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6 Attorneys for Defendant and Counterclaimant  
 GOOGLE TECHNOLOGY, INC., sued under its former name  
 7 GOOGLE, INC.

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

12 OVERTURE SERVICES, INC., a Delaware  
 13 corporation,

14 Plaintiff and Counterdefendant,

15 v.

16 GOOGLE INC., a California corporation,

17 Defendant and Counterclaimant.

Case No. C 02-01991 JSW (EDL)

**DECLARATION OF CHRISTINE P. SUN  
 IN SUPPORT OF GOOGLE'S  
 OPPOSITION TO OVERTURE'S  
 MOTION FOR PROTECTIVE ORDER**

Date: August 19, 2003  
 Time: 9:30 a.m.  
 Dept: E, 15<sup>th</sup> Floor  
 Judge: Hon. Elizabeth Laporte

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1 I, CHRISTINE P. SUN, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and am an  
3 associate in the law firm of Kecker & Van Nest, LLP, counsel for Google in the above-captioned  
4 matter. This declaration is in support of Google's Opposition to Overture's Motion for  
5 Protective Order. Except as otherwise noted, I have personal knowledge of the facts stated in  
6 this Declaration, and if called as a witness I could and would competently testify to them under  
7 oath.

8 2. Attached hereto as Exhibit A is a true and correct copy of United States Patent  
9 No. 6,269,361 B1.

10 3. Attached hereto as Exhibit B is a true and correct copy of relevant portions of an  
11 Office Action dated January 17, 1999 regarding Patent Application No. 09/322,677.

12 4. Attached hereto as Exhibit C is a true and correct copy of a May 19, 1998 Press  
13 Release entitled "GoTo.com Announces First Round of Financing Totaling More Than 6  
14 Million."

15 5. Attached hereto as Exhibit D is a true and correct copy of the Declaration of  
16 Darren Davis In Support of Petition and Motion to Make Application Special dated October 22,  
17 1999 regarding Patent Application No. 09/322,677.

18 6. Attached hereto as Exhibit E is a true and correct copy of Information Disclosure  
19 Statement dated August 27, 1999 regarding Patent Application No. 09/322,677.

20 7. Attached hereto as Exhibit F is a true and correct copy of a Response dated April  
21 6, 2000 regarding Patent Application No. 09/322,677.

22 8. Attached to Volume 2 of my Declaration, which has been filed under seal, as  
23 Exhibit G is a true and correct copy of excerpts of the Deposition of Darren Davis dated May 20-  
24 21, 2003.

25 9. Attached to Volume 2 of my Declaration, which has been filed under seal, as  
26 Exhibit H are excerpts of the Deposition of John Rauch dated July 23, 2003.

27 10. Attached hereto as Exhibit I is a true and correct copy of a Declaration of Darren  
28 J. Davis dated September 16, 2000 regarding Patent Application No. 09/322,677.

1 11. Attached hereto as Exhibit J is a true and correct copy of the Notice of Allowability  
2 dated March 23, 2001 regarding Patent Application No. 09/322,677.

3 12. Attached hereto as Exhibit K is a true and correct copy of Google's First Request  
4 for Production of Documents dated September 20, 2002. This document request includes  
5 requests for information related to Google's prior public use defense. For example, Request No.  
6 10 seeks, "All documents relating to the first sale or offer for sale of any product, device, or  
7 method that incorporates or embodies any of the subject matter claimed in the '361 patent.'  
8 Request No. 32 seeks, "Copies of all advertising and promotional materials for Overture's Paid  
9 Listing System." Request No. 77 seeks, "All documents provided by Overture at any  
10 conference, symposium seminar, exhibition, convention, or trade show at which any product,  
11 device, apparatus, or method that allegedly embodies, or falls within the scope of, any of the  
12 subject matter claimed in the '361 patent was discussed, referred to, advertised, displayed,  
13 demonstrated, or shown, including without limitation any such advertisements, brochures,  
14 articles, pamphlets, price lists, product specifications, or other promotional or marketing  
15 material."

16 13. With respect to Request 10, Overture agreed in its initial response to produce  
17 responsive documents, subject to its objections. With respect to Requests 32 and 77, Overture  
18 initially stated that it would withhold responsive documents until the damages phase of  
19 discovery. After meet and confer, Overture agreed to produce documents responsive to those  
20 requests, subject to its objections, prior to the damages phase of discovery. Attached hereto as  
21 Exhibit L is a true and correct copy of a Letter from C. McMahon to C. Sun dated January 21,  
22 2003.

23 14. As of this writing, Overture has not produced any billing statements to customers  
24 of the pre-critical date system, or information sufficient to determine what Overture told  
25 customers about the features and costs of the pre-critical date system.

26 15. Attached hereto as Exhibit M is a true and correct copy of Google's Second Set of  
27 Interrogatories dated December 12, 2002. Interrogatory 8 asks, "Identify all customers and  
28 potential customers of the COST-PER-CLICK SYSTEM, including but not limited to the name,

1 address, and contact person at each company, firm, or entity that has purchased, been approached  
2 to purchase, or considered purchasing services in connection with the COST-PER-CLICK  
3 SYSTEM.” “COST-PER-CLICK SYSTEM” is defined as, “the cost-per-click system which was  
4 available to the public at the website <http://www.goto.com> and associated web pages as of  
5 May 28, 1998; as well as any prior versions of any such systems, including but not limited to the  
6 “cost-per-click beta system” which OVERTURE began developing in January or February 1998,  
7 as described in OVERTURE’s November 6, 2002 Response to Google’s Interrogatory No. 2.”  
8 (emphasis added). On January 10, 2003, Overture responded to Google’s interrogatory with a  
9 list of approximately 500 names and addresses. Attached hereto as Exhibit N is a true and correct  
10 copy of Overture’s Objections and Response to Google’s Second Set of Interrogatories (Nos. 7-8)  
11 dated January 10, 2003. Google eventually culled down the list to about 300 advertisers that,  
12 based on Google’s research, are still in business.

13 16. Attached hereto as Exhibit O is a true and correct copy of the Davis Declaration  
14 dated October 22, 1999 regarding Patent Application No. 09/322,677.

15 17. In June 2003, I served on behalf of my client Google 25 subpoenas to advertisers,  
16 identified by Overture in its interrogatory response, located in California. With each subpoena, I  
17 enclosed a letter advising the advertiser that it could contact Google’s attorneys or Google’s  
18 vendor, Compex Legal Services, if the advertiser had any concerns about the subpoena.  
19 Attached hereto as Exhibit P is a true and correct copy of a Letter to Egghead from C. Sun dated  
20 July 8, 2003, which is an example of the letters I enclosed with each subpoena. No advertiser  
21 has contacted Google, or upon information and belief, Google’s vendor to express any such  
22 concern. Further, Google and, upon information and belief, Google’s vendor have granted  
23 extensions of time to each advertiser who has made such a request.

24 18. As of this writing, Google has received only one substantive response to the 25  
25 subpoenas served in June, which consists of a bill for month ending January 31, 2000. Attached  
26 hereto as Exhibit Q is a true and correct copy of documents numbered THD 00009 and 00010  
27 received in response to a Google’s subpoena to Attorneys Trust Service.

28 19. Attached hereto as Exhibit R is a true and correct copy of all the documents

