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10 Attorneys for Defendant GOOGLE INC.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

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

16 *Plaintiff,*

17 vs.

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

20 *Defendants.*

21 AND COUNTERCLAIM

CASE NO. CV 04-9484 AHM (SHx)

DISCOVERY MATTER

**DECLARATION OF MARGRET M.
 CARUSO IN SUPPORT OF
 GOOGLE INC.'S MOTION FOR
 REVIEW OF AND OBJECTIONS
 TO MAGISTRATE HILLMAN'S
 ORDER OF AUGUST 10, 2010 ON
 GOOGLE INC.'S MOTION TO
 QUASH SUBPOENAS TO
 SHANTAL RANDS POOVALA**

Hearing Date: October 4, 2010
 Hearing Time: 10:00 a.m.
 Courtroom.: 14

Hon. A. Howard Matz
 Discovery Cutoff: None Set
 Trial Date: None Set

1 I, Margret M. Caruso, declare as follows:

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

7 2. Attached as Exhibit 1 is a true and correct copy of Docket No 964,
8 Magistrate Judge Hillman’s August 10, 2010 Order Denying Google’s Motion to
9 Quash the Subpoenas Directed to Shantal Rands Poovala and for a Protective Order.

10 3. Attached as Exhibit 2 is a true and correct copy of the transcript of the
11 August 9, 2010 hearing before Magistrate Judge Hillman on Google’s Motion to
12 Quash Perfect 10 Inc.’s (“P10”) subpoenas of Shantal Rands Poovala.

13
14 I declare under penalty of perjury under the laws of the United States of
15 America that the foregoing is true and correct. Executed August 24, 2010 at
16 Redwood City, CA.

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19 Margret M. Caruso
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484-AHM (SHx)	Date	August 10, 2010
Title	Perfect 10, Inc. v. Google Inc.		

Present: The Honorable	Stephen J. Hillman
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Sandra L. Butler Deputy Clerk	CS 8-9-10 Court Reporter / Recorder	N/A Tape No.
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Attorneys Present for Plaintiffs:

Jeffrey Mausner
David Schultz

Attorneys Present for Defendants:

Margaret Caruso

Proceedings: (IN CHAMBERS- TELEPHONIC)

For the reasons set forth below, defendant's Motion to Quash the Subpoenas Directed to Shantal Rands Poovala and for a Protective Order (the "Motion") is DENIED.

Defendant Google Inc. has moved to quash the deposition and document subpoenas served on its employee Shantal Rands Poovala by plaintiff Perfect 10, Inc. and for a protective order regarding the same. Plaintiff is seeking information relevant to issues regarding its copyright infringement claim against defendant, including whether defendant has expeditiously processed DMCA notices and suitably terminated repeat infringers. (See Joint Stipulation 3:14-15, June 23, 2010). Though plaintiff deposed Ms. Poovala on November 19, 2008, the deposition lasted for less than three hours and was only in her capacity as one of several individuals designated by defendant in response to a Rule 30(b)(6) deposition notice served by plaintiff. (See *id.* at 3:2-4). Plaintiff now seeks to depose Ms. Poovala in her individual capacity. (See *id.* at 3:4-5).

"A party seeking to prevent a deposition carries a heavy burden to show why discovery should be denied." Google v. American Blind & Wallpaper Factory, Inc., 2006 WL 2578277, at *3 n.3 (N.D. Cal., Sept. 6, 2006) (granting motion to compel the deposition of Larry Page, Google's co-founder and president). "It is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error." Salter v. Upjohn Co., 593 F.2d 649, 651 (5th Cir. 1979).

A party may request the production of documents in connection with a deposition

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484-AHM (SHx)	Date	August 10, 2010
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subpoena. See Fed. R. Civ. P. 45(a)(2). Further, a subpoena may seek documents in the subpoenaed party's "possession, custody, or control." Wiwa v. Royal Dutch Petroleum Co., 392 F.3d 812, 821 (5th Cir. 2004). However, the Court may quash or modify a subpoena that "subjects a person to undue burden." See Fed. R. Civ. P. 45(c)(3)(A)(iv)

The Court may issue a protective order only after the moving party proves the order is necessary "to protect a party or person from annoyance, embarrassment, oppression, or unique burden or expense." Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975); Fed. R. Civ. P. 26(c).

Following the August 9, 2010 telephonic oral argument on the Motion, the Court finds that defendant has failed to meet its burden for the deposition notice and document subpoena served on Ms. Poovala to be quashed and for a protective order to be issued. The previous Rule 30(b)(6) deposition of Ms. Poovala does not preclude a deposition of her in an individual capacity. See Fed. R. Civ. P. 30(b)(6). In addition, plaintiff may conduct up to 10 depositions, lasting 7 hours each, without leave of the Court. See Fed. R. Civ. P. 30(a)(2)(A)(I), 30(d)(1). Moreover the recent Order denying plaintiff the opportunity to depose Dr. Schmidt weighs in favor of permitting the individual deposition of Ms. Poovala.

