008

CINDY L. NIRENBERG, CSR 5059
U.S. Official Court Reporter
312 North Spring Street, #438
Los Angeles, California 90012
www.cindynirenberg.com

1 sufficient to describe Google's attempts to develop or use any
2 Image Recognition Software."

3 Now, when I was dealing with the motion to dismiss, I
4 made certain findings, or at least observations, that are
5 related to the existence, if any, of Image Recognition
6 Software, and what I supposedly found -- and my gloss on it --
7 was quoted in the amended opinion of the Ninth Circuit at
8 Page 1174. That's 508 F.3d at Page 1174.

9 The key language which underlies my ruling on this
10 disputed provision of Judge Hillman's order that is the
11 language of the Ninth Circuit said, quote, "Without image
12 recognition technology, Google lacks the practical ability to
13 police the infringing activities of third-party websites," end
14 quote.

15 That language inherently confirms what I think common
16 sense would warrant a finding for, and that is that the
17 existence or non-existence, as the case may be, of image
18 recognition technology is highly relevant.

19 I don't understand how you can argue, as I think you
20 have on this motion, Mr. Zeller, that it's not relevant. It
21 either exists or it doesn't. It may not have existed when I
22 was grappling with this a few years ago.

23 If it exists now or in what manner it exists or in
24 what capacity it can be applied is highly relevant. I think
25 Judge Hillman's order is absolutely appropriate. I see no

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: APRIL 18, 2008

Cindy L. Nirenberg, CSR No. 5059

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California corporation,
Plaintiff,

vs.

GOOGLE INC., a corporation; and
DOES 1 through 100, inclusive,
Defendants.

Case No. CV04-9484 AHM (SHx) ✓
[Consolidated with Case No. CV 05-4753 AHM (SHx)]

ORDER ON GOOGLE INC.'S
OBJECTIONS TO, AND PERFECT
10, INC.'S MOTION FOR REVIEW
OF, PORTIONS OF THE
MAGISTRATE JUDGE'S ORDER OF
FEBRUARY 22, 2008 GRANTING IN
PART AND DENYING IN PART
PERFECT 10'S MOTION TO
COMPEL

AND COUNTERCLAIM

Hon. A. Howard Matz

PERFECT 10, INC., a California corporation,
Plaintiff,

vs.

AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation; and
DOES 1 through 100, inclusive,
Defendants.

Courtroom: 14
Hearing Date: April 14, 2008
Hearing Time: 10:00 am

Discovery Cutoff: None Set
Pretrial Conference Date: None Set
Trial Date: None Set

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ORDER

Google Inc.'s Objections To, and Perfect 10, Inc.'s Motion for Review of, the Magistrate Judge's Order of February 22, 2008, Granting in Part and Denying In Part Perfect 10, Inc.'s Motion to Compel, came on for hearing on April 14, 2008, the Honorable A. Howard Matz presiding. Jeffrey N. Mausner appeared on behalf of Plaintiff Perfect 10, Inc. ("Perfect 10"). Michael T. Zeller and Rachel M. Herrick appeared on behalf of Defendant and Counterclaimant Google Inc. ("Google").

Upon consideration of all papers and records on file and the parties' oral argument, the Court orders as follows:

ORDERS ON PERFECT 10'S OBJECTIONS

PERFECT 10'S OBJECTIONS REGARDING REQUEST NOS. 135, 136, AND 137

Perfect 10's objections to the Magistrate Judge's Order regarding Request Nos. 135, 136, and 137 are overruled, and the Magistrate Judge's Order regarding those Requests is affirmed.

PERFECT 10'S OBJECTIONS REGARDING (PROPOSED) FURTHER ORDER NO. 2

Perfect 10 objected to the Magistrate Judge's decision to not enter (Proposed) Further Order No. 2. Pursuant to the discussion at the hearing, the (Proposed) Further Order is imposed mutually on both parties as to all past, present and future requests for production. Accordingly, on or before June 16, 2008, Google shall provide Perfect 10 with a written response stating whether Google has produced documents in response to each of Perfect 10's requests for documents, listed by set number and request number. If no documents responsive to a request are located after a good-faith reasonable search and, therefore, none ultimately produced, Google shall so state with respect to each such request. On or before this

1 same date, Perfect 10 shall provide Google with a written response stating whether
2 Perfect 10 has produced documents in response to each of Google's requests for
3 documents, listed by set number and request number. If no documents responsive to
4 a request are located after a good-faith reasonable search and, therefore, none
5 ultimately produced, Perfect 10 shall so state with respect to each such request. The
6 obligations of Google and Perfect 10 herein to state whether they have produced
7 documents in response to each other party's requests for documents, listed by set
8 number and request number, shall apply to all future requests for documents as well,
9 and shall be subject to the parties' duties to seasonably supplement their discovery
10 responses pursuant to Fed. R. Civ. P. 26(e).

