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 9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

KAYE SCHOLER LLP

12	ICONFIND, INC.,)	Case No. 2:11-CV-00319 GEB JFM
)	
13	Plaintiff,)	DEFENDANT GOOGLE INC.'S
14)	REQUEST FOR JUDICIAL NOTICE
15	v.)	
)	
16	GOOGLE INC.,)	
17)	
18	Defendant.)	
19)	

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REQUEST FOR JUDICIAL NOTICE
 Case No. 2:11-CV-00319 GEB JFM

1 Defendant Google Inc. hereby requests that the Court take judicial notice, pursuant to
2 Rule 201 of the Federal Rules of Evidence, of the prosecution history of U.S. Patent No.
3 7,181,459, filed as an exhibit to this Request, for the reasons set forth below. For ease of
4 reference, selected portions of the prosecution history are filed as exhibits to Defendant Google
5 Inc.'s Motion For Judgment On The Pleadings Of Invalidity Of U.S. Patent No. 7,181,459, filed
6 herewith.

7 ARGUMENT

8 A court may take judicial notice of a fact that is "capable of accurate and ready
9 determination by resort to sources whose accuracy cannot reasonably be questioned." FED. R.
10 EVID. 201(b)(2). It is well-settled that records and reports from government agencies are the
11 proper subject of judicial notice. *See e.g., Barron v. Reich*, 13 F. 3d 1370, 1377 (9th Cir. 1994)
12 (judicial notice may be taken of "[r]ecords and reports of administrative bodies"); *Interstate*
13 *Natural Gas Co. v. Southern California Gas Co.*, 209 F. 2d 380, 385 (9th Cir. 1953) ("We may
14 take judicial notice of records and reports of administrative bodies.").

15 Courts in this Circuit and across the country routinely take judicial notice of records from
16 the United States Patent & Trademark Office ("PTO") including prosecution and reexamination
17 histories. *See e.g., Kristar Enters., Inc. v. Revel Envtl. Mktg., Inc.*, No. 98-3094, 1999 WL 66135,
18 at *3 (N.D. Cal., Feb. 9, 1999) (citing to judicially noticed prosecution history of a patent);
19 *Viskase Corp. v. Am. Nat. Can Co.*, 261 F. 3d 1316, 1327, 1328 n. 2 (Fed. Cir. 2001) (taking
20 judicial notice of PTO reexamination proceedings and outcomes); *Standard Havens Prods., Inc.*
21 *v. Gencor Indus., Inc.*, 897 F.2d 511, 514 n. 3 (Fed. Cir. 1990) (taking judicial notice of a PTO
22 Office Action because it was part of the public record).

23 Because the prosecution history of U.S. Patent No. 7,181,459 is officially published on the
24 PTO website, it is ascertainable, verifiable and its accuracy cannot be reasonably questioned. *See*
25 *Kos Pharm., Inc. v. Andrx Corp.*, 369 F. 3d 700, 705 n. 5 (3d Cir. 2004) (taking judicial notice of
26 a Notice of Allowance available on the PTO website); FED. R. EVID. 201(b)(2).

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CONCLUSION

Pursuant to the foregoing authorities, Google Inc. respectfully requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the prosecution history of U.S. Patent No. 7,181,459, filed as an exhibit to this Request.

Dated: April XXX, 2011

Respectfully submitted,

KAYE SCHOLER LLP

By: /s/ Michael J. Malecek

Michael J. Malecek
Attorney for Defendant
GOOGLE INC.