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22 UNITED STATES DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA
 24 SAN FRANCISCO DIVISION

25 OVERTURE SERVICES, INC.,
 26
 27 Plaintiff,
 28
 v.
 GOOGLE INC.,
 Defendant.

E-Filing Case No.: 02-01991 JSW (EDL)
**APPENDIX A TO MOTION TO
 COMPEL PRODUCTION OF
 DAMAGES DOCUMENTS**
 Hearing Date: March 2, 2004
 Hearing Time: 9:00 a.m.
 Hon. Elizabeth D. Laporte

1 request.

2 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

3 Overture is entitled to discovery from Google that relates to facts about Google's
4 accused Sponsored Search System that could form the basis for Overture's damages claim,
5 including those requested in Request No. 26. Documents about the market for the accused
6 system are relevant to the damages to which Overture is entitled by this lawsuit. *See Fed.*
7 *R. Civ. P. 26(b)(1)*. The discovery requested is proportional to the importance of the
8 damages issue to the case and Overture's need for the information to prepare its damages
9 case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from
10 a source other than Google without substantial difficulty, if at all. *See Fed. R. Civ. P.*
11 *26(b)(2)*.

12 There is no justification for further delay in Google's producing these documents.
13 The claim construction hearing, which was set for March 2003 when the parties' made their
14 agreement to postpone damages discovery, is currently set for March 24, 2004. In addition,
15 this case is now nearly two years old. The vast majority of the document requests at issue
16 have been outstanding since August 2002; all will have been outstanding at least roughly
17 four months on April 1, 2004. Finally, Overture is requesting that Google be compelled to
18 produce the documents *after* the claim construction hearing, which accords in full with the
19 parties' 2002 agreement.

20 REQUEST FOR PRODUCTION NO. 27:

21 All documents relating to any need, or to any perceived need, in the marketplace for
22 Google's Sponsored Search System.

23 RESPONSE TO REQUEST FOR PRODUCTION NO 27:

24 Google objects to this request on the ground that the term "Google's Sponsored
25 Search System" is vague, ambiguous and compound, and renders the request overbroad and
26 unduly burdensome. Subject to and without waiving the foregoing objection, Google
27 responds that it will produce documents within its possession that are responsive to this
28 request.

1 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

2 Overture is entitled to discovery from Google that relates to facts about Google's
3 accused Sponsored Search System that could form the basis for Overture's damages claim,
4 including those requested in Request No. 27. Documents about the market for the accused
5 system are relevant to the damages to which Overture is entitled by this lawsuit. *See Fed.*
6 *R. Civ. P. 26(b)(1)*. The discovery requested is proportional to the importance of the
7 damages issue to the case and Overture's need for the information to prepare its damages
8 case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from
9 a source other than Google without substantial difficulty, if at all. *See Fed. R. Civ. P.*
10 *26(b)(2)*.

11 Overture hereby incorporates by reference its discussion of the lack of justification
12 for further delay regarding Request No. 26.

13 REQUEST FOR PRODUCTION NO. 28:

14 All documents relating to Google's knowledge or awareness of Overture's design,
15 development, or operation of Overture's Sponsored Search System.

16 RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

17 Google objects to this request on the ground that the term "Overture's Sponsored
18 Search System" is vague, ambiguous and compound, and renders the request overbroad and
19 unduly burdensome. Google further objects to this request to the extent that it calls for
20 documents protected by the attorney-client privilege or the work-product doctrine. Google
21 further objects to this request to the extent that interpretation of the request calls for a legal
22 conclusion. Google further objects to this request to the extent that it is inconsistent with
23 Patent L.R. 2-5. Subject to and without waiving the foregoing objections, Google responds
24 that it will produce nonprivileged documents within its possession that are responsive to this
25 request.

26 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

27 Documents about Google's knowledge and use of information regarding Overture's
28 system are relevant to the damages to which Overture is entitled by this lawsuit, as well as

1 the willfulness of Google's infringement. *See* Fed. R. Civ. P. 26(b)(1). The discovery
2 requested is proportional to the importance of the damages issue to the case and Overture's
3 need for the information to prepare its damages case and analysis, is not unreasonably
4 cumulative or duplicative, and cannot be found from a source other than Google without
5 substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

6 Patent Local Rule 2-5, read in conjunction with Patent Local Rule 3-8, suggest only
7 that a party may withhold until 50 days after service of the Court's claim construction ruling
8 an opinion of counsel proffered to defend against a charge of willful infringement and
9 documents relating to that opinion. Request No. 28 includes, but is not limited to, such
10 documents.

11 Overture hereby incorporates by reference its discussion of the lack of justification
12 for further delay regarding Request No. 26.

13 **REQUEST FOR PRODUCTION NO. 29:**

14 All documents relating to any comparison of Google's Sponsored Search System and
15 other Sponsored Search System, including Overture's Sponsored Search System.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

17 Google objects to this request on the ground that the terms "Google's Sponsored
18 Search System" and "Overture's Sponsored Search System" are vague, ambiguous and
19 compound, and render the request overbroad and unduly burdensome. Google further
20 objects to this request to the "tent that it calls for documents protected by the attorney-client
21 privilege or the work product doctrine. Google further objects to this request to the extent
22 that interpretation of the request calls for a legal conclusion. Google further objects to this
23 request to the extent that it is inconsistent with Patent L.R. 2-5. Subject to and without
24 waiving the foregoing objections, Google responds that it will produce non-privileged
25 documents within its possession that are responsive to this request.

26 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

27 Overture is entitled to discovery from Google that relates to facts about Google's
28 accused Sponsored Search System that could form the basis for Overture's damages claim,

1 including those requested in Request No. 29. Documents relating to comparisons between
2 Google's accused system and other systems in the marketplace are relevant to the damages
3 to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery
4 requested is proportional to the importance of the damages issue to the case and Overture's
5 need for the information to prepare its damages case and analysis, is not unreasonably
6 cumulative or duplicative, and cannot be found from a source other than Google without
7 substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

8 Patent Local Rule 2-5 is inapposite to Request No. 29. Rule 2-5 permits a party to
9 object to discovery as premature where, *inter alia*, it seeks a comparison between the claims
10 and the accused system, *i.e.*, infringement contentions. Request No. 29 requests documents
11 relating to a comparison between the accused system and other systems, *not* between the
12 accused system and the claims.

13 Overture hereby incorporates by reference its discussion of the lack of justification
14 for further delay regarding Request No. 26.

15 REQUEST FOR PRODUCTION NO. 31:

16 All annual reports for Google.

17 RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

18 Google responds that it will produce documents within its possession that are
19 responsive to this request.

20 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

21 There is no question that Google's annual reports are relevant to the damages to
22 which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery
23 requested is proportional to the importance of the damages issue to the case and Overture's
24 need for the information to prepare its damages case and analysis, is not unreasonably
25 cumulative or duplicative, and cannot be found from a source other than Google more easily
26 than from Google itself. *See* Fed. R. Civ. P. 26(b)(2).

27 Overture hereby incorporates by reference its discussion of the lack of justification
28 for further delay regarding Request No. 26.