11 **PERFECT 10'S OBJECTIONS REGARDING REQUEST NO. 197**

12 Perfect 10's objections to the Magistrate Judge's denial of this Request
13 are sustained. Google shall produce transcripts in its possession, custody or control
14 of depositions of any Google employees, officers and directors taken in connection
15 with the lawsuit *Columbia Pictures Industries, et. al. v. Drury, et. al.*, filed in the
16 United States District Court for the Southern District of New York.

17
18 **ORDERS ON GOOGLE'S OBJECTIONS**

19 **GOOGLE'S OBJECTIONS REGARDING REQUEST NOS. 128-131 and 194-**
20 **195**

21 Google's objections to Request Nos. 128-131 and 194-195 are
22 overruled, but the Requests are limited to reports, studies, or internal memoranda.
23 On or before June 16, 2008, Google shall produce the following:

24 All reports, studies, or internal memoranda ordered, requested, or
25 circulated by Bill Brougher, Susan Wojcicki, Walt Drummond, and Eric Schmidt
26 relating to the following topics: search query frequencies, search query frequencies
27 for adult-related terms, number of clicks on adult images and images in general,
28

1 traffic to infringing websites, the draw of adult content, and percentage of searches
2 conducted with the safe search filter off. (Request Nos. 128-131).

3 All reports, studies, or internal memoranda circulated by or to John
4 Levine, Heraldo Botelho, Radhika Malpani, Jessie Jiang, Lawrence You, Diane
5 Tang, and Alexander MacGillivray relating to the following topics: search query
6 frequencies, search query frequencies for adult-related terms, number of clicks on
7 adult images and images in general, traffic to infringing websites, the draw of adult
8 content, and percentage of searches conducted with the safe search filter off.
9 (Request Nos. 194-95).

10 **GOOGLE'S OBJECTIONS REGARDING REQUEST NO. 174**

11 Google's objections are sustained in part and overruled in part. On or
12 before May 15, 2008, Google shall produce documents sufficient to describe
13 Google's attempts to develop or use any image recognition software capable of
14 matching a known still photographic image with another image in Google's search
15 engine index or search engine database. Google is not ordered to produce
16 documents regarding any other types of image recognition technology.

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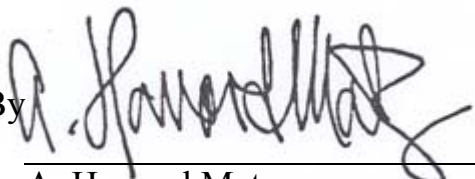
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1 **GOOGLE'S OBJECTIONS REGARDING REQUEST NO. 196**

2 Google's objections are overruled, subject to the following clarification
3 regarding the scope of Request No. 196. Perfect 10 sought, and the Magistrate
4 Judge ordered, production of "Google's DMCA log." As Perfect 10 clarified at the
5 hearing, "DMCA log" as used in Request No. 196 refers to a spreadsheet-type
6 document summarizing DMCA notices received, the identity of the notifying party
7 and the accused infringer, and the actions (if any) taken in response. Google's
8 obligation to produce documents in response to Request No. 196 shall be subject to
9 the foregoing definition.

