

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

XEROX CORPORATION,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 10-136-LPS
v.	)	
	)	
GOOGLE INC., YAHOO! INC., RIGHT	)	
MEDIA INC., RIGHT MEDIA LLC,	)	
YOUTUBE, INC. and YOUTUBE, LLC,	)	
	)	
Defendants.	)	

**DEFENDANTS GOOGLE INC. AND YOUTUBE LLC'S  
SECOND SUPPLEMENTAL OBJECTIONS AND RESPONSES TO  
XEROX'S FIRST SET OF INTERROGATORIES TO DEFENDANTS (NOS. 7)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Google Inc. and YouTube LLC hereby further object and respond in writing to Interrogatory No. 7 of Plaintiff Xerox Corporation's First Set of Interrogatories to Defendants.

**GENERAL OBJECTIONS**

Google and YouTube make the following general objections to each and every definition, instruction, and interrogatory made in Xerox's First Interrogatories to Defendants. Each of these objections is incorporated into the Specific Objections set forth below, whether or not separately set forth therein. By responding to any of the interrogatories or failing to specifically refer to or specify any particular General Objection in response to a particular interrogatory, Google and YouTube do not waive any of these General Objections, nor admit or concede the appropriateness of any purported interrogatory or any assumptions contained therein.

1. Nothing in these responses should be construed as waiving rights or objections that might otherwise be available to Google and YouTube nor should Google and YouTube's

responses to any of these interrogatories be deemed an admission of relevancy, materiality, or admissibility in evidence of the interrogatory or the response thereto.

2. Google and YouTube object to each interrogatory to the extent that it seeks the disclosure of information protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection as provided by law. Google and YouTube will not produce such privileged or protected information, and any inadvertent disclosure of any privileged or protected information should not be deemed a waiver of any privilege.

3. Google and YouTube object to each interrogatory, and to the definitions and instructions, to the extent they purport to impose upon Google and YouTube obligations broader than, or inconsistent with, the Federal Rules of Civil Procedure or the Local Rules and Orders of this Court.

4. Google and YouTube object to each interrogatory, and to the definitions and instructions, to the extent that they are overbroad, vague and ambiguous, unduly burdensome and oppressive, in purporting to require Google and YouTube to search facilities and inquire of employees other than those facilities and employees that could reasonably be expected to have responsive information, or produce information outside a relevant time period or unrelated to the asserted claims of the patent-in-suit. In particular, Google and YouTube object to Xerox's definition of "personalized search" as vague, ambiguous, and overbroad. Google and YouTube will not produce documents and information that are irrelevant, immaterial or not reasonably calculated to lead to the discovery of admissible evidence. Google and YouTube also will not produce information that is not in its possession, custody or control.

5. Google and YouTube object to each interrogatory to the extent it seeks information already in Xerox's possession or equally available to Xerox from other sources that are more convenient, less burdensome and/or less expensive.

6. Google and YouTube object to each interrogatory and to the definitions and instructions included therewith pursuant to Federal Rule of Civil Procedure 26(b)(2)(i) to the extent that they purport to require the disclosure of information that is more readily available and/or more appropriately obtainable through other means of discovery.

7. Google and YouTube object to each interrogatory to the extent that it is compound and/or is comprised of subparts constituting more than one interrogatory, particularly in view of Xerox's instructions with respect to each "subpart" of each interrogatory as each subpart properly counts as separate interrogatories against the limit of interrogatories for Xerox in this case.

8. Google and YouTube object to these interrogatories to the extent that such interrogatories, when properly counted, exceed the limit for interrogatories available to Xerox in this case.

9. Google and YouTube object to each interrogatory, and to the definitions and instructions included therewith, to the extent they seek proprietary, trade secret or other confidential or competitively sensitive business information. Google and YouTube will only produce such relevant, non-privileged information subject to adequate protections for Google and YouTube's confidential, trade secret and/or proprietary business or technical information via a protective order entered by the Court in this action.

10. Google and YouTube object to each interrogatory, and to the definitions and instructions included therewith, to the extent that they purport to Require Google and YouTube to disclose private or personally-identifiable information of its users.

11. Google and YouTube object to each interrogatory, and to the definitions and instructions included therewith, to the extent that they purport to require Google and YouTube to disclose information that is subject to any protective order, privacy interest, contractual obligation, or other confidentiality obligation owed to any third party.

