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16 Attorneys for Defendant GOOGLE INC.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

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

21 *Plaintiff,*

22 vs.

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

25 *Defendants.*

26 AND COUNTERCLAIM

CASE NO. CV 04-9484 AHM (SHx)

DISCOVERY MATTER

**[CORRECTED] DECLARATION
OF ANDREA PALLIOS ROBERTS
IN SUPPORT OF GOOGLE'S EX
PARTE APPLICATION FOR (1)
RELIEF FROM THE TEN-DAY
REQUIREMENT OF LOCAL RULE
7-3; AND (2) A STAY OF THE
COURT'S JUNE 16, 2010 ORDER**

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

1 I, Andrea Pallios Roberts, declare as follows:

2 1. I am a member of the bar of the State of California and an associate at
3 Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Defendant Google Inc.
4 (“Google”) in this action. Unless otherwise stated, I make this declaration of my
5 personal and firsthand knowledge, and if called and sworn as a witness, I could and
6 would testify competently thereto.

7 2. Shortly after receiving the Court’s June 16, 2010 Order denying
8 Plaintiff Perfect 10, Inc.’s (“P10”) Motion for Evidentiary and Other Sanctions (“the
9 Order”), Google began working diligently to comply with the alternative relief
10 provided in that Order, including by commencing to gather and review documents
11 for Google’s supplemental production, and taking steps to determine how long it
12 will take to search for, review and prepare the entire supplemental document
13 production specified in the Order.

14 3. Several in-house and outside legal personnel critical to Google’s
15 supplemental document production effort had pre-planned vacations scheduled
16 during the week before and/or the week after Independence Day, including the in-
17 house counsel overseeing this case and the in-house legal assistant overseeing the
18 document gathering effort. While Google has assigned additional legal personnel to
19 assist with this supplemental production effort, Google will still need substantial
20 additional time to complete it.

21 4. For example, one of the referenced document categories ordered to be
22 supplemented, P10’s Requests for Production Nos. 128-131 and 194-195, requires
23 Google to search a massive volume of documents—the entire custodial files of each
24 of the ten custodians named in the requests. Google must then convert and de-
25 duplicate the documents, manually review them for responsiveness and privilege,
26 and process any responsive documents for electronic production. By way of
27 comparison, Google’s prior search for documents responsive to these same requests
28

1 in 2008 involved the review of millions of documents (over 400 gigabytes of
2 electronic files, to be precise) and required more than three months to complete.

3 5. This supplemental production will require a similarly burdensome
4 undertaking. Based on our prior experience with pulling, searching, reviewing and
5 producing documents in the same categories as those specified in the Order
6 (including the production referenced in paragraph 4 above), we estimate that it will
7 take approximately six to eight weeks (and possibly longer) for Google to complete
8 the work necessary to supplement its production as the Court has ordered, even with
9 the assistance of the additional legal staffing Google has assigned to this project.

10 6. On Saturday, June 26, 2010, Jeffrey Mausner, counsel of record for
11 P10, emailed me (and other counsel for Google) to inform Google that P10 intended
12 to file objections to the Order. Mr. Mausner's email stated that P10 believed the
13 Order was "clearly erroneous," and listed several instances of what P10 believed
14 were "clearly erroneous findings of fact." The email did not indicate what specific
15 changes to the Order P10 would seek with its objections, but it did list several
16 categories of documents it claims Google was obliged to (but did not) produce,
17 which P10 apparently will request from Judge Matz in its objections. For example,
18 Mr. Mausner stated that "Perfect 10 was entitled to all [third-party DMCA] notices
19 that were sent to Google."

20 7. I am informed that during the June 28, 2010 telephonic hearing on an
21 unrelated Google discovery motion, P10 raised an issue referenced but not decided
22 in the Order, namely, whether Google should be required to re-produce in Excel
23 format the DMCA processing spreadsheets Google had already produced to P10. I
24 am informed that the Court directed the parties to continue to meet and confer
25 regarding this issue, and to bring the issue to the Court's attention if they reached an
26 impasse in those negotiations. Given that certain key Google personnel who must
27 approve any discovery agreements are currently on vacation (as referenced above),
28

1 Google anticipates that those negotiations will not conclude until late next week or
2 early the week thereafter.

3 8. On the morning of June 29, 2010, my colleague Rachel Herrick
4 Kassabian emailed Mr. Mausner, requesting that P10 agree to a stay of the Order's
5 July 6 deadline for Google's supplemental production during the pendency of P10's
6 objections to the Order. Ms. Kassabian's email explained the various reasons why a
7 stay was necessary and appropriate, including that despite Google's best efforts, it
8 would be physically impossible for Google to meet the current deadline. The parties
9 exchanged several emails, but ultimately, Mr. Mausner refused to agree to Google's
10 requested stay. Instead, Mr. Mausner demanded several substantive concessions –
11 including that Google agree to produce several categories of documents that the
12 Order found P10 had not even requested – in exchange for a 24-day extension. Ms.
13 Kassabian informed Mr. Mausner that Google would be filing an *ex parte*
14 application seeking the necessary stay of the Order, and Mr. Mausner indicated that
15 P10 would oppose it. A true and correct copy of these meet and confer emails is
16 attached hereto as Exhibit A.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct. Executed July 1, 2010 at Redwood
19 Shores, California.

