

1
2
3
4
5
6
7
8
9
10
11

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PERFECT 10, INC.,)	
)	
PLAINTIFF,)	
)	
VS.)	CASE NO. CV 04-9484-AHM(SH)
)	CV 05-4753-AHM(SH)
)	
GOOGLE, INC., ET AL.,)	LOS ANGELES, CALIFORNIA
)	SEPTEMBER 14, 2009
)	
DEFENDANTS.)	
_____)	

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

14
15
16
17
18
19
20
21
22
23
24

APPEARANCES:	SEE NEXT PAGE
COURT REPORTER:	RECORDED; COURT SMART
COURTROOM DEPUTY:	SANDRA L. 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)
FOR THE PLAINTIFF: LAW OFFICES OF JEFFREY N. MAUSNER
2 BY: JEFFREY N. MAUSNER
VALERIE KINCAID
3 ATTORNEYS AT LAW
21800 OXNARD STREET
4 SUITE 910
WOODLAND HILLS, CALIFORNIA 91367
5

6 FOR GOOGLE: QUINN EMANUEL URQUHART OLIVER &
HEDGES
7 BY: MICHAEL T. ZELLER
TOM NOLAN
8 ATTORNEYS AT LAW
865 SOUTH FIGUEROA STREET
9 10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
10

11 FOR AMAZON.COM, ALEXA TOWNSEND TOWNSEND & CREW
INTERNET: BY: MARK JANSEN
TIMOTHY CAHN
12 ATTORNEYS AT LAW
TWO EMBARCADERO CENTER
13 8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
14
15
16
17
18
19
20
21
22
23
24
25

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

I N D E X

CASE NO. CV 04-9484-AHM(SH)
CV 05-4753-AHM(SH)

SEPTEMBER 14, 2009

PROCEEDINGS: TELEPHONIC CONFERENCE

1 LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 14, 2009;3:00P.M.

2 THE CLERK: TODAY IS MONDAY, SEPTEMBER THE 14TH.

3 IT'S A TELEPHONIC HEARING REGARDING CASE NUMBER

4 CV 04-9484-AHM(SH), PERFECT 10 VERSUS GOOGLE CONSOLIDATED

5 WITH CASE NUMBER CV 05-4753, PERFECT 10 VERSUS AMAZON.COM,

6 A9.COM.

7 COUNSEL, PLEASE ENTER YOUR APPEARANCE.

8 THIS IS TAKING PLACE AT 3:00 P.M. ON SEPTEMBER 14TH

9 IN MAGISTRATE JUDGE HILLMAN'S CHAMBERS.

10 THE COURT: HI.

11 MR. MAUSNER: GOOD AFTERNOON, YOUR HONOR.

12 THE COURT: COULD YOU SPEAK UP, MR. MAUSNER.

13 MR. MAUSNER: IS THAT BETTER, YOUR HONOR?

14 THE COURT: YES, THANK YOU.

15 WHO ELSE IS PRESENT?

16 MR. ZELLER: WE ALSO HAVE MIKE ZELLER AND TOM NOLAN

17 FOR GOOGLE.

18 MR. CAHN: AND TIM CAHN AND MARK JANSEN FOR AMAZON.

19 THE COURT: OKAY.

20 MR. MAUSNER: VALERIE KINCAID AND JEFF MAUSNER FOR

21 PERFECT 10.

22 THE COURT: OKAY. I DID -- I DID SEE THAT THERE

23 WAS THIS EX PARTE APPLICATION AND PERFECT 10'S OPPOSITION

24 REGARDING THE AMAZON DEADLINES. I HAVEN'T BOTHERED TO -- I

25 HAVEN'T HAD A CHANCE TO SEE IF JUDGE MATZ HAS RULED ON THAT,

1 BUT I WOULD KIND OF DOUBT IT.

2 MR. MAUSNER: HE HAS ACTUALLY, YOUR HONOR.

3 THE COURT: OKAY.

4 MR. MAUSNER: WOULD YOU LIKE ME TO STATE WHAT THE
5 RULING WAS?

6 THE COURT: SURE. I CAN LOOK IT UP, BUT TELL ME
7 QUICKLY.

8 MR. MAUSNER: HE GRANTED AMAZON'S EX PARTE AND, IN
9 FACT, COMPLETELY VACATED THE SUMMARY JUDGMENT CUTOFF.

10 THE COURT: OKAY.

11 MR. MAUSNER: SO, YOU KNOW, IT'S OUR POSITION THAT
12 THERE'S NO REASON TO HAVE ANY OR MOST OF THE DISCOVERY
13 DISPUTES HEARD AT THIS TIME.

14 THE COURT: HMM.

15 MR. CAHN: AND CAN I, YOUR HONOR -- THIS IS TIM
16 CAHN FOR AMAZON.

17 THE COURT: YES.

18 MR. CAHN: THE REST OF THIS RULING MADE CLEAR THAT
19 HE WOULD ISSUE A NEW SUMMARY JUDGMENT SCHEDULE FOR AMAZON AT
20 THE TIME HE DECIDES THE PENDING SUMMARY JUDGMENT MOTION. HE
21 DIDN'T GIVE ANY INDICATION IN HIS ORDER WHEN THAT WOULD BE,
22 BUT IT COULD BE AT ANY TIME.

23 THE COURT: UH-HUH.

24 MR. ZELLER: AND IF I MAY -- THIS IS MIKE ZELLER
25 FOR GOOGLE.

1 THE ORDER ALSO ENDS BY SAYING, PERFECT 10 MUST
2 STILL COMPLY WITH ANY DISCOVERY REQUESTS IN THIS CASE AND IN
3 THE GOOGLE CASE UNLESS OTHERWISE ORDERED BY YOUR HONOR.

4 THE COURT: WELL, THAT CERTAINLY MAKES SENSE. I
5 CAN'T DISAGREE WITH THAT. BUT IT WAS GOOGLE, I BELIEVE, THAT
6 WAS SUGGESTING THAT WE STILL DEFER SOME OF THESE MOTIONS NEXT
7 WEEK TO SEE WHAT HAPPENED ON THE SUMMARY JUDGMENT MOTIONS.

8 MR. ZELLER: RIGHT. WHAT WE HAD SUGGESTED DEALT
9 WITH THE INFRINGEMENT CLAIMS, ALTHOUGH, YOU KNOW, MINDFUL
10 THAT AMAZON HAS ITS OWN ISSUES ON THAT, THAT AT LEAST DEALS
11 WITH THE MOST IMMEDIATE ISSUE WITH GOOGLE AS TO THE
12 INFRINGEMENT ISSUE. OF COURSE OUR POSITION IS STILL THE SAME
13 AS WE HAD DISCUSSED LAST WEEK, WHICH IS THAT THE OTHER TWO
14 MOTIONS SHOULD BE PROPERLY HEARD NOW.

15 THE COURT: WELL -- ANYONE ELSE WANT TO JOIN IN?

16 MR. MAUSNER: YOUR HONOR, MAY I RAISE ONE THING
17 THAT HAS TO DO WITH US TRYING TO MEET AND CONFER REGARDING
18 THESE MOTIONS.

19 GOOGLE HAS TAKEN THE POSITION THAT THEY WANT TO
20 HAVE A COURT REPORTER PRESENT AT ALL THE MEET AND CONFERS.
21 WE --

22 THE COURT: THAT'S AWFULLY EXPENSIVE.

23 MR. MAUSNER: WHAT?

24 THE COURT: THAT'S AWFULLY EXPENSIVE.

25 MR. MAUSNER: IT IS.

1 THE COURT: I DON'T KNOW WHY THAT WOULD BE
2 NECESSARY.

3 MR. MAUSNER: IT'S OUR POSITION THAT WE'RE WILLING
4 TO DO THAT SO LONG AS WE DON'T HAVE TO PAY FOR ANY OF THE
5 COSTS OF THE REPORTER.

6 WE'VE TOLD GOOGLE REPEATEDLY THAT WE WOULD CONSENT
7 TO A COURT REPORTER IF GOOGLE WOULD PAY FOR US TO GET A COPY
8 OF THE TRANSCRIPT. AND GOOGLE HAS REFUSED TO AGREE TO THAT.

9 AND BASICALLY WE'VE HAD TWO MEET AND CONFERS THAT
10 WE COULDN'T GO FORWARD ON BECAUSE OF THIS ISSUE. WE HAD ONE
11 ACTUALLY TODAY, THAT WE SENT AN EMAIL TO GOOGLE SAYING LET'S
12 TRY TO MEET AND CONFER ON THESE THINGS, AND THEY AGREED. AND
13 WE SET UP THE TIME AT ONE O'CLOCK --

14 THE COURT: ON WHICH --

15 MR. MAUSNER: -- ON THE PHONE --

16 THE COURT: ON WHICH THINGS? ON THE PENDING
17 MOTIONS OR SOMETHING ELSE?

18 MR. MAUSNER: YES. ON SOME ISSUES REGARDING THE
19 PENDING MOTIONS.

20 THE COURT: UH-HUH.

21 MR. MAUSNER: AND WE ALL GOT ON THE PHONE. AND
22 THEN IT TURNS OUT THERE WAS A COURT REPORTER THERE. AND WE
23 TOOK BASICALLY THE SAME POSITION, WHICH IS, THERE ARE TWO
24 ALTERNATIVES. WE WOULD GO FORWARD WITH THE COURT REPORTER IF
25 GOOGLE WOULD PAY ALL THE COSTS, INCLUDING A COPY OF THE

1 TRANSCRIPT FOR US; OR THEY DO IT WITHOUT A COURT REPORTER.
2 BUT WE CAN'T HAVE -- DOING IT WITH THE COURT REPORTER AND
3 THEN NOT BEING ABLE TO GET A COPY OF THE TRANSCRIPT WITHOUT
4 PAYING FOR IT. I MEAN, THESE -- SOME OF THESE THINGS CAN
5 TAKE MANY HOURS, AND IT CAN GET VERY EXPENSIVE FOR US.

6 THE COURT: I ALSO THINK -- I THINK THERE'S
7 ARGUMENTS ON BOTH SIDES AS TO WHETHER IT'S HELPFUL. BUT IT
8 MAY BE OBSTRUCTIVE TO PEOPLE CANDIDLY DISCUSSING RESOLUTION.
9 SO -- I MEAN, I DON'T WANT TO HEAR ABOUT PEOPLE NOT TRUSTING
10 EACH OTHER. THAT'S JUST UNACCEPTABLE TO ME. I KNOW THAT
11 SOME OF THESE ISSUES -- A LOT OF THESE ISSUES ARE VERY
12 COMPLEX AND HAVE TO BE REDUCED TO WRITING. AND I CERTAINLY
13 DON'T WANT TO ENCOURAGE AN EMAIL BATTLE OVER WHO SAID WHAT IN
14 A MEET AND CONFER.

