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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 OVERTURE SERVICES, INC., a Delaware
 20 Corporation,
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 22 Plaintiff,
 23 v.
 24 GOOGLE INC., a California Corporation,
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 26 Defendant.

E-Filing Case No.: 02-01991 JSW (EDL)
**OVERTURE SERVICES INC.'S
 OPPOSITION TO GOOGLE'S
 MISCELLANEOUS REQUEST RE
 OVERTURE'S REVISED CLAIM
 CONSTRUCTIONS**
[Local Civil Rule 7-10]
 The Honorable Jeffrey S. White

1 Pursuant to Civil Local Rule 7-10(b)(2), Overture Services, Inc. (“Overture”) hereby
2 opposes in part Google Inc.’s (“Google’s”) request for leave to file a sur-reply in connection with
3 Overture’s revised proposed constructions for two claims in dispute — “search listing” and “search
4 result list.” Overture apprised Google of these revised constructions on January 20, 2004, a full ten
5 days before Google’s response brief was due and thus ensured that Google would have an
6 opportunity to respond, as required by the Standing Order On Patent Cases before Judge White.
7 *See* Ex. A to Declaration of Christine P. Sun In Support of Miscellaneous Administrative Request
8 (“Sun Decl.”); Sun Decl. Ex. C. As previously explained to Google, Overture’s revisions were
9 based on further review of relevant dictionary definitions with an intent to clarify issues or moot,
10 not add, disputes between the parties. *See* Sun Decl. Ex. A.

11 Although Google demands a sur-reply to address Overture’s revised construction of “search
12 listing,” it has failed to identify any substantive reason for allowing further briefing on this term.
13 Overture’s revisions squarely address concerns previously raised by Google. Accordingly,
14 Overture requests that the Court deny Google’s sur-reply demand to the extent it applies at all to
15 further briefing by Google on “search listing.”

16 With respect to “search result list,”¹ as already explained by Overture and recognized by
17 Google itself, changing the word “set” to “series” in Overture’s proposed construction was intended
18 to moot Google’s objections. *See* Sun Decl. Ex. C; Google’s Administrative Request at 1. As
19 Overture has already conceded that a search result list is ordered, a sur-reply addressed to the
20 ordering issue is wholly unnecessary and thus inappropriate.

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28 ¹ Overture’s revised proposed construction of “search result list” is “a series of search listings that is obtained as a consequence of the examination of data.” *See* Sun Decl. Ex. A.

1 Google also argues it cannot fully respond to Overture's replacement of "calculation" with
2 "the examination of data" without a sur-reply. As stated before to Google, this revision was
3 intended to provide a construction that more closely tracks the relevant dictionary definitions, as
4 made clear by the definitions already cited in the Joint Claim Construction Statement. *See* Sun
5 Decl. Ex. A. To the extent Google insists on further addressing the specific 'issue' of "the
6 examination of data," Overture does not oppose to allowing a sur-reply no longer than two pages,
7 due seven days after Overture's reply brief, for this sole narrow purpose.

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10 DATED: February 4, 2004

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13 By /s/ S. Elizabeth Mitchell

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