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 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 (RS)

**DECLARATION OF AJAY S. KRISHNAN
 IN SUPPORT OF GOOGLE'S RESPONSE
 TO ABWF'S FOUR DECLARATIONS
 REGARDING ABWF'S ALLEGED
 PRESERVATION, COLLECTION, AND
 PRODUCTION OF MATERIALS IN
 RESPONSE TO APRIL 27, 2007
 COURT ORDER**

Hon. Richard Seeborg

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

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 25 **PUBLIC VERSION**
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1 I, Ajay S. Krishnan, declare as follows:

2 1. I am an attorney at the firm of Kecker & Van Nest LLP, counsel for Plaintiff and
3 Counter-Defendant Google Inc., and am admitted to practice before this Court. I make this
4 declaration in support of Google Inc.'s Response to ABWF's Four Declarations Regarding
5 ABWF's Alleged Preservation, Collection, and Production of Materials in Response to April 27,
6 2007 Court Order. Unless otherwise stated, I know the facts stated herein of my personal
7 knowledge and if called as a witness, I would testify competently thereto.

8 2. Attached hereto as Exhibit A is a true and correct copy of an email exchange
9 dated May 26, 2006, involving Michael Layne and Jeffrey Alderman, and which concerns a
10 search for responsive documents. The document was produced by ABWF in the course of
11 litigation, is Bates labeled ABWF 047376 - 047377, and was designated "Attorneys' Eyes Only"
12 by ABWF. It will therefore be filed under seal.

13 **Description of ABWF's October 2005 Document Production**

14 3. ABWF's October 2005 document production is the most reliable evidence of
15 ABWF's meager pre-2006 search, collection, and preservation efforts.

16 4. The Order specified that ABWF should produce information about *pre-2006*
17 search, collection, and preservation efforts. This is because ABWF began to take its discovery
18 obligations more seriously, if at all, only after Steve Katzman left in the late May of 2006.

19 5. The best evidence of ABWF's pre-2006 document search, collection, and
20 preservation efforts is ABWF's October 2005 document production. Prior to the spring of 2006,
21 ABWF produced only one box of documents, which represented less than 6% of ABWF's entire
22 document production. This single box was produced on October 26, 2005, and contained 2790
23 pages. ABWF does not contend that it searched for and collected responsive documents prior to
24 October 2005 and then waited until June 2006 to produce them, nor would ABWF have had a
25 legitimate reason for doing so. Thus, ABWF's October 2005 document production contains the
26 fruits of *all* of ABWF's pre-2006 search, collection, and preservation efforts.

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1 6. This is a very important point, because that October 2005 document production
2 places a serious limit on ABWF's recent declarations, which try to create the appearance that
3 ABWF took comprehensive and diligent efforts to preserve documents prior to 2006. In fact,
4 ABWF's October 2005 document production shows that ABWF took almost no steps to find,
5 collect, and preserve documents prior to 2006.

6 7. What was in the October 2005 box of documents? Of the 2790 pages, the first
7 1522 pages are clearly documents collected from ABWF's outside counsel, and not the result of
8 a document search at ABWF. These first 1522 documents contain cease-and-desist letters,
9 complaints, settlement agreements, and various other litigation documents related to ABWF's
10 efforts to defend its alleged marks. The documents produced by ABWF are almost uniformly
11 authored by outside counsel. (ABWF has no in-house counsel.)

12 8. Then, there are three sets of emails, which, as explained in the spoliation motion,
13 *were primarily to or from Google*. One set (258 pages) was printed from Jeffrey Alderman's
14 email account. The second set (213 pages) was printed from Steve Katzman's email account.
15 The source account for the third set of emails (271 pages) is unclear, because the top portion of
16 the emails are redacted and ABWF never produced a redaction log despite Google's requests.
17 Judging from the addressing information on these emails, they appear to be from the email
18 accounts of Joe Charno, Bill Smith, and Stephanie May. Of the emails from Alderman's
19 account, *only five* were emails that were not sent to or from Google.

20 9. The remainder of the documents in the October 2005 production were, again,
21 likely maintained by outside counsel, and not the fruits of an internal document search. They
22 consist of (1) a 428-page trademark file, which include documents submitted to and received
23 from the PTO, and (2) four sets of audited financial statements (75 pages).

24 10. Notably, other than emails—most of which were correspondence with Google—
25 the October 2005 document production contained practically no documents that would have been
26 found as a result of a document search at ABWF.

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I state under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct. Executed May 25, 2007, at San Francisco, California.

/s/ Ajay S. Krishnan
AJAY S. KRISHNAN

EXHIBIT A

MANUAL FILING NOTIFICATION

Regarding Exhibit A to the DECLARATION OF AJAY S. KRISHNAN IN SUPPORT OF GOOGLE'S RESPONSE TO ABWF'S FOUR DECLARATIONS REGARDING ABWF'S ALLEGED PRESERVATION, COLLECTION, AND PRODUCTION OF MATERIALS IN RESPONSE TO APRIL 27, 2007 COURT ORDER

This filing is in paper form only, and is being maintained in the case file in the Clerk's office. If you are a participant in this case, this filing will be served in hard-copy shortly.

This document was not electronically filed because it is under seal.