15 BUT, YOU KNOW, I'M NOT INCLINED TO IMPOSE A
16 COST-SPLITTING ORDER FOR THIS KIND OF COURT REPORTING.

17 MR. ZELLER: AND IF I MAY, JUDGE HILLMAN.

18 THE COURT: YES.

19 MR. ZELLER: THIS IS MIKE ZELLER FROM GOOGLE.

20 A COUPLE OF POINTS HERE. NUMBER ONE, WE ARE PAYING
21 FOR THE COSTS OF THE REPORTER. I CAN CERTAINLY TALK ABOUT
22 THE HISTORY OF WHAT LED US TO THIS DECISION. I'LL SKIP THAT
23 UNLESS THE COURT IS INTERESTED IN HEARING IT. BUT WE ARE
24 PAYING. WE ARE, GOOGLE, ARE PAYING FOR THE COURT REPORTER.
25 THAT IS BY FAR THE BULK OF THE EXPENSE.

1 WHAT MR. MAUSNER IS ALSO SAYING THAT WE ALSO SHOULD
2 PAY FOR IS THE TRANSCRIPT, A COPY OF A TRANSCRIPT FOR THEM.

3 THE COURT: WELL, IF YOU'RE NOT USING IT -- IF
4 YOU'RE NOT USING IT, AND YOU'RE NOT USING IT IN A MOTION OF
5 SOME SORT, THEN, I SUPPOSE IT'S YOUR -- YOU PAID FOR IT. YOU
6 GET TO KEEP IT.

7 MR. ZELLER: CORRECT. AND ULTIMATELY WHAT WE'RE
8 HOPEFUL IS THAT THIS WILL BE CONDUCIVE TO AVOIDING THE KINDS
9 OF DISPUTES IN THE PAST THAT HAVE ARISEN ABOUT MEET AND
10 CONFERS, INCLUDING WHO SHOT WHOM AND, YOU KNOW, HE-SAID,
11 SHE-SAID KIND OF DISPUTES.

12 BUT AT THE END OF THE DAY WHAT WE'RE HOPEFUL IS
13 THAT THE COURT REPORTER'S PRESENCE WILL AVOID THOSE DISPUTES
14 AND NO ONE WILL EVEN NEED A TRANSCRIPT. I MEAN, IT'S NOT OUR
15 INTENTION THAT GOOGLE IS GOING TO ROUTINELY ORDER THESE
16 TRANSCRIPTS EITHER. WE'RE HOPING THAT THIS WILL ACTUALLY
17 AVOID THOSE VERY KINDS OF DISPUTES.

18 SO, TO IMPOSE SOME BLANKET REQUIREMENT THAT WE PAY
19 FOR ONE FOR PERFECT 10 IS SOMEWHAT CONTRARY TO WHAT -- I
20 MEAN, FIRST OF ALL, WE'RE ALREADY PAYING FOR THE BULK OF IT.
21 NUMBER TWO, IT'S KIND OF CONTRARY TO WHAT WE'RE HOPING IS
22 GOING TO HAPPEN HERE.

23 AND, THEN, OF COURSE, ALSO, I MEAN, JUST IN
24 GENERAL, THE AMERICAN RULE IS THE PARTIES PAY THEIR OWN
25 COSTS. AND THAT'S TRUE FOR DEPOSITION TRANSCRIPTS AS WELL.

1 AND WE THINK THAT THIS SHOULD BE THE SAME POINT HERE.

2 THE OTHER -- THE OTHER POINT --

3 MR. MAUSNER: MAY I RESPOND TO THAT FIRST, YOUR
4 HONOR?

5 THE COURT: ARE YOU ASKING ME -- IS EVERYONE ASKING
6 ME TO MAKE SOME ORDER ON THIS TODAY?

7 MR. MAUSNER: YES.

8 AND MAY I RESPOND TO THAT, YOUR HONOR?

9 THE COURT: YES, YES.

10 MR. MAUSNER: OKAY. THEY DO NOT HAVE A RIGHT TO
11 HAVE A COURT REPORTER PRESENT IN A TELEPHONE CONVERSATION
12 BETWEEN US AND THEM. WE OBJECT TO THAT, AND WE WILL NOT
13 ALLOW IT UNLESS THEY AGREE TO -- YOU KNOW, WE'RE TRYING TO BE
14 VERY REASONABLE HERE. WE'RE SAYING YOU HAVE NO RIGHT TO HAVE
15 A COURT REPORTER THERE. BUT IF YOU ARE GOING TO HAVE A COURT
16 REPORTER THERE, WE WILL CONSENT TO IT AS LONG --

17 BY THE WAY, I'M GETTING AN ECHO. ARE YOU GETTING
18 AN ECHO ALSO?

19 THE COURT: NO.

20 MR. MAUSNER: LET ME TRY A DIFFERENT PHONE BECAUSE
21 IT'S ECHOING BACK.

22 HELLO?

23 THE COURT: YES.

24 MR. MAUSNER: OKAY.

25 THE COURT: IS THAT BETTER?

1 MR. MAUSNER: NO -- WELL, LET ME SEE.

2 SO, ANYWAY, OUR POSITION IS THAT, YOU KNOW, THEY
3 HAVE NO RIGHT TO DO THIS AT ALL. THEY CANNOT IMPOSE A COURT
4 REPORTER ON A PRIVATE TELEPHONE CONVERSATION BETWEEN US AND
5 THEM. BUT WE ARE WILLING TO DO IT SO LONG AS THEY WOULD PAY
6 FOR A TRANSCRIPT FOR US.

7 AND FOR THEM TO SAY, OH, WE'RE NOT GOING TO GET
8 THIS THING TRANSCRIBED, OF COURSE THEY'RE GOING TO GET IT
9 TRANSCRIBED. AND THEN THEY'RE GOING TO HAVE AN UNFAIR
10 ADVANTAGE OVER US BECAUSE WE'RE NOT GOING TO HAVE THE
11 TRANSCRIPT.

12 SO, I THINK THE BAR IS VERY CLEAR THAT EITHER THERE
13 IS NOT GOING TO BE A COURT REPORTER THERE UNLESS EVERYONE
14 CONSENTS TO IT. OR IF -- AND WE HAVE SAID WE WILL CONSENT TO
15 IT AS LONG AS WE JUST GET A TRANSCRIPT OF IT. I DON'T THINK
16 THAT THAT'S ASKING VERY MUCH.

17 THE COURT: WELL, YOU KNOW WHAT. I'M NOT IN A
18 POSITION TO MAKE A RULING ON THIS. I HAVE TO SAY THIS EXACT
19 ISSUE HAS NOT COME UP IN MY 17 OR WHATEVER YEARS ON THE
20 BENCH. AND IF YOU WANT A FORMAL RULING, THEN, I CAN'T DO
21 THAT TODAY.

22 I WOULD LIKE TO MOVE ON -- AND I'M GOING TO ORDER
23 THAT NO COURT REPORTER BE USED UNLESS THERE IS A COURT ORDER
24 PERMITTING. YOU'RE JUST GOING TO HAVE TO STUMBLE ALONG IN
25 THESE MEET AND CONFERS AND MAKE AN APPROPRIATE MOTION, ONE

1 SIDE OR THE OTHER.

2 SO, THE QUESTION --

3 MR. JANSEN: YOUR HONOR --

4 THE COURT: YES?

5 MR. JANSEN: THIS IS MARK JANSEN FOR AMAZON.COM AND
6 ALEXA.

7 THE COURT: YES.

8 MR. JANSEN: AND I JUST WANT TO SAY WE HAVE NOT
9 TAKEN A POSITION ON THAT ONE WAY OR THE OTHER, BUT WE DID
10 HAVE A FOLLOW-UP CALL WITH MR. MAUSNER THIS AFTERNOON AFTER
11 THE TERMINATION OF A DISCUSSION WITH GOOGLE BECAUSE OF THIS
12 CONFLICT. AND WE DID DISCUSS IN PARTICULAR THE FINANCIAL
13 DOCUMENTS IMPASSE. AND I WANT TO CONFIRM TO THE COURT THAT
14 WE HAVE CONFIRMED WITH MR. MAUSNER AND MS. KINCAID THAT THERE
15 IS TWO UNSOLVABLE DISPUTES REGARDING THEIR OBLIGATION TO
16 PRODUCE COMPLETE FINANCIAL RECORDS THAT IS CLEAR. AND WE
17 AGREE THAT THERE WAS AN IMPASSE ON THAT THAT NEEDS COURT
18 RESOLUTION.

19 SO, WE ACCORDINGLY TOOK OFF CALENDAR THE DEPOSITION
20 OF PERFECT 10'S ACCOUNTANT THAT WAS NOTICED FOR THIS
21 WEDNESDAY, WHICH WE HAD NOTICED WHEN WE DID -- BECAUSE OF THE
22 PENDING AND NOW TEMPORARILY VACATED SUMMARY JUDGMENT MOTION
23 DEADLINE. WE AGREED TO SET THAT DEPOSITION FOR SOME TIME IN
24 MID-OCTOBER ON THE ASSUMPTION THAT YOU WOULD ACTUALLY HAVE A
25 CHANCE TO HEAR AT LEAST THE FINANCIAL DOCUMENTS PART OF THE

1 MOTION IF NOT OTHER ASPECTS OF THE MOTION NEXT WEDNESDAY AS
2 CURRENTLY -- OR NEXT TUESDAY AS CURRENTLY SCHEDULED SO THAT
3 YOU COULD ISSUE A RULING AND PERFECT 10 CAN TIMELY PRODUCE
4 WHATEVER, IF ANY, DOCUMENTS YOU ORDERED PRODUCED FURTHER.

5 THE COURT: WHAT OTHER -- IS THAT THE ONLY PORTION
6 THAT YOU WOULD LIKE TO HAVE A RULING ON?

7 MR. JANSEN: WELL, THAT WAS ALL THAT WE DISCUSSED
8 IN THE PHONE CALL THAT TIM CAHN AND I HAD WITH MR. MAUSNER
9 AND MS. KINCAID AT 1:30 THIS AFTERNOON, BUT TO CONFIRM THAT
10 MR. HERSH SHOULD BE PUT OFF UNTIL YOU CAN RULE ON AT LEAST
11 THE FINANCIAL DOCUMENTS. HE IS THE ACCOUNTANT.