12. Google and YouTube object to each interrogatory to the extent that such interrogatory prematurely seeks the production of information and documents in advance of the dates set by the Federal Rules of Civil Procedure, the Local Rules, or any orders entered by this Court.

13. Google and YouTube object to each interrogatory as premature and unduly burdensome to the extent that it seeks information likely to depend on construction of claim terms and/or expert analysis of the patent-in-suit, the deadlines for which have not yet been set.

14. Google and YouTube object to each interrogatory as premature and unduly burdensome to the extent that it seeks discovery regarding non-infringement of any claim(s) of the patent-in-suit for which Xerox has not provided a substantive contention that Google and/or YouTube practice every element of such claim(s).

17. Google and YouTube object to each interrogatory as premature and unduly burdensome to the extent that it seeks discovery before Xerox pleads facts sufficient to define each and every accused instrumentality and how they could plausibly infringe the patent-in-suit.

18. Google and YouTube object to each interrogatory as unduly burdensome to the extent it seeks information about every version or release of purportedly accused technology or

functionality. The burden and expense associated with producing such information grossly outweighs its benefit and relevance.

19. Google and YouTube object to Xerox's definitions of the terms "Content Matching Products," "Google Content Matching Products," and "Accused Products" as vague, overbroad, unduly burdensome, and oppressive.

20. Google and YouTube object to Xerox's definition of the term "Google Maps" as vague, overbroad, unduly burdensome, and oppressive, particularly to the extent it encompasses products, services and software that display "information related to maps, addresses, directions, points of interest and/or businesses."

21. Google and YouTube object to Xerox's definition of the term "Google Video" as vague, overbroad, unduly burdensome, and oppressive, particularly to the extent it encompasses products, services and software that display "information related to videos."

22. Google and YouTube object to Xerox's definitions of the term "Youtube.com" as vague, overbroad, unduly burdensome, and oppressive, particularly to the extent it encompasses products, services and software that display "information related to videos."

23. Google and YouTube object to Xerox's definitions of the term "Predecessor Product," as vague, overbroad, unduly burdensome, and oppressive. In particular, it is not clear what "subsequent product, service, facility and/or computer software program" refers to. To the extent it is meant to refer to the accused products as defined elsewhere in Xerox's requests, Google and YouTube object on the ground that it cannot be expected to identify every "product, service, facility and/or computer software product" any part of which was "directly or indirectly used" in the creation of any accused product, regardless of relevance. The burden and expense associated with producing such information grossly outweighs its benefit and relevance.

24. Google and YouTube object to Xerox's definition of the term "Related Products," as vague, overbroad, unduly burdensome, and oppressive. Google and YouTube cannot be expected to identify all "products, service, facilities and/or computer software product" that "in any manner include, reference, utilize, call or invoke any of the Accused Products," regardless of relevance. The burden and expense associated with producing such information grossly outweighs its benefit and relevance.

25. Google and YouTube object to Xerox's definition of the term "979 Accused Products" as vague, overbroad, unduly burdensome, and oppressive, particularly to the extent that it incorporates Xerox's overbroad definition of the term "Google Content Matching Products."

26. Google and YouTube object to Xerox's definition of the term "994 Accused Products" as vague, overbroad, unduly burdensome, and oppressive, particularly to the extent that it incorporates Xerox's overbroad definitions of the terms "Google Maps," "Google Video," and "YouTube.com."

27. Google and YouTube object to each interrogatory, definition, and instruction to the extent the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

28. Google and YouTube respond to these interrogatories based upon its current understanding and reserves the right to supplement its responses if any additional information is identified at a later time and to make any additional objections that may become apparent.

29. Each of Google and YouTube's responses to these interrogatories are made subject to and without waiving, limiting, or intending to waive:

- A. each of the above-stated general objections and reservations;
- B. the right to object on the grounds of competency, privilege, relevancy, or materiality, or any other proper grounds, to the use of the documents or information, for any purpose, in whole or in part, in any subsequent step or proceeding in this action or any other action;
- C. the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of the present litigation; and
- D. the right at any time to revise, correct, and add to or clarify any of the responses herein.

30. By responding to these interrogatories, Google and YouTube do not waive or intend to waive, but expressly reserves, all of its statements, reservations, and objections, both general and specific, set forth in these responses, even though Google and YouTube may in some instances disclose information over the statements, reservations, and objections contained herein.

