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11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

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

15 Plaintiff,

16 vs.

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

18 Defendants.

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

DISCOVERY MATTER

**GOOGLE INC.'S OPPOSITION TO
 PERFECT 10, INC.'S REQUEST
 FOR A TELEPHONIC
 CONFERENCE WITH
 MAGISTRATE JUDGE HILLMAN**

Hon. Stephen J. Hillman

Date: None set
 Time: None set
 Crtrm.: 550

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

19 AND COUNTERCLAIM

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

22 Plaintiff,

23 vs.

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

26 Defendants.

1 At the January 15, 2010 hearing on Perfect 10's ("P10") motion for evidentiary
2 sanctions, this Court reprimanded Perfect 10 for its "appalling" conduct in filing its
3 motion without ever having properly met and conferred with Google regarding the
4 underlying discovery issues.¹ P10 nevertheless again rushes to this Court and
5 demands a telephonic hearing regarding issues P10 has not yet even given Google a
6 chance to respond to. P10's demand should be rejected.

7 Just two business days ago, P10 sent Google an email listing several categories
8 of documents about which it wished to meet and confer. The next business day—
9 yesterday—Google sent P10 an email confirming that it would consider, investigate
10 and respond to each of P10's demands in writing. See Declaration of Jeffrey
11 Mausner (Dkt. No. 750) ("Mausner Decl.") at Exh. 1, pp. 8-10.² Today, rather than
12 give Google the opportunity to provide that response, P10 burdens this Court with a
13 woefully premature "Request" for a telephonic conference to discuss P10's demands.³
14 (Dkt. No. 749). P10's Request lacks merit. Motion practice—let alone a hearing—
15 would be pointless at this stage, since Google has not yet even had the opportunity to
16 investigate and respond to P10's January 22 meet and confer email. Nor have the

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18 ¹ At the January 15, 2010 hearing, the Court commented that it was inclined to
19 deny P10's Sanctions Motion, observing among other things that the Court found it
20 "inconceivable" that Google was on any kind of notice that it was obliged to produce
21 Blogger-related discovery prior to P10's amendment to add Blogger to the case, and
22 that the Court was not left with the impression that any discovery order had been
23 violated.

24 ² Since P10 failed to consecutively number its Declaration and Exhibits as
25 required by Local Rule 11-5.2, Google refers to the page numbers of the .pdf file
26 itself.

27 ³ P10 presents a lengthy paraphrase from an informal transcription of the audio
28 tape from the January 15, 2010 hearing. Even assuming its accuracy, this quotation
hardly supports P10's Request—obviously, the Court was not contemplating a
telephonic conference before the parties completed meet and confer. Moreover, P10
omits the portions of the transcript wherein the Court reprimanded P10 for failing to
properly meet and confer before bringing a motion (as P10 again does here).

1 parties had the opportunity to identify which issues can be resolved without Court
2 intervention, and which issues will require the Court’s consideration.

3 This is only the most recent example of P10’s repeated failure to comply with
4 the Court’s meet and confer requirements. See Google’s Response to P10’s
5 Evidentiary Objections to the Reply Declaration of Rachel Herrick Kassabian (Dkt.
6 No. 728) at 3-5 (recounting five separate examples of P10’s failure to participate in
7 the meet-and-confer process in good faith).⁴ P10 should not be permitted, let alone
8 rewarded, for burdening the Court with unripe discovery issues, and its “Request”
9 should be denied.

10 Moreover, P10’s insistence that there is some urgency here because the
11 documents it claims to be seeking are “directly relevant to pending summary
12 judgment motions before Judge Matz” is incorrect. See Request at 1. Google’s
13 motions for summary judgment regarding its entitlement to DMCA safe harbor
14 (“DMCA Motions”) have been fully briefed and under submission for months now.
15 See Order dated August 13, 2009 (Dkt. No. 500). Judge Matz has not requested
16 further briefing, nor has P10 asked Judge Matz for leave to file a motion to reopen
17 briefing on Google’s DMCA Motions. And further, P10 has made repeated
18 representations—in words and in conduct—both to this Court and to Judge Matz that
19 no further discovery was needed for Judge Matz to rule on DMCA issues.⁵ P10 has
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21 ⁴ When Google has requested that P10 meet and confer regarding issues *Google*
22 wishes to pursue, P10 has ignored Google’s efforts for weeks or months at a time.
23 See Mausner Decl. at Exh. 1, p. 7 (1/22/10 email from R. Kassabian to J. Mausner
24 listing various of Google’s meet and confer correspondence to which P10 has not
25 responded for as many as three months, and again requesting a response). P10’s
26 dilatory conduct underscores the unreasonableness of P10’s election to rush into court
27 after giving Google just **24 hours** to respond to P10’s current discovery demand.

28 ⁵ For example, P10 opposed Google’s DMCA Motions on their merits (without
ever suggesting that discovery was incomplete, let alone filing a Rule 56(f) motion)
(Dkt. Nos. 473-484), and even filed its own summary judgment motion on the
(footnote continued)

1 no basis for demanding an “emergency” hearing on these unripe—and at this point
2 irrelevant—discovery issues.

3 Perfect 10’s Request for a telephonic conference should be denied.

4 DATED: January 26, 2010

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DMCA issue (Dkt. No. 436). See Access Telecom, Inc. v. MCI Telecommunications
23 Corp., 197 F.3d 694, 719 (5th Cir. 1999) (plaintiff “waived the issue of inadequate
discovery” by failing to file a Rule 56(f) motion); Sullivan v. City of Springfield, 561
24 F.3d 7, 16 (1st Cir. 2009) (plaintiffs could not argue that summary judgment was
premature when “they affirmatively requested that the court resolve the case on the
25 existing evidence”). P10 also has expressly *disclaimed* a Rule 56(f) continuance in
its Reply brief filed in support of its Sanctions Motion. See Sanctions Reply (Dkt.
26 No. 683, filed under seal) at 24 (“Perfect 10 is not seeking a continuance under Rule
27 56(f)”).
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