10 **IT IS SO ORDERED.**

11
12 DATED: May 13, 2008

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14 By 
15 _____
16 A. Howard Matz
17 United States District Judge
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

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PERFECT 10, INC., A CALIFORNIA)	
CORPORATION,)	
)	
PLAINTIFF,)	
)	
vs.)	No. CV07-05156-AHM(SHx)
)	
MICROSOFT, INC.,)	
)	
DEFENDANT.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, FEBRUARY 11, 2008

CINDY L. NIRENBERG, CSR 5059
U.S. Official Court Reporter
312 North Spring Street, #438
Los Angeles, California 90012
www.cindynirenberg.com

1 MR. BRIDGES: Okay. And so you have the DivX case as
2 well?

3 THE COURT: Yeah.

4 MR. BRIDGES: Okay. So those are about as similar to
5 this as the You Tube cases are.

6 THE COURT: Yeah. Okay.

7 MR. BRIDGES: Just one point of information, Your
8 Honor. We're doing the paperwork now, but -- you were familiar
9 with my participation in the Perfect 10/Google case. I
10 actually will be filing papers of withdrawal in the Google case
11 in the near future.

12 THE COURT: Who will be replacing your firm?

13 MR. BRIDGES: Quinn Emanuel.

14 THE COURT: What about on this case?

15 MR. BRIDGES: I'm here for this case.

16 THE COURT: Okay. All right. Let's talk about the
17 management of this case. Let's start with this question about
18 the protective order and whether it should differ from that in
19 the Google case, and the extent to which Dr. Zada -- is it Zada
20 or Zada?

21 MR. MAUSNER: Zada.

22 THE COURT: -- Dr. Zada should have access.

23 I don't want to rush into premature rulings, but I'm
24 intent today and hereafter in making sure that this case is
25 handled in the most efficient and brisk fashion possible, and

1 that it be considered to be so closely related to the Perfect
2 10 versus Google or Amazon cases as to warrant application of
3 rulings or opposures in those cases unless there is compelling
4 reason to deviate or differ.

5 Those are general words I have just used,
6 Mr. Bridges, but it seems to me that the concerns that you
7 expressed about a protective order -- which was consensual in
8 the Google case, right?

9 MR. BRIDGES: Not entirely, Your Honor.

10 MR. MAUSNER: No, it was not, Your Honor.

11 They also took the position that Dr. Zada should not
12 have access to that information. We briefed it, and we had a
13 hearing before Magistrate Judge Hillman and he made that
14 determination.

15 THE COURT: Okay. Well, I can see why he did. I
16 wasn't aware of that. But he's a party who has unique
17 significance to the prosecution of the case and the claims and
18 the education of the lawyer.

19 And I'm not going to preclude you from making a big
20 deal about this if you can't enter into an agreement, but I'm
21 giving you firm direction, Mr. Bridges, that I think that the
22 same protective order should be applicable to this case, and
23 that it would be at the very least a very dubious practice or
24 burden to impose on Judge Hillman to subject him to revisiting
25 an issue which I assume he looked at carefully and that was

1 briefed fully where your contentions were pithily conveyed
2 about why Zada shouldn't be given access to the highly
3 confidential material, and so I think -- I'm not trying to make
4 this acrimonious, but I think you proceed at your peril if you
5 take the same position all over again, absent any evidence that
6 you can point to or facts that Zada has failed to comply with
7 his limitations or the scope of the protective order or has
8 otherwise engaged in behavior which creates a new or different
9 concern or risk to Microsoft.

10 MR. BRIDGES: Your Honor, a couple things.

11 First, since that was submitted, the parties have had
12 further discussions about this, and I actually think we are
13 fairly close to an agreement on this. There are a couple of
14 outstanding issues that I think we need to iron out, but I
15 don't think you are going to see a pitched battle on this issue
16 at all.

17 THE COURT: Good, because I don't want to have
18 pitched battles about anything that is avoidable. And I don't
19 want Judge Hillman, who has been grappling in a more
20 time-invasive fashion than I, at least in the recent year on
21 some of these issues, subjected to unnecessary work either. So
22 keep that in mind.

23 MR. BRIDGES: Your Honor, I will. If I may --

24 THE COURT: Yeah.

25 MR. BRIDGES: -- just add one point.

CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: February 15, 2008

Cindy L. Nirenberg, CSR No. 5059

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION
CIVIL MINUTES--GENERAL

SCANNED

Case No: CV 04-9484-AHM (SHx)

Date: December 27, 2005

Title Perfect 10, Inc. v. Google Inc., et al.,

DOCKETED ON CM
DEC 28 2005
BY *[Signature]* 046

DOCKET ENTRY

PRESENT:

Hon. STEPHEN J. HILLMAN, MAGISTRATE JUDGE

SANDRA BUTLER
Deputy Clerk

05- 51
Tape Number

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Jeffrey Mauser
Daniel Cooper

Andrew Bridges
Anthony Malutta

PROCEEDINGS: GOOGLE'S MOTION FOR ENTRY OF PROTECTIVE ORDER

Following oral argument on December 21, 2005, the court now rules on Google's Motion for Entry of Protective Order. Defendant Amazon has joined in defendant Google's Motion papers, and in oral argument, though Amazon has not filed Motion papers of its own.