12 I THINK THERE'S OTHER ISSUES WHICH PROBABLY COULD
13 BE ADDRESSED AT THIS HEARING NEXT TUESDAY, BUT THAT'S ONE
14 THAT WE EXPRESSLY DID DISCUSS IN THE PHONE CALL WE JUST HAD
15 ABOUT AN HOUR AND A HALF AGO.

16 THE COURT: ALL RIGHT. WELL, WHY DON'T YOU -- I'M
17 GOING TO KEEP THE AMAZON MOTION ON CALENDAR FOR NEXT WEEK.
18 AND IF THERE ARE TOPICS IN THAT MOTION THAT MAKE SENSE TO YOU
19 TO DEFER SO THAT PERHAPS YOU WOULD BE PIGGY-BACKED ON
20 WHATEVER ORDER I MADE IN GOOGLE ON SOME OF THEM, LET THE
21 CLERK KNOW BY THE END OF THE DAY TOMORROW WHETHER THERE ARE
22 ANY TOPICS IN YOUR MOTION THAT YOU ARE NOT SEEKING RULING ON
23 NEXT WEEK. OTHERWISE I WILL ASSUME --

24 MR. JANSEN: YOUR HONOR, THE ISSUE OF OBJECTIONS TO
25 PERFECT 10'S FINANCIAL DISCLOSURES IS ACTUALLY TEE'D UP IN

1 THE GOOGLE MOTION, WHICH AMAZON HAS FILED A REQUEST TO JOIN.

2 SO, THAT'S THE MOTION THAT ADDRESSES THE AREAS OF

3 PERFECT 10'S INADEQUATE PRODUCTION OF FINANCIAL DOCUMENTS.

4 SO, THAT'S --

5 MR. ZELLER: YOUR HONOR, MIKE ZELLER --

6 MR. JANSEN: -- THAT'S THE MOTION THAT WE WOULD LIKE

7 TO KEEP ON CALENDAR.

8 MR. ZELLER: SORRY FOR INTERRUPTING.

9 THIS IS MIKE ZELLER FROM GOOGLE.

10 SETTING ASIDE THE TRANSCRIPT ISSUE, I MEAN, THERE
11 HAVE BEEN ALREADY EXTENSIVE MEET AND CONFERS ON THESE ISSUES.

12 WE'LL ATTEMPT TO TALK TO THEM AGAIN.

13 BUT ONE THING I DID WANT TO MAKE CLEAR WAS IS THAT
14 OVER THE COURSE OF TIME, INCLUDING RECENTLY, WE'VE SENT
15 MULTIPLE LETTERS TO PERFECT 10, YOU KNOW, OUTLINING IN SOME
16 DETAIL A NUMBER OF THESE ISSUES WHICH WE HAD HOPED TO RESOLVE
17 ON THE, YOU KNOW, TWO ISSUES THAT GOOGLE IN PARTICULAR THINKS
18 ARE STILL -- TWO MOTIONS RATHER THAT GOOGLE STILL THINKS IN
19 PARTICULAR, YOU KNOW, SHOULD BE THE SUBJECT OF THE HEARING ON
20 THE 22ND.

21 SO, THERE HAVE BEEN OTHER COMMUNICATIONS. I DIDN'T
22 WANT THE IMPRESSION TO BE LEFT THAT SOMEHOW THE COURT
23 REPORTER ISSUE IS COMPLETELY --

24 THE COURT: WELL -- OKAY. MY --

25 MS. KINCAID: YOUR HONOR --

1 THE COURT: WAIT A SECOND.

2 WHAT I WANT TO KNOW IS HAVE THERE BEEN SUBSTANTIVE
3 DISCUSSIONS ON A SAMPLING PROTOCOL ALONG THE LINES THAT WAS
4 USED SUCCESSFULLY IN THE MICROSOFT CASE. BECAUSE THAT IS THE
5 BULK OF -- I WON'T PUT AN ADJECTIVE TO IT -- THAT IS THE
6 LARGE PART OF THE GOOGLE MOTIONS PUTTING ASIDE THE RFA
7 MOTION.

8 MR. ZELLER: WHAT I WAS REFERRING TO WAS THE TWO
9 OTHER MOTIONS. WE HAVE NOT -- WE HAVE NOT DISCUSSED THE
10 SAMPLING PROCEDURE. AND THAT HASN'T TO MY KNOWLEDGE BEEN THE
11 SUBJECT OF DISCUSSIONS --

12 THE COURT: OKAY. SO, THE OTHER TWO MOTIONS, THE
13 GOOGLE MOTIONS, GOOGLE BELIEVES SHOULD GO FORWARD NEXT WEEK.

14 MR. ZELLER: THAT'S CORRECT, YOUR HONOR.

15 THE COURT: OKAY. NOW, I WOULD -- HOLD ON.

16 (PAUSE IN PROCEEDINGS.)

17 THE COURT: BEFORE I SAY OKAY, I AM WONDERING ON
18 YOUR -- THE MOTION TO COMPEL DOCUMENTS, NOT THE RFAS AND NOT
19 INTERROGATORIES 1 AND 3, BUT THE THIRD MOTION, IT SEEMS TO ME
20 A LOT OF THAT MAY BE WRAPPED UP IN THE DECISION ON SAMPLING
21 AS WELL. AND I CAN TELL YOU WHAT ISSUES IN PARTICULAR I
22 THINK THAT MAY APPLY TO.

23 I THINK THAT MAY AFFECT ISSUES 2, 5, 6, 8, AND 9
24 AND MAYBE ONE OR TWO OTHERS.

25 WHAT I'M THINKING IS THAT THERE MAY BE A FEW THINGS

1 IN THE DOCUMENT MOTION, A FEW TOPICS THAT ARE RIPE FOR RULING
2 AND WOULD NOT BE AFFECTED BY ANY SAMPLING DISCOVERY ORDER,
3 BUT THERE MAY BE SEVERAL THAT NEED TO SEE THE OUTCOME OF MORE
4 MEETINGS.

5 MR. MAUSNER: YOU KNOW, ONE THING I'D HAVE TO NOTE,
6 YOUR HONOR, IS THAT SOME OF THESE THINGS HAVE BEEN COMPLETELY
7 ELIMINATED, LIKE THE COPYRIGHT MATERIALS. GOOGLE SPENT OVER
8 A WEEK -- THEY HAD COPY SERVICES FOR OVER A WEEK IN OUR
9 OFFICE COPYING ALL OF THE COPYRIGHT MATERIALS. SO, I DON'T
10 THINK EVEN GOOGLE WOULD CLAIM THAT THAT ONE IS STILL AT
11 ISSUE.

12 THE COURT: OKAY. FAIR ENOUGH.

13 MR. MAUSNER: THERE'S SOME OTHER ONES -- PIC SCOUT
14 COME TO MIND --

15 THE COURT: ALL RIGHT. LET ME ASK GOOGLE. WHAT IS
16 YOUR RESPONSE TO WHAT I JUST SAID?

17 MR. ZELLER: WELL, I THINK IT'S -- NUMBER ONE, WHAT
18 I'D LIKE IS AN OPPORTUNITY TO GO THROUGH AND LOOK AT IT JUST
19 TO MAKE SURE --

20 THE COURT: YES.

21 MR. ZELLER: -- YOU KNOW, ONE BY ONE. AND I THINK
22 YOUR HONOR'S POINT IS A FAIR ONE.

23 WHAT I GUESS I WAS MOSTLY FOCUSED ON IN TERMS OF
24 THE DOCUMENTS AND WHAT IT IS THAT WE THINK CERTAINLY IS RIPE
25 FOR DISPOSITION AT THIS POINT REALLY ENCOMPASSED THE

1 FINANCIAL DOCUMENTS. SO, I'VE SORT OF COME OUT FROM THE
2 OTHER END.

3 THE COURT: SO, THAT'S NUMBER ONE.

4 MR. ZELLER: YES.

5 THE COURT: YES. AND ANYTHING ELSE?

6 MR. ZELLER: WELL, AGAIN, I MEAN, WE CAN'T -- I
7 DON'T HAVE THE ENTIRE FILING IN FRONT OF ME --

8 THE COURT: YES, RIGHT.

9 MR. ZELLER: -- SO I HESITATE TO JUST DO IT ON THE
10 FLY.

11 THE COURT: YES, I UNDERSTAND.

12 MR. ZELLER: WHAT I'D LIKE TO DO, YOUR HONOR, IS I
13 CAN -- TODAY WE CAN GO THROUGH IT AND LOOK AT IT IN DETAIL,
14 SEE WHAT IT IS --

15 THE COURT: OKAY.

16 MR. ZELLER: -- AND WHAT WE THINK EITHER CAN BE
17 DEFERRED OR DOESN'T REQUIRE A RULING AND THEN GIVE NOTICE TO
18 THE PARTIES AND YOUR HONOR.

19 THE COURT: OKAY. SO, WHAT I WOULD LIKE TO KNOW
20 AGAIN BY THE END OF TOMORROW -- IN FACT, I WOULD LIKE IT IN
21 WRITING.

22 MR. ZELLER: YES.

23 THE COURT: JUST FOR MY CLERK'S BENEFIT. JUST FAX
24 A MEMO TO (213) 894-4381 WITH COPY TO ALL COUNSEL INDICATING
25 WHICH ISSUES IN THE DOCUMENT MOTION YOU'RE REQUESTING THAT I

1 HEAR ORAL ARGUMENT ON NEXT TUESDAY.

2 AND ON THE INTERROGATORY MOTION I'M ASSUMING ALL OF
3 THAT IS NOT QUITE READY -- IT'S NOT READY FOR A RULING.

4 AND I'M ASSUMING ON THE RFA MOTION THAT I'M GOING
5 TO HEAR SOME GOOD NEWS, THAT THAT'S BEEN HOPEFULLY RESOLVED
6 BY NEXT WEEK. AND I GAVE YOU MY THOUGHTS ON THAT A WEEK AGO.

7 THAT'S THE GENERAL SHAPE OF WHAT I THINK NEXT
8 WEEK'S HEARING WILL BE. IT'S FINANCIAL DOCUMENTS AND MAYBE
9 ONE OR TWO OTHERS IN THE DOCUMENT -- IN GOOGLE'S DOCUMENT
10 MOTION AS WELL AS PERHAPS A FEW RULINGS ON THE RFA MOTION.
11 AND, THEN, FINALLY, AMAZON'S FINANCIAL DOCUMENTS ISSUE.

