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 6 Google Inc.

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA
 9 SAN JOSE DIVISION

11 DIGITAL ENVOY, INC.,)
 12)
 Plaintiff/Counterdefendant,)
 13)
 v.)
 14)
 GOOGLE INC.,)
 15)
 Defendant/Counterclaimant.)

CASE NO. C 04 01497 RS
**DECLARATION OF STEPHEN C.
 HOLMES IN SUPPORT OF
 GOOGLE INC.'S MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 ON COUNTS II, III, IV AND V OF
 THE AMENDED COMPLAINT**

Date: March 16, 2005
 Time: 9:30 a.m.
 Courtroom: 4, 5th Floor
 Judge: Hon. Richard Seeborg

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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. Attached hereto as Exhibit A is a true and correct copy of the November 30, 2000
7 agreement between Google and Digital Envoy, Inc. ("Digital Envoy") (along with its two
8 amendments and subsequent ratification), which Digital Envoy has acknowledged as authentic in
9 its pleadings in this case.

10 3. Attached hereto as Exhibit B is a true and correct copy of an email from Rob
11 Friedman of Digital Envoy to Steve Schimmel of Google, dated November 21, 2000, which was
12 retrieved from Google's electronic mail system. The email chain, which by convention is read
13 from end to beginning, reflects Google's discussions with Digital Envoy concerning a license to
14 certain Digital Envoy technology. It has been highlighted by our firm for emphasis.

15 4. Attached hereto as Exhibit C is a true and correct copy of an email from Steve
16 Schimmel of Google to Rob Friedman of Digital Envoy, dated November 21, 2000, also
17 retrieved from Google's electronic mail system. The email continues the discussion commenced
18 in Exhibit B between representatives of Google and Digital Envoy. It too has been highlighted
19 by our firm for emphasis.

20 5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the
21 deposition testimony of Rob Friedman, dated November 17, 2004. Mr. Friedman was designated
22 by Digital Envoy pursuant to Fed. R. Civ. P. 30(b)(6). The excerpts reflect Mr. Friedman's
23 acknowledgment that Digital Envoy's only breach of contract claim has been satisfied by Google
24 and that all of Digital Envoy's claims are based on Google's allegedly unlicensed use of Digital
25 Envoy's technology.

26 I declare under penalty of perjury under the laws of the United States of America that the
27 foregoing is true and correct. Executed on February 7, 2005, at Palo Alto, California.

28

/s/ Stephen C. Holmes
Stephen C. Holmes