

1 KEKER & VAN NEST, LLP
 MICHAEL H. PAGE - #154913
 2 MARK A. LEMLEY - #155830
 KLAUS H. HAMM - #224905
 3 AJAY S. KRISHNAN - #222476
 710 Sansome Street
 4 San Francisco, CA 94111-1704
 Telephone: (415) 391-5400
 5 Facsimile: (415) 397-7188

6 Attorneys for Plaintiff and Counter Defendant
 7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 GOOGLE INC., a Delaware corporation,
 12 Plaintiff,
 13 v.
 14 AMERICAN BLIND & WALLPAPER
 FACTORY, INC., a Delaware corporation
 15 d/b/a decoratetoday.com, Inc., and DOES 1-
 100, inclusive,
 16 Defendants.

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

**COUNTERDEFENDANT GOOGLE
 INC.'S MOTION FOR
 ADMINISTRATIVE RELIEF SEEKING
 LEAVE TO FILE A NON-
 ARGUMENTATIVE STATEMENT OF
 RECENT DECISION**

17 AMERICAN BLIND & WALLPAPER
 18 FACTORY, INC., a Delaware corporation
 d/b/a decoratetoday.com, Inc.,
 19 Counter Plaintiff,
 20 v.
 21 GOOGLE INC.,
 22 Counter Defendant

1 Pursuant to Civil Local Rule 7-11, Plaintiff and Counterdefendant Google Inc. moves the
2 Court for leave to file a Statement of Recent Decision, which is submitted herewith. Google
3 believes that a recent decision from the United States Court of Appeals for the First Circuit is
4 relevant to Google's summary judgment motion, which is already under submission with the
5 Court. *See* Docket Item No. 295. Civil Local Rule 7-3(d) prevents Google from bringing this
6 case to the Court's attention without leave of Court. The Court should grant leave to file the
7 Statement of Recent Decision for three reasons.

8 *First*, the Statement of Recent Decision that Google seeks to file contains no legal
9 argument. The prejudice to ABWF is therefore minimal.

10 *Second*, Google believes that the recent decision is relevant to the trademark-use issue
11 that is currently before the Court in the context of Google's summary judgment motion. ABWF
12 disputes this point. The trademark-use issue is discussed on:

- 13 • Pages 6-14 of Google's opening brief in support of its summary judgment motion
14 (Docket Item No. 234),
- 15 • Pages 13-20 of American Blind and Wallpaper Factory's opposition brief (Docket
16 Item No. 263), and
- 17 • Pages 5-10 of Google's reply brief (Docket Item No. 275).

18 In the interest of complying with the spirit of Civil Local Rule 7-3(d), Google refrains
19 from presenting legal argument either here or in the Statement of Recent Decision as to why the
20 case is relevant to the trademark-use issue. Of course, the Court need not decide whether the
21 case is in fact relevant to the trademark-use issue in order to grant leave to file the Statement of
22 Recent Decision.

23 *Third*, Google was not able to bring this case to the Court's attention at a prior
24 proceeding or in a prior filing. This Court's hearing on Google's summary judgment motion
25 took place on February 16, 2007. The First Circuit issued its decision on February 23, 2007.

26 This motion is supported by the Declaration of Ajay S. Krishnan in Support of
27 Counterdefendant Google Inc.'s Motion for Administrative Relief Seeking Leave to File a Non-
28 Argumentative Statement of Recent Decision, filed herewith.

///

1 Google respectfully requests that the Court grant leave to file the Statement of Recent
2 Decision.

3
4 Dated: March 2, 2007

KEKER & VAN NEST, LLP

5
6 By: /s/ Ajay S. Krishnan
AJAY S. KRISHNAN
7 Attorneys for Plaintiff and Counter Defendant
GOOGLE INC.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28