1 REQUEST FOR PRODUCTION NO. 32:

2 All documents relating to advertising plans, business plans, estimates, revenue
3 forecasts; web traffic reports, marketing plans or efforts, promotional programs, or
4 strategies on the part of Google concerning Google's Sponsored Search System.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

6 Google objects to this request on the ground that the term "Google's Sponsored
7 Search System" is vague, ambiguous and compound, and renders the request overbroad and
8 unduly burdensome. Subject to and without waiving the foregoing objection, Google
9 responds that it will produce documents within its possession that are responsive to this
10 request.

11 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

12 Overture is entitled to discovery from Google that relates to facts about Google's
13 accused Sponsored Search System that could form the basis for Overture's damages claim,
14 including those requested in Request No. 32. Documents responsive to Request No. 32 are
15 relevant to the damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P.
16 26(b)(1). The discovery requested is proportional to the importance of the damages issue to
17 the case and Overture's need for the information to prepare its damages case and analysis, is
18 not unreasonably cumulative or duplicative, and cannot be found from a source other than
19 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

20 Overture hereby incorporates by reference its discussion of the lack of justification
21 for further delay regarding Request No. 26.

22 REQUEST FOR PRODUCTION NO. 33:

23 Copies of all advertising and promotional materials for Google's Sponsored Search
24 System.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

26 Google objects to this request on the ground that the term "Google's Sponsored
27 Search System" is vague, ambiguous and compound, and renders the request overbroad and
28 unduly burdensome. Subject to and without waiving the foregoing objection, Google

1 responds that it will produce documents within its possession that are responsive to this
2 request.

3 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

4 Overture is entitled to discovery from Google that relates to facts about Google's
5 accused Sponsored Search System that could form the basis for Overture's damages claim,
6 including those requested in Request No. 33. Google's advertising and promotional
7 materials for the accused system are relevant to the damages to which Overture is entitled
8 by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
9 importance of the damages issue to the case and Overture's need for the information to
10 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
11 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
12 Fed. R. Civ. P. 26(b)(2).

13 Overture hereby incorporates by reference its discussion of the lack of justification
14 for further delay regarding Request No. 26.

15 **REQUEST FOR PRODUCTION NO. 34:**

16 All documents relating to any representation or submission made by Google to
17 another about Google's Sponsored Search System, including, but not limited to,
18 advertisements, promotional materials, data sheets, brochures, reports, catalogues, call
19 reports by inside or field sales people, internal or external communications, letters,
20 memoranda, notes, electronic mail transmissions, and submissions to any local, state,
21 federal, or foreign Governmental entity.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

23 Google objects to this request on the ground that the term "Google's Sponsored
24 Search System" is vague, ambiguous and compound, and renders the request overbroad and
25 unduly burdensome. Subject to and without waiving the foregoing objection, Google
26 responds that it will produce documents within its possession that are responsive to this
27 request.

28 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

1 Overture is entitled to discovery from Google that relates to facts about Google's
2 accused Sponsored Search System that could form the basis for Overture's damages claim,
3 including those requested in Request No. 34. Documents related to Google's
4 representations or submissions regarding the accused system are relevant to the damages to
5 which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery
6 requested is proportional to the importance of the damages issue to the case and Overture's
7 need for the information to prepare its damages case and analysis, is not unreasonably
8 cumulative or duplicative, and cannot be found from a source other than Google without
9 substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

10 Overture hereby incorporates by reference its discussion of the lack of justification
11 for further delay regarding Request No. 26.

12 **REQUEST FOR PRODUCTION NO. 35:**

13 All documents relating to any comments received by Google from another regarding
14 Google's Sponsored Search System, including, but not limited to, complaints, praise, or
15 suggestions regarding Google's Sponsored Search System.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

17 Google objects to this request on the ground that the term "Google's Sponsored
18 Search System" is vague, ambiguous and compound, and renders the request overbroad and
19 unduly burdensome. Subject to and without waiving the foregoing objection, Google
20 responds that it will produce documents within its possession that are responsive to this
21 request.

22 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

23 Overture is entitled to discovery from Google that relates to facts about Google's
24 accused Sponsored Search System that could form the basis for Overture's damages claim,
25 including those requested in Request No. 35. Documents regarding comments about the
26 accused system are relevant to the damages to which Overture is entitled by this lawsuit.
27 *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of
28 the damages issue to the case and Overture's need for the information to prepare its

1 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be
2 found from a source other than Google without substantial difficulty, if at all. *See* Fed. R.
3 Civ. P. 26(b)(2).

4 Overture hereby incorporates by reference its discussion of the lack of justification
5 for further delay regarding Request No. 26.

6 **REQUEST FOR PRODUCTION NO. 36:**

7 All documents relating to the total revenue that Google has earned, directly or
8 indirectly, from the sale or advertisement of products or services through or in conjunction
9 with Google's Sponsored Search System.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

11 Google objects to this request on the ground that the term "Google's Sponsored
12 Search System" is vague, ambiguous and compound, and renders the request overbroad and
13 unduly burdensome. Subject to and without waiving the foregoing objection, Google
14 responds that it will produce documents within its possession that are responsive to this
15 request.

16 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

17 Overture is entitled to discovery from Google that relates to facts about Google's
18 accused Sponsored Search System that could form the basis for Overture's damages claim,
19 including those requested in Request No. 36. Documents related to the revenue earned from
20 the accused system are relevant to the damages to which Overture is entitled by this lawsuit.
21 *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of
22 the damages issue to the case and Overture's need for the information to prepare its
23 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be
24 found from a source other than Google without substantial difficulty, if at all. *See* Fed. R.
25 Civ. P. 26(b)(2).

26 Overture hereby incorporates by reference its discussion of the lack of justification
27 for further delay regarding Request No. 26.

28 **REQUEST FOR PRODUCTION NO. 37:**

1 All documents relating to the profits earned by Google from the sale or
2 advertisement of products or services through or in conjunction with Google's Sponsored
3 Search System.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

5 Google objects to this request on the ground that the term "Google's Sponsored
6 Search System" is vague, ambiguous and compound, and renders the request overbroad and
7 unduly burdensome. Google further objects to this request on the ground that the phrase
8 "through or in conjunction with" is vague and ambiguous. Subject to and without waiving
9 the foregoing objections, Google responds that it will produce documents within its
10 possession that are responsive to this request.

11 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

12 Overture is entitled to discovery from Google that relates to facts about Google's
13 accused Sponsored Search System that could form the basis for Overture's damages claim,
14 including those requested in Request No. 37. Documents related to Google's profits related
15 to the accused system are relevant to the damages to which Overture is entitled by this
16 lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
17 importance of the damages issue to the case and Overture's need for the information to
18 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
19 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
20 Fed. R. Civ. P. 26(b)(2).

21 Overture hereby incorporates by reference its discussion of the lack of justification
22 for further delay regarding Request No. 26.

