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11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

14 PERFECT 10, INC., a California
 corporation,

15 *Plaintiff,*

16 vs.

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

19 *Defendants.*

20 AND COUNTERCLAIM
 21

CASE NO. CV 04-9484 AHM (SHx)

**GOOGLE INC.'S EX PARTE
 APPLICATION TO STRIKE
 PERFECT 10, INC.'S NOTICE
 SUBMITTING GOOGLE'S
 RESPONSES AND OBJECTIONS
 TO PERFECT 10'S FOURTEENTH
 SET OF REQUESTS FOR THE
 PRODUCTION OF DOCUMENTS**

Hon. A. Howard Matz

Date: None Set
 Time: None Set
 Crtrm.: 14

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

1 Pursuant to the Federal Rules of Civil Procedure and Local Rule 7-19,
2 Defendant Google Inc. (“Google”) respectfully submits this *ex parte* application to
3 strike Plaintiff Perfect 10, Inc.’s (“P10”) purported Notice Submitting Google’s
4 Responses and Objections to P10’s Fourteenth Set of Requests for the Production of
5 Documents, Submitted in Connection with P10’s Motion for Review of, and
6 Objections to, Magistrate Judge Hillman’s June 16, 2010 Order (Dkt. No. 966)
7 (“Notice”).

8 This *ex parte* application is made on the grounds that P10 may not submit
9 new evidence or arguments on a motion for review of a Magistrate Judge’s order
10 and that P10’s Notice further violates Local Rule 7-10 by submitting new evidence
11 and briefing on a motion that was already taken under submission. Google makes
12 these requests through an *ex parte* application because P10’s Notice was filed five
13 days after the Court’s Order taking P10’s Objections under submission (Dkt. No.
14 965), depriving Google of the opportunity to otherwise object to P10’s improper
15 pleading.

16 Pursuant to Local Rule 7-19, on August 19, 2010, Google contacted Jeffrey
17 N. Mausner of The Law Offices of Jeffrey N. Mausner (address: 21800 Oxnard
18 Street, Suite 910, Woodland Hills, California 91367, telephone: (818) 992-7500),
19 counsel of record for P10, regarding the substance of this *ex parte* application.
20 P10’s counsel stated that it would oppose this application.

21
22 DATED: August 23, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

23
24
25 By 

26 Margret M. Caruso
27 Attorneys for Defendant GOOGLE INC.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Court should reject P10’s Notice, which is the latest episode of P10’s
3 now-familiar practice of serial filings made without leave that violate the Rules and
4 burden the Court. First, the Notice improperly submits new evidence and arguments
5 on P10’s Motion for Review of, and Objections to, Magistrate Judge Hillman’s June
6 16, 2010 Order (Dkt. No. 923) (“Objections”) based on events that occurred *after*
7 Judge Hillman issued the June 16 Order. Objections to a Magistrate Judge’s order
8 must be based on the record on which the Magistrate Judge ruled. See Estate of
9 Gonzales ex rel. Gonzales v. Hickman, 2007 WL 3231956, *2 (C.D. Cal. April
10 17,2007) (in reviewing Magistrate Judge’s order under 28 U.S.C § 636(b)(1)(A),
11 “the district court is limited to the record that the magistrate judge had before her in
12 the proceeding below”); Paramount Pictures Corp. et al., v. Replay TV, et al., 2002
13 WL 32151632, *1 (C.D. Cal. May 30, 2002) (sustaining objections to new
14 declarations not presented to Magistrate Judge because “parties objecting to a
15 magistrate judge's order may not present affidavits containing evidence not
16 presented below”) (citations omitted); see also United States v. Walker, 601 F.2d
17 1051, 1055 (9th Cir. 1979) (“We are here concerned only with the record before the
18 trial judge when his decision was made.”). It is undisputed that the evidence and
19 argument contained in the Notice was not before Judge Hillman. Indeed, the
20 Notice’s title concedes that P10 is “submitting [new evidence] in connection with”
21 P10’s Objections. Notice at 1. P10’s Notice is improper for this reason alone.¹

22 _____
23 ¹ The thrust of P10’s Notice is that Google’s responses to P10’s fourteenth set
24 of document requests “contradict” Google’s defense of Judge Hillman’s June 16
25 Order. Notice at 2-3. P10’s claim is unfounded. Google responses do not claim
26 that P10 previously requested *non-P10* Blogger documents, only that P10 already
27 requested and Google produced documents related to *P10’s* notices of infringement.
28 This is because P10 sent some notices related to Blogger and Google produced
documents related to its processing of those notices, which are also sought by P10’s
(footnote continued)

1 Second, and independently, the Local Rules do not provide for briefing after
2 the reply—and certainly not after a motion has been taken under submission, as was
3 the case here. To the contrary, the Rules bar a party from submitting additional
4 briefing on a motion after the reply without leave of the court. See Local Rule 7-10
5 (“Absent prior written order of the Court, the opposing party shall not file a
6 response to the reply.”); Spalding Labs., Inc. v. Arizona Biological Control, Inc.,
7 2008 WL 2227501, at *1 n.2 (C.D. Cal. May 29, 2008) (“The Court strikes and does
8 not consider Spalding’s 14-page ‘sur-opposition’ to ARBICO’s reply brief.”) (citing
9 Local Rule 7-10); DISC Intellectual Properties LLC v. Delman, 2007 WL 4973849,
10 at *1 n.1 (C.D. Cal. Sept. 17, 2007) (rejecting “Defendants ... attempt[] to file a
11 Response to Plaintiffs’ Reply in violation of Local Rule 7-10.”). P10’s Notice
12 includes misleading and groundless argument in support of its Objections,² in
13 violation of the Rules.

14 P10’s Notice’s should be stricken in its entirety. However, if the Court is
15 inclined to consider any of P10’s erroneous argument or improper new evidence,
16 Google requests leave to file a short, substantive response to them.

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21 new requests. All of the document requests and prior production which Google
22 references in its responses to P10 improper new requests for documents related to
23 Blogger DMCA notices concern Google’s processing of P10’s Blogger notices.
24 Google’s statements that P10 never requested documents concerning Google’s
25 processing of *non-P10* Blogger notices are entirely consistent with Google’s
26 responses that it produced documents related to *P10’s* DMCA notices.

27 ² For example, P10 claims that the third-party DMCA documents it seeks “are
28 clearly relevant to this action,” but bases that claim on their relationship to an issue
the Court has decided as a matter of law—the adequacy of Google’s “repeat
infringer policy.” Notice at 3; see also n.1, *supra*.

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DATED: August 23, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By 
Margret M. Caruso
Attorneys for Defendant GOOGLE INC.