EXHIBIT 12

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ICONFIND, INC.,	Case No. 2:11-cv-00319-GEB-JFM
Plaintiff,	**PLAINTIFF'S RESPONSE TO GOOGLE INC.'S FIRST SET OF REQUESTS FOR ADMISSION**
v.	
GOOGLE INC.,	
Defendant.	

Pursuant to the Federal Rules of Civil Procedure 26 and 36, IconFind, Inc. ("IconFind") responds to Google Inc.'s ("Google") First Set of Request For Admission (No. 1) as follows:

GENERAL OBJECTIONS

The following General Objections apply to Google's Requests for Admission and are incorporated by reference as part of IconFind's response to each of those Requests.

1.   IconFind objects to Google Requests for Admission to the extent that they attempt to impose duties upon IconFind greater than those required by the Federal Rules of Civil Procedure, and any rule or Order of this Court.

2.   IconFind objects to Google's Requests for Admission to the extent that they are vague, ambiguous and reasonably subject to more than one interpretation, do not identify with particularity the information sought, include relative terms without a basis for comparison, include terms or figures without providing a contextual basis, or are otherwise incomprehensible.

3.   IconFind objects to Google's Requests for Admission to the extent that they are cumulative or overly burdensome, and to the extent they are directed toward unasserted claims or are otherwise irrelevant or not reasonably calculated to lead to admissible evidence.

4.   IconFind objects to Google's Requests for Admission to the extent that they encompass an unlimited or unspecified time period.

5.   IconFind objects to Google's Requests for Admission to the extent that they call for legal conclusions, admissions of law, conclusions as to ultimate issues in the case, the application of legal principles, or expert opinions.

6.   IconFind objects to Google's Requests for Admission to the extent that they are not sufficiently phrased to allow an admission or a denial without explanation.

7.   IconFind objects to Google's Requests for Admission to the extent that they seek

admissions regarding communications or information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or protection.

8.   IconFind objects to Google's Requests for Admission to the extent that they call for speculation.

9.   Nothing in these General Objections or Responses should be construed as waiving any rights or objections or admitting the relevance, materiality, or admissibility into evidence of the subject matter or facts contained in any Request or IconFind's response thereto. Additionally, IconFind's Specific Objections in Response to a Request should not be construed as a waiver or restriction of any other General Objection applicable to the information falling within the scope of such Request.

10.   IconFind has based its responses on information presently available to IconFind. IconFind reserves the right to supplement or amend its responses and to present evidence discovered hereafter at trial.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that an image on a webpage is not a "page" (as the term "page" is used in the '459 patent).

RESPONSE:

See General Objections 1-10. IconFind objects to this request to the extent it calls for information protected by the attorney-client privilege or work product doctrine. IconFind further objects to this request to the extent it requires assumptions or conclusions regarding claim construction and, accordingly, calls for legal conclusions and/or the determination of ultimate issues and is therefore improper under Rule 36. Lane No. 1 v. Lane Masters Bowling Inc., 2001 WL 1097861, *10 (N.D.N.Y. Mar. 22, 2011) (finding requests for admission improper because

"each of those seven requests calls for the making of legal conclusions and/or the determination of ultimate issues by either (1) asking whether a patent is valid … or (2) asking whether infringement has occurred"); Tulip Computers Int'l, B. V. v. Dell Computer Corp., 210 F.R.D. 100, 108 (D. Del. 2002) ("[R]equests that seek legal conclusions are not allowed under Rule 36 ... As a result, determining whether a patent is valid would call for a legal conclusion although dependent on factual inquiries. ... Similarly, determining whether a product or process infringes or whether infringement has occurred involves the requirement of claim construction, which is a legal determination within the province of the court."); Phillip M. Adams & Associates, LLC v. Dell, Inc., 2007 WL 128962, *2 (D. Utah Jan. 11, 2007) (denying motion to compel response to request for admission which asked Plaintiff to admit or deny that certain elements of one of the patents in suit are disclosed by a prior patent in suit; stating, "Dell is correct that its requests for admission seek factual information, but that factual information rests on legal analysis (from Adams) and on legal conclusions of claim construction (from the Court)"); Fulhorst v. United Techs. Auto., Inc., 1997 WL 873548, *3 (D. Del. Nov. 17, 1997) (denying motion to compel responses to requests for admission as improperly seeking the admission of a legal conclusion because "Defendant asks Plaintiff to assume that the allegedly infringing device is used in a certain manner, and then asks Plaintiff to admit that the device, if used in such a manner, infringes on Plaintiff's patent. Determining whether infringement has occurred involves, in the first instance, claim construction, which is a legal conclusion drawn by a court") (citing Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996)); Med. Graphics Corp. v. Sensormedics Corp., 1995 WL 523636, *14, n. 12 (D. Minn. Jun. 2, 1995) ("SensorMedics also argues that MedGraphics is bound by its response to the defendant's requests for admissions (as well as other statements) to the effect that the '764 patent does not 'cover' devices which measure only expiratory flow. Given the Court's obligation to construe the meaning of the claim

in light of the claim language, the specification and the prosecution history, <u>Markman</u>, 1995 WL 146983, at * 11, it is not clear that the Court is bound by such a statement."); <u>Pittway Corp.</u> v. <u>Fyrnetics, Inc.</u>, 1992 WL 12564602, *12 (N.D. Ill. Jun. 4, 2991) (rejecting requests for admission which called for the admission that specific "patents are prior art to the patent in suit" because they were "an effort to seek bald legal conclusions"); <u>Naxon Telesign Corp.</u> v. <u>GTE Information Systems, Inc.</u>, 1980 WL 57937, *2-3 (N.D. Ill. Oct. 3, 1980) (denying request to compel responses to requests for admission "each of which quotes selected language from the Naxon patent and asks that it be admitted that various elements disclosed in Unkles satisfy that quoted language. In combination those Requests seek to obtain an admission of the ultimate legal conclusion in the case rather than admissions 'of fact or of the application of law to fact.'"); <u>accord</u> <u>Streck, Inc.</u> v. <u>Research & Diagnostic Sys., Inc.</u>, 2009 U.S. Dist. LEXIS 130784, at *7-9 (D. Neb. June 1, 2009) (finding requests for admission that "require the defendants to assume that Streck's patents and claims are valid and enforceable – ultimate issues in the case" – to be improper under Rule 36); <u>Accord</u> <u>Golden Valley Microwave Foods, Inc.</u> v. <u>Weaver Popcorn Co., Inc.</u>, 130 F.R.D. 92, 96 (N.D. Ind. Jan. 17, 1990) (denying request to compel responses to requests for admission because "requests seeking a bald legal conclusion that certain patent claims are invalid runs counter to the proscription of FRCP Rule 36(a)").

Subject to the foregoing objections, IconFind states that this Request is improper under Rule 36 and therefore invalid.

Dated: July 25, 2011   Respectfully submitted,

                                                    /s/ Anna B. Folgers
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 1, 2011 the foregoing

PLAINTIFF'S RESPONSE TO GOOGLE INC.'S FIRST SET OF REQUESTS FOR ADMISSION

was served upon the following counsel of record via electronic transmission.

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I certify that all parties in this case are represented by counsel who are CM/ECF participants.

/s/   Anna B. Folgers
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