

1 ROBERT T. HASLAM (#71134)  
 2 ROBERT D. FRAM (#126750)  
 3 M. PATRICIA THAYER (#90818)  
 4 S. ELIZABETH MITCHELL (#187053)  
 5 ANDREW C. BYRNES (#191516)  
 6 HELLER EHRMAN WHITE & MCAULIFFE LLP  
 7 333 Bush Street  
 8 San Francisco, CA 94104-2878  
 9 Telephone: (415) 772-6000  
 10 Facsimile: (415) 772-6268

11 BRINKS HOFER GILSON & LIONE  
 12 JACK C. BERENZWEIG  
 13 WILLIAM H. FRANKEL  
 14 JASON C. WHITE  
 15 NBC Tower – Suite 3600  
 16 455 North Cityfront Plaza Drive  
 17 Chicago, Illinois 60611  
 18 Telephone: (312) 321-4200  
 19 Facsimile: (312) 321-4299

20 Attorneys for Plaintiff and Counterdefendant,  
 21 OVERTURE SERVICES, INC.

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

25 OVERTURE SERVICES, INC.,  
 26 Plaintiff and Counter defendant,  
 27 v.  
 28 GOOGLE INC.,  
 Defendant and Counterclaimant.

**E-Filing Case No.:** 02-01991 JSW (EDL)

**DECLARATION OF MICHAEL P. WICKEY IN SUPPORT OF PLAINTIFF OVERTURE SERVICES, INC.'S OPPOSITION TO DEFENDANT GOOGLE INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND TESTIMONY RE PROSECUTION OF THE '361 PATENT**

Hearing Date: August 10, 2004  
 Hearing Time: 9:00 a.m.  
 Hon. Elizabeth D. Laporte

1 I, Michael P. Wickey, declare:

2 1. I am an attorney licensed to practice in the State of California and an associate  
3 with the law firm of Heller Ehrman White & McAuliffe LLP, counsel to Plaintiff Overture  
4 Services, Inc. (“Overture”) in this action. I make this declaration in support of Overture’s  
5 Opposition to Google, Inc.’s (“Google”) Motion to Compel Production of Documents and  
6 Testimony re Prosecution of the ‘361 Patent. Unless otherwise noted, the factual assertions  
7 herein are made on my personal knowledge and, if called upon to do so, I could and would  
8 testify competently thereto.

9 2. On July 18, 2003, Elaine K. Lee gave sworn deposition testimony in this case  
10 for 3 hours, 40 minutes; on July 23, 2003 and April 15, 2004, John G. Rauch gave sworn  
11 deposition testimony in this case for a combined 9 hours; and on April 15, 2004, James P.  
12 Naughton gave sworn deposition testimony in this case for nearly 7 hours. During these  
13 depositions, Overture’s attorney witnesses were cautioned 70 times not to provide an  
14 answer that would reveal protected and/or privileged information.

15 3. Overture is engaged in ongoing litigation against FindWhat.com, Inc.  
16 (“FindWhat”) involving claims of the ‘361 patent: Overture Services, Inc. v.  
17 FindWhat.com, Inc., CV 03-00685 CJC, Central District of California, Southern Division  
18 (“the Overture v. FindWhat matter”). Attached hereto as Exhibit A is a true and correct  
19 copy of a November 5, 2002 Confidentiality Agreement between Google and FindWhat,  
20 detailing their agreement to share information between the two cases, which Google  
21 produced in this matter at GOG 32284 – 32288.

22 4. On May 11, 2004, James P. Naughton gave sworn deposition testimony for  
23 eight hours in the Overture v. FindWhat matter; and on May 12, 2004, John G. Rauch gave  
24 sworn deposition testimony for 6 hours in Overture v. FindWhat matter. Transcripts for  
25 these depositions were produced to Google in this case, pursuant to Google’s Request for  
26 Production No. 51, served on September 20, 2002 and reading: “REQUEST FOR  
27 PRODUCTION NO. 51: All documents relating to any disputes, including, without  
28 limitation, cease and desist matters, litigation, arbitration, or administrative procedures in

1 which Overture was or is involved and that relate to Overture's Paid Listing System."

