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 3 Warner Center Towers
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 5 Woodland Hills, California 91367-3640
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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; and
 17 DOES 1 through 100, inclusive,

18 Defendant.

Case No. CV 04-9484 AHM (SHx)

Before Judge A. Howard Matz

**DECLARATION OF JEFFREY N.
 MAUSNER IN OPPOSITION TO
 GOOGLE'S *EX PARTE*
 APPLICATION TO STRIKE
 PERFECT 10'S MOTION FOR
 PRELIMINARY INJUNCTION**

Date: Opposition to Ex Parte
 Time: Opposition to Ex Parte
 Place: Courtroom 14, Courtroom of the
 Honorable A. Howard Matz

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

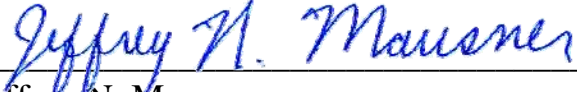
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I, Jeffrey N. Mausner, declare as follows:

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.

2. Attached hereto as Exhibit 1 are true and correct copies of emails between me and Google’s attorneys.

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 this 9th day of March, 2010 in Los Angeles County, California.



Jeffrey N. Mausner

Exhibit 1

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Sunday, January 17, 2010 8:05 AM
To: rachelkassabian@quinnemanuel.com; bradlove@quinnemanuel.com;
thomasnolan@quinnemanuel.com
Subject: Production of the documents that have not been produced by Google

Rachel, please let me know what times you are available in the coming week to discuss production of the documents that have not been produced by Google, as discussed in the hearing on Friday. Jeff.

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Facsimile: (818)716-2773
e-mail: jeff@mausnerlaw.com

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Tuesday, January 19, 2010 3:46 PM
To: rachelkassabian@quinnemanuel.com; bradlove@quinnemanuel.com;
thomasnolan@quinnemanuel.com
Subject: RE: Production of the documents that have not been produced by Google

Rachel, Brad, or Tom: Please respond to the email below. Thanks, Jeff.

From: Jeffrey Mausner [mailto:jeff@mausnerlaw.com]
Sent: Sunday, January 17, 2010 8:05 AM
To: Rachel Herrick Kassabian rachelkassabian@quinnemanuel.com; Brad R. Love bradlove@quinnemanuel.com ; Thomas Nolan thomasnolan@quinnemanuel.com
Subject: Production of the documents that have not been produced by Google

Rachel, please let me know what times you are available in the coming week to discuss production of the documents that have not been produced by Google, as discussed in the hearing on Friday. Jeff.

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e-mail: jeff@mausnerlaw.com

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Wednesday, January 20, 2010 6:54 AM
To: 'jeff@mausnerlaw.com'; Brad R. Love; Thomas Nolan
Subject: Re: Production of the documents that have not been produced by Google

Jeff,
I am currently traveling but will respond to your email below shortly. In the meantime, there is quite a backlog of Google meet and confer emails/letters for which we are still awaiting a response from P10. We'd appreciate it if you could respond to those now. Thanks.
Rachel

Rachel Herrick Kassabian, Partner
Quinn Emanuel LLP
555 Twin Dolphin Drive, Fifth Floor
Redwood Shores, CA. 94065
Direct: (650) 801-5005
Office: (650) 801-5000
Fax: (650) 801-5100

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Friday, January 22, 2010 11:45 AM
To: 'jeff@mausnerlaw.com'
Cc: Brad R. Love; Thomas Nolan
Subject: RE: Production of the documents that have not been produced by Google

Jeff,

We'd be happy to meet and confer with Perfect 10 regarding whatever document issues it wishes to pursue. However, we cannot have a productive conversation until Perfect 10 first identifies in writing what specific issues it has, regarding which specific documents, pursuant to Local Rule 37-1. Your reference to documents "discussed at the hearing on Friday" doesn't help us, since it was a four-hour hearing during which many document-related issues were discussed, including the fact that Perfect 10 has never actually requested many of the categories of documents upon which it based its sanctions motion. Accordingly, please provide Google with a letter identifying what documents Perfect 10 believes have not been produced, and what discovery requests Perfect 10 believes call for those documents. Once we have this information, we'd be happy to investigate and address these issues, by teleconference if you'd like. Again, if in your email below you are referring to documents Perfect 10 has not yet requested pursuant to Rule 34, then Perfect 10 needs to follow the Federal Rules, like any other litigant, and serve requests properly calling for those documents.