31. Pursuant to the Court's May 11, 2010 Order bifurcating the issues of infringement and invalidity from the issues of willfulness and damages, Google and YouTube will not be providing documents or information related to the issues of willfulness or damages until the commencement of bifurcated discovery on those issues.

#### **STATEMENT ON SUPPLEMENTATION**

Google and YouTube's investigation in this action is ongoing, and Google and YouTube reserve the right to rely on and introduce information in addition to any information provided herein at the trial of this matter or in other related proceedings. Google and YouTube have yet to receive complete discovery responses from Xerox. Google and YouTube anticipate that facts they learn later in the litigation may be responsive to one or more of the interrogatories and Google and YouTube reserve their right to supplement these interrogatories at appropriate points

throughout this litigation without prejudice and/or to otherwise make available to Xerox such information. Google and YouTube also reserve the right to change, modify or enlarge the following responses based on additional information, further analysis, and/or in light of events in the litigation such as rulings by the Court. Google and YouTube reserve the right to rely on or otherwise use any such amended response for future discovery, trial or otherwise.

### **SPECIFIC OBJECTIONS AND RESPONSES**

Google and YouTube expressly incorporate the above objections as though set forth fully in response to each of the following individual interrogatories, and, to the extent that they are not raised in the particular response, Google and YouTube do not waive those objections.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 7:**

If you contend that any claim of the Patents in Suit is invalid and/or unenforceable, specify each claim that you contend is invalid and/or unenforceable and describe in full for each such claim the basis for your contention, identifying all prior art, all documents and all facts that you believe support your contention.

#### **RESPONSE TO INTERROGATORY NO. 7:**

Google and YouTube incorporate here in response to this interrogatory their General Objections above by this reference. Google and YouTube object to this interrogatory on the ground that it is compound and/or is comprised of subparts constituting more than one interrogatory. Google and YouTube further object to this interrogatory as premature as Xerox has not yet set forth its allegations of infringement or identified all of the claims it intends to assert against Google and YouTube.

#### **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

Subject to the foregoing general and specific objections, Google and YouTube further respond as follows:

The '994 Patent:

The '994 Patent is invalid under 35 U.S.C. § 101 to the extent that it attempts to cover unpatentable abstract ideas. *See Bilski. See Bilski v. Kappos*, 561 U.S. \_\_\_, slip op. at 3 (2010).

The asserted claims of the '994 Patent are invalid under 35 U.S.C. § 102 and/or § 103 because at least the following prior art references anticipate the claims or render them obvious, alone or in combination:

*Patents or Patent Applications:*

US 5,367,619 (Diapaolo)

US 5,649,192 (Stucky)

US 5,987,440 (O'Neil)

US 5,077,666 (Brimm)

US 6,141,694 (Gardner)

*Publications:*

Rennison, Galaxy of News: An Approach to Visualizing and Understanding Expansive News Landscape, Proceedings of the 7th annual ACM symposium on User interface software and technology (1994)

*Systems in Prior Public Use (beyond those already listed):*

The Internet Movie Database

Google incorporates by reference herein the identification by other defendants of any Prior Art as invalidating claims of the '994 Patent under § 102 and/or § 103, to the extent such Prior Art is not specifically identified above. Google reserves the right to use any of the listed references in support of an argument based on a disclosed system in prior use.

Based on Plaintiff's apparent construction of the claims of the '994 patent (as expressed in its response to Google and YouTube.com's Interrogatory No. 2), and based at least upon the use of the terms "performing data analysis operations," "generate data and analysis results," "independently storing the knowledge, in the form of documents," "document database," "validating the accuracy of the knowledge," "making the stored knowledge available across a network," "managing the flow of information," "integration of the data and analysis results with the documents," "updating the documents," and "a change in the data or analysis results" the claims of the '994 Patent are invalid under 35 U.S.C. § 112 for indefiniteness, non-enablement, and inadequate written description.

The '979 Patent:

The '979 Patent is invalid under 35 U.S.C. § 101 to the extent that it attempts to cover unpatentable abstract ideas. *See Bilski. See Bilski v. Kappos*, 561 U.S. \_\_\_, slip op. at 3 (2010).