12 MR. MAUSNER: WHICH I THINK THAT'S BASICALLY THE
13 SAME AS GOOGLE'S.

14 THE COURT: YES, I KNOW THAT. BUT I'M THINKING OUT
15 LOUD AGAIN. I MEAN, I'M NOT GOING TO ORDER ALL DAMAGES
16 DOCUMENTS. FINANCIAL CONDITION IS SOMETHING ELSE. BUT
17 DAMAGES DOCUMENTS, YOU KNOW, THAT'S GOING TO HAVE TO -- I'M
18 NOT GOING TO GRANT THAT. SO, I ASSUME THERE'S SOMETHING ELSE
19 THAT GOOGLE AND AMAZON ARE SEEKING.

20 MR. CAHN: YOUR HONOR, THIS IS TIM CAHN FOR AMAZON
21 TALKING.

22 WE BOIL IT DOWN TO BASICALLY THREE CATEGORIES OF
23 FINANCIAL DOCUMENTS -- UNREDACTED STATEMENTS, BACK-UP SOURCE
24 INFORMATION FOR THE FINANCIAL STATEMENT, AND COMMUNICATIONS
25 BETWEEN THE ACCOUNTANT AND PERFECT 10.

1 THE COURT: OKAY. AND YOU REACHED AN IMPASSE ON
2 THAT.

3 MR. CAHN: YES.

4 THE COURT: I DO NOT WANT TO HEAR ARGUMENT, BUT I'D
5 LIKE TO HEAR JUST BARE BONES WHAT THE DISPUTE IS.

6 MR. MAUSNER.

7 MR. MAUSNER: WELL, THAT WAS ACTUALLY ONE OF THE
8 THINGS THAT WE WANTED TO DISCUSS TODAY. THERE ARE CERTAIN
9 THINGS IN THE REDACTED -- WE REDACTED CERTAIN THINGS THAT
10 ABSOLUTELY CANNOT BE GIVEN TO THEM. THE MAIN ONE IS ANYTHING
11 SHOWING THE AMOUNTS OF SETTLEMENTS IN OTHER CASES. AND WE
12 CAN'T GIVE THAT TO THEM. THEY'RE CONFIDENTIAL SETTLEMENT
13 AGREEMENTS. AND, YOU KNOW, WE CAN'T DO IT WITHOUT THE
14 CONSENT OF THE THIRD PARTY THAT WE SETTLED WITH.

15 AND WE MADE AN ATTEMPT --

16 THE COURT: WELL, THE COURTS -- I'M NOT TALKING
17 ABOUT THIS CASE, BUT COURTS MAKE THOSE ORDERS ALL THE TIME.
18 AND MAYBE ATTORNEY'S-EYES-ONLY IF I WERE TO GRANT IT. BUT
19 THAT'S WHAT COURTS DO.

20 MR. MAUSNER: WELL, IN THE PAST, YOUR HONOR, YOU
21 DID NOT DO THAT, AND YOU DENIED THE MOTION OF ANOTHER PARTY
22 IN THIS EXACT SAME SITUATION AND DID NOT ALLOW SETTLEMENT
23 AGREEMENTS TO BE PRODUCED WHEN THE PARTIES DIDN'T WANT TO
24 PRODUCE THEM.

25 THERE IS STUFF THAT I THINK WE CAN AGREE TO

1 UNREDACT I WAS LOOKING AT THIS MORNING. ONE IS THERE'S A
2 CATEGORY OF PROFESSIONAL FEES. THEY HAVE -- AT LEAST FOR THE
3 ATTORNEY'S FEES PART OF THAT I THINK WE CAN UNREDACT THAT.
4 AND WE WILL DO SO.

5 THERE ARE OTHER THINGS, YOU KNOW, SUCH AS MEDICAL
6 -- MEDICAL PAYMENTS FOR MODELS WHICH WE DON'T THINK THAT
7 THEY NEED. YOU KNOW, MAYBE THERE'S A WAY THAT WE CAN GIVE
8 THEM AN OVERALL FIGURE THAT DOESN'T STATE WHO THE MODEL IS
9 AND HOW MUCH WAS PAID OR WHATEVER. AND I JUST DON'T THINK
10 THERE'S ANY REASON THAT THEY NEED SOMETHING LIKE THAT.

11 MR. CAHN: YOUR HONOR, THIS IS TIM CAHN FOR AMAZON.

12 THE RESULT OF PERFECT 10'S REDACTIONS RENDER MANY
13 OF THE FINANCIAL STATEMENTS ALMOST MEANINGLESS IN TERMS OF
14 BEING ABLE TO GAUGE THE FINANCIAL CONDITION OF THE COMPANY,
15 UNDERSTAND FROM WHAT SOURCES OF REVENUE NUMBERS THAT APPEAR
16 ON THE FINANCIAL STATEMENTS MYSTERIOUSLY RELATE TO, OR TO
17 UNDERSTAND WHAT EXPENSES THAT PERFECT 10 IS CLEARLY USING TO
18 CALCULATE THE PROFITABILITY OR LACK OF PROFITABILITY OF ITS
19 BUSINESS AND TO KNOW WHAT THOSE EXPENSES ARE.

20 THE COURT: WELL, WHY DO YOU NEED ANY -- WHY SHOULD
21 I GIVE YOU ANY OF THIS AT THIS JUNCTION WHEN WE HAVEN'T EVEN
22 GOTTEN SAMPLING. YOU HAVEN'T EVEN GOTTEN TO THE HEART OF THE
23 CASE.

24 MR. CAHN: WELL, I THINK JUDGE MATZ HAS INDICATED
25 THAT HE IS GOING TO -- WHEN HE FINALLY DOES RULE ON THE

1 PENDING SUMMARY JUDGMENT MOTIONS, HE'S GOING TO MOVE RATHER
2 SWIFTLY IN THE AMAZON CASE. AND WE DON'T KNOW WHEN THAT
3 SUMMARY JUDGMENT DEADLINE -- FINAL DEADLINE WILL BE, BUT IT
4 COULD BE, YOU KNOW, WITHIN A MONTH OF WHEN JUDGE MATZ RULES,
5 FOR EXAMPLE.

6 SO, WE BELIEVE THAT FINANCIAL -- THE DISCOVERY AS
7 TO PERFECT 10'S FUNDAMENTAL BUSINESS PROFITABILITY IS
8 CRITICAL TO ARGUMENTS THAT AMAZON WOULD WANT TO BRING ON A
9 SUMMARY JUDGMENT MOTION.

10 MR. ZELLER: AND IF I MAY ADD FOR GOOGLE, YOUR
11 HONOR, AS WE MENTIONED BEFORE, THERE ARE A VARIETY OF CLAIMS
12 IN THIS CASE THAT ARE MADE AGAINST GOOGLE AND HAVE NOT BEEN
13 MADE IN THE OTHER CASES. THESE INCLUDE RIGHT OF PUBLICITY.
14 THESE INCLUDE TRADEMARK INFRINGEMENT CLAIMS.

15 SO, EVEN ASSUMING THAT THE DMCA MOTIONS ARE
16 GRANTED, AND THAT THEY KNOCK OUT THE COPYRIGHT INFRINGEMENT
17 CLAIMS, OR EVEN ASSUMING THAT WE LOSE ON SOME OR ALL OF THE
18 DMCA MOTIONS, AND THEN THERE'S A SAMPLING PROCEDURE USED FOR
19 THE COPYRIGHT INFRINGEMENT, THAT WOULD NOT OBTAIN OUR NEED
20 FOR THE FINANCIAL DISCOVERY.

21 AND IT IS CERTAINLY -- AS WAS DESCRIBED EARLIER --
22 IT IS HOLDING UP DEPOSITIONS. IT IS HOLDING UP OUR ABILITY
23 TO TAKE --

24 THE COURT: ALL RIGHT.

25 MR. ZELLER: -- DISCOVERY THAT --

1 THE COURT: OKAY.

2 MR. ZELLER: -- WILL AT SOME JUNCTURE NEED TO BE
3 TAKEN --

4 THE COURT: ALL RIGHT.

5 MR. ZELLER: -- REGARDLESS OF HOW THE COPYRIGHT
6 INFRINGEMENT CLAIMS ARE TREATED.

7 ALSO, WITH RESPECT TO -- IN ANSWER TO YOUR
8 QUESTION, IT IS THAT MANY OF THESE DOCUMENTS ARE DOCUMENTS
9 THAT PERFECT 10 HAS ALREADY PRODUCED, AT LEAST THAT'S THE
10 BACK-UP, OF COURSE, OF AT LEAST THE FINANCIAL STATEMENTS
11 THEMSELVES. THOSE ARE HEAVILY REDACTED.

12 AND IT JUST SEEMS THAT PARTICULARLY AS TO THOSE
13 KINDS OF STATEMENTS, THERE'S ABSOLUTELY NO REASON WHY WE
14 SHOULD NOT HAVE THAT INFORMATION NOW. I MEAN, THIS IS FAR
15 MORE WORK FOR PERFECT 10 TO REDACT ALL THIS INFORMATION THAN
16 IT IS TO SIMPLY PRODUCE IT AS THESE EXIST.

17 AND ONE THAT I HAD IN MIND PARTICULARLY WAS THE
18 "PERFECT 10, INC. FINANCIAL REPORT, MAY 31ST, 2009." THE
19 ENTIRE EQUITY SIDE OF THIS FINANCIAL STATEMENT HAS BEEN
20 REDACTED.

21 SO, THERE ARE MAJOR COMPONENTS OF WHAT ONE WOULD
22 WANT TO KNOW ABOUT THE FINANCIALS AND TO TIE IT IN
23 SPECIFICALLY, FOR EXAMPLE, TO THE CLAIMS THAT WOULD NOT BE
24 TOUCHED UPON EITHER BY THE SAMPLING OR THE DMCA MOTIONS
25 REGARDLESS OF THEIR DISPOSITION WOULD BE TRADEMARK

1 INFRINGEMENT. IN ISSUE IS GOING TO BE THE VALUE OF THE
2 PERFECT 10 MARK. AND THAT ISSUE IS JUST NOT GOING TO BE
3 OBTAINED BY ANY OF THESE OTHER POTENTIAL CONTINGENCIES.

4 THE COURT: OKAY. SO, HAVE -- I THINK MR. MAUSNER
5 GAVE ME -- NO, MR. ZELLER GAVE ME THREE AREAS THAT YOU'RE
6 GOING TO FOCUS ON NEXT WEEK. AND THOSE AREAS -- THE
7 UNREDACTED STATEMENTS, BACK-UP DOCUMENTS, AND COMMUNICATIONS
8 BETWEEN THE ACCOUNTANT AND PERFECT 10.

