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11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

14 DIGITAL ENVOY, INC.,  
 15 Plaintiff/Counter defendant,  
 16 v.  
 17 GOOGLE, INC.,  
 18 Defendant/Counterclaimant.  
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Case No. C 04 01497 RS

**DECLARATION OF ANDREW LINDER  
 IN SUPPORT OF DIGITAL ENVOY,  
 INC.'S OPPOSITION TO GOOGLE,  
 INC.'S SECOND MOTION FOR  
 SUMMARY JUDGMENT**

**Date: March 30, 2005**  
**Time: 9:30 a.m.**  
**Courtroom: 4, 5<sup>th</sup> Floor**

**The Honorable Richard Seeborg**

1 I, Andrew Linder, hereby declare:

2 1. I am a Partner of Frontier Funds, a venture capital firm headquartered in Charlotte,  
3 North Carolina. I have personal knowledge of the facts set forth herein and, if called as a witness,  
4 would testify competently thereto.

5 2. Frontier Funds is an investor in Digital Envoy, Inc. Prior to Frontier Funds making  
6 that investment, I was responsible for conducting due diligence into the business of Digital Envoy.

7 3. In connection therewith, on April 5, 2001, I spoke with Matt Cutts who was a  
8 senior software engineer for Google. Mr. Cutts was responsible for evaluating and selecting  
9 Digital Envoy as Google's geo-location vendor. I asked him about the selection process, his  
10 general opinion regarding Digital Envoy, Google's use of Digital Envoy's data and technology.  
11 Essentially, Mr. Cutts praised Digital Envoy for its superior technology, and its professionalism.

12 4. Following the conversation, I sent an e-mail to Mr. Cutts and he replied. The  
13 document marked Plaintiff's Exhibit 8 which is attached hereto is a true and correct copy of this e-  
14 mail exchange.

15 5. I sought clarification of Google's understanding of its prohibition against reselling  
16 products or services based on Digital Envoy's technology or data due to my understanding that  
17 Digital Envoy's business model was based on the ability to license its technology to web site  
18 owners who would be interested in the technology for a variety of purposes and it was imperative  
19 that Google was prohibited from sharing the benefit of the technology with potential licensees of  
20 Digital Envoy without either expanding its license or requiring a license to be obtained by the  
21 third party.

22 6. Based on my reading of the License Agreement, and Mr. Cutts' confirmation of  
23 Digital Envoy's understanding of the restrictive language, I was satisfied that Digital Envoy had  
24 adequately protected its market, and my company ultimately invested in Digital Envoy.

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I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct. Executed on March 9, 2005 at Charlotte, North Carolina.

/s/ Andrew Linder  
Andrew Linder