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

14 DIGITAL ENVOY, INC.,

15 Plaintiff/Counterdefendant,

16 v.

17 GOOGLE, INC.,

18 Defendant/Counterclaimant.

Case No. C 04 01497 RS

**MOTION FOR LEAVE TO FILE THE
 SUPPLEMENTAL DECLARATION OF
 ROBERT J. WADDELL, JR. IN
 OPPOSITION TO GOOGLE INC.'S
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT REGARDING DIGITAL
 ENVOY, INC.'S DAMAGES CLAIMS**

**Date: September 21, 2005
 Time: 9:30 a.m.
 Courtroom: 4, 5th Floor**

The Honorable Richard Seeborg

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1 Digital Envoy, Inc. ("Digital Envoy") respectfully moves for leave to file the Supplemental
2 Declaration of Robert J. Waddell, Jr. ("Waddell Declaration") attaching as **Exhibit A** thereto
3 excerpts from the transcript of the November 17, 2004 Deposition of Robert B. Friedman in
4 opposition to Google Inc.'s Motion for Partial Summary Judgment Regarding Digital Envoy, Inc.'s
5 Damages Claims. In support of this motion, Digital Envoy shows the Court as follows:

6 1. On September 8, 2005, Google Inc. ("Google") filed a Reply in Support of its
7 Motion for Partial Summary Judgment ("Reply"). Invoking Section 8 of the parties' Agreement,
8 Google attempts to limit significantly its liability for misappropriation of Digital Envoy's trade
9 secrets. *See* Reply at 2-10.

10 2. Google also asserts that Digital Envoy fails to offer a "single factual cite" opposing
11 Google's proffered contractual interpretation. *See* Reply at 8. Although Google's proffered
12 interpretation of the Agreement is incorrect as a matter of law, *see* Digital Envoy, Inc.'s
13 Opposition to Google Inc. Motion for Partial Summary Judgment Regarding Digital Envoy, Inc.'s
14 Damages Claims at 7-16, Google ignores the factual record in this case. *See* Transcript of
15 Deposition of Robert B. Friedman at 258-64, attached to Waddell Declaration as **Exhibit A**
16 (Digital Envoy's representative in contract negotiations with Google states that the intent of the
17 parties was for Section 8 to apply to breach of contract claims).

18 3. Therefore, Digital Envoy respectfully requests leave to file the Waddell Declaration
19 in order to reflect accurately the record in this case.

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