23 REQUEST FOR PRODUCTION NO. 38:

24 All income statements relating to Google's Sponsored Search System.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

26 Google objects to this request on the ground that the term "Google's Sponsored
27 Search System" is vague, ambiguous and compound, and renders the request overbroad and
28 unduly burdensome. Subject to and without waiving the foregoing objection, Google

1 responds that it will produce documents within its possession that are responsive to this
2 request.

3 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

4 Overture is entitled to discovery from Google that relates to facts about Google's
5 accused Sponsored Search System that could form the basis for Overture's damages claim,
6 including those requested in Request No. 38. Income statements relating to Google's
7 accused system are relevant to the damages to which Overture is entitled by this lawsuit.
8 *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of
9 the damages issue to the case and Overture's need for the information to prepare its
10 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be
11 found from a source other than Google without substantial difficulty, if at all. *See* Fed. R.
12 Civ. P. 26(b)(2).

13 Overture hereby incorporates by reference its discussion of the lack of justification
14 for further delay regarding Request No. 26.

15 **REQUEST FOR PRODUCTION NO. 39:**

16 All balance sheets relating to Google's Sponsored Search System.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

18 Google objects to this request on the ground that the term "Google's Sponsored
19 Search System" is vague, ambiguous and compound, and renders the request overbroad and
20 unduly burdensome. Subject to and without waiving the foregoing objection, Google
21 responds that it will produce documents within its possession that are responsive to this
22 request.

23 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

24 Overture is entitled to discovery from Google that relates to facts about Google's
25 accused Sponsored Search System that could form the basis for Overture's damages claim,
26 including those requested in Request No. 39. Balance sheets related to Google's accused
27 system are relevant to the damages to which Overture is entitled by this lawsuit. *See* Fed.
28 R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of the

1 damages issue to the case and Overture's need for the information to prepare its damages
2 case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from
3 a source other than Google without substantial difficulty, if at all. *See Fed. R. Civ. P.*
4 26(b)(2).

5 Overture hereby incorporates by reference its discussion of the lack of justification
6 for further delay regarding Request No. 26.

7 REQUEST FOR PRODUCTION NO. 40:

8 All profit and loss statements relating to Google's Sponsored Search System.

9 RESPONSE TO REQUEST FOR PRODUCTION NO 40:

10 Google objects to this request on the ground that the term "Google's Sponsored
11 Search System" is vague, ambiguous and compound, and renders the request overbroad and
12 unduly burdensome. Subject to and without waiving the foregoing objection, Google
13 responds that it will produce documents within its possession that are responsive to this
14 request.

15 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

16 Overture is entitled to discovery from Google that relates to facts about Google's
17 accused Sponsored Search System that could form the basis for Overture's damages claim,
18 including those requested in Request No. 40. Profit and loss statements relating to Google's
19 accused system are relevant to the damages to which Overture is entitled by this lawsuit.
20 *See Fed. R. Civ. P. 26(b)(1)*. The discovery requested is proportional to the importance of
21 the damages issue to the case and Overture's need for the information to prepare its
22 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be
23 found from a source other than Google without substantial difficulty, if at all. *See Fed. R.*
24 *Civ. P. 26(b)(2)*.

25 Overture hereby incorporates by reference its discussion of the lack of justification
26 for further delay regarding Request No. 26.

27 REQUEST FOR PRODUCTION NO. 41:

28 All audited or un-audited financial reports relating to Google's Sponsored Search

1 System

2 RESPONSE TO REQUEST FOR PRODUCTION NO. 41:

3 Google objects to this request on the ground that the term “Google’s Sponsored
4 Search System” is vague, ambiguous and compound, and renders the request overbroad and
5 unduly burdensome. Subject to and without waiving the foregoing objection, Google
6 responds that it will produce documents within its possession that are responsive to this
7 request.

8 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

9 Overture is entitled to discovery from Google that relates to facts about Google’s
10 accused Sponsored Search System that could form the basis for Overture’s damages claim,
11 including those requested in Request No. 41. Financial reports relating to Google’s accused
12 system are relevant to the damages to which Overture is entitled by this lawsuit. *See Fed.*
13 *R. Civ. P. 26(b)(1)*. The discovery requested is proportional to the importance of the
14 damages issue to the case and Overture’s need for the information to prepare its damages
15 case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from
16 a source other than Google without substantial difficulty, if at all. *See Fed. R. Civ. P.*
17 *26(b)(2)*.

18 Overture hereby incorporates by reference its discussion of the lack of justification
19 for further delay regarding Request No. 26.

20 REQUEST FOR PRODUCTION NO. 42:

21 All documents that identify any fees or costs incurred by Google in the design;
22 development, and operation of Google’s Sponsored Search System.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 42:

24 Google objects to this request on the ground that the term “Google’s Sponsored
25 Search System” is vague, ambiguous and compound, and renders the request overbroad and
26 unduly burdensome. Subject to and without waiving the foregoing objection, Google
27 responds that it will produce documents within its possession that are responsive to this
28 request.

1 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

2 Overture is entitled to discovery from Google that relates to facts about Google's
3 accused Sponsored Search System that could form the basis for Overture's damages claim,
4 including those requested in Request No. 42. Documents regarding Google's fees or costs
5 related to its accused system are relevant to the damages to which Overture is entitled by
6 this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
7 importance of the damages issue to the case and Overture's need for the information to
8 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
9 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
10 Fed. R. Civ. P. 26(b)(2).

11 Overture hereby incorporates by reference its discussion of the lack of justification
12 for further delay regarding Request No. 26.

13 REQUEST FOR PRODUCTION NO. 43:

14 Documents sufficient to identify the amount and nature of all investments made by
15 Google in facilities and equipment to design, develop, and operate Google's Sponsored
16 Search System.

17 RESPONSE TO REQUEST FOR PRODUCTION NO. 43:

18 Google objects to this request on the ground that the term "Google's Sponsored
19 Search System" is vague, ambiguous and compound, and renders the request overbroad and
20 unduly burdensome. Subject to and without waiving the foregoing objection, Google
21 responds that it will produce documents within its possession that are responsive to this
22 request.

23 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

24 Overture is entitled to discovery from Google that relates to facts about Google's
25 accused Sponsored Search System that could form the basis for Overture's damages claim,
26 including those requested in Request No. 43. Documents regarding Google's investments
27 in its accused system are relevant to the damages to which Overture is entitled by this
28 lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the

1 importance of the damages issue to the case and Overture's need for the information to
2 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
3 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
4 Fed. R. Civ. P. 26(b)(2).

5 Overture hereby incorporates by reference its discussion of the lack of justification
6 for further delay regarding Request No. 26.

7 REQUEST FOR PRODUCTION NO. 44:

8 Documents sufficient to establish the cost to Google of advertising, marketing, and
9 providing the products or services that it offers through or in conjunction with Google's
10 Sponsored Search System.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 44:

12 Google objects to this request on the ground that the term "Google's Sponsored
13 Search System" is vague, ambiguous and compound, and renders the request overbroad and
14 unduly burdensome. Subject to and without waiving the foregoing objection, Google
15 responds that it will produce documents within its possession that are responsive to this
16 request.

