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10
11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

15 vs.

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

18 *Defendants.*

19 AND COUNTERCLAIM

20 PERFECT 10, INC., a California
21 corporation,

Plaintiff,

22 vs.

23 AMAZON.COM, INC., a corporation;
24 A9.COM, INC., a corporation; and
25 DOES 1 through 100, inclusive,

26 *Defendants.*

CASE NO. CV 04-9484 AHM (SHx)
[Consolidated with Case No. CV 05-
4753 AHM (SHx)]

DISCOVERY MATTER

**GOOGLE INC.'S RESPONSE TO
PERFECT 10'S MEMORANDUM
IN SUPPORT OF ITS PROPOSED
ORDER REGARDING THE
IDENTIFICATION OF CERTAIN
DOCUMENTS AND REPLY TO
GOOGLE'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
ITS JOINDER IN DEFENDANTS
AMAZON.COM, INC. AND ALEXA
INTERNET'S *EX PARTE*
APPLICATION**

Hon. Stephen J. Hillman

Date: November 3, 2009

Time: 10:00 A.M.

Crtrm.: 550

Discovery Cutoff: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

1 In its 19-page “Memorandum” (Docket No. 602), Perfect 10 again has
2 disregarded the Court’s admonition not to raise extraneous issues. The
3 Memorandum also seeks to re-argue issues P10 already lost at the September 22,
4 2009 hearing on Google’s motion to compel, and is filled with false claims and
5 accusations directed at Google and its counsel (and the Amazon Defendants).
6 Google will not separately address each of these false claims here, but will respond
7 to them if and when P10 raises them in a proper forum. The Court should disregard
8 those portions of P10’s Memorandum in their entirety.¹

9 As for the portions that address the pending issues, P10 inconsistently asserts
10 that (1) P10’s production is “highly organized,” such that Defendants “may readily
11 find any documents they want,” and yet somehow (2) it would take P10 “years” to
12 find those documents itself, if Defendants’ Proposed Order was adopted. Both
13 statements cannot be true. As P10’s Memorandum demonstrates, P10 knows
14 precisely where the responsive documents are, and should be ordered to share that
15 information with Defendants. P10’s proposal that it only should be ordered to
16

17 ¹ P10’s new argument that, in response to Amazon’s *Ex Parte* motion directed
18 to P10’s discovery failures, *Google* should be ordered to identify each and every
19 single page of documents Google produced in response to three separate Court
20 Orders (one of which dates back to 2006), should be rejected out of hand. First, as
21 discussed above, Google’s production is entirely irrelevant to the pending motion.
22 As the Court has already instructed P10, if P10 takes issue with Google’s
23 productions, it may bring that dispute to Google’s attention in a conference of
24 counsel (which P10 has not done) and, if necessary, to the Court’s attention by filing
25 a motion. Again, P10 may not disregard this Court’s Local Rules requiring meet-
26 and-confer before motion practice. *See Local Rule 37-4*. Second, P10 has not
27 suggested (much less demonstrated) that it was unable to locate responsive
28 documents in Google’s production, so the order P10 seeks appears unnecessary.
Third, imposing Perfect 10’s Proposed Order would not be “mutual” since P10 has
refused to Bates stamp its production. To be mutual, P10 would first have to Bates
stamp its entire production and then submit to an order like the one it proposes for
Google (P10 Memo. at 15) which P10 has not agreed to do.

1 provide the location of documents responsive to some (but not all) of the Ordered
2 Requests is both baseless and arbitrary. So too is P10's insistence that even as to
3 those Requests, it need identify them only by "first subfolder level." An example
4 demonstrates why. If top-level folder X contains two subfolders (A & B), and those
5 two subfolders each contain four more sub-subfolders each (A:(D, E, F & G); B:(H,
6 I, J & K)), yet responsive documents may only be found in sub-sub-folder K, then
7 P10 must point to folder sub-subfolder K; identifying only sub-folder B would send
8 Defendants on a wild goose chase through sub-folders H, I & J. As for P10's claims
9 of burden, if P10 is correct that "Perfect 10's financial documents [produced as a
10 single PDF file on October 16, 2009] are the primary source of documents
11 responsive to virtually all of Google's recent requests" (P10 Memo. at 11), this task
12 will be far easier than P10 lets on.

13 Finally, Perfect 10's suggestion that an "outside expert" must be appointed
14 before the Court can issue this basic discovery order is another attempt to distract
15 and delay. This Court is more than capable of evaluating the parties' submissions
16 and deciding that P10 should be ordered to (1) identify what it produced in response
17 to the October 6, 2009 Order so that all parties have all responsive documents in
18 hand prior to the Hersh deposition and (2) Bates stamp its future production for the
19 Hersh deposition. P10 had its opportunity to brief and argue these two issues, and it
20 lost. There is no need for expert advice. Appointing such an expert will only serve
21 to further delay any discovery progress in this case.

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23 DATED: November 9, 2009

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