Also, I'd like to reiterate that there are a number of still-outstanding issues that Google has raised through meet and confer efforts, to which Perfect 10 has provided no substantive response. For instance, on October 30, 2009 – nearly three months ago – we sent Perfect 10 a meet and confer letter regarding issues that arose during Ms. Chou's deposition. Perfect 10 still has not responded to Google's letter. Similarly, on November 6, 2009 Google sent Perfect 10 meet and confer correspondence regarding Perfect 10's deficient responses to Google's Fifth Set of Interrogatories. To date, Perfect 10 has completely ignored this correspondence, other than to tell us you were too busy to respond to it. Further, we also have not received a response to our letter requesting a deposition date for Ms. Giovanni (whom Perfect 10's counsel is representing), though it was sent nearly two weeks ago. Perfect 10 may not demand immediate meet and confer sessions with Google while simultaneously ignoring Google's meet and confer requests for weeks or months at a time. If Perfect has time to address its own discovery issues, then it has time to respond to Google's discovery issues. As I requested below, please extend us the same courtesies you now seek by providing full and complete substantive responses to all of Google's long-outstanding discovery issues now.

Regards,

Rachel

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Friday, January 22, 2010 10:00 PM
To: 'Rachel Herrick Kassabian'
Cc: 'Brad R. Love'; 'Thomas Nolan'
Subject: RE: Production of the documents that have not been produced by Google

Hi Rachel. I think the documents that we have requested, and are requesting, are clear. As you said, we spent close to four hours discussing them at the hearing. We have also extensively briefed these issues, including the requests that Perfect 10 made, the Orders to produce, and the representations and promises made by Google regarding production of the documents. Nevertheless, below is a summary:

1. All spreadsheets, in electronic format such as Excel, that Google has that can be considered parts of a DMCA log. This includes logs for search, Blogger, AdSense, Adwords, Google Groups, or any other Google program or product. All such spreadsheets should be produced, in their entirety, without any columns or information removed. (Requests for Production 51 and 196, and Orders thereon.)
2. All spreadsheets, in electronic format such as Excel, that Google has that provide any of the following information: summarize DMCA notices received, the identity of the notifying party and the accused infringer, and/or the actions (if any) taken in response, including the date of response. This includes, but is not limited to, notices provided by Perfect 10. This includes spreadsheets for search, Blogger, AdSense, Adwords, Google Groups, or any other Google program or product. All such spreadsheets should be produced, in their entirety, without any columns or information removed. (Requests for Production 51 and 196, and Orders thereon.)
3. All notices of termination issued by Google as a result of alleged intellectual property violations. This includes such notices for search, Blogger, AdSense, Adwords, Google Groups, or any other Google program or product. (*See* Judge Hillman's May 22, 2006 Order, page 5, lines 15-20.)
4. All notices received by Google regarding intellectual property violations, including for search, Blogger, AdSense, Adwords, Google Groups, or any other Google program or product. *See* Defendant Google Inc.'s Responses and Objections to Plaintiff's Fifth Set of Requests for the Production of Documents, No. 196 (Page 57 of Mausner Decl.; *see also* Joint Stipulation Re Plaintiff Perfect 10, Inc.'s Motion to Compel Google to Produce Documents, Mausner Decl. Exh. L, p. 86, lines 21-22.)
5. Request for Production No. 29. Has Google made an attempt to determine who owns the websites listed in Judge Hillman's May 22, 2006 Order, page 5 line 21 to page 6 line 10? What did Google do to make that determination?
6. Did Google search the computers of every employee who is listed on GGL 33428 to 33433 for each of the documents in Perfect 10's Requests for Production which Google agreed to produce or was ordered to produce? Have any emails sent or received from any of those employees been lost or destroyed?

Please give me times next week when you are available to discuss these matters.

We will continue to address Google's numerous discovery requests and demands under separate cover, as soon as we are able.

Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Monday, January 25, 2010 12:56 PM
To: Jeffrey Mausner
Cc: Brad R. Love; Thomas Nolan; Michael T Zeller
Subject: RE: Production of the documents that have not been produced by Google

Jeff,

Perfect 10's demands are anything but clear, as evidenced by your email below, which includes (1) issues Perfect 10 never raised in its prior briefing, (2) issues the Court has already resolved, and (3) demands for documents related to Google products and services that are not even at issue in this lawsuit. We will consider, investigate and prepare a written response to your email below. In the meantime, as I have requested several times before, please respond to Google's previous (and long-outstanding) meet and confer correspondence.