17 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

18 Overture is entitled to discovery from Google that relates to facts about Google's
19 accused Sponsored Search System that could form the basis for Overture's damages claim,
20 including those requested in Request No. 44. Documents regarding Google's costs relating
21 to the accused system are relevant to the damages to which Overture is entitled by this
22 lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
23 importance of the damages issue to the case and Overture's need for the information to
24 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
25 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
26 Fed. R. Civ. P. 26(b)(2).

27 Overture hereby incorporates by reference its discussion of the lack of justification
28 for further delay regarding Request No. 26.

1 REQUEST FOR PRODUCTION NO. 45:

2 All documents that identify and explain Google's accounting books and records as
3 they relate to Google's Sponsored Search System.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 45:

5 Google objects to this request on the ground that the term "Google's Sponsored
6 Search System" is vague, ambiguous and compound, and renders the request overbroad and
7 unduly burdensome. Subject to and without waiving the foregoing objection, Google
8 responds that it will produce documents within its possession that are responsive to this
9 request.

10 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

11 Overture is entitled to discovery from Google that relates to facts about Google's
12 accused Sponsored Search System that could form the basis for Overture's damages claim,
13 including those requested in Request No. 45. Google's accounting books and records
14 relating to the accused system are relevant to the damages to which Overture is entitled by
15 this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
16 importance of the damages issue to the case and Overture's need for the information to
17 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
18 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
19 Fed. R. Civ. P. 26(b)(2).

20 Overture hereby incorporates by reference its discussion of the lack of justification
21 for further delay regarding Request No. 26.

22 REQUEST FOR PRODUCTION NO. 46:

23 All documents relating to any licenses, agreements, partner agreements, or letters of
24 intent entered into by Google relating to Google's Sponsored Search System, including, but
25 not limited to, any licenses, agreements, partner agreements, affiliate agreements, or letters
26 of intent.

27 RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

28 Google objects to this request on the ground that the term "Google's Sponsored

1 Search System” is vague, ambiguous and compound, and renders the request overbroad and
2 unduly burdensome. Google further objects to this request to the extent that it calls for
3 documents protected by the attorney-client privilege or the work-product doctrine. Subject
4 to and without waiving the foregoing objection, Google responds that it will produce non-
5 privileged documents within its possession that are responsive to this request.

6 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

7 Overture is entitled to discovery from Google that relates to facts about Google’s
8 accused Sponsored Search System that could form the basis for Overture’s damages claim,
9 including those requested in Request No. 46. Documents relating to licenses or agreements
10 regarding the accused system are relevant to the damages to which Overture is entitled by
11 this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
12 importance of the damages issue to the case and Overture’s need for the information to
13 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
14 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
15 Fed. R. Civ. P. 26(b)(2).

16 Overture hereby incorporates by reference its discussion of the lack of justification
17 for further delay regarding Request No. 26.

18 **REQUEST FOR PRODUCTION NO. 47:**

19 All documents relating to any indemnification, promise of any indemnification, or
20 hold harmless agreement given or received by Google with respect to the ‘361 patent or any
21 of the claimed subject matter thereof.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

23 Google objects to this request to the extent that it calls for documents protected by
24 the attorney-client privilege or the work-product doctrine. Subject to and without waiving
25 the foregoing objection, Google responds that it will produce non-privileged documents
26 within its possession that are responsive to this request.

27 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

28 Documents relating to indemnification regarding the ‘361 patent are relevant to the

1 damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The
2 discovery requested is proportional to the importance of the damages issue to the case and
3 Overture's need for the information to prepare its damages case and analysis, is not
4 unreasonably cumulative or duplicative, and cannot be found from a source other than
5 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

6 Overture hereby incorporates by reference its discussion of the lack of justification
7 for further delay regarding Request No. 26.

8 **REQUEST FOR PRODUCTION NO. 48:**

9 All documents relating to any indemnification, promise of any indemnification, or
10 hold harmless agreement given or received by Google with respect to Google's Sponsored
11 Search System.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

13 Google objects to this request on the ground that the term "Google's Sponsored
14 Search System" is vague, ambiguous and compound, and renders the request overbroad and
15 unduly burdensome. Google further objects to this request to the extent that it calls for
16 documents protected by the attorney-client privilege or the work-product doctrine. Subject
17 to and without waiving the foregoing objection, Google responds that it will produce non-
18 privileged documents within its possession that are responsive to this request.

19 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

20 Documents relating to indemnification regarding the accused system are relevant to
21 the damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The
22 discovery requested is proportional to the importance of the damages issue to the case and
23 Overture's need for the information to prepare its damages case and analysis, is not
24 unreasonably cumulative or duplicative, and cannot be found from a source other than
25 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

26 Overture hereby incorporates by reference its discussion of the lack of justification
27 for further delay regarding Request No. 26.

28 **REQUEST FOR PRODUCTION NO. 49:**

1 All documents relating to any agreements or arrangements under which Google
2 licensed, attempted to license, obtained a license, or attempted to obtain a license and that
3 relate to Google's Sponsored Search System, including all documents relating to any
4 negotiations leading to any such agreement or arrangement

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 49:

6 Google objects to this request on the ground that the term "Google's Sponsored
7 Search System" is vague, ambiguous and compound, and renders the request overbroad and
8 unduly burdensome. Google further objects to this request to the extent that it calls for
9 documents protected by the attorney-client privilege or the work-product doctrine. Subject
10 to and without waiving the foregoing objection. Google responds that it will produce non-
11 privileged documents within its possession that are responsive to this request.

12 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

13 Overture is entitled to discovery from Google that relates to facts about Google's
14 accused Sponsored Search System that could form the basis for Overture's damages claim,
15 including those requested in Request No. 49. Documents relating to licensing of the
16 accused system are relevant to the damages to which Overture is entitled by this lawsuit.
17 *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of
18 the damages issue to the case and Overture's need for the information to prepare its
19 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be
20 found from a source other than Google without substantial difficulty, if at all. *See* Fed. R.
21 Civ. P. 26(b)(2).

22 Overture hereby incorporates by reference its discussion of the lack of justification
23 for further delay regarding Request No. 26.

24 REQUEST FOR PRODUCTION NO. 50:

25 All documents relating to any agreements or arrangements under which Google
26 licensed, attempted to license, obtained a license, or attempted to obtain a license, including
27 all documents relating to any negotiations leading to any such agreement or arrangement.

28 RESPONSE TO REQUEST FOR PRODUCTION NO. 50:

1 Google objects to this request to the extent that it calls for documents protected by
2 the attorney-client privilege or the work-product doctrine. Subject to and without waiving
3 the foregoing objection, Google responds that it will produce non-privileged documents
4 within its possession that are responsive to this request.

5 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

6 Documents relating to Google's licensing practices are relevant to the damages to
7 which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery
8 requested is proportional to the importance of the damages issue to the case and Overture's
9 need for the information to prepare its damages case and analysis, is not unreasonably
10 cumulative or duplicative, and cannot be found from a source other than Google without
11 substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

12 Overture hereby incorporates by reference its discussion of the lack of justification
13 for further delay regarding Request No. 26.

