

1 Jeffrey N. Mausner (State Bar No. 122385)  
 2 Law Offices of Jeffrey N. Mausner  
 3 Warner Center Towers  
 4 21800 Oxnard Street, Suite 910  
 5 Woodland Hills, California 91367  
 6 Telephone: (310) 617-8100, (818) 992-7555  
 7 Facsimile: (818) 716-2773  
 8 Email: Jeff@mausnerlaw.com

9 Attorneys for Plaintiff Perfect 10, Inc.

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA

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

14 Plaintiff,

15 v.

16 GOOGLE, INC., a corporation,

17 Defendant.

Case No. CV 04-9484 AHM (SHx)

CONSOLIDATED WITH CASE NO. CV  
05-4753 AHM (SHx)

**DISCOVERY MATTER BEFORE  
JUDGE HILLMAN**

**REPLY TO GOOGLE'S  
SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF ITS MOTION TO  
COMPEL PERFECT 10, INC. TO  
AFFIX CONTROL NUMBERS TO ITS  
DOCUMENT PRODUCTION**

Date: None [Currently under submission]

Time: None

Place: Courtroom 550

Courtroom of Judge Hillman

Discovery Cut-Off Date: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

1 Perfect 10 opposes and objects to Google's Supplemental Memorandum in  
2 Support of its Motion to Compel Perfect 10, Inc. to Affix Control Numbers to its  
3 Document Production for the following reasons.

4 **1. GOOGLE PROVIDES NO SUPPORT FOR ITS CLAIMS**

5 Google's supplemental memorandum makes a sequence of claims with no  
6 evidentiary support of any kind and, therefore, this Court should not consider it. For  
7 example, on page 3, lines 17-19, Google states, with no evidentiary support, that  
8 "Once the files to be Bates-numbered have been selected, configuring Adobe Acrobat  
9 Professional to affix sequential control numbers to electronic documents can be done  
10 quickly (about 10 minutes in our example)."

11 Google then states, on page 4 line 24 to page 5 line 2, again with no support,  
12 "The computer processing time required for the automatic conversion and Bates-  
13 numbering after Adobe Acrobat has been configured will vary with the size and  
14 number of documents selected and the *speed of the computer* being used. With  
15 respect to the August 12, 2009 document production that Google converted, it took  
16 approximately 45 minutes for the computer to complete the bates numbering."  
17 (Emphasis added.) Again, there is no evidentiary support for this and other statements  
18 made in the memorandum.

19 **2. THIS PROJECT WOULD TAKE AT LEAST 8 MONTHS EVEN IF**  
20 **WHAT GOOGLE SAYS IS TRUE, AND IF THERE WERE NO ERROR**  
21 **MESSAGES GENERATED. FURTHERMORE, IT WOULD CREATE**  
22 **APPROXIMATLY 2 MILLION ADDITIONAL DOCUMENTS**

23 Google does not state in its supplemental pleadings who performed the  
24 conversion, and on *what speed computer*, and how long it actually took. However,  
25 because Perfect 10's production was more than 1500 times the size of what Google  
26 allegedly converted, assuming it took Google an hour, the whole project would take  
27 1,500 hours, or more than 37 weeks, *if there were no error messages*, and Google used

1 an ordinary PC. If Google used a fast computer, the project, if it even could be  
2 completed, could take Perfect 10 years.

3 Furthermore, as set forth below and in the Declaration of Melanie Poblete,  
4 Perfect 10 ran into a fatal error when it tried to follow Ms. Kassabian's instructions on  
5 a 3.44 gigabyte production which contained deposit material from Perfect 10's  
6 website. This was a more typical production than the cherry-picked one which Google  
7 allegedly selected for its example. Because of Perfect 10's experience, which occurred  
8 after less than one hour of processing, Perfect 10 has no reason to believe that what  
9 Ms. Kassabian claims, with no support whatsoever, can actually be done on a  
10 production of over one terabyte, which is what Perfect 10 produced. *See* Poblete  
11 Declaration In Reply to Google's Supplemental Memorandum in Support of Its Motion  
12 to Compel Perfect 10, Inc. to Affix Control Numbers to Its Document Production  
13 ("Poblete Decl."), submitted herewith, ¶¶3-4.

14 Also, because approximately 2 million of the files produced by Perfect 10 were  
15 .jpg files, Google's proposal would require that an additional two million near  
16 duplicate Adobe files be created, for no reason whatsoever. Zada Declaration In Reply  
17 to Google's Supplemental Memorandum in Support of Its Motion to Compel Perfect  
18 10, Inc. to Affix Control Numbers to Its Document Production ("Zada Reply Decl."),  
19 submitted herewith, ¶3.

20 Google makes no statement regarding how much time the entire project would  
21 take and how much it would cost, which is what the Court requested.