Regards,

Rachel Herrick Kassabian / Partner
Quinn Emanuel Urquhart Oliver & Hedges LLP
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Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Monday, January 25, 2010 3:03 PM
To: 'Rachel Herrick Kassabian'
Cc: 'Brad R. Love'; 'Thomas Nolan'; 'Michael T Zeller'
Subject: RE: Production of the documents that have not been produced by Google

Rachel, I disagree with your comments below regarding the documents. I think at this point we should set up the conference call with Judge Hillman. Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Monday, January 25, 2010 3:52 PM
To: Jeffrey Mausner
Cc: Brad R. Love; Thomas Nolan; Michael T Zeller
Subject: RE: Production of the documents that have not been produced by Google

Jeff,

Perfect 10 cannot go rushing to Judge Hillman any time it is not happy with one of my emails. Perfect 10 needs to follow the meet and confer rules, like all other litigants. Until the parties have worked out what they can agree to, what they can't, and what their respective positions are on each and every one of the unresolved issues, any motion practice (let alone a hearing) is premature.

My response stands.

Rachel Herrick Kassabian | *Partner*
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Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Tuesday, January 26, 2010 12:31 AM
To: 'Rachel Herrick Kassabian'
Cc: 'Brad R. Love'; 'Thomas Nolan'; 'Michael T Zeller'
Subject: RE: Production of the documents that have not been produced by Google

Rachel, these documents are directly relevant to pending summary judgment motions before Judge Matz. Judge Hillman said that we should try to resolve this over the next week or so, and if we couldn't, he could do so in a telephone conference. Jeff.

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Wednesday, January 27, 2010 4:53 PM
To: rachelkassabian@quinnemanuel.com; thomasnolan@quinnemanuel.com;
bradlove@quinnemanuel.com; michaelzeller@quinnemanuel.com
Subject: Meet and Confer re Documents
Attachments: Order re Telephonic Conference.pdf

Attached please find Judge Hillman's Order of today. I am available to meet and confer by telephone on any of the following dates: January 28, 29, 30, 31, February 1, 2, or 3. Please let me know when you are available to conduct the telephone meet and confer. Thanks, Jeff.

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Telephone: (310)617-8100; (818)992-7500
Facsimile: (818)716-2773
e-mail: jeff@mausnerlaw.com

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Thursday, January 28, 2010 1:23 PM
To: 'Jeffrey Mausner'
Cc: Thomas Nolan; Brad R. Love; Michael T Zeller; Andrea P Roberts
Subject: RE: Meet and Confer re Documents

Jeff,

Judge Hillman's orders states that the parties are to meet-and-confer "as soon as practicable for all counsel." As I told you previously, we are currently investigating the issues set forth in your January 22 email, and preparing a written response to each of them. We will get you that written response as soon as practicable. We can then set up a call. On that call, we will discuss (1) all of Google's outstanding meet and confer issues with P10 and (2) the issues raised in your January 22 email and our response. Please prepare accordingly.

Regards,

Rachel Kassabian

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Friday, January 29, 2010 2:21 PM
To: 'Rachel Herrick Kassabian'
Cc: 'Thomas Nolan'; 'Brad R. Love'; 'Michael T Zeller'; 'Andrea P Roberts'
Subject: RE: Meet and Confer re Documents

Follow Up Flag: Follow up
Flag Status: Completed

Rachel,

I don't understand the delay in agreeing to telephonically meet and confer regarding these documents, which are directly relevant to the pending summary judgment motions. Judge Hillman pointed out that the issues are not complicated, and originally contemplated that the meet and confer would take place last week. Please provide a date and time next week for a telephonic meet and confer regarding these documents.