14 **REQUEST FOR PRODUCTION NO. 51:**

15 All documents relating to Google's patent licensing policies or practices.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

17 Google objects to this request to the extent that it calls for documents protected by
18 the attorney-client privilege or the work-product doctrine. Subject to and without waiving
19 the foregoing objection, Google responds, at it will produce non privileged documents
20 within its possession that are responsive to this request.

21 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

22 Documents relating to Google's licensing policies and practices are relevant to the
23 damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The
24 discovery requested is proportional to the importance of the damages issue to the case and
25 Overture's need for the information to prepare its damages case and analysis, is not
26 unreasonably cumulative or duplicative, and cannot be found from a source other than
27 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

28 Overture hereby incorporates by reference its discussion of the lack of justification

1 for further delay regarding Request No. 26.

2 REQUEST FOR PRODUCTION NO. 52:

3 All documents relating to any patent license(s) that Google contends are relevant to
4 their issues of damages or a reasonable royalty in this case.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 52:

6 Google objects to this request to the extent that it tails for documents protected by
7 the attorney-client privilege, or the work-product doctrine. Subject to and without waiving
8 the foregoing objection, Google responds that it will produce non-privileged documents
9 within its possession that are responsive to this request.

10 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

11 Documents relating to licenses that Google believes are relevant to damages in this
12 case are, in fact, relevant to the damages to which Overture is entitled by this lawsuit. *See*
13 *Fed. R. Civ. P. 26(b)(1)*. The discovery requested is proportional to the importance of the
14 damages issue to the case and Overture's need for the information to prepare its damages
15 case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from
16 a source other than Google without substantial difficulty, if at all. *See Fed. R. Civ. P.*
17 *26(b)(2)*.

18 Overture hereby incorporates by reference its discussion of the lack of justification
19 for further delay regarding Request No. 26.

20 REQUEST FOR PRODUCTION NO. 53:

21 All documents relating to or upon which Google will rely in support of any amount
22 or rate that Google considers to be a reasonable royalty for their use or operation of
23 Google's Sponsored Search System, as it relates to the `361 patent.

24 RESPONSE TO REQUEST FOR PRODUCTION NO. 53:

25 Google objects to this request on the ground that the term "Google's Sponsored
26 Search System" is vague, ambiguous and compound, and renders the request overbroad and
27 unduly burdensome. Google further objects to this request to the extent that it calls for
28 documents protected by the attorney-client privilege or the work-product doctrine. Subject

1 to and without waiving the foregoing objection, Google responds that it will produce non-
2 privileged documents within its possession that are responsive to this request.

3 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

4 Overture is entitled to discovery from Google that relates to facts about Google's
5 accused Sponsored Search System that could form the basis for Overture's damages claim,
6 including those requested in Request No. 53. Documents relating to Google's position on
7 reasonable royalty are relevant to the damages to which Overture is entitled by this lawsuit.
8 *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of
9 the damages issue to the case and Overture's need for the information to prepare its
10 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be
11 found from a source other than Google without substantial difficulty, if at all. *See* Fed. R.
12 Civ. P. 26(b)(2).

13 Overture hereby incorporates by reference its discussion of the lack of justification
14 for further delay regarding Request No. 26.

15 **REQUEST FOR PRODUCTION NO. 54:**

16 All documents relating to the nature, size, and scope of the market for, the
17 availability of, and the demand for Sponsored Search Systems in general or Google's
18 Sponsored Search System in particular.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

20 Google objects to this request on the ground that the terms "Sponsored Search
21 Systems" and "Google's Sponsored Search System" are vague, ambiguous and compound,
22 and render the request overbroad and unduly burdensome. Google further objects to this
23 request to the extent that it calls for documents protected by the attorney-client privilege or
24 the work-product doctrine. Subject to and without waiving the foregoing objection, Google
25 responds that it will produce non-privileged documents within its possession that are
26 responsive to this request.

27 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

28 Documents relating to the market for the accused system and sponsored search

1 systems generally are relevant to the damages to which Overture is entitled by this lawsuit.
2 *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of
3 the damages issue to the case and Overture’s need for the information to prepare its
4 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be
5 found from a source other than Google without substantial difficulty, if at all. *See* Fed. R.
6 Civ. P. 26(b)(2).

7 Overture hereby incorporates by reference its discussion of the lack of justification
8 for further delay regarding Request No. 26.

9 **REQUEST FOR PRODUCTION NO. 55:**

10 All documents relating to Google’s market share as a percentage of total sales in the
11 Sponsored Search Systems industry, whether expressed in units or dollars.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

13 Google objects to this request on the ground that the term “Sponsored Search
14 Systems” is vague, ambiguous and compound, and renders the request overbroad and
15 unduly burdensome. Google further objects to this request to the extent that it calls for
16 documents protected by the attorney-client privilege or the work-product doctrine. Subject
17 to and without waiving the foregoing objection, Google responds that it will produce non-
18 privileged documents within its possession that are responsive to this request.

19 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

20 Documents relating to Google’s market share are relevant to the damages to which
21 Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested
22 is proportional to the importance of the damages issue to the case and Overture’s need for
23 the information to prepare its damages case and analysis, is not unreasonably cumulative or
24 duplicative, and cannot be found from a source other than Google without substantial
25 difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

26 Overture hereby incorporates by reference its discussion of the lack of justification
27 for further delay regarding Request No. 26.

28 **REQUEST FOR PRODUCTION NO. 56:**

1 All documents relating to Sponsored Search System products or services that have
2 been marketed or sold in competition with Google's Sponsored Search System, including
3 any competitive analyses of such products or services.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 56:

5 Google objects to this request on the ground that the terms "Sponsored Search
6 Systems" and "Google's Sponsored Search System" are vague, ambiguous and compound,
7 and render the request overbroad and unduly burdensome. Google further objects to this
8 request to the extent that it calls for documents protected by the attorney-client privilege or
9 the work-product doctrine Subject to and without waiving the foregoing objection, Google
10 responds that it will produce non-privileged documents within its possession that are
11 responsive to this request.

12 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

13 Documents relating to products and services competing with the accused system are
14 relevant to the damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P.
15 26(b)(1). The discovery requested is proportional to the importance of the damages issue to
16 the case and Overture's need for the information to prepare its damages case and analysis, is
17 not unreasonably cumulative or duplicative, and cannot be found from a source other than
18 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

19 Overture hereby incorporates by reference its discussion of the lack of justification
20 for further delay regarding Request No. 26.

21 REQUEST FOR PRODUCTION NO. 57:

22 All documents relating to each product, system, or service that Google contends is an
23 acceptable non-infringing alternative to the apparatus, systems, or methods claimed in the
24 '361 patent.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 57:

26 Google objects to this request to the extent that it calls for documents protected by
27 the attorney-client privilege or the work-product doctrine. Subject to and without waiving
28 the foregoing objection. Google responds that it will produce non-privileged documents

1 within its possession that are responsive to this request.

2 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

3 Documents relating to alleged non-infringing alternatives are relevant to the damages
4 to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery
5 requested is proportional to the importance of the damages issue to the case and Overture's
6 need for the information to prepare its damages case and analysis, is not unreasonably
7 cumulative or duplicative, and cannot be found from a source other than Google without
8 substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

9 Overture hereby incorporates by reference its discussion of the lack of justification
10 for further delay regarding Request No. 26.

11 **REQUEST FOR PRODUCTION NO. 58:**

12 All documents relating to any disputes, including, without limitation, cease and
13 desist matters, litigation, arbitration, or administrative procedures in which Google was or is
14 involved and that relate to Google's Sponsored Search System.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 58:**

16 Google objects to this request on the ground that the term "Google's Sponsored
17 Search System" is vague, ambiguous and compound, and renders the request overbroad and
18 unduly burdensome. Google further objects to this request to the extent that it seeks
19 documents that are not reasonably calculated to lead to the discovery of admissible
20 evidence. Google further objects to this request to the extent that it calls for documents
21 protected by the attorney-client privilege or the work-product doctrine. Subject to and
22 without waiving the foregoing objection, Google responds that it will produce non-
23 privileged documents within its possession that are responsive to this request.

24 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

25 Overture is entitled to discovery from Google that relates to facts about Google's
26 accused Sponsored Search System that could form the basis for Overture's damages claim,
27 including those requested in Request No. 58. Documents relating to disputes regarding
28 Google's accused system are relevant to the damages to which Overture is entitled by this

1 lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
2 importance of the damages issue to the case and Overture's need for the information to
3 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
4 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
5 Fed. R. Civ. P. 26(b)(2).

6 Overture hereby incorporates by reference its discussion of the lack of justification
7 for further delay regarding Request No. 26.

8 **REQUEST FOR PRODUCTION NO. 59:**

9 All documents relating to any consideration, negotiation, recommendation, or
10 proposal to license, buy, acquire, or otherwise obtain rights under the '361 patent.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

12 Google objects to this request to the extent that it calls for documents protected by
13 the attorney-client privilege or the work-product doctrine. Google further objects to this
14 request to the extent that it calls for documents that are readily obtainable from Plaintiff or
15 from other sources which are less burdensome and/or less expensive. Subject to and
16 without waiving the foregoing objections, Google responds that it will produce non-
17 privileged documents within its possession that are responsive to this request.

18 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

19 Documents relating to obtaining the rights to the '361 patent at issue in this lawsuit
20 are relevant to the damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ.
21 P. 26(b)(1). The discovery requested is proportional to the importance of the damages issue
22 to the case and Overture's need for the information to prepare its damages case and
23 analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source
24 other than Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

25 Overture hereby incorporates by reference its discussion of the lack of justification
26 for further delay regarding Request No. 26.

27 **REQUEST FOR PRODUCTION NO. 60:**

28 All documents relating to any money or monetary funds that have ever been set

1 aside, put in escrow, or designated for settlement or payment of damages relating to
2 Google's infringement or potential infringement of the `361 patent or any other patent.

3 RESPONSE TO REQUEST FOR PRODUCTION NO. 60:

4 Google objects to this request to the extent that it calls for documents protected by
5 the attorney-client privilege or the work-product doctrine. Subject to and without waiving
6 the foregoing objection, Google responds that it will produce non-privileged documents
7 within its possession that are responsive to this request.

8 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

9 Documents relating to money set aside for settlement or damages payments for
10 patent infringement are relevant to the damages to which Overture is entitled by this
11 lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
12 importance of the damages issue to the case and Overture's need for the information to
13 prepare its damages case and analysis, is not unreasonably cumulative or duplicative, and
14 cannot be found from a source other than Google without substantial difficulty, if at all. *See*
15 Fed. R. Civ. P. 26(b)(2).

16 Overture hereby incorporates by reference its discussion of the lack of justification
17 for further delay regarding Request No. 26.

18 REQUEST FOR PRODUCTION NO. 61:

19 All documents relating to any comments, statements, or representations made by
20 Google, or any other person, about the features, performance, advantages, or disadvantages
21 of Google's sponsored Search System or Overture's Sponsored Search System or any
22 comparisons between Google's Sponsored Search System and Overture's Sponsored Search
23 System.

24 RESPONSE TO REQUEST FOR PRODUCTION NO. 61:

25 Google objects to this request on the ground that the terms "Google's Sponsored
26 Search System" and "Overture's Sponsored Search System" are vague, ambiguous and
27 compound; and render the request overbroad and unduly burdensome. Subject to and
28 without waiving the foregoing objection, Google responds that it will produce documents

1 within its possession that are responsive to this request.

2 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

3 Documents relating to comments and the like about the features, advantages and
4 disadvantages of the accused system or Overture's system are relevant to the damages to
5 which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery
6 requested is proportional to the importance of the damages issue to the case and Overture's
7 need for the information to prepare its damages case and analysis, is not unreasonably
8 cumulative or duplicative, and cannot be found from a source other than Google without
9 substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

10 Overture hereby incorporates by reference its discussion of the lack of justification
11 for further delay regarding Request No. 26.

12 REQUEST FOR PRODUCTION NO. 62:

13 All documents relating to any efforts made by Google, or anyone acting on its behalf,
14 to solicit, convince, or persuade any of Overture's customers, affiliates, or advertisers to
15 advertise on Google's website.

16 RESPONSE TO REQUEST FOR PRODUCTION NO. 62:

17 Google objects to this request on the ground that it is overboard and unduly
18 burdensome, and to the extent that it seeks documents not reasonably calculated to lead to
19 the discovery or admissible evidence. Subject to and without waiving the foregoing
20 objection, Google responds that it will produce documents within its possession that are
21 responsive to this request.

22 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

23 Documents relating to efforts to promote advertising on Google's website are
24 relevant to the damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P.
25 26(b)(1). The discovery requested is proportional to the importance of the damages issue to
26 the case and Overture's need for the information to prepare its damages case and analysis, is
27 not unreasonably cumulative or duplicative, and cannot be found from a source other than
28 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

1 Overture hereby incorporates by reference its discussion of the lack of justification
2 for further delay regarding Request No. 26.

3 REQUEST FOR PRODUCTION NO. 63:

4 All documents relating to communications, letters, emails, comments, statements, or
5 representations made by Google that were directed to any of Overture's customers or
6 advertisers.

7 RESPONSE TO REQUEST FOR PRODUCTION NO. 63:

8 Google objects to this request on the ground that it is overboard and unduly
9 burdensome, and to the extent that it seeks documents not reasonably calculated to lead to
10 the discovery or admissible evidence. Subject to and without waiving the foregoing
11 objection, Google responds that it will produce documents within its possession that are
12 responsive to this request.

13 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

14 There is no question that Google's statements to Overture's customers or advertisers
15 are relevant to the damages to which Overture is entitled by this lawsuit. *See Fed. R. Civ.*
16 *P. 26(b)(1)*. The discovery requested is proportional to the importance of the damages issue
17 to the case and Overture's need for the information to prepare its damages case and
18 analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source
19 other than Google without substantial difficulty, if at all. *See Fed. R. Civ. P. 26(b)(2)*.

20 Overture hereby incorporates by reference its discussion of the lack of justification
21 for further delay regarding Request No. 26.

