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

14 GOOGLE, INC.,

15 Plaintiff,

16 v.

17 DIGITAL ENVOY, INC.,

18 Defendant.

19 DIGITAL ENVOY, INC.,

20 Counterclaimant,

21 v.

22 GOOGLE, INC.,

23 Counterdefendant.
24

Case No. C 04 01497 RS

**[Proposed] ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS
FOR IMPROPER VENUE**

25 The motion of Defendant Counterclaimant Digital Envoy, Inc. ("Digital
26 Envoy" or "Defendant") to dismiss this action for improper venue based on the first
27 to file rule came on for hearing at 9:30 a.m. on June 16, 2004, before the Honorable
28 Richard Seeborg. Alternatively, Digital Envoy moved to stay this action until the

1 Plaintiff Counterdefendant Google, Inc.'s ("Google" or "Plaintiff") motion to dismiss or
2 transfer, pending in a different action between the same parties entitled *Digital Envoy,*
3 *Inc. v. Google, Inc.*, Case No. 1:04-CV-0864-CAP, is resolved. Counsel, as stated in the
4 record, appeared on behalf of each party.

5 After due consideration of the parties' papers and supporting evidence, the
6 Court grants Digital Envoy's motion to dismiss for improper venue. The Court finds
7 no grounds for departing from the first-to-file rule. *Pacesetter Sys., Inc. v. Medtronic,*
8 *Inc.*, 678 F. 2d 93, 94-95 (9th Cir. 1982). Plaintiff's action is **DISMISSED** without
9 prejudice.

10 IT IS SO ORDERED.

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12 DATED: June __, 2004
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16 The Honorable Richard Seeborg
17 Magistrate Judge, Northern District of California
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