The asserted claims of the '979 Patent are invalid under 35 U.S.C. § 102 and/or § 103 because at least the following prior art references anticipate the claims or render them obvious, alone or in combination:

*Patents or Patent Applications:*

US 6,546,386 (Black)

US 7,225,180 (Donaldson)

US 6,236,768 (Rhodes)

US 5,893,092 (Driscoll)

US 6,363,378 (Conklin)

US 6,947,920 (Alpha)

US 7,047,242 (Ponte)

US 7,089,236 (Stibel)

US 5,488,725 (Turtle)

US 5,748,954 (Mauldin)

US 5,963,940 (Liddy)

US 6,038,561 (Snyder)

US 6,161,084 (Messerly)

US 6,519,586 (Anick)

US 2003/0014405 (Shapiro)

US 2002/0052898 (Schilit)

US 5,321,833 (Chang)

PCT/US00/41713 (publication no: WO 20 01/44992A1) (YellowBrix)

*Publications:*

Pazzani, et al., Syskill & Webert: Identifying interesting web sites, AAAI-96  
Proceedings (1996)

Salton, Another Look at Automatic Text-Retrieval Systems, Comm. of ACM  
(1986)

Google incorporates by reference herein the identification by other defendants of any Prior Art as invalidating claims of the '979 Patent under § 102 and/or § 103, to the extent such Prior Art is not specifically identified above. Google reserves the right to use any of the listed references in support of an argument based on a disclosed system in prior use.

The '979 Patent may also be invalid under 35 U.S.C. §§ 102(f) and 116 for failing to include all inventors of the claimed subject matter, pending further investigation.

Google and YouTube.com reserve the right to supplement this response as their investigation continues.

**SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

Subject to the foregoing general and specific objections, Google further supplements its response to this Interrogatory as follows:

This Supplemental Response addresses only claims 1 and 18 of the '979 Patent. On February 9, 2011, Xerox alleged for the first time that certain Google products infringe claims 2, 3, 5, 10, and 19 of the '979 Patent. Google has objected to the assertion of these additional claims. Google will supplement this Response in due course to address these additional claims if and to the extent that the Court allows Xerox to expand its infringement case to encompass them. Xerox has indicated that it is dropping all claims based on the '994 Patent, and, accordingly, this Supplemental Response does not address the '994 Patent.

Exemplary claim charts under 35 U.S.C. § 102(a), (b), (e), (f) and/or (g), and/or § 103 are attached as Charts A-1 through A-13 for the claims 1 and 18 of the '979 patent, identified by plaintiff Xerox Inc. in its Response to Google Interrogatory Nos. 1 and 2. Google incorporates herein the discussion of prior art references and the invalidity arguments under 35 U.S.C. sections 102 and/or 103 set forth in its Corrected Request for Inter Partes Reexamination of the '979 Patent filed with the United States Patent and Trademark Office on or about September 8, 2010. Google further directs Xerox to all subsequent proceedings in connection with the reexamination of the '979 Patent.

Google expressly reserves the right to amend the disclosures herein should Xerox provide any information that it failed to provide in its infringement contentions or should Xerox amend its infringement contentions. Further, because Google has not yet completed its search for and

analysis of relevant prior art, Google reserves the right to revise, amend, and/or supplement the information provided herein, including identifying and relying on additional references, should Google's further search and analysis yield additional information or references, consistent with the Federal Rules of Civil Procedure. Moreover, Google reserves the right to revise its ultimate contentions concerning the invalidity of the claims of the '979 patent, which may change depending upon the Court's construction of the claims of the '979 patent, any findings as to the priority date of the '979 patent, and/or positions that Xerox or its expert witness(es) may take concerning claim interpretation, infringement, and/or invalidity issues. Google further reserves the right to supplement its contentions to the extent that Xerox is permitted to assert additional claims of the '979 patent against Google.

Prior art not included in this disclosure, whether known or not known to Google, may become relevant. In particular, Google is currently unaware of the extent, if any, to which Xerox will contend that limitations of the asserted claims are not disclosed in the prior art identified by Google. To the extent that such an issue arises, Google reserves the right to identify other references that would have made the addition of the allegedly missing limitation to the disclosed device or method obvious.