Further, there appears to be some conflict between the pleadings defendant has submitted and Ms. Poovala's testimony at the Rule 30(b)(6) deposition. In the Poovala Declaration, she discussed specific actions taken by defendant in response to plaintiff's July 2, 2007 DMCA notice, but at her deposition she appeared to have less knowledge about the same topic.

Notwithstanding Judge Matz' recent important case rulings, no stay of discovery has been sought, and plaintiff is permitted to prepare its case as it sees fit.

Finally, the documents plaintiff seeks in connection with Ms. Poovala's deposition appear to be relevant to the subject matter of this action and reasonably calculated to lead to the discovery of admissible evidence.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484-AHM (SHx)	Date	August 10, 2010
Title	<u>Perfect 10, Inc. v. Google Inc.</u>		

The Motion therefore DENIED.

It is so ORDERED.

cc: Judge Matz
Magistrate Judge Hillman
Parties of Record

Initials of Preparer _____ : _____ 20

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PERFECT 10, INC.,)	
)	
PLAINTIFF,)	
)	
VS.)	CASE NO. CV 04-9484-AHM(SHX)
)	
)	
GOOGLE, INC., ET AL.,)	LOS ANGELES, CALIFORNIA
)	AUGUST 9, 2010
)	(3:08 P.M. TO 3:28 P.M.)
DEFENDANTS.)	
_____)	

TELEPHONIC CONFERENCE

BEFORE THE HONORABLE STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE

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16
17

18	APPEARANCES:	SEE NEXT PAGE
19	COURT REPORTER:	RECORDED
20	COURTROOM DEPUTY:	LA'REE HORN
21	TRANSCRIBER:	DOROTHY BABYKIN
22		COURTHOUSE SERVICES
23		1218 VALEBROOK PLACE
		GLENDORA, CALIFORNIA 91740
		(626) 963-0566

24
25 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 APPEARANCES: (CONTINUED)

FOR THE PLAINTIFF:

LAW OFFICES OF JEFFREY N. MAUSNER
BY: JEFFREY N. MAUSNER
DAVID NATHAN SCHULTZ
ATTORNEYS AT LAW
21800 OXNARD STREET
SUITE 910
WOODLAND HILLS, CALIFORNIA 91367

5

6 FOR THE DEFENDANT:

QUINN EMANUEL URQUHART & SULLIVAN
BY: MARGARET CARUSO
BRAD LOVE
ATTORNEYS AT LAW
555 TWIN DOLPHIN
SUITE 560
REDWOOD SHORES, CALIFORNIA 04065

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I N D E X

CASE NO. CV 04-9484-AHM(SHX)

AUGUST 9, 2010

PROCEEDINGS: TELEPHONIC CONFERENCE

1 LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 9, 2010; 3:08 P.M.

2 THE CLERK: UNITED STATES DISTRICT COURT, CENTRAL
3 DISTRICT OF CALIFORNIA. TELEPHONIC CONFERENCE HELD BEFORE
4 STEPHEN J. HILLMAN REGARDING CASE NUMBER CV 04-9484-AHM(SHX),
5 PERFECT 10, INC. VERSUS GOOGLE, INC., ET AL.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE
7 RECORD.

8 MS. CARUSO: -- AND BRAD LOVE FOR GOOGLE.

9 THE COURT: OKAY. I JUST TURNED ON THE TAPE
10 RECORDER. SO, IT'S MR. SCHULTZ AND MR. MAUSNER.

11 AND I'M SORRY?

12 MS. CARUSO: MARGARET CARUSO AND BRAD LOVE.

13 THE COURT: OKAY. ARE WE WAITING FOR ANYONE ELSE?

14 MS. CARUSO: NOT ON OUR SIDE, NO.

15 MR. MAUSNER: NOT FROM PERFECT 10.

16 THE COURT: OKAY. I JUST HAVE A COUPLE OF
17 QUESTIONS. ONE IS COULD EITHER SIDE'S POSITION ON THIS
18 MOTION SHIFT ONCE THE SUPPLEMENTAL PRODUCTION THAT I ORDERED
19 IS COMPLETED, WHICH APPARENTLY IS GOING TO TAKE ANOTHER FEW
20 WEEKS. THAT'S MY FIRST QUESTION.

21 AND, SECONDLY, WHAT IF I'M OVERRULED ON MY
22 SANCTIONS MOTION, DOES THAT PUT THIS DEPOSITION MOTION IN A
23 DIFFERENT POSTURE.

24 MR. SCHULTZ: YOUR HONOR, THIS IS MR. SCHULTZ ON
25 BEHALF OF PERFECT 10.

1 I DON'T BELIEVE THAT EITHER IF YOU ARE OVERRULED,
2 OR IF THERE'S ANYTHING THAT'S IN THE SUPPLEMENTAL PRODUCTION
3 WILL AFFECT THE ISSUE BEFORE YOU, WHICH IS PERFECT 10'S
4 DESIRE AND RIGHT TO DEPOSE MS. POOVALA FOR THE FIRST TIME.

5 SO, AT LEAST PERFECT 10'S POSITION IS THAT
6 REGARDLESS OF JUDGE MATZ'S RULING ON THE HEARING THAT'S SET
7 FOR NEXT MONDAY, AND REGARDLESS OF WHATEVER DOCUMENTS ARE
8 PRODUCED, WE NEED TO AND WE'RE ENTITLED TO DEPOSE MS.
9 POOVALA.

10 THE COURT: OKAY.

11 MS. CARUSO: YOUR HONOR?

12 THE COURT: YES.

13 MS. CARUSO: THIS IS MARGARET CARUSO FOR GOOGLE.

14 WE AGREE THAT THE SUPPLEMENTAL PRODUCTION WOULDN'T
15 HAVE ANY EFFECT HERE. AND IT'S DIFFICULT TO SEE HOW THE
16 OUTCOME OF A SANCTIONS MOTION WOULD HAVE ANY EFFECT EITHER.

17 AND, YES, WE REACH A DIFFERENT CONCLUSION THAN
18 PERFECT 10 DOES ON THIS AND FIND THAT IN ALL CIRCUMSTANCES
19 JUDGE MATZ'S PRIOR ORDERS HAVE MOOTED ANY POSSIBLE NEED FOR
20 THIS DEPOSITION.

21 THE COURT: WELL, THE DENIAL OF THE PRELIMINARY
22 INJUNCTION IS HARDLY DISPOSITIVE OF THE CASE.

23 MS. CARUSO: YES, YOUR HONOR.

24 THE COURT: IT IS HARDLY -- IT IS NOT DISPOSITIVE
25 OF THE CASE.

1 MS. CARUSO: THAT'S CORRECT. IT'S NOT DISPOSITIVE
2 OF THE CASE.

3 HOWEVER, COMBINED WITH THE SUMMARY JUDGMENT RULING,
4 THERE ARE NO COPYRIGHT ISSUES LEFT IN DISPUTE THAT PERFECT 10
5 HAS IDENTIFIED ANY TESTIMONY THAT MS. POOVALA WOULD HAVE
6 PERSONAL KNOWLEDGE OF.

7 THE COURT: WELL, WHY ARE THE COPYRIGHT ISSUES NOT
8 IN DISPUTE ANY LONGER?

9 MS. CARUSO: GIVEN THE SUMMARY JUDGMENT RULING, MS.
10 POOVALA'S TESTIMONY -- EVERY SUBJECT THAT PERFECT 10 HAS
11 IDENTIFIED THAT SHE MIGHT HAVE RELEVANT KNOWLEDGE OF ALL
12 RELATES TO DMCA ISSUES THAT HAVE BEEN RESOLVED BY THE COURT.

13 MR. SCHULTZ: YOUR HONOR, THIS IS MR. SCHULTZ.

14 WITH ALL DUE RESPECT TO MS. CARUSO, THERE ARE TONS
15 OF ISSUES THAT REMAIN TO BE LITIGATED WITH RESPECT TO PERFECT
16 10'S COPYRIGHT CLAIM, INCLUDING ISSUES THAT WERE SPECIFICALLY
17 LEFT OPEN BY JUDGE MATZ IN HIS RULING RELATING TO CERTAIN
18 NOTICES.

19 AND FOR THAT MATTER, REGARDLESS OF JUDGE MATZ'S
20 RULING, AS THE COURT IS WELL AWARE, THE RULING ON THE SUMMARY
21 JUDGMENT MOTION IS HARDLY A FINAL RULING. IN FACT, FEDERAL
22 RULE OF CIVIL PROCEDURE 54(B) SPECIFICALLY SAYS THAT ANY
23 ORDER OR DECISION THAT ADJUDICATES FEWER THAN ALL THE CLAIMS
24 MAY BE REVISED AT ANY TIME BEFORE THE ENTRY OF A JUDGMENT
25 ADJUDICATING ALL THE CLAIMS AND ALL THE PARTIES' RIGHTS AND

1 LIABILITIES.

2 MS. POOVALA IS THE KEY DEPONENT -- IS THE KEY
3 WITNESS APPARENTLY FROM GOOGLE'S PERSPECTIVE RELATING TO
4 ISSUES AS TO HOW THEY DEALT WITH NOTICES THAT WERE SUBMITTED
5 BY PERFECT 10. SHE SUBMITTED TWO DECLARATIONS AND WE'RE
6 ENTITLED TO DEPOSE HER REGARDING THOSE MATTERS REGARDLESS OF
7 JUDGE MATZ'S RULING.

8 THE COURT: DO YOU AGREE THAT THE SUMMARY JUDGMENT
9 RULING DISPOSES OF THE COPYRIGHT -- ALL COPYRIGHT CLAIMS?

10 MR. SCHULTZ: NO.

11 THE COURT: WHICH ONES ARE LEFT?

12 MR. SCHULTZ: WELL, CERTAINLY, YOUR HONOR, THERE
13 ARE ISSUES WITH RESPECT TO WHAT WE'VE CALLED THE "B NOTICES"
14 FOR WHICH JUDGE MATZ STATED SPECIFICALLY THAT PERFECT 10 CAN
15 GO FORWARD.

16 SECONDLY, THERE ARE NUMEROUS NOTICES THAT WERE
17 SUBMITTED BY PERFECT 10 FOLLOWING THE FILING OF THE SUMMARY
18 JUDGMENT MOTION WHICH WERE NOT COVERED BY JUDGE MATZ'S
19 RULING, THAT THE SUMMARY JUDGMENT MOTIONS WERE FILED JULY
20 2ND, 2009, AND THERE WERE NUMEROUS SUBSEQUENT DMCA NOTICES
21 THAT ARE STILL AT ISSUE IN THE CASE, INCLUDING SOME THAT WERE
22 -- THEORETICALLY SHOULD HAVE BEEN ADDRESSED IN THE MOTION
23 FOR PRELIMINARY INJUNCTION.

24 AND, FURTHERMORE, IT'S NOT AT ALL CLEAR TO ME --
25 LOOK, YOUR HONOR, THIS IS NOT THE NORMAL SITUATION WHERE WE

1 WERE A JOHNNIE-COME-LATELY AND WE DECIDED AFTER -- YOU KNOW,
2 WAY DOWN THE LINE TO DEPOSE MS. POOVALA. WE'VE BEEN TRYING
3 TO TAKE HER DEPOSITION SINCE LAST FALL. SHE WAS ON MATERNITY
4 LEAVE. SO, WE --

5 THE COURT: YES, I REMEMBER.

6 MR. SCHULTZ: -- COULDN'T TAKE HER DEPOSITION THEN.

7 IT SEEMS TO ME TO BE -- WOULD BE GROSSLY UNFAIR
8 WERE THE SITUATION TO BE, HEY, LOOK, YOU CAN'T TAKE HER
9 DEPOSITION WHILE THE SUMMARY JUDGMENT MOTION IS PENDING
10 BECAUSE SHE'S ON MATERNITY LEAVE. NOW THAT SHE'S BACK OFF
11 MATERNITY LEAVE YOU CAN'T TAKE HER DEPOSITION BECAUSE THE
12 SUMMARY JUDGMENT MOTION HAS BEEN RULED UPON.

13 THERE ARE ISSUES THAT ARE STILL REMAINING IN THE
14 CASE. AND OUR POSITION IS WE'RE ENTITLED TO TAKE A
15 BROAD-BASED DEPOSITION OF MS. POOVALA RELATING TO ALL THE
16 ISSUES THAT ARE RAISED BY HER DECLARATION, AMONG OTHER
17 THINGS.

18 BUT, FRANKLY, WE DON'T KNOW EXACTLY AT THIS POINT
19 HOW THE TRIAL OF THE REMAINING COPYRIGHT CLAIMS ARE GOING TO
20 PLAY THEMSELVES OUT.

21 THE COURT: OKAY.

22 MS. CARUSO: YOUR HONOR?

23 THE COURT: YES.

24 MS. CARUSO: I'D LIKE TO POINT OUT TO YOU THAT
25 PERFECT 10 MOVED FOR SUMMARY JUDGMENT ON COPYRIGHT ISSUES

1 APART FROM THE DMCA RULING --

2 THE COURT: I KNOW WHAT YOU'RE GOING TO SAY, BUT GO
3 AHEAD. YES.

4 MS. CARUSO: -- ARGUING THAT DISCOVERY WAS
5 COMPLETE, IT DIDN'T NEED ANYTHING FURTHER. IT ONLY DECIDED
6 -- SERVED US NOTICE FOR MS. POOVALA'S TESTIMONY IN HER
7 PERSONAL CAPACITY -- OF COURSE, IT HAD ALREADY DEPOSED HER
8 PREVIOUSLY -- AFTER THE HEARING ON THE PRELIMINARY INJUNCTION
9 MOTION.

10 SO, THERE HAVE BEEN THESE WAVES OF MOTIONS THAT
11 HAVE DEALT WITH COPYRIGHT ISSUES. AND P-10 HAS BEEN FINE
12 WITH THE RECORD ON THOSE. NOW, IT WANTS MORE DISCOVERY. BUT
13 IT STILL REMAINS UNCLEAR WHAT TESTIMONY IT'S GOING TO GET
14 FROM HER THAT'S GOING TO ADDRESS ANYTHING NEW.

15 NOW, THERE'S TWO THINGS THAT PERFECT 10'S COUNSEL
16 JUST IDENTIFIED. ONE IS THE GROUP B NOTICES. AND THERE ARE
17 VERY FEW OF THOSE THAT ARE AT ISSUE IN THE CASE GIVEN THE
18 COURT'S RULING.

19 AND THE SECOND IS THE POST SUMMARY JUDGMENT
20 NOTICES. ALL OF THOSE, EVEN THOUGH THEY WERE NOT SORT OF PER
21 SE AN ISSUE IN THE SUMMARY JUDGMENT ORDER THAT CAME OUT, THE
22 COURT'S SUMMARY JUDGMENT ORDER DOES GIVE THE LEGAL GUIDANCE
23 BY WHICH ALL OF THEM CAN BE RESOLVED. BECAUSE UNDER THE
24 STANDARD THAT'S ARTICULATED BY THE COURT NONE OF THOSE POST
25 SUMMARY JUDGMENT NOTICES ARE ADEQUATE.

1 THE COURT: ARE WHAT?

2 MS. CARUSO: ARE ADEQUATE OR COMPLIANT WITH THE
3 STATUTE.

4 MR. SCHULTZ: WITH ALL DUE RESPECT, OBVIOUSLY, WE
5 DISAGREE AS TO WHETHER OR NOT THOSE NOTICES, WHICH ARE
6 SIGNIFICANTLY DIFFERENT THAN THE NOTICES THAT WERE
7 ADJUDICATED BY JUDGE MATZ. WE DON'T AGREE. THAT'S SOMETHING
8 THAT WOULD NEED TO BE DETERMINED.

9 WE ALSO DON'T AGREE THAT THERE ARE VERY FEW GROUP B
10 NOTICES THAT NEED TO BE (RECORDING SKIPS) TRIAL HERE.

11 WE ALSO BELIEVE THAT, FRANKLY, UNDER THE
12 CIRCUMSTANCES HERE WE'RE ENTITLED TO TAKE A BROAD DEPOSITION
13 OF MS. POOVALA. FOR MS. CARUSO TO SAY THAT WE ONLY NOTICED
14 MS. POOVALA'S DEPOSITION AFTER THE PRELIMINARY INJUNCTION
15 HEARING SORT OF -- THAT MAY BE TRUE IN THE MATTER OF TIME,
16 BUT WE TRIED TO NOTICE HER DEPOSITION BACK IN OCTOBER, AND WE
17 WERE TOLD THAT SHE WAS ON MATERNITY LEAVE. AND WE WERE ONLY
18 TOLD SHE WAS OFF MATERNITY LEAVE RIGHT AROUND -- RIGHT AROUND
19 THE TIME OF THE HEARING ON THE PRELIMINARY INJUNCTION MOTION.

20 WE BELIEVE THAT SHE HAD LOTS OF RELEVANT TESTIMONY
21 RELATING TO THE COPYRIGHT CLAIM. WE PLAYED THOSE OUT. I
22 MEAN, SHE SUBMITTED -- SHE SUBMITTED TWO DECLARATIONS WITH
23 TONS OF EXHIBITS -- 125 PARAGRAPHS' WORTH OF INFORMATION, 38
24 ACCOMPANYING EXHIBITS.

25 AND, FRANKLY, WE, PLAINTIFF PERFECT 10, ARE

1 ENTITLED TO DETERMINE WHO IT IS THAT WE WANT TO DEPOSE IN
2 THIS CASE. I MEAN, THE LAST TIME WE WERE --

3 MR. MAUSNER: CAN I SAY SOMETHING?

4 THE STATEMENT THAT WE ALREADY NOTICED HER
5 DEPOSITION AFTER THE P.I. IS NOT TRUE. WE NOTICED HER
6 DEPOSITION IN SEPTEMBER 2009.

7 THE COURT: I REMEMBER THAT.

8 MR. MAUSNER: FIRST NOTICE. THEY TOLD US THAT SHE
9 WAS ON MATERNITY LEAVE AND COULD NOT BE DEPOSED. OKAY. SO,
10 WE'VE BEEN TRYING TO TAKE HER DEPOSITION FOR -- WHAT IS IT?
11 --

12 THE COURT: ALMOST A YEAR.

13 MR. MAUSNER: -- MONTHS NOW. AND WHAT THEY DO IS
14 THEY DELAY AND THEY DELAY AND THEY DELAY. AND THEY SAY,
15 WELL, YOU CAN TAKE HER DEPOSITION WHEN SHE COMES BACK FROM
16 MATERNITY LEAVE. AND, THEN, SHE COMES BACK FROM MATERNITY
17 LEAVE. WE RENOTICE THE DEPOSITION. AND NOW THEY'RE SAYING
18 WE CAN'T TAKE IT ALL.

19 THAT'S JUST UNFAIR THE WHOLE WAY THIS THING IS
20 GOING. EVERYTHING HAS BEEN OBSTRUCTED. WE HAVEN'T BEEN ABLE
21 TO TAKE ANY DISCOVERY. AND HERE THEY'RE DOING IT AGAIN WITH
22 OBVIOUSLY THE MOST RELEVANT WITNESS ON GOOGLE'S SIDE.

23 MR. SCHULTZ: YOUR HONOR, LET ME ADD ONE PARTICULAR
24 POINT, WHICH IS, AS YOUR HONOR MAY RECALL THE LAST TIME WE
25 SPOKE BEFORE YOU WE WERE DEALING WITH THE MOTION TO QUASH THE

1 SUBPOENA FOR GOOGLE'S CHIEF EXECUTIVE OFFICER DR. SCHMIDT.
2 YOU INDICATED YOU THOUGHT IT WAS A CLOSE QUESTION, AND, THEN,
3 YOU SUBSEQUENTLY GRANTED GOOGLE'S MOTION.

4 AND ONE OF THE GRANTS YOU ADVANCED SPECIFICALLY
5 WAS, YOU KNOW, YOU STATED PERFECT 10 SHOULD FIRST DEPOSE
6 OTHER LOWER-LEVEL EMPLOYEES RATHER THAN -- AND I'M QUOTING
7 FROM YOUR ORDER NOW -- QUOTE, LEAPFROGGING TO THE PINNACLE OF
8 GOOGLE'S CORPORATE PYRAMID.

9 THE COURT: RIGHT. AND, OF COURSE, MY ORDER WAS
10 RIGHT BEFORE JUDGE MATZ RULED. BUT I --

11 WELL, ANYTHING MORE FROM GOOGLE?

12 MS. CARUSO: YES, YOUR HONOR.

13 AGAIN, PERFECT 10 SAID THEY DID NOT NEED ANY MORE
14 DISCOVERY TO RESOLVE THE COPYRIGHT ISSUES IN THIS CASE. THEY
15 FILED A SUMMARY JUDGMENT --

16 MR. MAUSNER: WAIT A MINUTE. WHEN DID WE SAY THAT?
17 GET THE QUOTE WHERE WE SAID THAT.

18 MS. CARUSO: PERFECT 10 FILED A SUMMARY JUDGMENT
19 MOTION ON --

20 MR. MAUSNER: OKAY. AND WHERE DO WE SAY THAT WE
21 DON'T NEED ANY MORE DISCOVERY IN THIS CASE?

22 MR. LOVE: -- IT WAS DURING THE MEET AND CONFER ON
23 BOTH PERFECT 10 AND GOOGLE'S COPYRIGHT SUMMARY JUDGEMENT
24 MOTION IN THE SUMMER OF 2009. AND WE HAD BEEN MEETING AND
25 CONFERRING FOR MORE THAN FIVE MONTHS TRYING TO FILE --

1 MR. MAUSNER: OKAY. WHAT WAS THE STATEMENT THAT
2 WAS MADE AND WHO MADE IT?

3 MR. LOVE: ON A PHONE CALL WITH MS. HERRICK YOU
4 SAID THAT FURTHER DMCA DISCOVERY WOULD BE A WASTE OF TIME,
5 AND THAT YOU DIDN'T NEED ANYTHING FURTHER BECAUSE SUMMARY
6 JUDGEMENT ON COPYRIGHT ISSUES WAS RIPE --

7 MR. MAUSNER: OKAY. YOU'RE SAYING THAT I SAID
8 THAT?

9 MR. LOVE: YES.

10 MR. MAUSNER: THAT'S NOT TRUE. I DID NOT SAY THAT.
11 OKAY. I DENY SAYING THAT.

12 MS. CARUSO: WELL, IRRESPECTIVE OF WHETHER YOU SAID
13 THAT OR NOT, AND THERE WAS NO DECLARATION --

14 MR. MAUSNER: BUT I DIDN'T SAY IT. OKAY.

15 MS. CARUSO: OKAY. I'LL --

16 MR. MAUSNER: -- I DIDN'T SAY THAT WE DON'T NEED ANY
17 MORE DISCOVERY IN THIS CASE.

18 MS. CARUSO: NOT IN THIS CASE, PERIOD, BUT WITH
19 RESPECT TO THE COPYRIGHT ISSUES.

20 MR. MAUSNER: NO.

21 MS. CARUSO: AND THE FACT THAT --

22 MR. MAUSNER: -- SAY THAT EITHER. I DIDN'T SAY THAT
23 WE DON'T NEED MORE DISCOVERY WITH RESPECT TO THE COPYRIGHT
24 ISSUES.

25 THE COURT: YOU KNOW WHAT. I'M GOING --

1 MR. MAUSNER: I NEVER SAID THAT. AND YOU GUYS ARE
2 MAKING THAT UP.

3 THE COURT: YOU GUYS ARE REALLY -- YOU GOT TO GET
4 OUT FROM THE GUTTER. JUST MOVE ON.

5 ANY OTHER ARGUMENTS? I THINK I KNOW -- I THINK I
6 HAVE ENOUGH TO RULE, BUT GO AHEAD.

7 MS. CARUSO: THANK YOU, YOUR HONOR.

8 I WOULD LIKE TO POINT OUT THAT BY OPERATION OF THE
9 FEDERAL RULES WHEN YOU MAKE A MOTION FOR SUMMARY JUDGMENT,
10 YOU ARE IMPLICITLY STATING TO THE COURT THAT YOU DON'T NEED
11 FURTHER DISCOVERY FOR THE ISSUES TO BE RESOLVED.

12 AND AS DR. ZADA SAID IN A PRIOR HEARING BEFORE YOUR
13 HONOR, IT'S PREMATURE TO RECEIVE THIS DISCOVERY UNTIL WE KNOW
14 THE LIABILITY STANDARDS THAT WILL BE IMPOSED UPON THE
15 DEFENDANTS AND WHETHER THEY WILL BE LIABLE -- WHAT THEY'LL BE
16 LIABLE FOR, IF ANYTHING.

17 AND BECAUSE PERFECT 10'S SUMMARY JUDGMENT MOTION IS
18 PENDING, WE PROPOSE THAT THAT FIRST BE ADDRESSED BEFORE
19 THERE'S ANY FURTHER DISCOVERY ON COPYRIGHT ISSUES.

20 MR. SCHULTZ: WITH ALL DUE RESPECT, YOUR HONOR,
21 THEY HAD AN OPPORTUNITY TO RAISE THAT POINT IN BOTH THE JOINT
22 STIPULATION AND IN THE SUPPLEMENTAL MEMO, AND IT WAS NOT
23 ADDRESSED.

24 MR. MAUSNER: I'M NOT SURE WHAT THEY'RE PROPOSING.

25 MR. SCHULTZ: JEFF.

1 MR. MAUSNER: THEY'RE PROPOSING THAT OUR --

2 MR. SCHULTZ: JEFF, JEFF, JEFF.

3 MR. MAUSNER: -- SUMMARY JUDGMENT MOTION BE DECIDED
4 BEFORE WE GET TO TAKE HER DEPOSITION? THAT DOESN'T MAKE ANY
5 SENSE AT ALL.

6 MS. CARUSO: YOU FILED THE SUMMARY JUDGMENT MOTION
7 ALREADY. AND SHE HAS PREVIOUSLY BEEN DEPOSED.

8 MR. SCHULTZ: YOUR HONOR, WE'RE NOW GOING OVER
9 ARGUMENTS THAT HAVE BEEN RAISED BEFORE. I DON'T THINK FILING
10 A SUMMARY JUDGMENT MOTION IN -- WHICH WAS, BY THE WAY, FILED
11 AT OR ABOUT THE SAME TIME AS GOOGLE'S SUMMARY JUDGMENT
12 MOTIONS.

13 AND, CERTAINLY, WE WERE NOT IN THE POSITION AT THE
14 TIME TO HAVE ANALYZED IN ANY GREAT DEGREE WHAT WAS IN MS.
15 POOVALA'S DECLARATION. AND NOW THAT WE'VE BEEN ABLE TO
16 ANALYZE IT WE SEE WHY WE NEED TO DEPOSE HER. WE SEE THE
17 CONTRADICTIONS BETWEEN HER VARIOUS DECLARATIONS AND BETWEEN
18 HER DEPOSITION TESTIMONY -- WHICH IS IN THE RECORDS BEFORE
19 YOUR HONOR, AND I WON'T SPEND THE TIME GOING OVER IT.

20 I DON'T THINK GOOGLE HAS THE RIGHT TO TELL PERFECT
21 WHO IT CAN AND CAN'T DEPOSE WITH RESPECT TO AN ISSUE THAT
22 IS STILL GOING TO BE BEFORE THE COURT IN TRIAL, PARTICULARLY
23 SINCE THERE'S NO FINAL JUDGMENT HERE. WE COULD ALWAYS GAIN
24 SOMETHING FROM MS. POOVALA WHICH WOULD RAISE ISSUES THAT ARE
25 RELEVANT TO ISSUES THAT MAY HAVE BEEN DECIDED BASED ON THE

1 RECORD BEFORE US.

2 SO, I THINK THAT -- I THINK THAT THESE
3 CIRCUMSTANCES, AND BASED UPON OUR PAPERS, UNLIKE THE
4 SITUATION WITH DR. SCHMIDT, THIS ISN'T A CLOSE CALL. WE
5 SHOULD BE ALLOWED TO TAKE OUR FIRST INDIVIDUAL DEPOSITION OF
6 MS. POOVALA.

7 THE COURT: WELL, I -- MY TENTATIVE RULING IS TO
8 AGREE WITH PERFECT 10. I DON'T THINK THAT THE POSTURE OF THE
9 CASE CURRENTLY WARRANTS SIMPLY CUTTING OFF ALL PERCIPIENT
10 DISCOVERY -- PERCIPIENT DEPOSITIONS.

11 AND IT MAY -- IT MAY NOT GET MUCH. I DON'T KNOW.
12 THERE'S NOTHING THAT REQUIRES THEM TO STATE EXACTLY WHAT
13 THEY'RE GOING TO GET OR PROVE THAT THEY'RE GOING TO GET
14 SOMETHING USEFUL.

15 BUT SINCE, AMONG OTHER REASONS, I DID NOT PERMIT
16 THEM TO PROCEED WITH DR. SCHMIDT, WHILE IT'S PERHAPS A CLOSER
17 QUESTION THAN I'M ACKNOWLEDGING, I LIKELY AM GOING TO ALLOW
18 IT. AND I'LL ISSUE AN ORDER BY WEDNESDAY.

19 MR. SCHULTZ: THANK YOU, YOUR HONOR.

20 THE COURT: ALL RIGHT. THANK YOU ALL.

21 MS. CARUSO: YOUR HONOR.

22 THE COURT: YES?

23 MS. CARUSO: THIS IS MS. CARUSO.

24 I APOLOGIZE IF THIS IS SOMETHING THAT'S ALREADY
25 BEEN ESTABLISHED IN THIS CASE. BUT IN MS. POOVALA'S PRIOR

1 DEPOSITION COUNSEL FROM PERFECT 10 SPENT TWO HOURS ASKING HER
2 THE SAME TWO QUESTIONS OVER AND OVER AGAIN.

3 IS THERE AN EXPEDITED PROCEDURE BY WHICH WE CAN
4 CONTACT THE COURT --

5 THE COURT: WELL, MR. MAUSNER -- I THINK MR.
6 MAUSNER MAY RECALL MANY YEARS AGO IN ANOTHER PERFECT 10 CASE
7 I ACTUALLY WAS AVAILABLE -- AND MAYBE THIS CASE -- I WAS
8 AVAILABLE. THERE BECAME A CRISIS DURING A DEPOSITION. AND
9 I'M WILLING TO DO THAT IN THIS CASE.

10 SO, IF YOU SCHEDULE IT FOR A DAY, MAKE SURE IT'S A
11 DAY THAT I'M NOT ON THE BENCH AND I'M HERE. AND IF THERE'S A
12 PROBLEM, I'LL RESOLVE IT RIGHT THEN ON THE PHONE.

13 MR. MAUSNER: HOW SHOULD WE DETERMINE THAT, YOUR
14 HONOR?

15 THE COURT: WELL, WHAT MONTH ARE YOU THINKING OF?
16 I MEAN, I COULD TELL --

17 MR. MAUSNER: I WOULD GUESS SEPTEMBER.

18 THE COURT: I COULD TELL YOU THE WEEK I'M GOING TO
19 BE AWAY IS THE WEEK OF THE 20TH. NO, I'M SORRY. I'M GOING
20 TO BE AWAY -- I GUESS THE FIRST HALF OF SEPTEMBER IS BETTER
21 THAN THE SECOND HALF. LET ME PUT IT THAT WAY.

22 MR. MAUSNER: I'M SORRY. I DIDN'T HEAR THE --

23 MR. SCHULTZ: I GOT YOU.

24 THE COURT: I'M HERE MORE OFTEN THE FIRST HALF OF
25 SEPTEMBER THAN THE SECOND HALF OF SEPTEMBER.

1 MR. MAUSNER: OKAY.

2 MR. SCHULTZ: I'M ASSUMING WHAT WILL HAPPEN, YOUR
3 HONOR, IS WE'LL GET AVAILABLE DATES FROM --

4 THE COURT: I DON'T KNOW, THEY MAY APPEAL ME. SO,
5 IT MAY BE OCTOBER OR NOVEMBER. I DON'T KNOW.

6 MR. SCHULTZ: OKAY. WELL, I ASSUME WE'LL GET
7 AVAILABLE DATES, YOUR HONOR, AND WE'LL OBVIOUSLY TRY TO RUN
8 IT BY YOUR CLERK IF THAT'S SOMETHING THAT WE DECIDE MAKES
9 SENSE.

10 THE COURT: OKAY.

11 THANK YOU ALL.

12 MR. SCHULTZ: THANK YOU VERY MUCH, YOUR HONOR.

13 THE COURT: ALL RIGHT. BYE.

14 MR. MAUSNER: THANK YOU.

15 (PROCEEDINGS CONCLUDED 3:28 P.M.)

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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

8/20/10

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN