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8 Attorneys for Defendant/Counterclaimant  
9 Google Inc.

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

11	DIGITAL ENVOY, INC.,	)	CASE NO. C 04 01497 RS
12		)	
12	Plaintiff/Counterdefendant,	)	<b>DECLARATION OF</b>
13		)	<b>STEPHEN C. HOLMES IN</b>
13	v.	)	<b>SUPPORT OF GOOGLE INC.'S</b>
14		)	<b>MOTION TO SHORTEN TIME ON</b>
14	GOOGLE INC.,	)	<b>THE HEARING OF ITS MOTION</b>
15		)	<b>FOR A PROTECTIVE ORDER</b>
15	Defendant/Counterclaimant.	)	
16		)	Judge: Hon. Richard Seeborg
16		)	Courtroom: 4, 5 <sup>th</sup> Floor
17	<hr/>		

1 I, Stephen C. Holmes, declare as follows:

2 1. I am an attorney at law duly licensed to practice in the State of California and before  
3 this Court. I am an associate at Wilson Sonsini Goodrich & Rosati, counsel for defendant and  
4 counterclaimant Google Inc. ("Google"). I have personal knowledge of the facts set forth herein  
5 and, if called as a witness, could and would testify competently thereto.

6 2. Last Wednesday, Google received notice that Digital Envoy had served or attempted  
7 to serve 22 nonparty subpoenas to some of Google's biggest strategic partners and advertising  
8 customers.

9 3. The subpoenas are remarkably broad seeking, *inter alia*, all communications from  
10 Google on *any* subject, all documents relating to *any* agreement between the parties and all  
11 technical schematics on *any* Google product. Their breadth aside, the information demanded is  
12 not relevant to this case. That is likely why Digital Envoy has attempted to circumvent the  
13 normal discovery process, demanding that nonparties produce volumes of information on Google  
14 that it has never sought from Google in the first instance.

15 4. The return dates on the subpoenas are January 26, 2005. The normal hearing date for  
16 a motion filed today is February 23, 2005, nearly one month *after* the subpoena return date.  
17 Accordingly, substantial harm or prejudice will occur if the Court does not change the date for  
18 hearing Google's motion to January 26, 2005, because Google will not have been able to present  
19 its motion before the third parties' responses to the subpoenas are due.

20 5. As soon as Google learned of Digital Envoy's subpoenas, on January 12, 2005, I  
21 contacted counsel for Digital Envoy objecting to the subpoenas and seeking an agreement to stay  
22 enforcement of the subpoenas until Google's motion for a protective order could be resolved.

23 6. Digital Envoy responded two days later, on January 14, 2005, refusing to delay its  
24 enforcement of the subpoenas. Digital Envoy likewise refused to inform any of the third parties  
25 that Google would be moving for a protective order. Later, that same day I wrote back to Digital  
26 Envoy's counsel's asking their agreement to a shortened briefing schedule. On January 15,  
27 2005, Digital Envoy's counsel agreed to a shortened briefing schedule, including the hearing on  
28 January 26, but specified their own briefing schedule rather than agreeing to Google's. Under

1 Digital Envoy's proposed shortened schedule, Google would not be permitted to file a reply brief  
2 on the motion. As Digital Envoy has refused to explain the relevance of the information sought  
3 in its subpoenas during Google's meet and confer efforts, Google believes a reply brief is of  
4 particular importance.

5 7. On January 17, 2005 Google reiterated its request that the return date on the  
6 subpoenas be extended so that the parties could adopt a reasonable briefing schedule for the  
7 protective order motion. Again, Digital Envoy refused.

8 8. Pursuant to L.R. 6-3(b), the only previous time modifications in the case are a  
9 modification to allow Digital Envoy to amend its complaint and allow Google to answer, and to  
10 change the date of the agreed JAMS mediation to February 10, 2005.

11 9. The requested time modification for Google's Motion for a Protective Order will not  
12 have any effect on the schedule for the case.

13  
14 I declare under penalty of perjury under the laws of the United States of America that the  
15 foregoing is true and correct. Executed on January 19, 2004, at Palo Alto, California.

16  
17 /s/ Stephen C. Holmes  
18 Stephen C. Holmes  
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