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E-FILED 5/23/05

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DIGITAL ENVOY, INC.,
Plaintiff,
v.
GOOGLE, INC.,
Defendant.

NO. 5:04-cv-1497 RS

**ORDER GRANTING GOOGLE'S
REQUEST TO RE-BRIEF ISSUE
IN LIGHT OF COURT'S ORDER
GRANTING PARTIAL
SUMMARY JUDGMENT**

On May 20, 2005, the Court issued an order denying defendant Google's motion for summary judgment as to all claims filed by plaintiff Digital Envoy but granting its motion for partial summary judgment as to the second, third, fourth, and fifth claims for relief. On May 23, 2005, Google filed a request that the Court issue a further ruling specifically addressing Google's argument that it is entitled to judgment as a matter of law as to Digital's claim for misappropriation of trade secrets because Digital failed to establish the requisite *mens rea* required to maintain that intentional tort. In the alternative, Google offered to re-brief the issue in light of the Court's summary judgment order. Based on all papers filed to date, and good cause appearing therefor, the Court orders both parties to file supplemental briefs addressing the sole issue of the *mens rea* which must be established in order to sustain the claim for trade secret misappropriation. The supplemental briefs shall be filed on or before June 3, 2005 and shall not exceed five (5) pages in length.

United States District Court
For the Northern District of California

1 Upon the filing of the supplemental briefs, Google's request that the Court issue a further ruling will be
2 submitted on the papers and no further hearing regarding this issue shall be conducted.

3 IT IS SO ORDERED.

4 Dated: May 23, 2005

/s/ Richard Seeborg
RICHARD SEEBORG
United States Magistrate Judge

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1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY**
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11 Counsel are responsible for distributing copies of this document to co-counsel who have not registered
12 for e-filing under the Court's CM/ECF program.

13 **Dated: May 23, 2005**

Chambers of Judge Richard Seeborg

14 **By: /s/ BAK**