20 

21 _____
22 Andrea Pallios Roberts
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EXHIBIT A

From: [Jeffrey Mausner](#)
To: [Rachel Herrick Kassabian](#)
Cc: [Brad R. Love](#); [Andrea P Roberts](#); "[David Schultz](#)"
Subject: RE: Order of Magistrate Judge Hillman
Date: Tuesday, June 29, 2010 11:42:53 PM

Perfect 10 will agree that Google may have up to and including July 30 to produce documents if Google agrees to produce the following by that date:

1. All intellectual property notices, including all notices pertaining to Blogger;
2. All DMCA logs in EXCEL format, including logs pertaining to Blogger;
3. All termination notices, including for Blogger;
4. The remaining documents that Judge Hillman ordered Google to produce in his June 16, 2010 Order.

Acceptance of the above proposal will allow Google to avoid a hearing before Judge Matz in connection with Perfect 10's objections to Judge Hillman's Order, in which Perfect 10 demonstrates just how much material Google has failed to produce.

Regards, Jeff.

From: Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]
Sent: Tuesday, June 29, 2010 10:15 PM
To: 'Jeffrey Mausner'
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Jeff,

While we appreciate the week, it won't be enough, unfortunately. For example, one of the document categories to be supplemented, Request for Production Nos. 128-131 and 194-195, requires Google to search through a massive volume of documents. As you may recall from our discussions back in June 2008, last time we had to search through several hundred gigabytes of files, encompassing literally millions of pages of documents pertaining to the custodians in question. That production took Google approximately three months, and required an extension as well. We estimate the supplemental production on these requests will take 6-8 weeks (which puts us right around the hearing date on P10's Objections).

We might be able to work out an agreement that provides the DMCA processing

spreadsheets in excel format, but recall from our January 2010 hearing that doing so will be time consuming as well, since those documents will need to be manually re-reviewed and redacted for privilege in excel format. The bottom line here is that this isn't just a matter of convenience -- we physically cannot complete the supplemental production by July 6 (or July 13), and we need more time. Please let us know whether P10 will reconsider and stipulate to Google's request below. If not, we will proceed with our ex parte application tomorrow.

Regards,
Rachel

From: Jeffrey Mausner [mailto:jeff@mausnerlaw.com]
Sent: Tuesday, June 29, 2010 9:43 PM
To: Rachel Herrick Kassabian
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Hi Rachel. Perfect 10 will agree to a one-week extension, until July 13, 2010, for Google to produce the materials that Judge Hillman ordered produced, as long as Google produces all materials that are in EXCEL format or other electronic format in that native format. That should actually speed the production, because you will not have to convert the documents into another format. I understand that your client contact at Google will be back by that time.

Perfect 10 will oppose an ex parte application seeking relief other than that described above.

Regards, Jeff.

From: Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]
Sent: Tuesday, June 29, 2010 7:35 PM
To: 'Jeffrey Mausner'
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Thanks Jeff. We will need to file an ex parte tomorrow if the parties cannot agree on this, since we want the Court to have sufficient time to consider it before the impending holiday. Please let us know this evening whether (1) P10 will agree to the below request, and (2) if not, whether P10 intends to oppose Google's ex parte.

Regards,

Rachel

From: Jeffrey Mausner [mailto:jeff@mausnerlaw.com]
Sent: Tuesday, June 29, 2010 5:15 PM
To: Rachel Herrick Kassabian
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Hi Rachel. I have been tied up with other matters so far today, but will get back to you as soon as I can. Jeff.

From: Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]
Sent: Tuesday, June 29, 2010 5:11 PM
To: 'Jeffrey Mausner'
Cc: Brad R. Love; Andrea P Roberts; David Schultz
Subject: RE: Order of Magistrate Judge Hillman

Jeff,

We have yet to hear from you regarding the request below. Accordingly, please be advised that Google will be seeking ex parte relief from the Court tomorrow, as described below. Please let us know if P10 intends to oppose Google's ex parte application, and if so, on what grounds. Alternatively, if P10 will agree to the requested relief, please advise so that we can avoid burdening the Court with unnecessary motion practice.

Regards,

Rachel

From: Rachel Herrick Kassabian
Sent: Tuesday, June 29, 2010 8:56 AM
To: 'Jeffrey Mausner'
Cc: Brad R. Love; Andrea P Roberts
Subject: Order of Magistrate Judge Hillman

Jeff,

Given P10's intention to file objections to Judge Hillman's June 16th Order with Judge Matz, and the fact that the parties are still meeting and conferring regarding certain document issues (ie spreadsheet format), we suggest that the parties agree to continue the deadlines for supplemental production in that Order pending Judge Matz's ruling on P10's Objections. Once the parties have Judge Matz's order and reach agreement on formatting issues, Google will know with certainty the scope of any necessary production, which will allow us to avoid potentially duplicative or wasted production costs. Additionally, we have investigated the time it will take for Google to search for, review and produce supplemental documents, and confirmed that it will be impossible to complete

this supplementation by the current deadline, due to (1) the large volume of materials that must be searched and (2) the pre-planned summer vacations of key Google in-house and outside personnel.

Please let us know by the close of business if P10 will agree to the above.

Regards,

Rachel Herrick Kassabian | *Partner*
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