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 GOOGLE TECHNOLOGY INC., sued under its former name
 14 GOOGLE INC.

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

19 OVERTURE SERVICES, INC., a Delaware
 20 corporation,

21 Plaintiff and Counterdefendant,

22 v.

23 GOOGLE INC., a California corporation,

24 Defendant and Counterclaimant.

Case No. C 02-01991 JSW (EDL)

**STIPULATED REQUEST FOR LEAVE
 TO DEFER ADJUDICATION OF
 WHETHER 35 U.S.C. § 112 ¶ 6 GOVERNS
 CERTAIN LIMITATIONS**

Judge: Hon. Jeffrey S. White

**STIPULATED REQUEST FOR LEAVE TO DEFER ADJUDICATION OF WHETHER
35 U.S.C. § 112 ¶ 6 GOVERNS CERTAIN LIMITATIONS**

Overture Services, Inc. (“Overture”) and Google Technology Inc. (“Google”) hereby jointly request that the Court defer briefing and resolution of whether 35 U.S.C. § 112 ¶ 6 governs certain claim terms.

Patent Local Rule 4-1(a) requires that each party simultaneously exchange “a list of claim terms, phrases, or clauses which that party contends should be construed by the Court” and that each party “identify any claim element which that party contends should be governed by 35 U.S.C. § 112(6).” The parties timely exchanged disclosures pursuant to Patent Local Rule 4-1(a). After meeting and conferring about these disclosures, the parties agreed that twelve terms or phrases should be briefed for construction by the Court, and so notified the Court in a letter dated May 14, 2003.

In addition to identifying terms requiring construction, Google identified the following eight clauses in claim 14 of the patent-in-suit that it contends are governed by 35 U.S.C. § 112 ¶ 6:

programming code for providing the advertising web site promoter with login access in response to authentication, wherein the advertising web site promoter's login access grants the advertising web site promoter access to modify the advertising web site promoter's account, the advertising web site promoter not being provided with access to modify the accounts of others;

programming code on said computer system for adding money to the account of an advertising web site promoter in substantially real time upon receiving a request from said advertising web site promoter;

programming code on said computer system for adding a search listing to an account of an advertising web site promoter in substantially real time upon receiving a request from said advertising web site promoter;

programming code on said computer system for deleting a search listing to an account of an advertising web site promoter in substantially real time upon receiving a request from said advertising web site promoter;

programming code on said computer system for modifying in substantially real time the search listing of an advertising web site promoter upon receiving a request from said advertising web site promoter;

programming code for generating in substantially real time an activity report for an advertising web site promoter upon receiving a request from said advertising web site promoter;

1 programming code for receiving a search request from a remote computer, the
2 search request including at least one keyword, the search request being
3 received over the computer network from the remote computer through a web
4 site that is publicly accessible without authentication; and

5 programming code for generating in substantially real time a search result list in
6 response to the search request, the search result list including search listings
7 from the accounts on the database, wherein the search term for each search
8 listing in the search result list generates a match with the search request, the
9 search listings in the search result list arranged in an order determined using
10 the bid amounts of the search listings.

11 Overture contends that these clauses are not governed by 35 U.S.C. § 112 ¶ 6. The eight clauses
12 identified by Google appear only in claim 14. Given that this dispute relates to only one of the
13 62 asserted claims (Overture has asserted that Google infringes claims 1-2, 4-5, 7-18, 20-30, and
14 33-67 of the patent-in-suit), the parties propose to defer briefing of this issue until after the Court
15 has issued a claim construction order addressing the twelve terms identified in the May 14, 2003
16 letter to the Court.

17 The parties jointly request that the Court enter an order deferring adjudication of whether
18 the eight clauses identified above are governed by 35 U.S.C. § 112 ¶ 6, and the subordinate issue
19 of what structure, acts, or materials correspond to those elements, if any of the identified clauses
20 are governed by 35 U.S.C. § 112 ¶ 6. The parties further request that the Court hold a further
21 case management conference shortly after issuing a claim construction order addressing the
22 twelve terms identified in the May 14, 2003 letter to the Court, at which time the Court and the
23 parties can discuss whether and how the § 112 ¶ 6 issue should be addressed, and other case
24 management issues.

25 Dated: May 29, 2003

BRINKS HOFER GILSON & LIONE

26 By: _____
27 s/ Jason C. White
28 JASON C. WHITE
Attorneys for Plaintiff and Counterdefendant
OVERTURE SERVICES, INC.

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Dated: May 29, 2003

KEKER & VAN NEST, LLP

By: s/Michael S. Kwun
Defendant and Counterclaimant
GOOGLE TECHNOLOGY INC., sued under its
former name GOOGLE INC.

DECLARATION OF MICHAEL S. KWUN

I, Michael S. Kwun, declare that prior to filing the above Stipulated Request, I sent it to Jason C. White for his review, and he authorized me to file the Stipulated Request on his behalf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 29th day of May 2003 at San Francisco, California.

s/Michael S. Kwun
MICHAEL S. KWUN