With regard to Google's discovery issues, they should not be intermingled with the production of these documents. First of all, on January 15, 2010, Judge Hillman told the parties to conduct a telephonic meet and confer regarding these documents. Judge Hillman reiterated this in his written order dated January 27, 2010. On the other hand, Judge Hillman has not ordered Perfect 10 to meet and confer with Google about Google's issues. That said, Perfect 10 has been responding to your many letters and emails as quickly as it can. Just in the past few days, we have responded to your and Tom Nolan's requests regarding: Aria Giovanni's deposition, the Microsoft Settlement Agreement, Jen Snow's deposition, and Sheena Chou's deposition. Last week, we sent you a lengthy response to your second piece of meet and confer correspondence regarding Nadine Schoenweitz's deposition. In contrast, you still have not even given us a date for Ms. Poovala's deposition, despite the fact that she is Google's main witness for the summary judgment motions, and we have been seeking to depose her since October 2009.

The matters Google raises cannot be used by Google as an excuse to delay the meet and confer regarding the documents that Google has not produced, and which are important to the pending summary judgment motions.

Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Monday, February 01, 2010 8:47 PM
To: Jeffrey Mausner
Cc: Thomas Nolan; Brad R. Love; Michael T Zeller; Andrea P Roberts
Subject: RE: Meet and Confer re Documents

Jeff,

There is no “delay” on Google’s part here. We are carefully investigating and considering P10’s demands (made just nine days ago), and preparing a written response to each of them. We will get you that written response as soon as practicable. To be clear, the only “delay” here has been P10’s woefully untimely presentation of these supposed discovery issues.

Secondly, we are not suggesting any “intermingling” of Google’s outstanding meet-and-confer issues with any of P 10’s. To the contrary, the issues should be discussed, separately, in the order in which they were raised. As you know, the Local Rules require P10 to meet-and-confer, and Judge Hillman’s recent order does not suspend that obligation or otherwise instruct the parties to meet-and-confer only on P10’s issues, to the exclusion of Google’s issues. Your email alone mentions 5 separate issues on which P10 is obliged to meet-and-confer. Suffice to say, P10 has not fulfilled its meet-and-confer obligations regarding any of them thus far. Discovery is a mutual obligation, and P10 may not press its own issues to the exclusion of Google’s issues. You have plenty of time to prepare for this call, and no excuse for not preparing, so please proceed accordingly.

Regarding P10’s proposed subpoena to Ms. Poovala (who is currently out on maternity leave, as you know), the parties are addressing that in separate correspondence, so I will not repeat myself here.

Further, we again disagree that any documents P10 claims to be seeking now are “directly relevant to the pending summary judgment motions.” P10 opposed those motions on the merits, they are under submission, briefing is closed, and P10 has not sought to reopen that briefing with Judge Matz. Moreover, P10’s words and conduct confirm that P10 had ample evidence with which to oppose Google’s motions – and with which to file its own summary judgment motion. We have made this abundantly clear in prior correspondence and briefing, and will address it further in the written response to P10’s January 22 email that we are in the process of preparing now.

Lastly, I note that your repeated barrage of emails suggesting an urgency that simply does not exist and demanding an immediate response only serve to delay Google’s efforts to substantively respond to P10’s discovery issues in good faith. If P10 sincerely desires the promptest possible resolution of these issues, please refrain from this needless and redundant posturing.

Regards,

Rachel Herrick Kassabian / Partner
Quinn Emanuel Urquhart Oliver & Hedges LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
650.801.5005 Direct
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Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Tuesday, February 02, 2010 12:05 PM
To: 'Rachel Herrick Kassabian'
Cc: 'Thomas Nolan'; 'Brad R. Love'; 'Michael T Zeller'; 'Andrea P Roberts'
Subject: RE: Meet and Confer re Documents

Rachel: I am not addressing all of the statements in your correspondence -- Perfect 10 has addressed most of them previously.

We had the hearing before Judge Hillman regarding the documents that Google has not produced 18 days ago. Judge Hillman has ordered the parties to meet and confer regarding those documents. In his January 27 written order, Judge Hillman made clear that the “meet and confer regarding Perfect 10’s Sanctions Motion [shall take place] as soon as practicable for all counsel,” and that the “precise issues set forth by Perfect 10 are not complicated.” Therefore, it is quite clear that Google is acting in bad faith. Moreover, the court-ordered meet and confer takes precedence over any other meet and confer.