9 THAT'S IT IN A NUTSHELL AS FAR AS AMAZON AND GOOGLE
10 ARE CONCERNED? THAT'S THE HEART OF WHAT YOU'RE SEEKING.

11 MR. ZELLER: YES. AND UNREDACTED STATEMENTS --

12 THE COURT: YES, I SAID THAT.

13 MR. ZELLER: -- OF THE FINANCIALS THAT HAVE BEEN
14 PRODUCED.

15 THE COURT: YES. OKAY. I MEAN, WHEN I FOCUS ON
16 GETTING READY, I JUST WANT TO -- I'M GOING TO FOCUS ON THOSE.

17 AND AMAZON AGREES WITH THAT?

18 MR. CAHN: YES.

19 THE COURT: OKAY.

20 ALL RIGHT. SO, THEN, TO REITERATE WHAT I SAID FIVE
21 MINUTES AGO, I NEED TO KNOW IN THE DOCUMENT MOTIONS AND IN
22 THE AMAZON MOTION WHETHER THERE'S ANYTHING ELSE THAT I'M
23 GOING TO BE ASKED TO RULE ON NEXT WEEK OTHER THAN ISSUE
24 NUMBER ONE AND THE CORRESPONDING PORTION IN -- ISSUE NUMBER
25 ONE IN THE DOCUMENT MOTION AND THE CORRESPONDING PORTIONS OF

1 AMAZON MOTIONS.

2 AND, THEN, SECONDLY, POTENTIALLY BUT HOPEFULLY NOT
3 ANY RFA ISSUES.

4 ANYTHING ELSE IN GOOGLE'S DOCUMENT MOTION THAT THEY
5 WISH ME TO CONSIDER? -- OTHER THAN ISSUE ONE, THEY'LL LET ME
6 KNOW BY FAX BY THE END OF TOMORROW.

7 MR. ZELLER: YES. AND ONE -- APART FROM THE
8 SUBSTANTIVE ISSUES I KNOW THAT THERE ARE A COUPLE OF ISSUES
9 PERTAINING TO PROTECTIVE ORDERS AS WELL AS THE BATES STAMPING
10 OF THE DOCUMENTS WHICH IS CAUSING SOME ISSUES. AND I KNOW
11 THAT THOSE ARE ADDRESSED IN THE DOCUMENT ISSUE.

12 THE COURT: WELL --

13 MR. MAUSNER: CAN I SAY SOMETHING?

14 THE COURT: IN A MINUTE.

15 THINGS LIKE BATES STAMPING, AGAIN, THAT'S GOING TO
16 BE SUBSUMED WITHIN A RULING ON SAMPLING.

17 WON'T IT?

18 MR. ZELLER: NO. THIS IS -- THIS DEALS WITH THE
19 PRODUCTION THAT PERFECT 10 HAS ALREADY MADE TODAY.

20 THE COURT: RIGHT.

21 MR. ZELLER: BUT THE DOCUMENTS ARE NOT BATES
22 STAMPED. THERE ARE NO CONTROL NUMBERS.

23 THE COURT: RIGHT, RIGHT. BUT WHY WOULD I ORDER
24 THAT AT THIS POINT UNTIL I'VE RULED ON THE SAMPLING ISSUE.
25 WHY AM I GOING TO HAVE THEM BATES STAMP EVERYTHING THAT

1 THEY'VE PRODUCED.

2 MR. ZELLER: IT'S ALREADY A PAST ISSUE IN THE SENSE
3 THAT WE NEED TO HAVE CONTROLS OF WHAT HAS ALREADY BEEN
4 PRODUCED. AND THAT IS RELEVANT EVEN TO THE DMCA ISSUES AND
5 APART FROM SAMPLING. A GOOD BULK OF THAT PRODUCTION IS THE
6 CONTENT OF DMCA NOTICES. THEY'VE BEEN PRODUCED TO US ON HARD
7 DRIVE WITHOUT ANY CONTROL NUMBERS, WITHOUT ANY REAL
8 DOCUMENTATION AS TO WHAT'S ON THERE.

9 AND THERE ALREADY ARE DISPUTES AS TO WHAT HAS BEEN
10 PRODUCED AND WHAT HASN'T. AND, OF COURSE, IT IS CUSTOMARY IN
11 ANY LITIGATION, PARTICULARLY ONE OF THIS SIZE, FOR THERE TO
12 BE BATES NUMBERS OR CONTROL NUMBERS OF SOME SORT ASSOCIATED
13 WITH THE PRODUCTION. AND THAT'S WHAT WE DON'T HAVE.

14 MR. MAUSNER: MAY I RESPOND -- MAY I RESPOND TO
15 THAT, YOUR HONOR?

16 THE COURT: BRIEFLY.

17 MR. MAUSNER: THERE HAVE BEEN -- THERE HAVE BEEN
18 SEVEN SUMMARY JUDGMENT MOTIONS THAT HAVE BEEN FILED WITHOUT
19 HAVING ANY PROBLEMS AT ALL REGARDING THIS STAMPING EVERY
20 DOCUMENT.

21 THE WAY WE PRODUCED IT TO THEM IS VERY ORGANIZED.
22 IT'S ON DISKS AND A HARD DRIVE. AND FOLDERS THAT HAVE
23 SUBFOLDERS AND SO ON. IT'S A MUCH MORE ORGANIZED WAY THAN
24 JUST STAMPING EVERY DOCUMENT. THESE ARE ORGANIZED.

25 AND, YOU KNOW, SINCE THIS MOTION WAS FILED, GOOGLE

1 HAS FILED THREE SUMMARY JUDGMENT MOTIONS. AMAZON HAS FILED
2 AT LEAST ONE OR TWO SUMMARY JUDGMENT MOTIONS. THIS HASN'T
3 BEEN A -- YOU KNOW, HASN'T PREVENTED THEM FROM FILING THEIR
4 SUMMARY JUDGMENT MOTIONS.

5 WE'VE ALSO FILED OUR SUMMARY JUDGMENT MOTIONS. AND
6 NONE OF THIS HAS PREVENTED ANY PARTY FROM FILING THESE
7 MOTIONS.

8 I'D ALSO NOTE THAT AWHILE BACK -- AND THIS WAS
9 BEFORE FURTHER PRODUCTIONS HAD TAKEN PLACE -- MR. MALUTTA,
10 WHO IS ONE OF AMAZON'S ATTORNEYS, STATED THAT HE GOT
11 ESTIMATES FROM CONTRACTORS AS TO HOW MUCH IT WOULD COST TO
12 BATES STAMP ALL OF THESE DOCUMENTS. AND THE ESTIMATE HE GOT
13 WAS \$1 MILLION.

14 NOW, TO PUT PERFECT 10 TO THE COST OF PAYING \$1
15 MILLION TO STAMP -- NUMBER STAMP ON ALL OF THESE DOCUMENTS
16 WHEN THERE'S BEEN NO PROBLEM AT ALL IN DOING THESE SUMMARY
17 JUDGMENT MOTIONS WITHOUT IT SEEMS TO BE VERY BURDENSOME AND
18 WASTEFUL AT THIS POINT.

19 MR. ZELLER: MIKE ZELLER.

20 IT IS JUST PUZZLING THAT A PLAINTIFF WOULD BE
21 ASSERTING IN ANY CASE IN THIS DAY AND AGE THAT BATES NUMBERS
22 SHOULDN'T BE ATTACHED TO THEIR PRODUCTION. I DON'T -- IT'S
23 JUST -- IT'S ONE OF THOSE SELF-EVIDENT PROPOSITIONS.

24 AND I HAVE NO IDEA WHAT THE BASIS WAS OR THE
25 ACCURACY OF THE REPRESENTATION BEING MADE ABOUT WHAT MR.

1 MALUTTA SAID. CERTAINLY AREN'T HEARING FROM PERFECT 10 AN
2 ACTUAL ESTIMATE OR WHY THESE WEREN'T STAMPED IN THE FIRST
3 PLACE. I'VE NEVER HAD A CASE, AND I WOULD BE HARD-PRESSED
4 FOR ANY ATTORNEY ON THIS PHONE TO IDENTIFY A CASE, LET ALONE
5 ONE OF THIS MAGNITUDE, WHERE A MAJOR PARTY TO IT WASN'T
6 STAMPING ITS PRODUCTION AND PROVIDING AT LEAST SOME
7 IDENTIFYING CONTROL INFORMATION.

8 THE COURT: WELL, IT WOULD HELP ME TO KNOW A
9 REALISTIC COST ESTIMATE.

10 MR. MAUSNER: WELL, YOU KNOW, WE HAVEN'T HAD A COST
11 ESTIMATE DONE. BUT AMAZON HAD IT DONE. AND MR. MALUTTA --
12 THIS IS ON THE RECORD OF THE HEARING IN FRONT OF JUDGE MATZ
13 -- STATED THAT IT'S \$1 MILLION.

14 MR. JANSEN: OKAY. THAT'S -- THIS IS MARK JANSEN.
15 I DON'T BELIEVE MR. MALUTTA'S ON THE PHONE RIGHT
16 NOW, BUT I BELIEVE THAT IS TOTALLY TAKEN OUT OF CONTEXT BY
17 MR. MAUSNER.

18 THE ESTIMATE -- TO THE EXTENT THERE WAS AN
19 ESTIMATE, IT WAS JUST A VERY GENERAL ESTIMATE, WHAT ARE THE
20 COSTS TO ACTUALLY ORGANIZE PERFECT 10'S PRODUCTION -- BECAUSE
21 PERFECT 10, ALTHOUGH MR. MAUSNER CLAIMS OTHERWISE, THE
22 DOCUMENT PRODUCTION THEY'VE MADE IS COMPLETELY UNORGANIZED.
23 THERE IS NO LOGIC TO THE PRODUCTION. IT IS ESSENTIALLY AN
24 ELECTRONIC EQUIVALENT OF THE OLD-FASHIONED MIX-UP OF PAPERS
25 IN TOTALLY UNRELATED WAYS.