22 REQUEST FOR PRODUCTION NO. 64:

23 All documents relating to any agreements or arrangements between Google and
24 America Online, Inc. ("AOL") that relate to Google's Sponsored Search System, including
25 all documents relating to any communications or negotiations leading to any such
26 agreement or arrangement.

27 RESPONSE TO REQUEST FOR PRODUCTION NO. 64:

28 Google objects to this request on the ground that the term "Google's Sponsored

1 Search System” is vague, ambiguous and compound, and renders the request overbroad and
2 unduly burdensome. Google further objects to this request to the extent that it calls for
3 documents protected by the attorney-client privilege or the work-product doctrine. Subject
4 to and without waiving the foregoing objections, Google responds that it will produce non-
5 privileged document within its possession that are responsive to this request.

6 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

7 Documents relating to agreements regarding the accused system are relevant to the
8 damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The
9 discovery requested is proportional to the importance of the damages issue to the case and
10 Overture’s need for the information to prepare its damages case and analysis, is not
11 unreasonably cumulative or duplicative, and cannot be found from a source other than
12 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

13 Overture hereby incorporates by reference its discussion of the lack of justification
14 for further delay regarding Request No. 26.

15 **REQUEST FOR PRODUCTION NO. 65:**

16 All documents relating to any agreements or arrangements between Google and
17 AT&T that relate to Google’s Sponsored Search System, including all documents relating to
18 any communications or negotiations leading to any such agreement or arrangement.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 65:**

20 Google objects to this request on the ground that the term “Google’s Sponsored
21 Search System” is vague, ambiguous and compound, and renders the request overbroad and
22 unduly burdensome. Google further objects to this request to the extent that it calls for
23 documents protected by the attorney-client privilege or the work-product doctrine. Subject
24 to and without waiving the foregoing objections, Google responds that it will produce non-
25 privileged document within its possession that are responsive to this request.

26 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

27 Overture hereby incorporates by reference its discussion above regarding Request
28 No. 64.

1 Documents relating to acquisitions or mergers involving Google are relevant to the
2 damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). In
3 particularly, these documents are likely to include facts regarding the finances of Google's
4 accused system. The discovery requested is proportional to the importance of the damages
5 issue to the case and Overture's need for the information to prepare its damages case and
6 analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source
7 other than Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

8 Overture hereby incorporates by reference its discussion of the lack of justification
9 for further delay regarding Request No. 26.

10 OVERTURE'S FIFTH SET OF REQUESTS

11 REQUEST FOR PRODUCTION NO. 99:

12 All documents relating to any discussions, meetings, or communications of any sort
13 between Google and Terra Lycos concerning the '361 patent.

14 RESPONSE TO REQUEST FOR PRODUCTION NO. 99:

15 Google objects to this request to the extent that it calls for documents protected by
16 the attorney-client privilege, the work product doctrine, and/or any other privileges or
17 immunities. Google further objects to this request to the extent-that the phrase "concerning
18 the '361 patent" calls for a legal conclusion. Subject to any without waiving the foregoing
19 objections, Google responds that it will produce non-privileged documents responsive to
20 this request to the extent that they exist and have not already been produced. To the extent
21 that any such documents relate only to damages issues, pursuant to the parties' agreement to
22 phase damages discovery, such documents will be produced in the damages phase of
23 discovery.

24 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

25 Documents relating to discussions and the like between Google and Terra Lycos
26 regarding the '361 patent at issue in this lawsuit are relevant to the damages to which
27 Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested
28 is proportional to the importance of the damages issue to the case and Overture's need for

1 the information to prepare its damages case and analysis, is not unreasonably cumulative or
2 duplicative, and cannot be found from a source other than Google without substantial
3 difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

4 Overture hereby incorporates by reference its discussion of the lack of justification
5 for further delay regarding Request No. 26.

6 REQUEST FOR PRODUCTION NO. 107:

7 All documents relating to any licenses, agreements, partner agreements, or letters of
8 intent entered into by Google and Terra Lycos relating to Google's Sponsored Search
9 System, including, but not limited to any licenses, agreements, partner agreements, or letters
10 of intent.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 107:

12 Google objects to this request to the extent that it seeks documents concerning any
13 Google's Sponsored Search System that ceased to be used prior to the issuance of the
14 Patent-in-Suit, on July 31, 2001. Google's response is limited to Google's Sponsored
15 Search Systems that have been in use since the issuance of Patent-in-Suit. Based on
16 discussions between counsel for Overture and Google, Google understands the term
17 "Google's Sponsored Search System" to be limited to advertising models that are priced on
18 a "cost-per-click" pricing model. Based on that understanding and the time limitation noted
19 above, Google understands the term "Google's Sponsored Search System" to be limited to
20 AWS. Google further objects to this request to the extent that it purports to require the
21 production of documents protected by the attorney-client privilege, the work product
22 doctrine, or any other privileges or immunities. Subject to and without waiving the
23 foregoing object, Google responds that, to the extent that there are nonprivileged documents
24 within its possession, custody, or control that are responsive to this request, that relate to
25 AWS, and that pre-date the filing of this lawsuit, Google will produce such documents to
26 the extent that they exist and have not already been produced; to the extent that there are
27 non-privileged documents within its possession, custody, or control that are responsive to
28 this request, that relate to AWS, and that post-date the filing of this lawsuit, such documents

1 can only be related to damages issues, and pursuant to the parties' agreement to phase
2 damages discovery; such documents will be produced in the damages phase of discovery.

3 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

4 Overture is entitled to discovery from Google that relates to facts about Google's
5 accused Sponsored Search System that could form the basis for Overture's damages claim,
6 including those requested in Request No. 107. Documents relating to licenses or
7 agreements between Google and Terra Lycos regarding the accused system, regardless of
8 their date, are relevant to the damages to which Overture is entitled by this lawsuit. *See*
9 Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the importance of the
10 damages issue to the case and Overture's need for the information to prepare its damages
11 case and analysis, is not unreasonably cumulative or duplicative, and cannot be found from
12 a source other than Google without substantial difficulty, if at all. *See* Fed. R. Civ. P.
13 26(b)(2).

14 Overture hereby incorporates by reference its discussion of the lack of justification
15 for further delay regarding Request No. 26.

16 **REQUEST FOR PRODUCTION NO. 108:**

17 All documents relating to any licenses, agreements, partner agreements, or letters of
18 intent entered into by Google and Terra Lycos relating to sponsored search links, including,
19 but not limited to, any licenses, agreements, partner agreements, or letters of intent.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 108:**

21 Google objects to this request on the ground that the phrase "sponsored search links"
22 is overly broad to the extent that it includes sponsored search links" that are beyond the
23 scope of AWS, which is the only service that Overture has asserted allegedly infringes the
24 patent in suit, and thus this request seeks in part documents that are neither relevant to the
25 claims or defenses raised in this action, nor reasonably calculated to lead to the discovery of
26 admissible evidence. Google objects to this request to the extent that it seeks documents
27 concerning any Google's Sponsored Search System that ceased to be used prior to the
28 issuance of the Patent-in-Suit, on July 31, 2001. Google's response is limited to Google's

1 Sponsored Search Systems that have been in use since the issuance of the Patent-in-Suit.
2 Based on discussions between counsel for Overture and Google, Google understand the
3 term “Google’s Sponsored Search System” to be limited to advertising models that are
4 priced on a “cost-per-click” pricing model. Based on that understanding and the time
5 limitation noted above, Google understands the term “Google’s Sponsored Search System”
6 to be limited to AWS. Google further objects to this request to the extent that it purports to
7 require the production of documents protected by the attorney-client privilege, the work
8 product doctrine, and/or any other privileges or immunities. Subject to and without waiving
9 the foregoing objections, Google responds that it will produce documents as stated in its
10 response to Request for Production No. 107.