2 5. On May 28, 2004, Google provided Overture with a draft version of the  
3 current motion as an attachment to a mediation brief, and from that date until Google filed  
4 its current motion to compel on June 29, 2004, during which time the parties were engaged  
5 in settlement discussions, counsel for Google did not make any attempt to address the  
6 substance of its draft motion with counsel for Overture or to resolve the issues disputed  
7 without court action.

8 6. Attached hereto as Exhibit B is a true and correct copy of a July 1, 2004 letter  
9 from Andrew C. Byrnes, counsel for Overture, to Christine P. Sun, counsel for Google.

10 7. Attached hereto as Exhibit C is a true and correct copy of a letter sent by  
11 facsimile dated July 7, 2004 from Michael P. Wickey to Christine P. Sun.

12 8. Attached hereto as Exhibit D is a true and correct copy of a July 9, 2004 letter  
13 from Christine P. Sun to Michael P. Wickey.

14 9. Attached hereto as Exhibit E are true and correct excerpts from the deposition  
15 transcript of Jeffrey Brewer, dated November 12, 2003, taken in the Overture v. FindWhat  
16 matter. The transcript for this deposition was produced to Google in the current case,  
17 pursuant to Google's Request for Production No. 51.

18 10. Attached hereto as Exhibit F are true and correct excerpts from the deposition  
19 transcript of Tod Kurt, dated April 27, 2004 taken in Overture v. FindWhat matter. The  
20 transcript for this deposition was produced to Google in the current case, pursuant to  
21 Google's Request for Production No. 51.

22 11. Attached hereto as Exhibit G are true and correct excerpts from the deposition  
23 transcript of Steven Skovran, dated May 11, 2004, taken in Overture v. FindWhat matter.  
24 The transcript for this deposition was produced to Google in the current case, pursuant to  
25 Google's Request for Production No. 51.

26 12. Attached hereto as Exhibit H are true and correct excerpts from the deposition  
27 transcript of Matthew J. Derer, dated April 22, 2004, taken in Overture v. FindWhat matter.  
28 The transcript for this deposition was produced to Google in the current case, pursuant to

1 Google's Request for Production No. 51.

2 13. Attached hereto as Exhibit I are true and correct excerpts from the deposition  
3 transcript of Preston Pfarner, dated April 28, 2004, taken in the Overture v. FindWhat  
4 matter. The transcript for this deposition was produced to Google in the current case,  
5 pursuant to Google's Request for Production No. 51.

6 14. Attached hereto as Exhibit J are true and correct excerpts from the deposition  
7 transcript of James B. Gallinatti, dated June 9, 2004, taken in the Overture v. FindWhat  
8 matter. The transcript for this deposition was produced to Google in the current case,  
9 pursuant to Google's Request for Production No. 51.

10 15. Attached hereto as Exhibit K are true and correct excerpts from the deposition  
11 transcript of James P. Naughton, dated April 15, 2004, taken in this matter.

12 16. Attached hereto as Exhibit L are true and correct excerpts from the deposition  
13 transcript of Elaine K. Lee, dated July 18, 2003, taken in this matter.

14 17. Attached hereto as Exhibit M are true and correct excerpts from the deposition  
15 transcript of John G. Rauch, dated April 15, 2004, taken in this matter.

16 18. Attached hereto as Exhibit N is a true and correct copy of the U.S. PTO  
17 Notice of Allowability for Application No. 09/322,677 dated March 23, 2001.

18 19. Attached hereto as Exhibit O are true and correct excerpts from the deposition  
19 transcript of Darren J. Davis, dated May 20 and 21, 2003, taken in this matter.

20 20. Attached hereto as Exhibit P is a true and correct copy of the U.S. PTO  
21 Information Disclosure Statement dated August 27, 1999 filed by Elaine K. Lee on behalf  
22 of the inventors of the '361 Patent.

23 21. Attached hereto as Exhibit Q is a true and correct copy of U. S. Patent No.  
24 6,269,361 B1 issued on July 31, 2001.

25 22. I have reviewed the application for the '361 patent, all amendments submitted  
26 during its prosecution before the U.S. PTO, and the patent as issued. Based on that review,  
27 I have honestly and faithfully rendered the history of changes to the language of Claim 1 of  
28 the '361 patent and have attached that rendering hereto as Exhibit R.

