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 16 Hypermedia Navigation LLC

17 IN THE UNITED STATES DISTRICT COURT
 18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 19 OAKLAND DIVISION

20 **HYPERMEDIA NAVIGATION**
 21 **LLC,**

22 Plaintiff,

23 v.

24 **YAHOO HOLDINGS, INC.,**

25 Defendant.

Case No. 4:17-cv-03188-HSG

**ADMINISTRATIVE MOTION FOR
 LEAVE TO FILE SUR-REPLY**

DATE: Thursday, November 9, 2017
 TIME: 2:00 p.m.
 C/R: 2, 4th Floor
 JUDGE: Hon. Haywood S. Gilliam, Jr.

1 Pursuant to Local Civil Rules 7-11, Plaintiff Hypermedia Navigation, LLC
2 (“Hypermedia” or “Plaintiff”) hereby submits the following administrative motion
3
4 for an order granting Hypermedia leave to file the sur-reply to Defendant Yahoo
5 Holdings, Inc.’s (“Yahoo” or “Defendant”) Motion to Dismiss. Hypermedia has
6
7 complied with Local Rule 7-11 and sought Defendant’s stipulation to file a sur-
8
9 reply. Defendant has not yet confirmed whether it would oppose the Motion and as
10 such, Plaintiff files the Motion as Opposed.

11 **I. INTRODUCTION AND STATEMENT OF RELEVANT**
12 **FACTS**

13 Yahoo’s Reply Brief adds 8 new case cites and specifically makes new
14
15 invalidity arguments based on at least 4 previously undisclosed cases.

16 Plaintiff requests leave to file a sur-reply brief to respond to the new arguments
17
18 and evidence introduced by Defendant’s reply. Good cause exists to grant
19
20 Hypermedia’s request under the circumstances. Defendant filed its Motion to
21
22 Dismiss on September 11, 2017. Its Motion did not raise any of these cases or make
23
24 any invalidity arguments based on these cases. Defendant had more than sufficient
25
26 ability to do so.

27 Defendant had an obligation to come forward with all arguments on which it
28
29 intended to rely (and to submit all evidence) in its opening brief, to allow Plaintiff an
30
31 adequate opportunity to respond. Instead of complying with this obligation,
32
33 Defendant waited until its Reply brief to raise various new arguments, leaving

1 Plaintiff with no ability to respond or otherwise defend itself. *See II.A* below.
2 Plaintiff should have the opportunity to respond to these allegations, which
3
4 Defendant waited until the last minute to make.

5 For these reasons, Plaintiff respectfully requests that the Court grant leave to
6 file a sur-reply in opposition to Defendant's Motion to Dismiss. To the extent the
7
8 Court is inclined to grant this request, Plaintiff has attached its Sur-Reply in
9
10 Opposition to Defendant's Motion to Dismiss as Exhibit A to this Motion. This Sur-
11
12 Reply is limited to certain evidence and argument that was improperly raised for the
13 first time in Defendant's Reply.

14 **II. ARGUMENT**

15 **A. *In addition to the numerous new cases which could've been previously*** 16 ***presented by Yahoo, Yahoo adds new invalidity arguments based on GT*** 17 ***Nexus, Intellectual Ventures I, CyberSource, and Affinity Labs.***

18 In Yahoo's Reply, pages 7, 9-11 specifically set forth new invalidity
19 arguments based on at least 3 new cases that were not previously discussed in either
20 the Motion or the Response. Defendant had ample opportunity to make invalidity
21 arguments based on these cases in its Motion but did not do so. Plaintiff is requesting
22 the opportunity to respond to these invalidity arguments which are not comparable
23 to the Asserted Claims.
24

25 **III. CONCLUSION**

26
27
28

1 Defendant's submission of new evidence and new invalidity arguments in its
2 Reply is improper. Plaintiff therefore requests administrative leave to submit the
3
4 Sur-Reply attached as Exhibit A to this Motion, responding to Defendant's newly
5 added invalidity arguments.
6

7 Dated: October 16, 2017

8 By: /s/ Hao Ni
9 Hao Ni

10 **Attorney for Plaintiff Hypermedia
11 Navigation LLC**

12 **CERTIFICATE OF SERVICE**

13 I certify that all counsel of record is being served on October 16, 2017, with a copy
14 of this document via the Court's CM/ECF system.

15 */s/ Hao Ni*

16 _____
17 HAO NI

18
19
20
21 Dated: 10/17/2017