The court has carefully considered the strenuous arguments of Google and Amazon that their proposed Protective Order be entered. The defendants' Proposed Order would restrict in house counsel for Perfect 10 (Mr. Cooper) as well as Perfect 10's CEO (Dr. Zada) from access to certain anticipated discovery which defendants deem confidential and/or highly confidential. Defendants note that Perfect 10 is vigorously and ably represented by outside counsel (Mr. Mausner and other attorneys), and argue that access to some highly sensitive, proprietary and potentially embarrassing material should reasonably be restricted to outside counsel.

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Minute Order
December 27, 2005
Page 2

SCANNED

Defendants are fearful that access to certain anticipated discovery on the part of Dr. Zada and Mr. Cooper, even pursuant to Protective Order, would insufficiently protect defendants' interests. The defendants fear that Dr. Zada (in particular) has evidenced such a degree of public animus towards defendants, and a desire to publically embarrass defendants, that defendants have no confidence that Dr. Zada or his in-house attorney (Mr. Cooper) would abide by a Protective Order which permits them access to certain sensitive/proprietary discovery which defendants anticipate producing in this litigation.

Perfect 10 counters that it is not a "competitor" of defendants in any business sense (Perfect 10 is not in the search engine business, as are defendants); that Dr. Zada has an untarnished record of abiding by Protective Orders previously entered in other litigation (including Protective orders issued by this court); and that Dr. Zada has unique need for access to all discovery because of his daily personal involvement with the technical aspects of this litigation, consistent with his level of involvement in similar types of Perfect 10 intellectual property litigation. Dr. Zada asserts that he has never violated (nor been accused of violating) any Protective Order restricting his dissemination of highly confidential discovery.

The voluminous Motion papers contain ample documents suggesting that Dr. Zada might have motive to disparage and "expose" what he and Perfect 10 consider to be the illegal conduct of defendants' businesses. Nevertheless, in many other lawsuits there is a potential motive to embarrass opposing parties. But is there is reasonable likelihood that Dr. Zada and/or Mr. Cooper will flaunt the strict terms of a Protective Order which permits them access to sensitive and potentially embarrassing material, and thereby expose themselves to severe fines or even Contempt charges? On this record, this court cannot make such a finding.

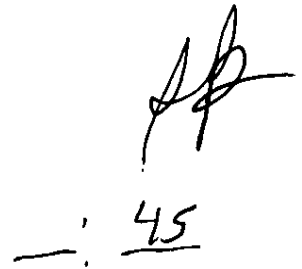
Accordingly, the court enters plaintiff's Proposed Protective Order. Although the court does not make light of defendants' serious concerns, the court concludes that defendants simply have not shown that it is reasonably likely that Dr. Zada and/or Mr. Cooper would not abide by a Protective Order. Nor have defendants shown that their Proposed Protective Order would not unnecessarily restrict Dr. Zada's actual daily involvement in the litigation.

Minute Order
December 27, 2005
Page 3

SCANNED

Notwithstanding the court's conclusion, the court will reluctantly permit defendants to revisit the issue on a very limited basis, when and if there are business and technological "trade secrets" about to be disclosed, which secrets defendants believe are currently so commercially sensitive that partial reconsideration of the Protective Order is justified. If and when such an occasion arises, defendants may request expedited oral argument without Motion papers. It is fully expected that Perfect 10 will fairly consider defendants' position as to one or more specific requests of defendants, and Perfect 10 should not assume that this court will refuse to modify the Protective Order it now enters. While the court has been solicitous of Perfect 10's asserted needs in this litigation, the court may well modify the Protective Order on an item by item basis, even if it modestly restricts Dr. Zada's and/or Mr. Cooper's access to some material.

cc: Judge Matz
Judge Hillman
Parties of Record

A handwritten signature, possibly "AP", is written above the number "45" which is underlined. A horizontal line is drawn to the left of the number.