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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

**REQUEST FOR ORDER ALLOWING
 SURREPLY IN OPPOSITION TO
 MOTION TO STAGE DISCOVERY
 [Local Rule 7-10(b)]**

Date: September 22, 2004
 Time: 9:00 a.m.
 Crtrm.: 4, 5th Floor

The Honorable Richard Seeborg

21
 22 Plaintiff and Counterdefendant Digital Envoy, Inc. ("Digital Envoy") requests an order,
 23 pursuant Local Rule 7-10(b), allowing Digital Envoy's Surreply—which was filed on August 23,
 24 2004 at or about 11:30 p.m.—to defendant's Motion to Stage Discovery (the "Motion"). Good
 25 cause exists to grant Digital Envoy's request.

26 The Surreply addresses a very narrow issue, *i.e.*, Google, Inc.'s ("Google") recent
 27 insistence on compliance with C.C.P. § 2019(d) while seeking to delay any discovery it must
 28

1 respond to on trade secrets. Google only raised this issue after Digital Envoy filed its opposition¹
2 and the parties' argued the Motion to the Court during the Case Management Conference. By
3 raising the issue for the first time after the opposition was filed and after the Case Management
4 Conference, Google denied Digital Envoy the opportunity to address this inconsistency in
5 Google's position while arguing the motion.

6 To ensure it might be heard on this issue, Digital Envoy filed its surreply within hours of
7 receiving a copy of Google's reply brief and letters confirming its reliance on C.C.P. § 2019(d).
8 (Declaration of Craig Cardon in Support of Request for Order Allowing Surreply ("Cardon Decl.")
9 at ¶ 2; see also Exhibits A and B attached to Cardon Decl.) Digital Envoy was not able to seek a
10 stipulation from Google's counsel at the time it filed the surreply due to the late hour in the day,
11 and accordingly did not file this request with the surreply. (Cardon Decl. at ¶ 2.) Digital Envoy,
12 however, did request a stipulation the following day, but was refused. (Declaration of Brian
13 Blackman in Support of Request for Order Allowing Surreply at ¶ 2.)

14 For these reasons, Digital Envoy requests the Court issue an order pursuant to Local Rule
15 7-10(b) accepting the Surreply filed last night and allowing its consideration in opposition to
16 Google's Motion to Stage Discovery.

17
18 DATED: August 24, 2004

19 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

20
21 By /s/

22 P. CRAIG CARDON
23 BRIAN R. BLACKMAN
24 Attorneys for DIGITAL ENVOY, INC.

25
26 _____
27 ¹It should be noted that Digital Envoy identified its original opposition as a preliminary opposition
28 in order to have the issued before the Court in time to informally discuss the Motion at the Case
Management Conference.