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

OVERTURE SERVICES, INC.

No. C-02-1991 CRB (EDL)

Plaintiffs,

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
COMPEL PRODUCTION OF
DISCOVERY RELATING TO DAMAGES**

v.

GOOGLE INC.

Defendants.

Plaintiff Overture Services, Inc. (“Overture”) alleges that Google, Inc. (“Google”) infringes its U.S. Patent No. 6,269,361 (“the ‘361 patent”). Google has asserted an affirmative defense, and a counterclaim for declaratory judgment, of non-infringement. Overture’s Motion to Compel production of discovery relating to damages is presently before the Court. On March 9, 2003, the Court held a hearing on this motion and for the following reasons, Plaintiff’s Motion to Compel Damages Discovery is Granted in part and Denied in Part as follows.

This dispute involves a single question: the timing for the production of discovery relating to damages. In August, 2002, the parties agreed to delay responding to discovery relating to damages until after the Markman hearing, then set for March 25, 2003. The Claims Construction has been delayed several times, and is now set for March 24, 2004. In light of the delay in the Markman hearing, Overture requested, on January 8, 2004, that Google respond in full by February 6, 2004. (Brynes Decl. Exh. L.) Google responded that, in light of the agreement, production of damages documents was not warranted.

1 As a compromise, Overture suggested April 1, 2004 as a date for exchange of discovery. Google
2 countered with an offer to produce summary financial data in early April followed by phased production of
3 the remaining discovery. (Brynes Decl. Exhs. O, R.). Although the parties met and conferred, they were
4 unable to reach an agreement.

5 Overture claims to need the discovery “now to conduct its damages analysis and prepare its case.”
6 (Mot. at 4.) Google claims there is no reason to compel production immediately following the Markman
7 hearing. Additionally, Google claims that it would be very difficult to comply, given the resources devoted
8 to claims construction and other outside financial reporting obligations. Given that no trial dates have yet
9 been set, the Court agrees that production immediately following the Markman hearing is not warranted.

10 Accordingly, It is Hereby Ordered that:

- 11 1) Overture’s Motion to Compel Production of all Damages Discovery on April 1, 2004 is Denied;
12 and
13 2) Google shall produce summary damages documents, including aggregate numbers on a month by
14 month basis for Google’s Advertising Department on or before April 1, 2004;
15 3) Google shall produce all remaining damages documents on a rolling basis, production to occur
16 not more than a week after the documents have been completed; and
17 4) Google shall complete production of all requested damages documents on or before June 1,
18 2004.

19 IT IS SO ORDERED.

20
21 Dated: March 9, 2004

(Electronic Signature Authorized)

ELIZABETH D. LAPORTE
United States Magistrate Judge