11 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

12 Documents relating to licenses or agreements between Google and Terra Lycos
13 regarding sponsored search links, including regarding the accused system, are relevant to
14 the damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The
15 discovery requested is proportional to the importance of the damages issue to the case and
16 Overture’s need for the information to prepare its damages case and analysis, is not
17 unreasonably cumulative or duplicative, and cannot be found from a source other than
18 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

19 Overture hereby incorporates by reference its discussion of the lack of justification
20 for further delay regarding Request No. 26.

21 **REQUEST FOR PRODUCTION NO. 109:**

22 All documents relating to any licenses, agreements, partner agreements, or letters of
23 intent entered into by Google and Terra Lycos relating to sponsored links, including, but not
24 limited to, any licenses, agreements, partner agreements, or letters of intent.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 109:**

26 Google objects to this request on the ground that the phrase “sponsored links” is
27 overly broad to the extent that it includes “sponsored links” that are beyond the scope of
28 AWS, which is the only service that Overture has asserted allegedly infringes the patent in

1 suit, and thus this request seeks in part documents that are neither relevant to the claims or
2 defenses raised in this action, nor reasonably calculated to lead to the discovery of
3 admissible evidence. Google objects to this request to the extent that it seeks documents
4 concerning any Google's Sponsored Search System that ceased to be used prior to the
5 issuance of the Patent-in-Suit, on July 31, 2001. Google's response is limited to Google's
6 sponsored Search Systems that have been in use since the issuance of the Patent-in-Suit.
7 Based on discussions between counsel for Overture and Google, Google understands the
8 term "Google's Sponsored Search System" to be limited to advertising models that are
9 priced on a "cost-per-click" pricing model. Based on that understanding and the time
10 limitation noted above, Google understands the term "Google's Sponsored Search System"
11 to be limited AWS. Google further objects to this request to the extent that it purports to
12 require the production of documents protected by the attorney-client privilege, the work
13 product doctrine, and/or any other privileges or immunities. Subject to and without waiving
14 the foregoing objections Google responds that it will produce documents as stated in its
15 response to Request for production No. 107.

16 **WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:**

17 Documents relating to licenses or agreements between Google and Terra Lycos
18 regarding sponsored links, including regarding the accused system, are relevant to the
19 damages to which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The
20 discovery requested is proportional to the importance of the damages issue to the case and
21 Overture's need for the information to prepare its damages case and analysis, is not
22 unreasonably cumulative or duplicative, and cannot be found from a source other than
23 Google without substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

24 Overture hereby incorporates by reference its discussion of the lack of justification
25 for further delay regarding Request No. 26.

26 **REQUEST FOR PRODUCTION NO. 110:**

27 All documents relating to any licenses, agreements, partner agreements, or letters of
28 intent entered into by Google and Terra Lycos relating to paid links, including, but not

1 limited to, any licenses, agreements, partner agreement, or letters of intent.

2 RESPONSE TO REQUEST FOR PRODUCTION NO. 110:

3 Google objects to this request on the ground that the phrase “paid links” is overly
4 broad to the extent that it includes “paid links” that are beyond the scope of AWS, which is
5 the only service that Overture has asserted allegedly infringes the patent in suit, and thus
6 this request seeks in part documents that are neither relevant to the claims or defenses raised
7 in this action, nor reasonably calculated to lead to the discovery of admissible evidence.

8 Google objects to this request to the extent that it seeks document is concerning any
9 Google’s Sponsored Search System that ceased to be used prior to the issuance of the
10 Patent-in-Suit, on July 31, 2001. Google’s response is limited to Google’s Sponsor Search
11 Systems that have been in use since the issuance of the Patent-in-Suit. Based on discussions
12 between counsel for Overture and Google, Google understands the term “Google’s
13 sponsored Search System” to be limited to advertising models that are priced on a “cost-per-
14 click” pricing model. Based on that understanding and the time limitation noted above,
15 Google and understands the term “Google’s Sponsored Search System” to be limited to
16 AWS. Google further o objects to this request to the extent that it purports to require the
17 production of documents protected by the attorney-client privilege, the work product
18 doctrine, and/or any other privileges or immunities. Subject to and without waiving the
19 foregoing objections, Google responds that it will produce documents as stated in its
20 response to Request for Production No. 107.

21 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

22 Documents relating to licenses or agreements between Google and Terra Lycos
23 regarding paid links, including regarding the accused system, are relevant to the damages to
24 which Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery
25 requested is proportional to the importance of the damages issue to the case and Overture’s
26 need for the information to prepare its damages case and analysis, is not unreasonably
27 cumulative or duplicative, and cannot be found from a source other than Google without
28 substantial difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

1 Overture hereby incorporates by reference its discussion of the lack of justification
2 for further delay regarding Request No. 26.

3 REQUEST FOR PRODUCTION NO. 112:

4 All documents relating to any indemnification, promise of indemnification, or hold
5 harmless agreement given by Google to Terra Lycos with respect to the '361 patent or any
6 of the claimed subject matter thereof.

7 RESPONSE TO REQUEST FOR PRODUCTION NO. 112:

8 Google objects to this request to the extent that it calls for documents protected by
9 the attorney-client privilege, the work product 'doctrine, and/or any other privileges or
10 immunities. Google further objects to this request to the extent that the phrase "with respect
11 to the '361 patent" calls for a legal conclusion. Subject to and without waiving the
12 foregoing objections, Google responds that it will produce non-privileged documents
13 responsive to this request to the extent that they exist and have not already been produced.
14 To the extent that any such documents relate only to damages issues, pursuant to the parties'
15 agreement to phase damages discovery, such documents will be produced in the damages
16 phase of discovery.

17 WHY OVERTURE IS ENTITLED TO THE REQUESTED DISCOVERY:

18 Documents relating to indemnification agreements given by Google to Terra Lycos
19 with respect to the '361 patent at issue in this lawsuit are relevant to the damages to which
20 Overture is entitled by this lawsuit. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested
21 is proportional to the importance of the damages issue to the case and Overture's need for
22 the information to prepare its damages case and analysis, is not unreasonably cumulative or
23 duplicative, and cannot be found from a source other than Google without substantial
24 difficulty, if at all. *See* Fed. R. Civ. P. 26(b)(2).

25 Overture hereby incorporates by reference its discussion of the lack of justification
26 for further delay regarding Request No. 26.

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