That said, if Google wants to telephonically meet and confer about any discovery it has sought from Perfect 10, then you may go ahead and do so now -- we are available today to meet and confer regarding both the Court ordered meet and confer regarding the documents that Google has not produced, and Google’s discovery issues. Perfect 10 has responded, in writing, to all of Google's meet and confer correspondence. In fact, with regard to certain issues, the parties have repeatedly gone back and forth in writing. Therefore, if there is something that Google wants to discuss further, then Google should call us. Please let me know when you want to talk today.
Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Tuesday, February 02, 2010 4:02 PM
To: Jeffrey Mausner
Cc: Thomas Nolan; Brad R. Love; Michael T Zeller; Andrea P Roberts
Subject: RE: Meet and Confer re Documents

Jeff,

This is exactly the kind of needless and redundant posturing I referred to in my email below. Your accusations are baseless and require no response. My prior response stands.

Regards,

Rachel Herrick Kassabian / Partner
Quinn Emanuel Urquhart Oliver & Hedges LLP

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Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Wednesday, February 10, 2010 7:41 PM
To: Jeffrey Mausner
Cc: Thomas Nolan; Brad R. Love; Michael T Zeller; Andrea P Roberts
Subject: RE: Meet and Confer re Documents

Jeff,

As an update, I wanted to let you know that we are continuing to investigate and consider P10's recent discovery demands, and we expect to be able to provide Google's response later this week or early next week.

Regards,

Rachel Herrick Kassabian / Partner
Quinn Emanuel Urquhart Oliver & Hedges LLP

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Jeffrey Mausner

From: Brad R. Love [bradlove@quinnemanuel.com]
Sent: Tuesday, February 16, 2010 4:34 PM
To: 'Jeffrey Mausner'
Cc: Rachel Herrick Kassabian; Michael T Zeller; Thomas Nolan
Subject: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests
Attachments: 02 16 10 Letter to J. Mausner re. discovery requests.pdf

Jeff,

Please see attached.

Regards,

Brad Love
Quinn Emanuel Urquhart Oliver & Hedges, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Direct: (415) 875-6330
Main Phone: (415) 875-6600
Main Fax: (415) 875-6700
E-mail: bradlove@quinnemanuel.com
Web: www.quinnemanuel.com

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Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Wednesday, February 17, 2010 11:36 PM
To: 'Brad R. Love'
Cc: 'Rachel Herrick Kassabian'; 'Michael T Zeller'; 'Thomas Nolan'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Rachel: Please let me know when you are available for a telephone conference regarding this matter. We are available at the following times: February 23 in the afternoon; February 24 all day; February 25 all day; February 26 all day. Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Tuesday, February 23, 2010 5:05 PM
To: Jeffrey Mausner
Cc: Michael T Zeller; Thomas Nolan; Brad R. Love
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Jeff,

I am available for a call on February 26 at 3pm, or March 4 at 10am. Prior to the call, please let us know what Perfect 10's position is with respect to the matters outlined in our February 16 correspondence.

Regards,

Rachel Herrick Kassabian | *Partner*
Quinn Emanuel Urquhart Oliver & Hedges LLP

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Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Thursday, February 25, 2010 11:12 AM
To: 'Rachel Herrick Kassabian'
Cc: 'Michael T Zeller'; 'Thomas Nolan'; 'Brad R. Love'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Hi Rachel. I've been tied up with the Amazon settlement, so I guess we should do March 4 at 10 A.M. I don't intend to get you anything in writing prior to that, because I think we have stated everything at this point. If necessary, we will send you a letter after we talk by phone. Regards, Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Friday, February 26, 2010 11:27 AM
To: 'Jeffrey Mausner'
Cc: Michael T Zeller; Thomas Nolan; Brad R. Love
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

That's fine, Jeff. My 10am has since been filled, but I can do 1:15pm that same day (March 4). Please call Tom Nolan in the LA office at that time, and he will patch me in.

As for a response, our February 16 letter makes an offer of compromise, and we'd like to know before the call whether P10 is going to accept it (or is considering accepting it). Having this information will make the call more productive and will allow us to better prepare for it. Please let us know P10's position before March 4.

Thanks,

Rachel

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Thursday, March 04, 2010 1:12 PM
To: 'Jeffrey Mausner'
Cc: Michael T Zeller; Thomas Nolan; Brad R. Love
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Jeff,

In light of Perfect 10's filing of a motion for preliminary injunction against Google today, which requires our immediate attention, we will need to reschedule today's meet and confer call. It also appears that the need for such a call may now be moot, given this (most recent) confirmation by Perfect 10 that it presently believes the current discovery record is sufficient to file yet another merits motion regarding DMCA issues.

We'll be in touch next week to discuss these matters.

Regards,

Rachel

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Thursday, March 04, 2010 1:15 PM
To: 'Rachel Herrick Kassabian'
Cc: 'Michael T Zeller'; 'Thomas Nolan'; 'Brad R. Love'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

We are prepared to proceed with the 1:15 PM phone call. We need to complete the meet and confer process now. You have delayed this long enough. The phone call will not take long, let's just do it now. I will call Tom at 1:15, as scheduled. Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Thursday, March 04, 2010 1:33 PM
To: 'Jeffrey Mausner'
Cc: Michael T Zeller; Thomas Nolan; Brad R. Love
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Jeff,

We agreed to make ourselves available for this meet and confer call last week – ***and you declined***, telling me that you were “tied up with the Amazon settlement.” In fact, we now know that you were busy preparing a preliminary injunction motion. If this meet and confer call were indeed important to Perfect 10, you would have made yourself available last week, instead of spending that time preparing a preliminary injunction motion (to which Google now has a very short period of time to respond). Perfect 10 must live with the strategic choices it has made, and the priorities it has dictated.

As I said below, we will be in touch next week to further discuss these issues.

Regards,

Rachel

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Thursday, March 04, 2010 1:55 PM
To: 'Rachel Herrick Kassabian'
Cc: 'Michael T Zeller'; 'Thomas Nolan'; 'Brad R. Love'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Rachel, I was working on the Amazon settlement. After delaying this matter for almost two months, you gave me only two choices for the meet and confer, and I chose one of them. There was no reason for you to unilaterally cancel the meet and confer.

Dr. Zada and I tried to call Tom Nolan and you, Rachel, and got voicemail for both of you, despite the fact that we had this meet and confer scheduled for 1:15 PM. It is obvious that you were avoiding my phone call. I left messages for both of you to call me back. Please call me back by 3 P.M. today, or we will proceed accordingly. Jeff.

Jeffrey Mausner

From: Thomas Nolan [thomasnolan@quinnemanuel.com]
Sent: Thursday, March 04, 2010 10:49 PM
To: 'Jeffrey Mausner'
Cc: Michael T Zeller; Rachel Herrick Kassabian; Brad R. Love
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Jeff,

Perfect 10 must live with the consequences of electing to put other Perfect 10 matters before this meet and confer call. If this call were really important to Perfect 10, you would have made time for it last week, but you did not do so. Nor has Perfect 10 even bothered to respond to Google's offer of compromise, which Google made more than two weeks ago by letter dated February 16. We are still waiting to hear from Perfect 10 on that issue.

Perfect 10 has now served a 25-page motion accompanied by hundreds (if not thousands) of pages of supporting materials contained in eleven separate declarations, and is demanding extraordinary injunctive relief. That motion requires our immediate attention, especially given the very short period of time Google has to respond. We believe the motion is completely inappropriate, and we reserve all rights to seek appropriate relief from this motion in short order. That aside, if Perfect 10 truly is interested in continuing these meet and confer efforts regarding DMCA discovery issues now, Google will need an extension of time to file its opposition to Perfect 10's preliminary injunction motion. We simply cannot do both given the current opposition deadline. Accordingly, we propose the following:

Google's Opposition Materials Due: April 12, 2010

Perfect 10's Reply Materials Due: May 5, 2010

Please advise if Perfect 10 wishes to resume meet and confer efforts related to DMCA discovery now, subject to this agreed extension.

Best Regards,

Thomas Nolan
Quinn Emanuel Urquhart Oliver & Hedges, LLP
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Direct: (213) 443-3885
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Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Friday, March 05, 2010 11:28 AM
To: 'Thomas Nolan'
Cc: 'Michael T Zeller'; 'Rachel Herrick Kassabian'; 'Brad R. Love'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Tom, we will agree to additional time for Google to file its Opposition to Perfect 10's Motion for Preliminary Injunction, if Perfect 10 also gets additional time to file its Reply. We would agree to the following schedule:

Google's Opposition due: March 24, 2010. This date gives Google twenty-one days for its Opposition. Portions of Google's Opposition which are not electronically filed must be served by email on Perfect 10 by March 24.

Perfect 10's Reply due: April 12, 2010. This date gives Perfect 10 nineteen days for its Reply. Portions of Perfect 10's Reply which are not electronically filed must be served by email on Google by April 12.

Hearing: May 3, 2010, or as soon thereafter as Judge Matz can hear the matter. This date gives Judge Matz at least three weeks after receiving Perfect 10's reply.

Perfect 10's agreement to this schedule is conditioned upon Google's agreement to the following three points:

1. Google will make Ms. Poovala available for deposition on a mutually agreeable date between March 29 and April 2, 2010. We have been waiting for almost 5 months to take Ms. Poovala's deposition .
2. Google will produce the documents set forth in my January 22, 2010 email, by March 19, 2010. Google should have already produced these documents months or years ago. Perfect 10 will not accept Google's "compromise." These documents were previously ordered produced and/or Google represented they had been produced. They are all highly relevant. Perfect 10 will not forego production of some of the documents to get others.
3. Google will not seek to further delay consideration by the Court of the preliminary injunction motion.

Please let me know at your earliest opportunity if Google is agreeable to the above. Jeff.

Jeffrey Mausner

From: Thomas Nolan [thomasnolan@quinnemanuel.com]
Sent: Friday, March 05, 2010 6:02 PM
To: Jeffrey Mausner
Cc: Michael T Zeller; Rachel Herrick Kassabian; Brad R. Love; Andrea P Roberts
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Jeff,

Thank you for your response. The parties are in agreement that additional time will be needed to substantively brief P10's second Motion for Preliminary Injunction. Such an extension will benefit both parties as well as the Court. However, we cannot agree to your proposed conditions.

Regarding Ms. Poovala: We currently have no authority to negotiate with respect to the proposed subpoena P10 wishes to serve upon Ms. Poovala in her individual capacity. As we have made clear before, Ms. Poovala is on maternity leave through mid-April. If P10 does elect to serve her with a subpoena after that time, we anticipate that she and Google will have objections to the subpoena.

Regarding a further production of documents: Judge Hillman has already made clear that Google has complied with all prior document requests and court orders. We believe Google's proposed compromise (as set forth in our February 16 letter) is more than fair, and as we have made clear, we are happy to discuss this further, after a stipulated extension is in place. In any event, P10's PI Motion is based on a large evidentiary record and it is apparent that P10 does not believe further discovery is necessary to litigate this motion, so any supplemental discovery on these issues would be a waste of time. And finally, it would be physically impossible to supplement Google's production on the magnitude P10 is demanding by March 19.

And regarding your final demand, while it is not entirely clear what you are referring to, we cannot agree to any constraints on the particular arguments Google may make, or forms of relief Google may seek, in response to P10's motion (nor would we expect P10 to agree to such substantive constraints regarding its PI briefing).

As for the proposed deadlines, we are amenable to shortening the briefing window if that's what P10 would prefer, but several members of our team of conflicts during the week of March 22, and we do not believe briefing could be completed by then anyway. Accordingly, as a further compromise, we propose that Google's opposition papers be due April 5, with P10's reply papers due April 26.

We remain open to a stipulated extended briefing schedule, which will benefit both parties, and harm neither. Please advise as soon as possible whether you are willing to agree to such an extension, without the below-referenced proposed conditions.

Best Regards,

Thomas Nolan
Associate,
Quinn Emanuel Urquhart Oliver & Hedges LLP.

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Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Sunday, March 07, 2010 9:59 PM
To: 'Thomas Nolan'
Cc: 'Michael T Zeller'; 'Rachel Herrick Kassabian'; 'Brad R. Love'; 'Andrea P Roberts'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Tom: Perfect 10 does not agree that additional time is necessary for Google to respond to Perfect 10's motion for preliminary injunction. In fact, Google has twelve (12) days to file its response because Perfect 10 graciously served the motion five (5) days earlier than required. As set forth in my earlier email, Perfect 10 is willing to agree that Google may have an additional nine days to file its opposition, for a total of 21 days. That is more than sufficient. Your request for 33 days is excessive and unnecessary.

Furthermore, if Google is given additional time, it should agree to the very reasonable conditions set forth in my prior correspondence.

It is necessary to take Ms. Poovala's deposition for the reasons enumerated in prior correspondence. Her deposition is very relevant to the pending summary judgment motions; she was Google's primary witness in all three motions. There is no legitimate reason to further delay Ms. Poovala's deposition; we have been trying to take her deposition *since October 2009*. As we stated earlier this week, the parties have thoroughly met-and-conferred about this critical issue and, therefore, Perfect 10 will bring this issue to Judge Hillman's attention shortly. Furthermore, Ms. Poovala and Google have waived any purported objections to her subpoenas - they were due months ago. As well as its obvious relevance to the summary judgment motions, Perfect 10 should also have the opportunity to take Ms. Poovala's deposition before its reply brief for the preliminary injunction is due, particularly if Google uses her declaration in opposition to the preliminary injunction motion.

Perfect 10 disagrees with your characterization of Judge Hillman's position regarding Google's failure to comply with court orders. Judge Hillman ordered the parties to meet-and-confer regarding Google's admitted failure to produce numerous documents, but Google has disregarded that order and instead has responded with numerous delay tactics. Google's claim that it cannot produce the documents by March 19, 2010 is incredible, given that these documents were ordered produced either by Judge Hillman on May 22, 2006, or by Judge Matz on May 13, 2008, and all of these documents are the subject of the sanctions motion that was filed in November 2009.

The third condition is that if you are given this extension, Google will not request further time or a stay of the preliminary injunction motion. It would not be right to delay the consideration of this motion through an extension, and then seek to delay it yet again.

Please feel free to call me if you want to discuss this further. Jeff.

Jeffrey Mausner

From: Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]
Sent: Monday, March 08, 2010 12:02 AM
To: 'Jeffrey Mausner'
Cc: Michael T Zeller; Brad R. Love; Andrea P Roberts; Thomas Nolan
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Jeff,

We are sorry to hear that Perfect 10 is not amenable to Google's proposal. Please be advised that Google will be seeking relief from the Court on an ex parte basis tomorrow, Monday, March 8. Google's ex parte application will ask the Court (1) to strike P10's Motion for Preliminary Injunction, and for sanctions against P10, or (2) in the alternative, for a stay of the Motion pending resolution of Google's Motions for Summary Judgment Regarding Google's Entitlement to Safe Harbor under the Digital Millennium Copyright Act, or (3) in the alternative, for expedited discovery on the matters presented in the Motion. This ex parte application will be made on the grounds that Perfect 10's filing of this Motion violates the Court's July 8, 2009 Order and is made in bad faith; that judicial resources would be conserved and justice served by striking or staying it and deciding Google's DMCA Motions before it; and that should the Court be inclined to hear the Motion, additional discovery from Perfect 10 is required to prepare a full and complete opposition to it.

Given your email below, we assume Perfect 10 will oppose Google's ex parte application. However, please advise as soon as possible, and in any event by Monday, March 8 at noon, whether P10 will stipulate to any of this relief, and/or whether P10 will indeed be opposing the ex parte.

As for the remaining issues and representations in your email below, Google disagrees with them in their entirety.

Regards,

Rachel

Jeffrey Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Monday, March 08, 2010 11:43 AM
To: 'Rachel Herrick Kassabian'
Cc: 'Michael T Zeller'; 'Brad R. Love'; 'Andrea P Roberts'; 'Thomas Nolan'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Meet and confer re. discovery requests

Rachel: We disagree with the content of your email. Perfect 10 graciously agreed to allow Google, with its vast resources, three weeks to prepare its opposition to Perfect 10's motion for preliminary injunction (the "Motion"). All that Google asked for in its previous email was additional time; it made no mention of the other issues that you raise for the first time in your latest email, such as striking the Motion, staying the Motion, sanctions, and expedited discovery. If Perfect 10 had agreed to your proposed briefing schedule, would Google not have raised these additional issues? Or were you simply going to raise these additional issues after Google got the additional extension? If all that Google really wants is the additional time, we should discuss that issue.

Before Perfect 10 can evaluate Google's latest request, please inform us of the following:

1. Why Google believes that Perfect 10's motion for preliminary injunction violates the July 8, 2009 Order.
2. Why Google believes that Perfect 10's motion for preliminary injunction is made in bad faith.
3. The discovery Google wants to take prior to a hearing on Perfect 10's motion for preliminary injunction and how long it would take to conduct such discovery.
4. Why Google believes that Perfect 10's motion for preliminary injunction should be stayed pending a resolution of Google's summary judgment motions.
5. The specific relief to which you want Perfect 10 to stipulate in order for Google not to bring an ex parte application.

I look forward to hearing from you. Jeff.