

1 Robert N. Phillips (SBN 120970)  
 Ethan B. Andelman (SBN 209101)  
 2 HOWREY SIMON ARNOLD & WHITE, LLP  
 525 Market Street, Suite 3600  
 3 San Francisco, CA 94105  
 Telephone: (415) 848-4900  
 4 Facsimile: (415) 848-4999

5 David A. Rammelt (Admitted *Pro Hac Vice*)  
 Susan J. Greenspon (Admitted *Pro Hac Vice*)  
 6 Dawn M. Beery (Admitted *Pro Hac Vice*)  
 KELLEY DRYE & WARREN LLP  
 7 333 West Wacker Drive, Suite 2600  
 Chicago, IL 60606  
 8 Telephone: (312) 857-7070  
 Facsimile: (312) 857-7095

9 Attorneys for Defendant/Counter-Plaintiff  
 10 AMERICAN BLIND AND WALLPAPER  
 FACTORY, INC.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 GOOGLE INC., a Delaware corporation,

14 Plaintiff,

15 v.

16 AMERICAN BLIND & WALLPAPER  
 17 FACTORY, INC., a Delaware corporation  
 d/b/a decoratetoday.com, Inc.; and DOES 1-  
 18 100, inclusive,

19 Defendants.

20 AMERICAN BLIND & WALLPAPER  
 FACTORY, INC., a Delaware corporation  
 21 d/b/a decoratetoday.com, Inc.,

22 Counter-Plaintiff,

23 v.

24 GOOGLE, INC.,

25 Counter-Defendant.

Case No. C 03-5340-JF (EAI)

**DECLARATION OF CAROLINE C.  
 PLATER IN SUPPORT OF AMERICAN  
 BLIND & WALLPAPER, INC.'S MOTION  
 TO AMEND AND EXTEND CASE  
 MANAGEMENT ORDER DATES**

Date: June 23, 2006  
 Time: 9:00 a.m.  
 Courtroom: 3  
 Hon. Jeremy Fogel

1 I, Caroline C. Plater, declare as follows:

2 1. I am an attorney at Kelley Drye & Warren LLP, counsel of record for  
3 Defendant/Counter-Plaintiff American Blind & Wallpaper Factory, Inc. (“American Blind”) in  
4 the above-captioned action. I am a member in good standing of the State Bar of Illinois. I have  
5 personal knowledge of the facts set forth in this declaration and, if called as a witness, could and  
6 would testify competently to such facts under oath.

7 **Description of the Motion to Amend and Extend the Case Management Order Dates**

8 2. Defendant/Counter-Plaintiff American Blind’s Motion to Amend and Extend Case  
9 Management Order Dates filed herewith seeks to extend all dates in the case management order  
10 by 90 days.

11 3. As set forth in the Motion to Amend and Extend Case Management Order Dates,  
12 both parties require additional time to complete their discovery of the opposing party and to fulfill  
13 their discovery obligations to the opposing party. Without the additional time requested, neither  
14 party will be able to properly prepare and defend their positions in this matter and, thus, will be  
15 prejudiced.

16 4. American Blind was unable to bring this motion at an earlier date due to the timing  
17 of the change in management at the company and Google’s recent refusal to agree to any joint  
18 submissions regarding an extension of the case management order.

19 **Basis for the Motion to Amend and Extend Case Management Order Dates**

20 5. In the midst of completing fact discovery in this matter, negotiations were taking  
21 place between the then current management of American Blind and its then current Board of  
22 Directors and shareholders with respect to the potential sale of the company. The then current  
23 management of American Blind was unable to respond to the supplemental interrogatories and  
24 document production requests and did not have the time necessary to prepare for and attend  
25 depositions due to the company’s focus on these negotiations. On May 18, 2006, the company’s  
26 ownership was sold and American Blind unexpectedly underwent a change in the management of  
27 the company.

28 6. As a result of the transition in management and ownership, American Blind was

1 unable respond to Google's discovery requests in the time frame originally anticipated, the  
2 deposition of American Blind's corporate representative was canceled, due to the subsequent  
3 resignation of American Blind's corporate designee and no new corporate designee has yet to be  
4 appointed by the company.

5 7. Counsel for American Blind has apprised counsel for Google of these  
6 developments and has requested that Google agree to an extension of the discovery and  
7 subsequent deadlines, but Google has refused to agree to such a voluntary extension, despite the  
8 fact that much of the delay prior to April 18, 2006, was caused by Google. (*See* June 6, 2006  
9 correspondence from Caroline C. Plater to Klaus Hamm and Ajay Krishnan, attached hereto as  
10 Exhibit B).

11 8. Google did not properly respond to American Blind's First Request for Documents  
12 until March 10, 2006 because it was compelled to do so by the Court by order dated February 8,  
13 2006. The documents produced in association with the motion to compel were only a fraction of  
14 Google's document production. Following its original production, Google produced  
15 approximately 28,000 pages of additional documents to American Blind – often timed so that it  
16 was impossible for American Blind to review Google's entire production prior to the depositions  
17 of Google representatives. Google also produced an unprepared Fed. R. Civ. P. 30(b)(6) witness,  
18 Alana Karen, and then refused to produce her a second time for a re-deposition on the topics she  
19 was unprepared to testify to during her first deposition.<sup>1</sup> The need for a second deposition of Ms.  
20 Karen is the direct result of Google's dilatory behavior in the discovery process.

21 9. Google produced a second Fed. R. Civ. P. 30(b)(6) designee, Prashant Fuloria, but  
22 there was not enough time to complete Mr. Fuloria's deposition because Mr. Fuloria was two  
23 hours late. Counsel for American Blind and Google agreed at the conclusion of Mr. Fuloria's  
24 deposition that he would be produced again to complete his Fed. R. Civ. R. 30(b)(6) testimony.  
25 Mr. Fuloria's deposition was also separately and individually noticed on April 14, 2006. Google  
26 has provided no dates for the continuation of Mr. Fuloria's Fed. R. Civ. P. 30(b)(6) deposition or

---

27 <sup>1</sup> American Blind will be separately filing a Motion to Compel the further deposition of  
28 Alana Karen for failure to comply with Fed. R. Civ. P. 30 (b)(6).

1 for his individually noticed deposition. In addition, although the parties had previously selected  
2 June 13, 2006 for the deposition of Rose Hagan, as a result of the recent changes at American  
3 Blind and the cancellation of Mr. Katzman's deposition for June 6, 2006, it was agreed that Ms.  
4 Hagan's deposition would also be canceled. No new date has been provided by Google for Ms.  
5 Hagan's deposition and counsel for Google, Michael Page, stated on June 7, 2006, to counsel for  
6 American Blind that it will not produce any more of its witnesses until Google has taken the  
7 depositions of American Blind's witnesses.

8 10. Google has also not provided the names or dates for the designees who will  
9 address the remainder of the Fed. R. Civ. P. 30(b)(6) topics from American Blind's Notice.

10 11. Both Google and American Blind share responsibility for the delays in completing  
11 discovery and require additional time to properly prepare and defend their positions in this matter.  
12 Both parties will be prejudiced if the current schedule is not extended.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed June 9, 2006, at Chicago, Illinois.

15  
16 /s/ Caroline C. Plater  
CAROLINE C. PLATER