1 OUR PARALEGAL -- AND WE HAVE STARTED TO GO THROUGH
2 IT TO PREPARE FOR DEPOSITIONS. IT'S ONE THING TO FILE A
3 SUMMARY JUDGMENT MOTION, YOUR HONOR, BUT IT'S HARD TO --
4 ACTUALLY TO PREPARE FOR DEPOSITION AND TRIAL IN A CASE WHERE
5 DOCUMENTS ARE NOT ORGANIZED, THEY'RE NOT NUMBERED. AND WE
6 EXPECTED -- WE CAN'T EVEN FIND A COPY OF PERFECT 10'S
7 MAGAZINES IN THIS PRODUCTION. YOU'D THINK AT THE VERY LEAST
8 THEY WOULD HAVE PRODUCED THEIR MAGAZINES, WHICH IS THE BASIC
9 PREMISE OF THEIR BUSINESS, AND IN WHICH THEY CLAIM ALL OF
10 THEIR COPYRIGHTED MATERIALS WERE FIRST PUBLISHED TO US IN AN
11 ORGANIZED GROUP. BUT WE HAVEN'T EVEN GOTTEN THEIR MAGAZINES
12 --

13 MR. MAUSNER: THAT'S --

14 MR. JANSEN: -- IN ANY ORGANIZED WAY.

15 MR. MAUSNER: AND MARK --

16 MR. JANSEN: AND WE CANNOT FIND THOSE MAGAZINES,
17 JEFF.

18 MR. MAUSNER: MARK -- MARK, AN ATTORNEY FROM YOUR
19 OFFICE AND A PARALEGAL FROM YOUR OFFICE WENT TO OUR OFFICE
20 LAST WEEK. AND WE GAVE THEM EVERYTHING IN A CONFERENCE ROOM.
21 OKAY. AGAIN. WE GAVE THEM ALL OF THE COPYRIGHT
22 CERTIFICATES. WE GAVE THEM ALL OF THE DEPOSIT MATERIALS,
23 WHICH ARE THE DISKS AND THE MAGAZINES. AND THEY WERE SITTING
24 RIGHT THERE IN THE CONFERENCE ROOM. AND THEY'RE STILL
25 AVAILABLE IN MY OFFICE. GOOGLE SEVERAL MONTHS AGO SPENT OVER

1 A WEEK WITH A COPY SERVICE. YOU KNOW, ONE COPY SERVICE FOR
2 THE HARDCOPIES AND ANOTHER ONE FOR THE DISKS. AND THEY
3 COPIED EVERYTHING.

4 AND I'VE TOLD YOU SEVERAL TIMES YOU HAVE A CHOICE.
5 YOU CAN EITHER GET AN EXACT COPY WHAT GOOGLE COPIED OR YOU
6 CAN REPRODUCE EXACTLY -- DO THE COPYING YOURSELF. YOU CAN
7 SPEND A WEEK DOING IT. BUT WE'VE GIVEN YOU ALL OF THAT STUFF
8 IN THE PAST. IT'S ALL ON HARD DRIVES.

9 MR. JANSEN: OKAY. NOW, JUDGE HILLMAN, THIS IS
10 MARK JANSEN.

11 MR. MAUSNER -- GOOGLE BROUGHT THIS MOTION. I'M
12 SIMPLY EXPLAINING WE HAVE HAD A REAL PROBLEM IN THE WAY
13 DOCUMENTS ARE PRODUCED. THEY ARE NOT NUMBERED. AND FOR THE
14 VERY FIRST TIME ON THIS PHONE CALL MR. MAUSNER SEEMS TO BE
15 INDICATING THAT THEIR FIRST -- PERFECT 10'S FIRST DOCUMENT
16 PRODUCTION IN THIS CASE IS MAKING AVAILABLE THE DOCUMENTS IN
17 HIS OFFICE LAST TUESDAY.

18 MR. MAUSNER: THAT'S NOT TRUE --

19 MR. JANSEN: I THINK --

20 MR. MAUSNER: THEY HAD THAT -- YOU'VE HAD THAT
21 STUFF FOR --

22 MR. JANSEN: MR. MAUSNER, MR. MAUSNER, PLEASE DON'T
23 INTERRUPT ME.

24 YOUR HONOR, WHAT I WAS REFERRING TO WHEN I WAS
25 MAKING THE COMMENT WAS THAT WE HAVE GOTTEN OVER THE YEARS A

1 LARGE ELECTRONIC PRODUCTION FOR, YOU KNOW, DISKS OF WHAT --
2 AS MR. MAUSNER SAYS, FOLDERS WITHIN SUB-FOLDERS WITHIN
3 SUB-FOLDERS OF ALLEGEDLY, QUOTE, ORGANIZED MATERIAL THAT WE
4 HAVE UNDERSTOOD TO BE THEIR DOCUMENT PRODUCTION.

5 BUT AS I SAID, YOU WOULD THINK AT THE VERY LEAST IF
6 WE WERE GETTING AN ORGANIZED PRODUCTION AS MR. MAUSNER CLAIMS
7 WE'RE GETTING, WE WOULD HAVE AT LEAST RECEIVED FULL COPIES OF
8 EACH OF THE PERFECT 10 MAGAZINES AS PART OF THEIR INITIAL
9 PRODUCTION. I ASSUME IT WOULD BE PART OF THEIR INITIAL
10 DISCLOSURE THAT JUST THE COPYRIGHTED -- THAT THE MAIN, YOU
11 KNOW THE MAIN IMAGES ON WHICH THEY'RE BASING THEIR COMPLAINT.
12 BUT WE'VE NEVER, AS FAR AS I'M AWARE, EVER RECEIVED AN
13 ORGANIZED PRODUCTION OF ALL THE -- ALL OF THOSE MAGAZINES IN
14 ONE PLACE. WE CAN'T EVEN LOCATE THEIR MAGAZINES IN OUR
15 DOCUMENT PRODUCTION TO DATE.

16 THE DOCUMENT PRODUCTION THAT WAS ALLEGEDLY MADE
17 LAST WEEK WAS, AGAIN, TOTALLY UNORGANIZED. BOXES OF ALLEGED
18 COPYRIGHT DEPOSIT MATERIAL THAT HAS NO RELATIONSHIP
19 WHATSOEVER TO THE REGISTRATION APPLICATIONS. AND THAT'S
20 ANOTHER ISSUE WHICH I THINK WE'LL HAVE TO ADDRESS AT A FUTURE
21 HEARING. BUT THEY HAVE ABSOLUTELY NO CORRELATION BETWEEN
22 THEIR COPYRIGHT AND REGISTRATION APPLICATION AND THE
23 CORRESPONDING COPYRIGHT DEPOSIT MATERIAL. AND THAT'S GOING
24 TO BE A FUNDAMENTAL PROOF ISSUE AT TRIAL. AND IT MAY BECOME
25 A DISCOVERY ISSUE WE HAVE TO ADDRESS LATER, NOT ON THIS PHONE

1 CALL, I HOPE, AND NOT ON THE PENDING MOTION.

2 THE COURT: ALL RIGHT. HERE IS THE QUESTION I HAVE
3 FOR ALL OF YOU. AND I DON'T WANT AN ANSWER BECAUSE -- TODAY
4 -- BECAUSE YOU'RE NOT GOING TO BE ABLE TO GIVE IT TO ME.
5 BUT -- BECAUSE IS THIS NOT THE CASE THAT CALLS OUT FOR SOME
6 SORT OF CREATIVE DOCUMENT IDENTIFICATION IN A COST-EFFECTIVE
7 WAY SO THAT EVERYONE KNOWS WHAT HAS BEEN PRODUCED AND CAN
8 REFER TO THE SAME DOCUMENT FOR WHATEVER PURPOSE IT MAY BE
9 USED, WHETHER IT BE FOR DEPOSITION, SUMMARY JUDGMENT, OR
10 TRIAL WITHOUT GOING TO A MILLION-DOLLAR EXPENSE, WHICH I
11 CERTAINLY AM NOT GOING TO ORDER THAT.

12 ON THE OTHER HAND, I HEAR LOUD AND CLEAR WHAT THE
13 DEFENDANTS' PROBLEMS ARE.

14 AND THEY'RE DEALING WITH A MESS, MR. MAUSNER, AN
15 ABSOLUTE INDECIPHERABLE MESS THAT DR. ZADA AND PROBABLY DR.
16 ZADA ALONE FULLY UNDERSTANDS WHAT IT COMPRISES. SO THAT --
17 YOU KNOW, THAT'S REALLY WHAT WE'LL NEED TO DISCUSS NEXT WEEK.

18 AND YOU TALK ABOUT A MEET AND CONFER. THAT'S
19 WHAT I NEED A MEET AND CONFER ON AS WELL AS SAMPLING IS HOW
20 TO GET CONTROL OF THIS CASE AND THESE DOCUMENTS SO THAT
21 EVERYTHING IS FIXED IN TIME AND EVERYTHING IS SEARCHABLE AND
22 --

23 MR. MAUSNER: IT IS ACTUALLY SEARCHABLE NOW BECAUSE
24 ADOBE FORMAT IS THE BEST WAY TO SEARCH SOMETHING. TIF
25 DOCUMENTS ARE JUST, YOU KNOW, LOOSE DOCUMENTS THAT ARE

1 NUMBERED IN SOME RANDOM WAY. WE HAVE THEM ARRANGED
2 LOGICALLY. THEY'RE IN, YOU KNOW, FILES AND SUB-FILES AND
3 SUB-FILES THAT, YOU KNOW, ARRANGE THEM TO EXACTLY POINTING TO
4 WHAT THEY ARE. AND WE'LL SHOW YOU ON THE 22ND.

5 THE COURT: BUT HAVE YOU SHOWN THEM? HAS THERE
6 BEEN TESTIMONY OR DECLARATION OR SOMETHING THAT SAYS HOW
7 THEY'RE ORGANIZED.

8 MR. MAUSNER: YES, THERE HAVE BEEN. NOW, THERE HAS
9 BEEN IN CONNECTION WITH THIS MOTION AND OTHER THINGS THAT --
10 OTHER THAN WHAT'S BEEN FILED IN COURT. BUT, SURE, WE'LL DO
11 IT ON THE 22ND.

12 MR. ZELLER: THIS IS MIKE ZELLER AGAIN. I'M NOT
13 REALLY SURE THE BASIS OF WHY MR. MAUSNER IS SAYING SOME OF
14 THESE POINTS ABOUT HIS PRODUCTION. FOR A FACT, A NUMBER OF
15 THESE FILES ARE NOT SEARCHABLE. AND THEY CERTAINLY ARE
16 DISORGANIZED. AND I CERTAINLY THINK THAT THE BEST WAY OF
17 DOING THIS RATHER THAN TALKING IN GENERALITIES AND MAKING
18 REPRESENTATIONS ON BOTH SIDES IS WE WILL BRING SOME EXAMPLES
19 FOR YOUR HONOR TO SEE AT THE HEARING.

20 MR. MAUSNER: WE WILL DO SO, ALSO. THE ONLY ONES
21 THAT AREN'T SEARCHABLE ARE THE ONES THAT WERE NOT SEARCHABLE
22 IN THEIR NATIVE FORMAT. IF THEY WERE SEARCHABLE IN THEIR
23 NATIVE FORMAT, WE'VE KEPT THEM THAT WAY.