Google's claim charts cite to particular teachings and disclosures of the prior art as applied to features of the asserted claims. However, persons having ordinary skill in the art generally may view an item of prior art in the context of other publications, literature, products, and understanding. As such, the cited portions are only examples, and Google reserves the right to rely on un-cited portions of the prior art references and on other publications and expert testimony as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that the prior art discloses a claim limitation. Google further

reserves the right to rely on un-cited portions of the prior art references, other publications, and testimony to establish bases for combinations of certain cited references that render the asserted claims obvious.

The references discussed in the claim charts may disclose the elements of the asserted claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. The suggested obviousness combinations are provided in the alternative to Google's anticipation contentions and are not meant to suggest that any reference included in the combinations is not by itself anticipatory

For purposes of this interrogatory response, Google identifies prior art references and provides element-by-element claim charts based in part on the apparent constructions of the asserted claims advanced by Xerox. Nothing stated herein shall be treated as an admission or suggestion that Google agrees with Xerox regarding either the scope of any of the asserted claims or the claim constructions advanced by it in its infringement contentions or anywhere else. Moreover, nothing in this interrogatory response shall be treated as an admission that Google's accused technology meets any limitation of the claims.

Depending on the Court's construction of the claims of the '979 patent, and/or positions that Xerox or its expert witness(es) may take concerning claim interpretation, infringement, and/or invalidity issues, different charted prior art references may be of greater or lesser relevance and different combinations of these references may be implicated. Given this uncertainty, the charts may reflect alternative applications of the prior art against the asserted claims.

Google further intends to rely on inventor admissions concerning the scope of the prior art relevant to the '979 patent found in, *inter alia*: the patent prosecution histories for the '979

patent and related patents and/or patent applications; any deposition testimony of the named inventors; and the papers filed and any evidence submitted by Xerox in conjunction with this litigation.

Discovery is ongoing, and Google's prior art investigation and third party discovery is therefore not yet complete. Google reserves the right to present additional items of prior art under 35 U.S.C. § 102(a), (b), (e), (f) and/or (g), and/or § 103 located during the course of discovery or further investigation. For example, Google expects to issue subpoenas to third parties believed to have knowledge, documentation and/or corroborating evidence concerning some of the prior art listed in the Interrogatory response and/or additional prior art. These third parties include without limitation the authors, inventors, or assignees of the references listed in the Interrogatory response. In addition, Google reserves the right to assert invalidity under 35 U.S.C. § 102(c) or (d) to the extent that discovery or further investigation yield information forming the basis for such claims.

Further, based on Google's present understanding of the asserted claims of the '979 patent that Google believes Xerox to be asserting based on Xerox's proposed constructions and its infringement Contentions, Google believes that the charted references anticipate the claims of the '979 patent as shown in the references' respective charts. However, if the finder of fact determines that some element of a given claim was not disclosed by an anticipation reference, that reference in combination with the knowledge and skill of a person of ordinary skill in the art at the time of the alleged invention and/or other prior art disclosing the allegedly missing limitations would have rendered each of the asserted claims obvious.

The Supreme Court has held that the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *KSR*

*Intl Co. v. Teleflex Inc.*, 550 U.S. 398, 127 S. Ct. 1727, 1739 (2007). When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. *Id.* at 1740. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Id.*

In order to determine whether there is an apparent reason to combine the known elements in the fashion claimed by the patent at issue, a court can look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art. *Id.* at 1740-41. For example, obviousness can be demonstrated by showing there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims. *Id.* at 1743. Any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed. *Id.* Common sense also teaches that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle. *Id.*

Thus, the motivation to combine the teachings of the prior art references disclosed herein is found in the references themselves and/or: (1) the nature of the problem being solved, (2) the express, implied and inherent teachings of the prior art, (3) the knowledge of persons of ordinary skill in the art, (4) the fact that the prior art is generally directed towards providing personalized information services to a user, and/or (5) the predictable results obtained in combining the different elements of the prior art.

Based on Google's present understanding of the asserted claims of the '979 patent and the constructions that Google believes Xerox to be asserting based on Xerox's proposed constructions and its Infringement Contentions, the asserted claims of the '979 patent are obvious in light of the combinations outlined in the attached charts. Each of these combinations yields predictable results.

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**CERTIFICATE OF SERVICE**

I, David E. Moore, hereby certify that on February 18, 2011, true and correct copies of the within document were served on the following counsel of record at the addresses and in the manner indicated:

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