22 **3. WHEN PERFECT 10 ATTEMPTED TO FOLLOW MS. KASSABIAN'S**  
23 **INSTRUCTIONS, IT RAN INTO A FATAL ERROR**

24 As stated above, Google's supplemental memorandum should be disregarded by  
25 the Court, because it is completely unsupported. When Perfect 10 attempted to follow  
26 Ms. Kassabian's instructions, it got a fatal error in less than one hour. Poblete Decl.,  
27 ¶¶ 3-4.

1 Google has no real reason to insist on the Bates stamping of documents, other  
2 than to simply try to overwhelm Perfect 10 with busywork. Perfect 10 produced all  
3 relevant and requested non-privileged documents, in an attempt to minimize motion  
4 practice, and there were a large number of them. Perfect 10 produced them in a very  
5 organized manner, as the Court saw at the hearing on September 22. Now Google is  
6 trying to make Perfect 10 pay the price for trying to minimize motion practice. Quinn  
7 Emmanuel is known for these tactics, and in fact has been sanctioned by the Ninth  
8 Circuit for similar conduct.

9 **4. GOOGLE’S CLAIMS REGARDING DR. ZADA’S NET WORTH ARE**  
10 **INCORRECT**

11 Dr. Zada’s net worth is far less than what Google claims. Google relies on a  
12 made up number by the show “How Did You Get So Rich?” Dr. Zada did not provide  
13 that number to the show. Zada Reply Decl. ¶2, Exh. 1 (an email from Joan Rivers,  
14 the host of the show, confirming this.) The value of the “Perfect 10 Mansion,” which  
15 is being sold to forestall the mass layoff of most of Perfect 10’s remaining employees,  
16 is also far less than Google claims. Zada Reply Decl. ¶2.

17 **5. PERFECT 10’S PRODUCTION IS FAR SUPERIOR TO THAT OF**  
18 **GOOGLE, WHICH IN ADDITION, HAS DISOBEYED DISCOVERY ORDERS**

19 Google’s production is not complete, fails to comply with Court orders, is  
20 disorganized, is highly duplicative, makes things very difficult to find, and is in large  
21 part unreadable; the Bates numbers that Google provided did nothing to help its  
22 production. Perfect 10’s production is very well organized and makes things easy to  
23 locate, and it does not require Bates numbers.

24 While Perfect 10 has gone out of its way to produce every conceivable  
25 document in an organized, searchable format, to minimize motion practice, Google has  
26 produced multiple copies of the same often unreadable or redacted documents in a  
27 completely disorganized fashion. In other words, not only is Google attempting to

1 drive up the cost of litigation by filing a series of completely unnecessary “busywork”  
2 type motions, but it is simultaneously making it impossible for Perfect 10 to conduct  
3 meaningful discovery by refusing to produce documents ordered by the Court.

4 Perfect 10 spent a great deal of effort filing and winning several motions to  
5 compel, both in front of this Court and on appeal to Judge Matz. In response to the  
6 ultimate discovery order, issued by Judge Matz on May 13, 2008, Google simply  
7 disobeyed the most important portions of Judge Matz’s order, namely, to produce  
8 “Google’s DMCA log,” which was to be a “spreadsheet-type document summarizing  
9 DMCA notices received, the identity of the notifying party and the accused infringer,  
10 and the actions (if any) taken in response.” Order, Docket No. 294, page 5, lines 1-9;  
11 Zada Reply Decl. ¶¶4-5.

12 Google also disobeyed Judge Matz’s order to produce, in response to Perfect  
13 10’s requests 128-131 and 194-195, “All reports, studies, or internal memoranda  
14 ordered, requested, or circulated by Bill Brougher, Susan Wojcicki, Walt Drummond,  
15 and Eric Schmidt relating to the following topics: search query frequencies, search  
16 query frequencies for adult-related terms, number of clicks on adult images and images  
17 in general, traffic to infringing websites, the draw of adult content, and percentage of  
18 searches conducted with the safe search filter off (Request Nos. 128-131). Zada Reply  
19 Decl. ¶¶4-5. Google similarly disregarded a second order to produce the same reports,  
20 studies, or internal memoranda, *circulated by or to* John Levine, Heraldo, Botelho,  
21 Radhika Malpani, Jessie Jiang, Lawrence You, Diane Tang, and Alexander  
22 Macgillivray. (Request 194-195). Zada Reply Decl. ¶¶4-5.

23 Given Google’s complete disregard for Court ordered discovery in this case, and  
24 its production of completely disorganized, redacted, unreadable, and duplicative  
25 documents, containing in some cases thirteen copies of the same document, the Court  
26 should not only deny Google’s improper and unsupported new motion, but insist that  
27 such obvious attempts to crush Perfect 10 with unnecessary busywork stop.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: October 1, 2009      LAW OFFICES OF JEFFREY N. MAUSNER

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