24 THE COURT: HAVE YOU CONSIDERED JOINTLY RETAINING
25 AN I.T. PERSON AS A NEUTRAL TO SOLVE THIS IMPASSE?

1 MR. MAUSNER: WE HAVE -- NO, WE HAVE NOT DONE THAT,
2 YOUR HONOR.

3 THE COURT: WOULD THAT BE SOMETHING WORTH
4 DISCUSSING?

5 MR. MAUSNER: POSSIBLY, YES.

6 THE COURT: MR. ZELLER, WHAT DO YOU THINK?

7 MR. ZELLER: I THINK THAT'S A -- I THINK THAT'S A
8 VERY PROMISING IDEA, YOUR HONOR. I MEAN, I THINK THAT --
9 THEY'RE CERTAINLY ARE, AND I'VE USED IT IN SOME OTHER CASES,
10 ALTHOUGH, NOT QUITE LIKE THIS IN THIS PARTICULAR
11 CIRCUMSTANCE. BUT THERE CERTAINLY ARE SERVICES THAT OPERATE
12 DATA ROOMS.

13 YOU KNOW, CERTAINLY PART OF IT WILL DEPEND ON THIS
14 KIND OF FUNDAMENTAL ISSUE ABOUT ORGANIZATION AND HOW IT'S
15 PROVIDED TO US. THAT MAY AT LEAST ASSIST IN KNOWING WHAT THE
16 UNIVERSE OF MATERIALS ARE SO WE DON'T HAVE DISPUTES ABOUT
17 WHAT WE WERE GIVEN AND WHEN WE WERE GIVEN IT WITH RESPECT TO
18 ELECTRONIC FILES. AND, SO, THAT MAY HELP ON -- I THINK ON
19 SOME POTENTIAL FRONT.

20 THE COURT: YOU KNOW I'M NOT WORRIED ABOUT IMPOSING
21 A LITIGATION EXPENSE ON EVERYONE INCLUDING PERFECT 10,
22 WHATEVER ITS FINANCIAL CONDITION MAY BE. BUT I WANT THERE TO
23 BE, YOU KNOW, A REALISTIC RELATIONSHIP TO SOME GOOD COMING
24 OUT OF THIS, SOMETHING WORTHWHILE COMING OUT OF IT. AND
25 BATES STAMPING MAY BE THE LEAST EFFECTIVE PRODUCTIVE AND

1 EXPENSIVE THING THAT I COULD DO, SO.

2 MR. ZELLER: I GUESS I GO BACK TO THAT ISSUE BUT --
3 IN A SECOND. BUT THE ISSUE OF A DATA ROOM, FOR EXAMPLE,
4 WHERE PEOPLE PROVIDE, YOU KNOW, INFORMATION OR DATA, WHATEVER
5 THE CASE MAY BE, TO AN I.T. NEUTRAL, THOSE OPERATIONS TEND TO
6 BE RELATIVELY INEXPENSIVE. THEY'RE NOT, YOU KNOW, FREE, OF
7 COURSE. BUT THEY ARE NOT A CONSIDERABLE EXPENSE.

8 BUT ON THE OTHER HAND -- I MEAN, I KNOW FOR A FACT
9 BECAUSE CERTAINLY I HAVE LOTS OF CASES, INCLUDING THIS ONE,
10 WHERE WE PRODUCED DOCUMENTS IN ELECTRONIC FORM. NORMALLY YOU
11 CONVERT THEM TO TIF FILES. YOU ASSOCIATE A BATES NUMBER WITH
12 IT. IT'S EMBEDDED IN THE DOCUMENT. IT'S JUST -- IT IS NOT
13 ROCKET SCIENCE. AND IT'S NOT THAT DIFFICULT. AND IT'S NOT
14 THAT EXPENSIVE.

15 PERHAPS, PERFECT 10 HAS MADE IT MORE DIFFICULT
16 BECAUSE OF THE FACT THAT IT PRODUCED THESE PRIOR FILES IN A
17 NON-SEARCHABLE FORMAT WITHOUT CONTROL NUMBERS AND IN A HIGHLY
18 DISORGANIZED, FRANKLY, INCOMPREHENSIBLE MANNER.

19 THE COURT: LET ME ASK --

20 MR. ZELLER: SO, THERE'S --

21 THE COURT: LET ME ASK YOU THIS.

22 MR. ZELLER: UH-HUM.

23 THE COURT: WELL, FINISH YOUR THOUGHT. I'M SORRY.

24 MR. ZELLER: SURE.

25 THE COURT: FINISH YOUR THOUGHT. I INTERRUPTED

1 YOU.

2 MR. ZELLER: SURE. NO, NO. THAT'S -- I THINK THAT
3 WAS --

4 THE COURT: ALL RIGHT.

5 WHAT I WOULD LIKE TO KNOW IS CAN WHAT YOU JUST
6 DESCRIBED, WHICH DOES INCLUDE SORT OF DIGITAL BATES STAMPING
7 --

8 MR. ZELLER: UH-HUM.

9 THE COURT: -- YOU KNOW, CAN I GET ONE OR TWO
10 ESTIMATES OF WHAT THAT WOULD COST WITHIN A WEEK -- YOU KNOW,
11 BY NEXT WEEK.

12 MR. ZELLER: YES. I'LL SEE WHAT WE CAN DO ON OUR
13 FRONT. CERTAINLY, FOR MANY CASES JUST AS A MATTER OF COURSE
14 WE TAKE THE DOCUMENTS, YOU KNOW, WHATEVER FORMAT THEY'RE IN,
15 THEY GET CONVERTED TO TIF. OUTSIDE LITIGATION SUPPORT
16 SERVICES DO THIS ALL THE TIME. ALSO, A LOT OF FIRMS HAVE THE
17 CAPABILITY OF DOING IT IN-HOUSE. AND THEN THAT TIF FORMAT,
18 IT'S EASILY SEARCHABLE. I MEAN IT'S OCR. SO, YOU CAN
19 ACTUALLY SEARCH THE WHOLE THING, WHICH IS QUITE DIFFERENT
20 FROM WHAT WE CURRENTLY HAVE IN THIS PRODUCTION.

21 BUT WE CAN CERTAINLY -- WE CAN CERTAINLY GET YOU
22 ESTIMATES. I KNOW THAT WE DO THEM AS A MATTER OF COURSE IN
23 MANY OTHER CASES.

24 THE COURT: WELL, THEY -- I MEAN THIS IS, YOU KNOW,
25 I'M NOT TYING YOU DOWN TO WHAT -- I'M NOT HOLDING YOU TO ANY

1 NUMBER YOU GIVE ME. BUT BASED ON YOUR PRIOR EXPERIENCE AND
2 YOUR GENERAL KNOWLEDGE OF WHAT --

3 (TAPE CHANGED TO SIDE 2.)

4 THE COURT: -- BASED ON WHAT YOU'VE RECEIVED IN
5 THIS CASE FROM PERFECT 10, I MEAN CAN YOU GIVE ME A WILD
6 ESTIMATE.

7 MR. ZELLER: UNFORTUNATELY, I THINK IT WOULD BE
8 JUST A SHEER GUESS BECAUSE THE REALITY IS IS THAT I KNOW THAT
9 THERE ARE DRIVES THAT HAVE BEEN PRODUCED BY PERFECT 10 THAT I
10 HAVE NEVER LOOKED AT FOR THE SIMPLE REASON THAT OTHER PEOPLE
11 DESCRIBED THEM AS JUST SUCH A MESS AND INCOMPREHENSIBLE THAT
12 IT WOULDN'T BE WORTH MY TIME. SO, FRANKLY, I WOULD JUST BE
13 GIVING SUCH A WILD GUESS. BUT I CAN GIVE THE COURT
14 INFORMATION --

15 THE COURT: BUT I MEAN UNDER --

16 MR. ZELLER: -- IN SHORT ORDER.

17 THE COURT: UNDER A HUNDRED THOUSAND.

18 MR. ZELLER: I -- IT'S A GUESS. I WOULD -- I WOULD
19 IMAGINE THAT IS TRUE. YOU KNOW, CERTAINLY THE KINDS OF RATES
20 THAT I AM CHARGED FOR DOING PRODUCTIONS, THAT'S WHAT I WOULD
21 -- I WOULD EXPECT IT WOULD BE BELOW THAT NUMBER. BUT, YOU
22 KNOW, A LARGE PART OF IT DEPENDS TOO ON VARIABLES SUCH AS,
23 YOU KNOW, WHAT'S THE DIFFICULTY OF THE CONVERSION FROM THE
24 NATIVE FORMAT TO A TIF FILE. OBVIOUSLY, SOME FILES -- DATA
25 FILE FORMATS ARE MORE EXOTIC THAN OTHERS AND REQUIRE, YOU

1 KNOW, MORE EFFORT AND TIME. MUCH OF IT IS JUST REALLY TIME
2 BASED.

3 BUT LET ME PUT IT THIS WAY. I MEAN, I DO LARGE
4 PRODUCTIONS WHERE IN THE COURSE OF A DAY OR TWO I TURN OVER
5 ALL MANNER OF ELECTRONIC FILES TO THE OUTSIDE LITIGATION
6 FIRM. AND THEY SEND THE THING BACK, YOU KNOW, IN A FULLY
7 SEARCHABLE TIF FORMAT DOCUMENT WITH BATES NUMBERS IN A DAY OR
8 TWO. SO, IT'S JUST --

9 THE COURT: THAT --

10 MR. ZELLER: IT'S NOT THAT --

11 THE COURT: -- CAN'T BE A HUNDRED THOUSAND DOLLARS.

12 MR. ZELLER: RIGHT. EXACTLY. I MEAN THAT'S JUST
13 NOT ANYWHERE NEAR THE RATES OF WHAT I'M NORMALLY SEEING.

14 IT ALSO -- PART OF MY HESITATION IS BECAUSE I DON'T
15 WANT TO BE WRONG ON THESE NUMBERS. BUT, ALSO, OF COURSE,
16 USUALLY WITH THESE LITIGATION FIRMS, THE OUTSIDE KIND OF
17 SUPPORT FIRMS, THEY'RE DOING A LOT OF OTHER THINGS FOR US,
18 TOO. SO, I DO SEE BILLS.

19 THE COURT: UH-HUM.

20 MR. ZELLER: BUT, YOU KNOW, EVERYTHING THAT GOES
21 UNDERNEATH IT, YOU KNOW, WOULD BE A LITTLE BIT -- AGAIN, IT
22 WOULD JUST BE A GUESS. AND I CAN GET -- I CAN GET YOU HARD
23 INFORMATION ON THIS --

24 THE COURT: THAT --

25 MR. ZELLER: -- YOU KNOW, IN SHORT ORDER.

1 THE COURT: THAT WOULD BE GREAT.

2 MR. MAUSNER: JUST --

3 THE COURT: YES.

4 MR. MAUSNER: -- TO COMPLETE THE RECORD, YOUR HONOR.

5 THIS IS FROM THE AUGUST 18TH, 2008 HEARING BEFORE
6 JUDGE MATZ. MR. MALUTTA, COUNSEL FOR AMAZON, STATED, QUOTE,
7 "WE HAVE HAD QUOTES FROM VENDORS. AND IT'S NEAR
8 A MILLION DOLLARS TO CONVERT THEIR NATIVE FILES
9 INTO SOMETHING THAT'S USABLE IN A STANDARD
10 LITIGATION DATABASE, CLOSE QUOTE.

11 THE COURT: OKAY.

12 MR. MAUSNER: SO.

13 THE COURT: ALL RIGHT. BUSINESS IS TOUGH. MAYBE
14 THEY'LL MAKE A GOOD OFFER NOW.

15 ALL RIGHT. SO, I THINK I KNOW WHERE WE ALL ARE SO
16 THAT -- THIS ISSUE, THIS BATES STAMP ISSUE IS ISSUE IX, ROMAN
17 NUMERAL IX, I GUESS, IN THE DAMAGES MOTION. SO, WE HAVE
18 ISSUE I, WHICH IS DAMAGES CLAIMS AND FINANCIAL CONDITION. WE
19 HAVE ISSUE IX. AND I'LL HEAR WHAT ELSE, IF ANY, THAT GOOGLE
20 AND AMAZON WANT A RULING ON NEXT WEEK.

21 YOU'RE GOING TO DO YOUR BEST COLLECTIVELY, THAT IS,
22 GOOGLE AND PERFECT 10, ON THE RFAS. INTERROGATORY 1 AND 3
23 MOTION WILL BE NOT HEARD NEXT WEEK PENDING FURTHER
24 DISCUSSIONS.

25 AND, BY THE WAY, HAS GOOGLE HAD -- MR. ZELLER, HAVE

1 YOU HAD A CHANCE TO LOOK AT THE WAY IT WAS DONE IN MICROSOFT,
2 THE SAMPLE PROTOCOL, WHICH MAY BE OF SOME USE IN THIS CASE.

3 MR. ZELLER: THE SHORT ANSWER IS TO A DEGREE WE
4 HAVE. IF I UNDERSTAND IT, THERE WAS AN ISSUE -- AND I DON'T
5 BELIEVE IT HAS BEEN RESOLVED YET. OTHER PEOPLE ON THE PHONE
6 CAN CORRECT ME IF I AM WRONG ON THIS. BUT I BELIEVE THAT
7 THERE WAS AN ISSUE OF AT LEAST ONE OF THE TRANSCRIPTS WHERE
8 THIS WAS DISCUSSED. IT'S NOT AVAILABLE TO US. I BELIEVE
9 IT'S BEEN SEALED.

10 MR. MAUSNER: THAT'S NOT CORRECT. IT WAS UNSEALED.

11 MR. ZELLER: OKAY. I WASN'T AWARE OF THAT
12 HAPPENING, BUT --

13 THE COURT: I THINK IT MAY HAVE ALSO -- IT WAS AN
14 ORDER THAT JUDGE MATZ ISSUED, WASN'T IT?

15 MR. ZELLER: I'M SORRY, AN ORDER?

16 THE COURT: MR. MAUSNER.

17 MR. MAUSNER: AN ORDER UNSEALING IT. THAT'S
18 CORRECT.

19 THE COURT: YES. I MEAN, IT WAS A -- IT WAS A
20 COURT ORDER THAT ORDERED THE SAMPLING PROCEDURES.

21 MR. MAUSNER: YES.

22 THE COURT: YES.

23 MR. MAUSNER: THERE WAS A COURT ORDER --

24 THE COURT: YES.

25 MR. MAUSNER: -- FOR THE SAMPLING PROCEDURES --

1 THE COURT: AND IT WAS UNSEALED.

2 MR. MAUSNER: -- THAT'S CORRECT. BUT THEN THE
3 SAMPLING DOCUMENTS WERE ACTUALLY FILED. THE TRANSCRIPT WAS
4 JUST A POST-SETTLEMENT DISCUSSION BETWEEN JUDGE MATZ, ANDREW
5 BRIDGES, AND ME REGARDING WHETHER, YOU KNOW, SAMPLING WAS
6 USEFUL. IT WAS ORIGINALLY SEALED. AND THEN JUDGE MATZ ASKED
7 US IF WE HAD ANY OBJECTION TO IT BEING UNSEALED. WE DIDN'T.
8 AND YOU ORDERED IT UNSEALED.

9 THE COURT: OKAY.

10 MR. ZELLER: BUT I THINK THERE ARE A COUPLE OF
11 ISSUES THAT ARE BEING CONFLATED. YOU KNOW, ONE DEALS WITH
12 THAT PARTICULAR TRANSCRIPT, WHICH I NOW KNOW IS NOT SEALED,
13 SO -- OR, AT LEAST, NOW IT'S UNSEALED. SO, WE WILL GO AND
14 LOOK AT THAT. BUT THAT THE BIGGER ISSUE DEALS WITH -- I
15 MEAN, CERTAINLY WE HAVE BEEN INVOLVED IN PRIOR DISCUSSIONS
16 WITH JUDGE MATZ REGARDING THIS SAMPLING PROCEDURE IN GENERAL,
17 YOU KNOW, AS I MENTIONED BEFORE IN THE LAST CALL THAT IS, YOU
18 KNOW, NOT AN ISSUE THAT WE ARE CONSENTING TO. OBVIOUSLY,
19 WE'LL DO AS WE ARE ORDERED. AND WE'LL, YOU KNOW, BASED ON
20 YOUR SUGGESTIONS HERE SEE IF THERE IS SOME WAY OF DISCUSSING
21 IT WITH PERFECT 10.

22 BUT I STRONGLY SUSPECT BASED ON THE PRIOR
23 DISCUSSIONS THAT WE DID HAVE ON SAMPLING AS WELL AS SOME OF
24 THE INDICATIONS WHERE I -- AT LEAST MY IMPRESSION WAS, AND,
25 PERHAPS, I'M WRONG, THAT THE PARTIES DIDN'T BELIEVE THAT THE

1 SAMPLING WAS VERY CONDUCIVE ULTIMATELY TO RESOLUTION. AND IT
2 WOULD --

3 THE COURT: I BELIEVE IT WAS. AND I BELIEVE IT WAS
4 FOR THEM.

5 MR. JANSEN: YOUR HONOR, THIS IS MARK --

6 THE COURT: YES.

7 MR. JANSEN: THIS IS MARK JANSEN. I READ THE
8 TRANSCRIPT THAT WAS UNSEALED. THAT WAS A DISCUSSION THAT WAS
9 ORDERED TO OCCUR BY JUDGE MATZ BETWEEN THE MICROSOFT COUNSEL
10 AND PERFECT 10 COUNSEL. AND THE DISCUSSION AS I RECALL
11 READING IT WAS THAT REALLY THE -- THE WAY THIS WORKED OUT WAS
12 FAIRLY UNWIELDY AND NOT HELPFUL TO MICROSOFT IN ACTUALLY
13 UNDERSTANDING THE CLAIMS AGAINST IT.

14 THE COURT: WELL, WE'VE ALL READ THE SAME
15 TRANSCRIPT. I THINK IT WAS SOMEWHAT HELPFUL. AND I THINK IT
16 WOULD POTENTIALLY BE EVEN MORE HELPFUL IN THE GOOGLE CASE
17 THAN IT WAS IN MICROSOFT. I'M NOT SURE ABOUT AMAZON. BUT
18 THAT'S THE DIRECTION I'M GOING. AND THAT'S ALL I HAVE TO SAY
19 ABOUT THAT RIGHT NOW.

20 MR. JANSEN: AND WE UNDERSTAND, YOUR HONOR. BUT
21 YOU'RE ASKING -- YOU BELIEVE THE PARTIES SHOULD MEET AND
22 CONFER --

23 THE COURT: WAIT. SAY IT AGAIN. YOU'RE KIND OF
24 PENNING IN AND OUT. WHAT DID YOU --

25 MR. JANSEN: I'M SORRY. AND WE UNDERSTAND THAT

1 YOU'RE ASKING US TO MEET AND CONFER ON THAT ISSUE.

2 THE COURT: YES.

3 MR. ZELLER: AND WE WILL CERTAINLY DO THAT, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT. NOW, GIVEN THE LIMITED
6 NATURE OF NEXT WEEK'S HEARING WHY DON'T WE DO IT
7 TELEPHONICALLY. AND I'LL SAVE EVERYONE A LOT OF MONEY THAT
8 CAN GO TOWARDS BATES STAMPING OR SOMETHING. ALL RIGHT.

9 MR. MAUSNER: YES. SURE.

10 THE COURT: OKAY.

11 MR. ZELLER: THAT SOUNDS FINE, YOUR HONOR.

12 THE COURT: ALL RIGHT. I'LL SET IT UP FOR A
13 TELEPHONIC TEN O'CLOCK NEXT TUESDAY.

14 MR. MAUSNER: OH, IT'S GOING TO BE TEN O'CLOCK.

15 THE COURT: THAT'S WHAT I HAD, YES.

16 MR. MAUSNER: OKAY.

17 THE COURT: I CAN ADJUST THAT IF EVERYONE WANTS TO.
18 I'D LIKE TO GET IT DONE THEN.

19 MR. MAUSNER: THAT'S FINE WITH PERFECT 10.

20 THE COURT: OKAY. OKAY.

21 ALL RIGHT. ANYTHING ELSE WE CAN TAKE CARE OF NOW?
22 NO.

23 MR. ZELLER: THAT COVERS IT FROM OUR --

24 THE COURT: GOING, GOING, GONE. ALL RIGHT.
25 THANKS.

1 MR. ZELLER: THANK YOU VERY MUCH.

2 THE COURT: BYE-BYE.

3 MR. MAUSNER: THANK YOU, YOUR HONOR. BYE.

4 (PROCEEDINGS ADJOURNED.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

C E R T I F I C A T E

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

DOROTHY BABYKIN

12/1/09

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN