

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

XEROX’S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the local rules of this Court, Plaintiff-Counterclaim Defendant Xerox Corporation hereby requests that Defendants-Counterclaim Plaintiffs Google Inc., Yahoo! Inc., Right Media Inc., Right Media LLC, YouTube, Inc. and YouTube, LLC answer this First Set of Interrogatories. These interrogatories are to be answered fully and under oath, within thirty (30) days from the date of service, in the manner proscribed by the Federal Rules of Civil Procedure and the local rules of this Court and in accordance with the definitions and instructions set forth below.

DEFINITIONS AND INSTRUCTIONS

1. “’979 Patent” means U.S. Patent No. 6,778,979 entitled “System for Automatically Generating Queries”.
2. “’994 Patent” means U.S. Patent No. 6,236,994 entitled “Method and Apparatus for the Integration of Information and Knowledge”.
3. “Patents in Suit” means, collectively or individually, the ’979 Patent and the ’994 Patent.

4. “Xerox” means, collectively and/or individually, Plaintiff-Counterclaim Defendant Xerox Corporation and its officers, directors, employees, partners, subsidiaries or affiliates.

5. “Google” means, collectively and/or individually, Defendant-Counterclaim Plaintiff Google Inc. and its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

6. “Right Media” means, collectively and/or individually, Defendant-Counterclaim Plaintiffs Right Media Inc. and Right Media LLC, and their officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

7. “Yahoo” means, collectively and/or individually, Defendant-Counterclaim Plaintiff Yahoo! Inc. and its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

8. “YouTube” means, collectively and/or individually, Defendant-Counterclaim Plaintiffs YouTube, Inc. and YouTube LLC, and their officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

9. “You” and “your” mean the responding defendant, *i.e.*, Google, Right Media, Yahoo or YouTube, as the case may be.

10. “Sale” or “sell” (including related grammatical forms) means any commercial transfer of a product, service, facility and/or computer software program (or any rights to distribute a product, service, facility and/or computer software program), or of any installation, support, maintenance or other related services, under any means by which a product, service, facility and/or computer software program is sold, distributed, leased, licensed, maintained or otherwise supplied.

11. “Predecessor Product” means any product, service, facility and/or computer software program whose architecture, design or code was directly or indirectly used in the creation of a subsequent product, service, facility and/or computer software program, regardless of whether such product, service, facility and/or computer software program was itself ever sold or marketed and regardless of whether such product, service, facility and/or computer software program was acquired from a third party.

12. “Content Matching Products” means collectively and/or individually, any products, services, facilities and/or computer software programs that enable the delivery and/or display of advertisements and/or other content based at least in part on the content of selected documents.

13. “Google Content Matching Products” means Content Matching Products that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by Google including, without limitation, “Google AdWords” and “Google AdSense” (including all versions or releases of Google AdWords or Google AdSense products, services, facilities and/or computer software programs, such as, without limitation, AdSense for Content, AdSense for Feeds, AdSense for search, AdSense for mobile content, AdSense for domains and AdSense for videos).

14. “Google Maps” means, collectively and/or individually, any products, services, facilities and/or computer software programs that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by Google that generate and/or display maps, user ratings, and information related to maps, addresses, directions, points of interest and/or businesses. “Google Maps” includes, without limitation, the products, services, facilities and/or computer software programs available at <http://maps.google.com> and related applications or

services for mobile devices, such as those available at <http://www.google.com/mobile/maps> and <http://m.google.com/maps>.

15. “Google Video” means, collectively and/or individually, any products, services, facilities and/or computer software programs that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by Google that host and/or display videos, information related to videos, and user reviews and/or ratings. “Google Video” includes, without limitation, the products, services, facilities and/or computer software programs available at <http://video.google.com> and related applications or services for mobile devices.

16. “Right Media Content Matching Products” means Content Matching Products that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by Right Media including, without limitation, “Right Media Exchange”.

17. “Yahoo Content Matching Products” means Content Matching Products that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by Yahoo including, without limitation, “Yahoo! Content Match”, “Yahoo! Search Marketing”, “Yahoo! Publisher Network” and “Y!Q Contextual Search”.

18. “Yahoo! Video” means, collectively and/or individually, any products, services, facilities and/or computer software programs that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by Yahoo that host and/or display videos, information related to videos, and user reviews and/or ratings. “Yahoo! Video” includes, without limitation, the products, services, facilities and/or computer software programs available at <http://video.yahoo.com> and related applications or services for mobile devices.

19. “Yahoo! Shopping” means, collectively and/or individually, any products, services, facilities and/or computer software programs that are sold, licensed, distributed, leased,

maintained, offered or otherwise supplied by Yahoo that display products for sale, information related to products, and user reviews and/or ratings. “Yahoo! Shopping” includes, without limitation, the products, services, facilities and/or computer software programs available at <http://shopping.yahoo.com> and related applications or services for mobile devices.

20. “YouTube.com” means, collectively and/or individually, any products, services, facilities and/or computer software programs that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by YouTube that host and/or display videos, information related to videos and user reviews and/or ratings. “YouTube.com” includes, without limitation, the products, services, facilities and/or computer software programs available at <http://www.youtube.com> and related applications or services for mobile devices, such as those available at <http://www.google.com/mobile/youtube> and <http://m.google.com/youtube>.

21. “’979 Accused Products” means, collectively and/or individually, Google Content Matching Products, Right Media Content Matching Products and Yahoo Content Matching Products.

22. “’994 Accused Products” means, collectively and/or individually, Google Maps, Google Video, Yahoo! Shopping, Yahoo! Video and YouTube.com.

23. “Accused Products” means, collectively and/or individually, the entire line of products, services, facilities and/or computer software programs (including Predecessor Products) and all versions and releases thereof (even if released under other names or as part of other products, services, facilities and/or computer software programs) for the ’979 Accused Products and the ’994 Accused Products, including all beta versions, portions, options and components thereof, and all associated documentation and user manuals.

24. “Related Products” means, collectively and/or individually, all products, services, facilities and/or computer software programs that are marketed, advertised, sold, licensed, distributed, leased, maintained, offered or otherwise supplied by you that in any manner include, reference, utilize, call or invoke any of the Accused Products.

25. “All”, “each” and “any” mean all and any.

26. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

27. “Document” has the broadest possible construction and includes, but is not limited to, the original and/or any copies of any correspondence, book, pamphlet, periodical, letter, calendar or diary entry, memorandum, message, calendar or diary, telex, telegram, cable, telecopy, report, record, study, stenographic or handwritten note, working paper or draft, invoice, voucher, receipt, notice, check, statement, chart, graph, data or other compilation, map, diagram, blueprint, table, index, picture, list, promissory note, card, summary, transcript, confirmation slip, order, manual, photograph, contract, agreement, ledger, log, journal, instrument, accounting, account, corporate minutes, meeting minutes, notebook, notes, schedule, voice recording, tap, microfilm, data sheet, data processing card, disk, computer software data which can be reviewed from electronic media including but not limited to emails and metadata, memorandum and/or record of telephone conversations or face-to-face conversations, or any other written, typed, printed, recorded, transcribed, punched, taped, filmed, photographed or graphic maker, however produced or reproduced, and copies or reproductions of any of the above that differ in any respect from the original, such as copies containing marginal, handwritten or “blind-copy” notes or notations or other variations, drafts or non-identical copies. Designated documents are to be

taken as including all attachments, exhibits, enclosures, appendices and other documents that relate to or refer to such designated documents.

28. “Including” and “includes” mean “including” and “includes” without limitation.

29. “Describe”, when referring to your contentions, means state with particularity all facts, and identify all documents, relevant to such contentions.

30. “Identify” with respect to persons, means to provide, to the extent known, the person’s full name, present or last known business address, and when referring to a natural person, additionally, the present or last known place of employment.

31. “Identify” with respect to documents, means to provide, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

32. The use of any definition for the purposes of these requests shall not be deemed to constitute an agreement or acknowledgment on the part of Xerox that such definition is accurate, meaningful or appropriate for any other purpose in this litigation.

33. The use of the singular of any word shall include the plural and vice versa, and the use of a verb in any tense or voice shall be construed as the use of that verb in all other tenses and voices, as necessary to bring within the scope of the discovery request all responses that might otherwise be construed as outside its scope.

34. If you have any good faith objection to any part of an interrogatory, then the part objected to should be identified and a response to the remaining unobjectionable part should be provided.

35. If you have a good faith objection to any interrogatory or any part thereof based on attorney-client privilege, work product immunity, or any other privilege or immunity, you

shall provide an explanation of the basis therefore, including the specific nature of the privilege or exemption claimed and the detailed grounds for claiming such.

36. In the event that an interrogatory response requires, in whole or in part, consultation of a document which is known to have existed and cannot now be located or has been destroyed or discarded, that document shall be identified by:

- a. the last known custodian;
- b. date of destruction or discard;
- c. the manner of destruction or discard;
- d. the reason(s) for destruction or discard;
- e. as to lost or misplaced documents, the efforts made to locate such documents;
- f. a statement describing the document, including a summary of its contents;
- g. the identity of its author(s); and
- h. persons to whom it was sent or shown.

37. If you respond to any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted by Fed. R. Civ. P. 33(d):

- a. the specification of documents produced shall be in sufficient detail to permit Xerox to locate and identify the records and to ascertain the answer as readily as you could;
- b. You shall make available any computerized information or summaries thereof that you either have, or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery

c. You shall provide any relevant compilations, abstracts, or summaries in your custody or readily obtainable by you, unless these materials are privileged or otherwise immune from discovery; and

d. the document shall be made available for inspection and copying within seven (7) days after service of the responses to these interrogatories or a date agreed upon by all the parties.

38. These requests are continuing in nature and therefore require that you, in accordance with the duty to supplement and correct under Fed. R. Civ. P. 26(e), promptly produce for inspection and copying any documents not previously produced that you may from time to time acquire, obtain, locate or identify.

39. Each interrogatory shall be answered on the basis of your entire knowledge, from all sources, after an appropriate and good faith inquiry has been made. If you are unable to answer any of these interrogatories in full after exercising due diligence to secure the information requested, you should answer to the extent possible, explain why you are unable to answer the remainder and provide whatever information or knowledge you have concerning the unanswered portion.

40. Xerox reserves the right to propound additional interrogatories.

INTERROGATORIES

1. Identify all of your Content Matching Products.

2. Identify any products, services, facilities and/or computer software programs that are sold, licensed, distributed, leased, maintained, offered or otherwise supplied by you that employ semantic analysis of document content and/or ontologies to classify or categorize document content.

3. Identify all of your Related Products.

4. Separately for each version and/or release of each of your Accused Products, identify the persons most knowledgeable (*i.e.*, persons to whom your management would turn for information) as to the research, design, architecture, development, prototyping and/or engineering of the version and/or release of the Accused Product, and describe the role of each identified person.

5. Separately for each version and/or release of each of your Accused Products, identify the persons most knowledgeable (*i.e.*, persons to whom your management would turn for information) as to the marketing, promotion, pricing, sales, financial accounting, financial analysis and/or valuation of the version and/or release of the Accused Product, and describe the role of each identified person.

6. Separately for each of the Patents in Suit, identify the persons most knowledgeable (*i.e.*, persons to whom your management would turn for information) as to the facts supporting each of your defenses, together with a brief statement of each such person's area of relevant knowledge.

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.

8. If you contend that any of your '979 Accused Products do not infringe any claim of the '979 Patent, specify, separately for each '979 Accused Product, each claim that you contend is not infringed and describe in full for each such claim the basis for your contention, identifying all documents and all facts that you believe support your contention.

9. If you contend that any of your '994 Accused Products do not infringe any claim of the '994 Patent, specify, separately for each '994 Accused Product, each claim that you contend is not infringed and describe in full for each such claim the basis for your contention, identifying all documents and all facts that you believe support your contention.

Dated: April 23, 2010

ASHBY & GEDDES, P.A.

/s/ John G. Day

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October 7, 2010

Xerox Corp. v. Google Inc., et al., C.A. No. 10-136-LPS-MPT

Dear Andrea:

I have your letter dated September 30, 2010 regarding Xerox's responses to several of Google's and Defendants' interrogatories.

As we have stated numerous times now, Xerox's responses to Defendants' interrogatories are more than sufficient for this stage of the litigation, and Xerox will comply with Fed. R. Civ. P. 26(e) and supplement its responses when it is in a position to do so. In that regard, Xerox may supplement its responses by referencing produced documents in accordance with Fed. R. Civ. P. 33(d). As you are aware, document production for this case is still ongoing.

With respect to your request that Xerox supplement its response to Google's Interrogatory No. 4, which asks Xerox to identify "any and all inspection, testing, evaluation, or analysis" of Google and YouTube's infringing products, as Xerox stated in its objections, the substance of these investigations is protected by attorney-client privilege, work product protection or both. To the extent documents were generated during the course of inspection, testing, evaluation or analysis, Xerox will disclose the bases for any claims of privilege regarding those documents when the parties exchange privilege logs.

You also ask that Xerox supplement its response to Defendants' Interrogatory No. 1, asking Xerox to describe all facts relating to conception and reduction to practice for each claim of the patents-in-suit. Xerox's response cited dates and individuals as requested, and pointed to the specific work those individuals undertook at their respective research facilities. That response is more than sufficient for this stage of the litigation. Xerox is still in the process of identifying and collecting any documents that may exist relating to the research conducted at these facilities during the times specified. In that regard, because the development of the invention disclosed in U.S. Patent 6,778,979 took place at a research facility in Grenoble, France, document

production has been complicated by distance and by the burdensome and time-consuming procedures for data collection under French law. In addition, the Xerox facility in Blue Bell, PA where the invention disclosed in U.S. Patent 6,236,994 was developed was closed down a number of years ago, further complicating document collection efforts. As soon as relevant documents have been located, collected and reviewed, Xerox will produce any non-privileged responsive materials. Thereafter, Xerox will supplement its interrogatory responses as appropriate. This includes supplementation regarding Xerox prototypes responsive to Defendants' Interrogatory No. 6, to which you refer at the end of your letter.

Finally, you request that Xerox supplement its responses to Defendants' Interrogatory Nos. 3, 4 and 5, which seek information regarding secondary considerations of non-obviousness, the ways in which the patents-in-suit improve upon prior art and the level of skill for a person of ordinary skill in the art of the subject matter of the patents-in-suit. Your letter apparently assumes that Google's failure to disclose any basis for its purported obviousness defenses was Xerox's sole objection to those interrogatories. That is not correct. In addition to general objections, Xerox also specifically objected to Interrogatory Nos. 4 and 5 because they seek premature expert discovery, and to Interrogatory No. 4 to the extent it seeks irrelevant information. Xerox stands by those objections.

With respect to Xerox's objections based on Google's failure to disclose any basis for its purported obviousness defenses, those objections also stand. Neither Google nor the other Defendants have disclosed any basis for an obviousness defense (or for any invalidity defense whatsoever), other than a laundry list of purported prior art references that lack any indication as to how any such reference purportedly invalidates or renders obvious the claims of the patents-in-suit. Please let us know when Google intends to supplement its defective interrogatory responses and disclose the invalidity contentions requested by Xerox over five months ago.

Very truly yours,

/s/

Richard J. Stark

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BY EMAIL

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January 27, 2011

Xerox Corp. v. Google Inc., et al., C.A. No. 10-136-LPS-MPT

Dear Gene and David:

I write in response to Gene's letter dated January 21, 2011, as well as to David's follow-up email of the same date, in which Defendants demand that Xerox provide supplemental infringement contentions—even though neither Defendant group has completed production of infringement-related documents or even responded to repeated requests to provide a date by which document production would be complete.

When Google last raised the issue of contentions, we pointed out that Xerox's infringement contentions let Defendants know which functionalities of the accused products correspond to each element of the asserted patent claims, which is sufficient for this phase of the litigation. Indeed, in its reexamination request, Google repeatedly represented to the Patent Office that Google understood Xerox's infringement contentions enough to derive purported claim constructions. In Xerox's prior response, we also noted that Google has repeatedly delayed providing full infringement discovery to Xerox, even while Google demanded accelerated supplementation of Xerox's contentions—a statement that applied equally to Yahoo's delays in completing discovery. We indicated that Xerox would supplement its infringement contentions only after it thoroughly understood the operation of the accused products, which could not occur until Defendants completed document production and Xerox had the opportunity to complete its analysis of that production, potentially including depositions.

Since then, nothing has changed that alters Xerox's prior response. Defendants have not yet completed production of documents concerning the accused products, nor even provided any estimate of when that production will be complete or how many documents remain to be produced. Xerox requested an update on the status of Defendants' productions on December 28, 2010. That request was ignored. When Xerox followed up on January 10, 2011, and requested that Defendants indicate when document production would be complete, both Defendant groups responded that they required several more weeks even to be in a position to answer the question. Several more weeks

have passed, yet Defendants still have not revealed when they will complete the production of documents, even though the deadline for document production passed more than two months ago. Accordingly, Xerox once again requests that Defendants provide an answer to this threshold question. Xerox also requests that Defendants confirm when they will provide witnesses or written responses to Xerox's pending 30(b)(6) deposition notices regarding discovery matters, which were served a month and a half ago.

Furthermore, we note that Defendants' demands for more infringement claim reads ring hollow given that Defendants have yet to provide a single invalidity claim read in this case—eight months after such claim reads were due. Xerox again requests that Defendants comply with their discovery obligations and provide invalidity claim reads immediately.

Defendants try to justify their latest demand for supplemented contentions by pointing to the imminent claim construction process. But that argument puts the cart before the horse. It will actually be more logical and efficient to update initial contentions following *Markman* proceedings, at which time the parties will have the benefit of the Court's construction of the claims at issue.

You request a meet-and-confer on these issues. Although it is clear that any delay in this case is entirely of Defendants' own making and Defendants need to comply with their own discovery obligations before lodging complaints against Xerox, we are available for a call anytime on Monday, January 31, 2011. We trust that Defendants will be prepared to provide a date by which they will complete document production, an estimate of the volume of the documents yet to be produced, a date by which they will provide witnesses or written responses to Xerox's outstanding deposition notices, and a date by which they will provide invalidity claim reads.

Very truly yours,

/s/

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EXHIBIT 4

REDACTED IN ITS ENTIRETY

EXHIBIT 5

REDACTED IN ITS ENTIRETY

EXHIBIT 6

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

2

3

XEROX CORPORATION,

- - -

CIVIL ACTION

4

Plaintiff, Counterclaim
Defendant,

:

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:

5

v.

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6

GOOGLE, INC., YAHOO! INC., RIGHT

:

7

MEDIA INC., RIGHT MEDIA LLC,

:

8

YOUTUBE, INC., YOUTUBE, LLC,

:

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Defendants.

:

NO. 10-136 (LPS)

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Wilmington, Delaware
Tuesday, February 22, 2011
TELEPHONE CONFERENCE

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BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.

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APPEARANCES:

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ASHBY & GEDDES, P.A.

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BY: JOHN G. DAY, ESQ.

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and

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CRAVATH SWAINE & MOORE, LLP

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BY: RICHARD J. STARK, ESQ., and

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18 P R O C E E D I N G S

19 (REPORTER'S NOTE: Telephone conference took
 11:10:17 20 place in chambers, starting at 11:16 a.m.)

11:10:17 21 THE COURT: Good morning, everybody. This is

11:16:34 22 Judge Stark. Who is there, please?

11:16:37 23 MR. DAY: Good morning, your Honor. On behalf

11:16:39 24 of the plaintiffs Xerox, you have John Day at Ashby & Geddes

11:16:43 25 as Delaware counsel. With me on the line from Xerox, lead

11:16:49 1 counsel from Cravath Swain & Moore in New York, you have

11:16:52 2 Rick Stark and Scott Leslie.

11:16:56 3 THE COURT: Okay.

11:16:58 4 MR. MOORE: Good morning, your Honor. David

11:16:59 5 Moore Potter Anderson on behalf of Google; and with me on

11:17:02 6 the line are David Perlson and Andrea Roberts from Quinn

11:17:06 7 Emanuel.

11:17:07 8 THE COURT: Okay.

11:17:08 9 MS. NOREIKA: Good morning, your Honor.

11:17:09 10 Maryellen Noreika from Morris Nichols for Yahoo and Right

11:17:14 11 Media defendants; and with me are Anthony Fenwick and David

11:17:18 12 Lisson from David Polk.

11:17:20 13 THE COURT: Okay. That is all the defendants;

11:17:23 14 is that correct?

11:17:23 15 MS. NOREIKA: Yes.

11:17:23 16 THE COURT: Okay. Thank you.

11:17:25 17 So for the record, this is our case of Xerox

11:17:30 18 Corporation v Google Inc. It is our Civil Action No.

11:17:34 19 10-136-LPS. And the purpose of today's call is to discuss

11:17:39 20 the discovery disputes between the parties which are set out

11:17:46 21 in three letters.

11:17:48 22 Let me just, as background, say that I was a

11:17:57 23 little surprised at the length of the verbiage we got on

11:18:00 24 this dispute. It seemed to us that two defendants' letters

11:18:05 25 were substantively pretty much identical and could have, and

11:18:10 1 really should have, been consolidated into a single

11:18:14 2 three-page letter. Likewise, I suppose the plaintiff felt

11:18:17 3 it necessary in responding to six pages to write six pages,

11:18:22 4 though it certainly seemed a single three-page response

11:18:26 5 would have been adequate in this instance. But I recognize

11:18:29 6 there is some ambiguity in our proceedings and our order,

11:18:33 7 but I provide that as background and guidance perhaps for

11:18:36 8 going forward.

11:18:37 9 But with that, let me turn to defendants in

11:18:42 10 hopes that I'm only going to hear from one of you on behalf

11:18:45 11 of all of you, but be that as it may, let me hear first from

11:18:49 12 defense, please.

11:18:52 13 MR. FENWICK: Your Honor, this is Tony Fenwick

11:18:53 14 from Davis Polk on behalf of the Yahoo! defendants. And I

11:18:58 15 think I can certainly address the common issues.

11:19:04 16 With respect to the issue of the infringement

11:19:07 17 contentions, Xerox's position seems to be that it shouldn't

11:19:12 18 be required to provide meaningful detailed infringement

11:19:17 19 contentions until after the Court issues its Markman ruling

11:19:20 20 which could be some time substantially down the road.

11:19:23 21 Xerox also suggests that this district is

11:19:27 22 different in this respect from other districts which require

11:19:31 23 early detailed infringement contentions. I just don't see

11:19:40 24 any basis for that. Judge Thyng's form scheduling order

11:19:43 25 which was entered early in the case as well as your Honor's

11:19:45 1 form scheduling order which was subsequently entered, both

11:19:49 2 explicitly encourage early contention interrogatories; and

11:19:53 3 that is what the defendants did here was serve early

11:19:56 4 interrogatories, seeking infringement contentions.

11:20:00 5 The responses that were provided by Xerox to

11:20:04 6 those contentions were frankly not defensible. They really

11:20:09 7 added no information beyond what was in their complaint

11:20:12 8 other than to specify the two asserted claims, claims 1 and

11:20:17 9 18 of the '979 patent.

11:20:21 10 Those initial contentions groups all the accused

11:20:25 11 products together indiscriminately and they remain today the

11:20:30 12 operative contentions with respect to Right Media. Those

11:20:34 13 contentions have never been supplemented in any way.

11:20:37 14 To make things more concrete, I think it's

11:20:42 15 helpful to focus on a particular limitation, and I would --

11:20:46 16 I don't know if your Honor has the exhibits to the letters

11:20:49 17 in front of you, but if you have the Morris Nichols letter

11:20:55 18 in front of you on behalf of Yahoo!, there is one limitation

11:21:00 19 which I think is worth the time to focus on, and that is the

11:21:04 20 last limitation of claim 1. And the reason I say that is

11:21:08 21 not to pick it at random or tactically but because I think

11:21:11 22 it's fair to say that that is the limitation in this case

11:21:15 23 that, more than any other limitation, your Honor's time is

11:21:19 24 going to be focused on going forward. There are going to be

11:21:23 25 issues and arguments about other limitations but that is the

1 one the spotlight is really going to be on.
2 And if you look, your Honor, at Exhibit A, to
3 the Yahoo! letter, at page 5, the bottom of the page, you
4 will see the contentions that were provided with respect to
5 that limitation. It's the "automatically formulating the
6 query to restrict a search" limitation.

7 It's a limitation that is relevant, that is
8 part of every claim that Xerox wishes to assert in this
9 case. And if you look at the language of the claim and the
10 language of the infringement contention, which are side by
11 side here, you see that Xerox basically just repeated the
12 language of the claim as their contention.

13 With respect to the supplementation, if your
14 Honor looks at Exhibit C, page 6, at the top of the page,
15 you will see the same limitation and the supplemental
16 contentions against Yahoo!'s content match, accused product.

17 If you compare the language of the contention
18 to the language of Xerox's proposed construction of that
19 limitation, which is found at Exhibit D, page 2, in the
20 middle of the page, you can compare those two and see that
21 all the supplementation really did was replace a near
22 recitation of the claim language with a near recitation
23 of the proposed claim construction language.

24 That is not very informative, that is not what
25 infringement contentions are supposed to be, and it's not

1 of last year. So since at least August of last year, Xerox
2 has had a detailed explication of invalidity contentions in
3 connection with the '979 patent.

4 Xerox also points to purported late production
5 of documents for the state of their infringement contentions.
6 And what I would say to that is that Judge Thyng set up a
7 schedule in this case that asks the defendants to provide a
8 production in July of last year of source code and design
9 documents that described the operation of the products
10 that are accused in this case; and certainly the Yahoo!
11 defendants and I suspect the Google defendants worked very
12 diligently to provide that production.

13 And that's the way it ought to work. You know,
14 we're in the midst of this monstrosity that is E-discovery,
15 and in a patent case, if the plaintiff specifies clearly
16 what products are accused, then defendants ought to be able
17 to pull together documents, to the extent they exist, that
18 describe those products without going through this exercise
19 of a mile-long list of search terms being run against an
20 Everest-size mountain of data. And what Xerox is
21 complaining about is the mile-long search terms running
22 against an Everest-size mountain of data.

23 We gave them the documents that matter back
24 in July of 2010. To the extent there needed to be any
25 supplementation of that because they don't understand how

1 going to advance the case when we're all going to be focused
2 very much on that limitation going forward. And I don't
3 think Mr. Stark, on behalf of Xerox, is going to disagree
4 with me about that.

5 There are a couple of things that were raised
6 in particular in the Xerox letter that I feel I need to
7 address.

8 Xerox has offered as some form of excuse, I
9 suppose, for the state of their infringement contentions
10 the assertion that defendants invalidity contentions have
11 been inadequate and late. I think it's telling that Xerox
12 attaches only the interrogatories that they served seeking
13 infringement -- invalidity contentions and not either set
14 of responses that were provided by the defendants, not the
15 initial responses that were provided in July of last year
16 which were extensive, and not the recent supplementation.

17 Xerox asserts that Yahoo!'s invalidity
18 contentions have added 17 new references just a few days
19 ago, and the fact is not a single one of those references
20 is new to Xerox. They all have been known to Xerox for six
21 months. All of those references were identified in either
22 Google's July 2010 invalidity contentions and incorporated
23 by reference into Yahoo!'s or the few that weren't
24 identified there were identified and discussed at great
25 detail in the petition for reexam that was filed in August

1 the products work, which, believe me, is not something we're
2 trying to hide the ball about, they have the ability to tell
3 us what it is they need.

4 What they don't understand, what additional
5 documentation they think ought to exist that they can't
6 find. It wasn't until February 11th of this year that they
7 finally sent us a long-promised letter pointing to some of
8 those issues, gaps that they think may exist; and we're
9 working diligently to try to address those, to the extent
10 that they are real.

11 So that was what I had to say initially with
12 respect to the infringement contentions.

13 I think Xerox's letter points to a few instances
14 of specification of high level components of defendant
15 systems. That is not sufficient to tell us what their
16 theory of infringement is. And the fact that, in connection
17 with their submission, they included documents with arrows
18 pointing to particular sections of documents, they never
19 cited anything like that in their infringement contentions,
20 and it seems clear that they were capable of doing it
21 because they did it in their submission to your Honor in an
22 exemplary manner, by way of example.

23 THE COURT: Okay. Go on to the issue of the
24 newly asserted claims.

25 MR. FENWICK: With respect to the newly asserted

1 claims, your Honor, I think that is a question of basic
 2 fairness. The truth is that the defendants feel they have
 3 been sandbagged repeatedly in this case, first by inclusion
 4 of the '994 patent that was withdrawn, and that was a big
 5 waste of everyone's time and money. Secondly, by the
 6 withholding of meaningful infringement contentions for eight
 7 plus months. And now, most brazenly, by the late addition
 8 of these five claims.

9 We still don't have any explanation as to why
 10 Xerox was not forthcoming previously about these claims,
 11 let alone during the hearing that we had with your Honor on
 12 February 3rd when the scope of the case was kind of front
 13 and center and Xerox was arguing for an accelerated schedule,
 14 which they got.

15 It is not unreasonable. No one can say it's
 16 unreasonable to require patent plaintiffs to identify all
 17 asserted claims meaningfully in advance of a deadline for
 18 exchanging proposed constructions. And in this case, the
 19 deadline for proposed claim construction has been in place
 20 since May of last year, and yet for reasons we still don't
 21 understand, not until that deadline had come did we receive
 22 any notice of the addition of these claims.

23 It is one thing to sandbag and narrow a case,
 24 it's an even worse thing to sandbag and broaden a case
 25 because the impact on the ability of the defendants to

1 lay in the bed that they've made.

2 THE COURT: Okay. And did the Google defendants
 3 want to add something briefly?

4 MR. PERLSON: No, your Honor. I don't have
 5 anything further to add to that.

6 THE COURT: Okay. Let's hear from Xerox, please.

7 MR. STARK: Thank you, your Honor. Richard
 8 Stark for Xerox.

9 First, on the issue of the infringement
 10 contentions, your Honor. I want to say, first of all, that
 11 way back in the beginning of discovery, we answered these
 12 interrogatories, and we served an initial preliminary set of
 13 infringement contentions which frankly put the defendants on
 14 notice of substantively what we were claiming, identified
 15 the products that were being asserted against, identified
 16 the functionality, namely, the extraction of entities,
 17 categorizing the content of web pages, and then formulating
 18 a query in order to find relevant advertisements that are
 19 relevant to a particular web page or other content.

20 And that is exactly the functionality that is
 21 at issue here. They had no difficulty in understanding that
 22 for purposes of finding, as they say, the relevant design
 23 documentation, no difficulty understanding that for purposes
 24 of drafting the reexam request in which Google at least
 25 purported to understand what patent holder's constructions

1 prepare the case, to analyze the infringement and invalidity
 2 issues, and to understand what claim construction issues
 3 they're supposed to be thinking about and developing and
 4 what positions on invalidity and infringement is
 5 meaningfully prejudiced.

6 THE COURT: What about their suggestion that
 7 these additional claims are dependent and, therefore, there
 8 is not that much you have to do, and in connection with the
 9 reexam you all studied these claims anyway, so while you may
 10 be surprised, there is no real significant prejudice to you?

11 MR. FENWICK: Well, I can tell you on behalf of
 12 the Yahoo! defendants, your Honor, we did not participate
 13 in the preparation and filing of that reexam. We had been
 14 focused for eight plus months on claim 1 and claim 18.

15 It is the case there are two dependent claims
 16 that are more or less the same. They are dependent claims,
 17 so they're not entirely different from the claims that are
 18 at issue. But, nonetheless, you're bringing into play five
 19 or so limitations that none of us have been focused on.
 20 At least, the Yahoo! defendants haven't been focused on
 21 throughout the process of investigating the issues and
 22 developing positions.

23 So I guess that is my response on that front,
 24 your Honor. And we're not asking for dismissal of a cause
 25 of action. We're asking that your Honor require Xerox to

1 were and what was being asserted against them and came
 2 up with a raft of prior art to throw against the wall in
 3 relation to those claims as they understood them.

4 We then supplemented to add further details
 5 based on our review of the documents that we have so far.
 6 And to suggest that these contentions that are now before
 7 the Court and before the defendants are somehow high level
 8 or not detailed enough just really ignores the reality.

9 I'd like to refer your Honor to a couple of
 10 pages in exhibits we submitted. With respect to Google, I'd
 11 like to refer to Exhibit H to our letter, and it's page 2 in
 12 that exhibit.

13 Page 2 and Exhibit H is from a Google internal
 14 document. This shows a diagram of the entire ad serving
 15 system in Google's software. And we've given claim contention
 16 discovery that focuses on just the relevant components of
 17 this. Particularly right in the center of the diagram, you
 18 see something called the CAT2 Mixer. It's a component of
 19 their software. And then off in the upper right-hand is
 20 something called RePhil. It's another component of Google's
 21 software. These play a central role in what they identified
 22 and what we have now identified in our supplemented infringe-
 23 ment contentions. And there are some related data structures
 24 that have to do with those that are also mentioned in our
 25 infringement contentions.

1 And looking, for instance, at the contentions
 2 against Google -- and we can see this really in -- let's
 3 see. Well, it's attached to any number of the letters.
 4 Pretty much all the letters, I think. Our infringement
 5 contentions as to '979 and Google refer to AdSense, which is
 6 at least one of the services that uses this system that is
 7 depicted on the top of page 2 in Exhibit H. And after the
 8 preamble, the second block there, states that AdSense
 9 utilizes such categories, for example, Phil Clusters. Those
 10 are data structures used by the RePhil element in the upper
 11 right corner. Verticals, that is another data structure or
 12 set of data items that is used by the CAT2 Mixer and is
 13 specified farther on in this same document that we're talking
 14 about. And then we say, and/or associated data. We're
 15 going to find out more presumably when we get a 30(b)(6)
 16 deposition that we haven't had yet. And these constitute
 17 categories and they're identified within their system.
 18 Let me just pause there to say this is really
 19 a very detailed notice to the defendants. These are
 20 components of their software. They know better than we do
 21 what source code modules that these blocks on their diagram
 22 correspond to. They can't be in any doubt as to what is
 23 being referred to here.
 24 We've identified specific components, not some
 25 high level thing. It's specific components within their

1 Mr. Fenwick looked at this in the Yahoo! claim read and
 2 said, well, this is some sort of just a reformulation of
 3 the claim language and the claim construction. Well, first
 4 of all, there should be no surprise it corresponds to words
 5 from our claim construction or from the claim language. It
 6 has to in order to show infringement.
 7 Secondly, it's not just that. It's obviously
 8 referring to data items and elements that were referred to
 9 in the above steps. So it also comes together in the last
 10 element there, but it is referring back to, when it refers
 11 to categories or to entities or labels, it is referring
 12 back to, or was identified in the earlier steps. So it is a
 13 bit misleading, I have to say, to jump to the last element
 14 and then claim there is no specificity because you are
 15 looking at the last element.
 16 I think it is more telling to look at the, I
 17 believe it was, the Google letter where they claim that,
 18 gosh, there is no specificity here because Xerox doesn't
 19 identify categories.
 20 Well, as we stated in our response letter, that
 21 is just wrong. And I just pointed out where we identify
 22 what the categories are, Phil Clusters and Verticals in our
 23 claim read.
 24 There is similar detail provided in the Yahoo!
 25 claim read that we have given them, the interrogatory

1 system. And we've identified the specific data structures,
 2 Phil Clusters and Verticals within that system.
 3 Moving on to the next element of the claim, we
 4 state using CAT2 Mixer and/or associated components, there
 5 are potentially some other elements that are called by CAT2.
 6 Ads that identify, for example, names, compound words,
 7 phrases, and/or recognizable terms, entities. And they're
 8 fully aware of where in their source code that happens.
 9 That this is an integral part of what a CAT2 Mixer does.
 10 It's part of the whole purpose of the thing. It identifies
 11 those things in the context of a web page, for which AdSense
 12 is going to provide an ad.
 13 Moving on. I won't read the whole thing, but
 14 it goes on to talk further about CAT2 Mixer, RePhil, and the
 15 next step. And then, in the last step, talks about how
 16 AdSense takes data that it has gotten from the prior steps,
 17 puts those together into a query to go the ad retrieval
 18 system.
 19 And, again, there is no doubt in my mind that
 20 Google is perfectly capable of understanding where that
 21 happens. There is no doubt it happens. You have to send
 22 the query data off to the ad retrieval system, if you want
 23 to get ads out of it, and we do know they get ads out of
 24 their system.
 25 So to pause on this last element for a moment,

1 answer, and briefly I would refer your Honor to Exhibit K to
 2 our letter, which is a Yahoo! document. Page 2 in Exhibit K
 3 has a diagram of the Yahoo! system.
 4 THE COURT: And, Mr. Stark, what about this
 5 suggestion that in this submission to the Court, you are now
 6 being more specific and more forthcoming than you have been
 7 previously in your actual responses to interrogatories?
 8 MR. STARK: Well, it is true, your Honor, we
 9 have identified a couple of documents which we didn't have
 10 in our interrogatory answers. And if that is the answer to
 11 this, to identify a few documents, I'm more than happy to do
 12 that.
 13 But I frankly think the purpose of these kinds
 14 of contention interrogatories is to give defendants notice
 15 of what aspect of their system we're reading our claims on
 16 and where do we believe we find our patented invention in
 17 their system.
 18 Our claim reads do that quite specifically; and
 19 I don't think the defendants have any lack of ability to
 20 look up in their own documents where do they find discussion
 21 of CAT2 Mixer. I mean the document that we identified --
 22 I'm sorry -- that I was referring to a moment ago, Exhibit
 23 H, is one of Google's principal documents. It's a piece
 24 of documentation where they would send their engineers to
 25 look to see what is this thing, CAT2 Mixer.

1 So I think we identified CAT2 Mixer. We
 2 effectively have identified the documentation of the CAT2
 3 Mixer and the underlying source code. They would know that.
 4 If Google's lawyers went to Google's engineers and said what
 5 is this thing, CAT2 Mixer? They would be directed to these
 6 documents and the underlying source code.

7 THE COURT: All right. Move on to the newly
 8 asserted claims issue, please.

9 MR. STARK: Your Honor, if I may just tarry on
 10 Exhibit K for a moment. It's the diagram of the Yahoo!
 11 system, and just right in the center there we pointed out
 12 Cuervo Expert. Again, it's the specific component of the
 13 Yahoo! system that we have pointed out to them.

14 Moving on then to the issue of the new claims.
 15 Your Honor, we had a date in the schedule to identify the
 16 claims and claim terms at the start of the Markman procedure,
 17 and that is what we have done. We didn't, frankly, identify
 18 that we were going to assert the dependent claims until it
 19 came to putting together the claim construction charts. And
 20 so we identified them when we knew that we were going to use
 21 them.

22 They know, and they have as much notice as we do
 23 on that, frankly. The limitations, the additional limitations
 24 really are very small, very little to deal with here. Claim
 25 2 is dependent on claim 1 and adds the limitation, adding

1 disclose what are we debating in the claim construction?
 2 We disclosed to them what we're debating in the claim
 3 construction. They have time to consider that, time to deal
 4 with it. And we will come down to, in another week or two,
 5 what our joint statement is as to what is really debated
 6 between the parties on the claim construction issues and
 7 still more weeks to go before any briefing is done.

8 They haven't taken any depositions, they haven't
 9 given any depositions. It's not conceivable to me what
 10 their prejudice really is in dealing with effectively a
 11 handful of additional words in these dependent claims.

12 THE COURT: And when we had the scheduling
 13 conference at the beginning of the month, were you already
 14 at work on consider whether to add these additional claims?
 15 And if so, my impression there was that this case was
 16 getting narrower and now I'm told it's getting larger, so
 17 help me understand what was really going on at Xerox at
 18 that time.

19 MR. STARK: Sure, your Honor. Quite frankly,
 20 no, I had not considered at that point whether we would add
 21 dependent claims or not. And I think it is quite correct
 22 that the case got narrower. It got narrower by elimination
 23 of a whole new patent, and it's not materially broader by
 24 having a few dependent claims with a few straightforward
 25 limitations in the patent that was already at issue. So I

1 terms relating to context information surrounding the set of
 2 entities in the selected document content. That's it.

3 Claim 3 is dependent from claim 2 and says,
 4 wherein the number of terms added is limited to a predefined
 5 number. These are pretty simple straightforward additional
 6 limitations on the independent claims. It's really not
 7 adding anything by way of burden to the defendants. And
 8 they had, indeed, every opportunity to study these claims,
 9 and Google obviously had studied them extensively in
 10 preparing their reexam request.

11 And I don't think it can be credited to say
 12 Yahoo! was somehow unaware of this. They're clearly well
 13 aware of the reexam petition and even told the court that
 14 they were willing to be bound by it. It seems to me not
 15 quite believable that they're prepared to be bound by
 16 something that they haven't studied.

17 In any event, these are very minor additional
 18 limitations in the claims, in these dependent claims. And
 19 when we knew that we were asserting the additional dependent
 20 claims, promptly, two days later, we gave the defendants the
 21 claim readings, the infringement contentions on those.

22 So we now have all that, and indeed seven weeks
 23 or something like that, we still have six and-a-half weeks
 24 until the first Markman brief is due, so all this comes at
 25 the outset of what is simply a dance between the parties to

1 see no issue there, with all respect.

2 THE COURT: All right. And I think I'm seeing
 3 all of you next Monday for argument on the motion to stay.
 4 From your perspective, Mr. Stark, is there any urgency that
 5 the two issues in front of me today be resolved before that
 6 hearing next week?

7 MR. STARK: The only urgency, your Honor, is
 8 that our joint claim construction document is due that same
 9 day, I think. Yes, on the 28th. So we will need to come to
 10 ground as to whether we're talking about these few dependent
 11 claims or not.

12 THE COURT: Is there anything else you want to
 13 add before I turn it back to the defendants?

14 MR. STARK: No. Thank you, your Honor.

15 THE COURT: Okay. Mr. Fenwick.

16 MR. FENWICK: Yes, your Honor. Mr. Stark may
 17 have misspoken, but he indicated that the February 7th date
 18 that recently passed was for identification of claims and
 19 constructions, and that is not correct. That deadline was
 20 for identification of proposed terms for construction and
 21 also disclosure of what those -- an exchange of what those
 22 constructions would be. The assumption I think fairly has
 23 been that the claims at issue would have been identified a
 24 long time ago.

25 I think if Mr. Stark is suggesting it only

1 occurred to Xerox to add the claims over the weekend between
 2 the teleconference with your Honor and the date for exchange
 3 of proposed constructions, then it seems pretty clear to me
 4 that Xerox doesn't have much of an investment in asserting
 5 these dependent claims and can't claim that they're suffer-
 6 ing much prejudice by being precluded from pursuing these
 7 going forward.

8 The reason your Honor received the two letters
 9 from the defendants is that Yahoo! did not receive from
 10 the plaintiff its infringement contentions with respect to
 11 Google and Google did not receive from the plaintiff its
 12 infringement contentions with respect to Yahoo!, and so
 13 we were not in a position to characterize the state of the
 14 contentions with respect to Google. And for that same
 15 reason, I don't have the exhibits regarding Google that Mr.
 16 Stark was referring to when he was talking about the Google
 17 components.

18 I can't say that with respect to Yahoo! at most
 19 what they have done is provide 10,000-foot type contentions
 20 with respect to a small portion of the limitations that are
 21 at issue. It is simply not correct that, for example, the
 22 particular limitation that I brought out, that that is just
 23 a culmination of everything else.

24 You know, the crux of many of the issues that
 25 are going to be brought before your Honor in this case going

1 contentions. So they should be able to do that; and to say
 2 that we can go talk to an engineer to figure out how the
 3 product works is not a sufficient answer.

4 That is all I have.

5 THE COURT: Okay. Thank you, counsel.

6 Well, as you may have gathered from my
 7 questioning, what I am going to do is give these disputes a
 8 little bit more attention before I give you a ruling on them.

9 I recognize that if I have not ruled by the time
 10 I see you next Monday that I cannot expect the joint claim
 11 construction chart to be filed Monday, which I think is when
 12 it is presently due. So at this point, you should assume
 13 that I'm not going to get you a ruling until after we have
 14 the argument on Monday and that you will be given a reason-
 15 able number of days after I do get you a ruling before you
 16 will need to file your joint claim construction chart.

17 Is there anything else we need to address at
 18 this time, Mr. Fenwick?

19 MR. FENWICK: No, your Honor.

20 THE COURT: And Mr. Perlson?

21 MR. PERLSON: No, your Honor.

22 THE COURT: And Mr. Stark?

23 MR. STARK: Your Honor, if I might just briefly
 24 respond to one comment that Mr. Fenwick made. And that was
 25 on the subject of whether we got an investment, so to speak,

1 forward have to do with this notion in that limitation of
 2 restricting a search to the category of information that
 3 is identified by the assigned classification label,
 4 restricting a search to the category, and there is just
 5 nothing in these contentions that tells us what Xerox's
 6 theory is as to how our products are doing that. And we ask
 7 ourselves, why are we here? How can these patents possibly
 8 be asserted against these products? That question or that
 9 limitation is front and center, and we have nothing on that
 10 front from them in these contentions.

11 THE COURT: And from the defense perspective, is
 12 there urgency that I rule on these issues before me today in
 13 advance of our meeting next Monday?

14 MR. FENWICK: No, your Honor, so long as we're
 15 not expected to provide joint construction charts on the
 16 dependent claims next Monday.

17 THE COURT: Okay. Thank you.

18 Is there anything from Google?

19 MR. PERLMAN: The only thing I would add, your
 20 Honor, is that -- and Mr. Stark was talking about how we
 21 should -- you know, that Google knows what the CAT2 Mixer is
 22 and things like that. I mean, it's true that I could go to
 23 Google and get an explanation of the CAT2 mixer, but the
 24 plaintiff has the burden to show infringement. And it's
 25 there that the interrogatory asks for them to explain those

1 in the dependent claims.

2 I simply respectfully submit that the issue
 3 is not whether I personally or my team has invested a lot
 4 of time in the dependent claims but in my client Xerox's
 5 capability to substantively assert their rights with respect
 6 to those claims on the one hand versus prejudice to the
 7 defendants on the other hand, which, for reasons I have
 8 explained, I would submit is nonexistent.

9 THE COURT: Okay. Thank you all very much for
 10 your time. We'll see you on Monday. Good-bye.

11 (The attorneys respond, "Thank you, your Honor.")
 12 (Telephone conference ends at 11:53 a.m.)
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EXHIBIT 7

**EXCERPTS FROM THE INVALIDITY CHARTS ATTACHED TO
(1) YAHOO! INC. AND RIGHT MEDIA LLC’S THIRD SUPPLEMENTAL RESPONSE TO
INTERROGATORY NO. 7 OF XEROX’S FIRST SET OF INTERROGATORIES AND
(2) DEFENDANTS GOOGLE INC. AND YOUTUBE LLC’S THIRD SUPPLEMENTAL OBJECTIONS AND RESPONSES TO
XEROX’S FIRST SET OF INTERROGATORIES TO DEFENDANTS (NO. 7)**

The following tables show each Defendant’s invalidity claim charts for the “automatically categorizing” step of Claim 1 of the ’979 Patent with respect to two purported prior art references: U.S. Patent 6,122,647 (“Horowitz”) and U.S. Patent 6,473,752 (“Fleming”), served on April 15, 2011. (Ex. 20 at Charts B-7 & B-8; Ex. 21 at Appendices A & B.) These charts are identical to those previously served by Defendants on February 17-18, 2011, in their second supplemental responses to Xerox’s Interrogatory No. 7, except that they add one additional reference, the “Oracle Text White Paper” reference, to the list of citations.

As is apparent from the tables, Defendants’ claim charts for the Horowitz patent simply consist of unelaborated block quotes from that patent, followed by list of citations to 13 other references, including certain portions of the Fleming patent. Then, in the claim charts for the Fleming patent, each Defendant merely replaces the previously cited portions of Fleming with block quotes, and replaces the block quotes from the Horowitz patent with the corresponding column-line citations.

Defendants’ claim charts below are also identical to those that appear in Defendants’ Fourth Supplemental Responses to Xerox’s Interrogatory No. 7, both served on May 11, 2011, except that the corresponding charts in Defendants’ Fourth Supplemental Responses each add one more citation to an additional reference (the “Pretschner” reference) at the end of the lists of citations.

U.S. Patent 6,122,647 (Horowitz)		U.S. Patent 6,473,752 (Fleming)	
Yahoo App. A at 5-6 (emphasis added)	Google Chart 7 at 6-8 (emphasis added)	Yahoo App. B at 5-7 (emphasis added)	Google Chart 8 at 7-9 (emphasis added)
“In one embodiment, the present invention provides a computer-implemented process in which a portion of text of a source document is analyzed and a number of topics are determined as being representative of what the selected portion is about. Topic analysis may be determined by various syntactic and semantic processes, such as identification and frequency analysis of terms of the selected portion. For each of the topics, a new tag is added to the	“In one embodiment, the present invention provides a computer-implemented process in which a portion of text of a source document is analyzed and a number of topics are determined as being representative of what the selected portion is about. Topic analysis may be determined by various syntactic and semantic processes, such as identification and frequency analysis of terms of the selected portion. For each of the topics, a new tag is added to the	“The present invention relates generally to locating computer documents and more particularly to determining topics of interest to a user and locating documents related to those topics.” 1:6-9.	“The present invention relates generally to locating computer documents and more particularly to determining topics of interest to a user and locating documents related to those topics.” 1:6-9.
		“The system also analyzes the contents of the selected computer documents to identify relevant terms in the contents of the documents, and more generally to identify topics to which the contents are	“The system also analyzes the contents of the selected computer documents to identify relevant terms in the contents of the documents, and more generally to identify topics to which the contents are

U.S. Patent 6,122,647 (Horowitz)	
Yahoo App. A at 5-6 (emphasis added)	Google Chart 7 at 6-8 (emphasis added)
<p>source document. A tag includes a term, preferably from the text of the document, and a reference to the topic associated with the term. These tags are preferably stored with the source document.” 3:25-35.</p> <p>“The user selects a portion 304 of the source document 300, which may be the entire source document 300, or any lesser portion of it, such as a selected set of words, a sentence, paragraph, or the like. The selected portion 304 is provided to the tagging module 120, which is coupled to the knowledge base 130.” 7:59-65. “The tagging module 120 determines the topics in the knowledge base 130 that are about the selected portion 304. Preferably the tagging module 120 applies some type of linguistic analysis to the selected portion, including either syntactic or semantic analysis methods to determine the topics that are most representative or relevant to the selected portion 304.” 7:66-8:5.</p> <p>See Figs. 6-8.</p> <p>To the extent this reference does not teach this claim element, this reference in combination with the knowledge of one of ordinary skill in the art renders this claim element obvious. See, e.g.:</p>	<p>source document. A tag includes a term, preferably from the text of the document, and a reference to the topic associated with the term. These tags are preferably stored with the source document.” 3:25-35.</p> <p>“The user selects a portion 304 of the source document 300, which may be the entire source document 300, or any lesser portion of it, such as a selected set of words, a sentence, paragraph, or the like. The selected portion 304 is provided to the tagging module 120, which is coupled to the knowledge base 130.” 7:59-65. “The tagging module 120 determines the topics in the knowledge base 130 that are about the selected portion 304. Preferably the tagging module 120 applies some type of linguistic analysis to the selected portion, including either syntactic or semantic analysis methods to determine the topics that are most representative or relevant to the selected portion 304.” 7:66-8:5.</p> <p>See Figs. 6-8.</p> <p>To the extent this reference does not teach this claim element, this reference in combination with the knowledge of one of ordinary skill in the art renders this claim element obvious. See, e.g.:</p>

U.S. Patent 6,473,752 (Fleming)	
Yahoo App. B at 5-7 (emphasis added)	Google Chart 8 at 7-9 (emphasis added)
<p>related.” 3:5-8.</p> <p>“Those skilled in the art will appreciate that relevant terms can be generated in a variety of ways, and can be extracted from the contents of the entire document or only from the content of the portions of the document with which the user interacts.” 9:25-29.</p> <p>“Those skilled in the art will appreciate that topics of user interest can be generated in a variety of ways, that the importance of a topic can be calculated in a variety of ways (i.e., using of a variety of importance measures), and that the topics can be prioritized in a variety of ways.” 9:65-10:2.</p> <p>“Those skilled in the art will appreciate that other methods of generating topics related to document contents are possible. These may include methods that do not use extracted terms . . . or generating a new term that is broad enough to include multiple extracted and related terms.” 12:18-24.</p> <p>See Figs. 2, 5, 6, 9.</p> <p>To the extent this reference does not teach this claim element, this reference in combination with the knowledge of one of ordinary skill in the art renders this claim element obvious. See, e.g.:</p>	<p>related.” 3:5-8.</p> <p>“Those skilled in the art will appreciate that relevant terms can be generated in a variety of ways, and can be extracted from the contents of the entire document or only from the content of the portions of the document with which the user interacts.” 9:25-29.</p> <p>“Those skilled in the art will appreciate that topics of user interest can be generated in a variety of ways, that the importance of a topic can be calculated in a variety of ways (i.e., using of a variety of importance measures), and that the topics can be prioritized in a variety of ways.” 9:65-10:2.</p> <p>“Those skilled in the art will appreciate that other methods of generating topics related to document contents are possible. These may include methods that do not use extracted terms . . . or generating a new term that is broad enough to include multiple extracted and related terms.” 12:18-24.</p> <p>See Figs. 2, 5, 6, 9.</p> <p>To the extent this reference does not teach this claim element, this reference in combination with the knowledge of one of ordinary skill in the art renders this claim element obvious. See, e.g.:</p>

U.S. Patent 6,122,647 (Horowitz)		U.S. Patent 6,473,752 (Fleming)	
Yahoo App. A at 5-6 (emphasis added)	Google Chart 7 at 6-8 (emphasis added)	Yahoo App. B at 5-7 (emphasis added)	Google Chart 8 at 7-9 (emphasis added)
U.S. Patent Application Pub. No. 2002/0147738 ¶ 15	Reader, para. 0015	U.S. Patent Application Pub. No. 2002/0147738 ¶ 15	Reader, para. 0015
Mase at p. 377-379; Fig. 1	Mase, p. 377-379, Fig. 1	Mase at p. 377-379; Fig. 1	Mase, p. 377-379, Fig. 1
PCT Application Pub. No. WO 01/44992 at 17:15-32,18:16-22	Wieser, p. 17, lines 15-32; p. 18, lines 16-22	PCT Application Pub. No. WO 01/44992 at 17:15-32,18:16-22	Wieser, p. 17, lines 15-32; p. 18, lines 16-22
U.S. Patent No. 6,236,768 at Table 2; 5:12-28	Rhodes, Table 2, 5:12-28	U.S. Patent No. 6,236,768 at Table 2; 5:12-28	Rhodes, Table 2, 5:12-28
U.S. Patent No. 6,546,386 at 2:10-18, 2:57-61	Black, 2:10-18, 2:57-61	U.S. Patent No. 6,546,386 at 2:10-18, 2:57-61	Black, 2:10-18, 2:57-61
U.S. Patent No. 7,225,180 at Figs. 9b and 9c; 18:47-63, 20:3-18, 20:19-29	Donaldson, Figs. 9b and 9c, 18:47-63, 20:3-18, 20:19-29	U.S. Patent No. 7,225,180 at Figs. 9b and 9c; 18:47-63, 20:3-18, 20:19-29	Donaldson, Figs. 9b and 9c, 18:47-63, 20:3-18, 20:19-29
HyPursuit at pgs. 181, 182, 185, 186, 191	HyPursuit, p. 181, 182, 185, 186, 191	HyPursuit at pgs. 181, 182, 185, 186, 191	HyPursuit, p. 181, 182, 185, 186, 191
Finkelstein at pgs. 408, 410	Finkestein, p. 410, 408	Finkelstein at pgs. 408, 410	Finkestein, p. 410, 408
U.S. Patent No. 6,473,752 at 1:6-9, 3:5-8, 9:26-29, 9:65-10:2, 12:18-24	Fleming, 1:6-9, 3:5-8, 9:26-29, 9:65-10:2, 12:18-24	U.S. Patent No. 6,122,647 at 3:25-35, 7:66-8:5; Figs. 6-8	Horowitz, 3:25-35, 7:66-8:5, Figs. 6-8
U.S. Patent No. 6,606,644 at 11:4-17	Ford, 11:4-17	U.S. Patent No. 6,606,644 at 11:4-17	Ford, 11:4-17
U.S. Patent No. 6,829,780 at 11:16-40	Kraft, 11:16-40	U.S. Patent No. 6,829,780 at 11:16-40	Kraft, 11:16-40
U.S. Patent No. 7,225,142 at 9:33-37	Apte, 9:33-37	U.S. Patent No. 7,225,142 at 9:33-37	Apte, 9:33-37
U.S. Patent No. 7,451,099 at 27:14-34, 27:46-51; Fig 16A	Henkin, 27:30-34, 27:14-29, 27:46-51, Fig 16A	U.S. Patent No. 7,451,099 at 27:14-34, 27:46-51; Fig 16A	Henkin, 27:30-34, 27:14-29, 27:46-51, Fig 16A
Oracle Text White Paper, p. 11, 18, 19.	OracleText White Paper, p. 11, 18, 19	Oracle Text White Paper, p. 11, 18, 19.	OracleText White Paper, p. 11, 18, 19

EXHIBIT 8

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OF COUNSEL
PAUL C. SAUNDERS

March 8, 2011

Xerox Corp. v. Google Inc., et al., Civ. A. No. 10-136-LPS

Dear Jeremy and Andrea:

I write to address numerous critical deficiencies in Defendants' second supplemental responses to Xerox's Interrogatory No. 7 seeking invalidity contentions (the "Responses"). As detailed below, Defendants, who each provided essentially identical invalidity charts, have failed to disclose where even a single claim limitation is purportedly found in any prior art reference, have not provided any substantive contentions for their Section 101, 103 and 112 defenses and counterclaims, have padded the claim charts they did provide with pointless repetition of the same citations, and have failed to offer any claim charts at all for 24 references.

For openers, the only differences between the 13 charts submitted by Google and the 13 charts submitted by Yahoo are that Google and Yahoo use different citation conventions and arrange the charts in a different order. Otherwise, *all 26 of Defendants' invalidity charts contain exactly the same information*, and accordingly suffer from the same substantive shortcomings, as explained below.

First, although Defendants represented to the Court that they provided detailed contentions, their charts fail to disclose any actual theory of invalidity. Instead, Defendants merely point to a shifting mass of references without any indication of how those references purportedly render any claims invalid. Specifically, Defendants' invalidity charts lack substantive detail or support for Defendants' contentions in at least the following ways:

- A. As the charts reveal, Defendants simply cite a reference and state that either that reference discloses the invention or that reference plus some unspecified combination of one or more of the 13 other cited references discloses the invention. But Defendants never actually contend that any one reference discloses all limitations of a given claim or that any specific combination of references discloses all limitations of a claim. Instead,

Defendants merely cite to a host of materials and effectively say that claim limitations are disclosed somewhere among them, in some unspecified combination or combinations, without any detail or explanation.

- B. Both during the parties' discussions regarding Xerox's infringement contentions and in their letters to the Court, Defendants falsely complained that Xerox did not identify where specific claim limitations such as "category", "classification label", etc. were found in Defendants' products. While Xerox had in fact provided this information, Defendant's own invalidity contentions make no effort to explain where any of those limitations (or any other limitations, for that matter) are found in any prior art reference.
- C. Although Defendants purportedly assert invalidity defenses and counterclaims based on obviousness under 35 U.S.C. § 103, Defendants have provided no substantive contentions to support their obviousness claims. Specifically, Defendants have not identified which specific limitations (*e.g.*, "entities," "classification labels," and the like) are not found in a given primary reference, nor have Defendants indicated where those specific limitations are found in secondary prior art references. Furthermore, Defendants have provided no substantive explanation of why a person of ordinary skill in the art would have been motivated in 2001 to combine the teachings from those references.

Rather than provide this crucial basic information, Defendants have simply padded their contentions by reciting, for each element of the asserted claims, the same list of citations to the same portions of the same references (again, without any explanation as to how any particular reference discloses elements of the claim or otherwise renders the claim invalid).

For example, for the "automatically categorizing" step of Claim 1, Defendants provide the following contentions in claim charts for U.S. Patent 6,122,647 (Horowitz) (*see* Yahoo Chart A; Google Chart A-7), and U.S. Patent 6,473,752 (Fleming) (*see* Yahoo Chart B; Google Chart A-8). The chart on the left quotes from the Horowitz reference and then includes a double-spaced string cite to the 13 other references. As is clearly evident, the chart on the right then simply quotes the same portions of the Fleming reference that were identified in the prior chart and then adds the same double-spaced string cite, except that the Fleming citations are replaced by the Horowitz citations (indicated by the bolded, underlined text):

Yahoo! Contentions for U.S. Patent 6,122,647 (Horowitz)	Yahoo! Contentions for U.S. Patent 6,473,752 (Fleming)
"In one embodiment, the present invention provides a computer-implemented process in which a portion of text of a source document is analyzed and a number of topics are determined as being representative of what the selected portion is about. Topic analysis may be determined by various syntactic and semantic processes, such as	"The present invention relates generally to locating computer documents and more particularly to determining topics of interest to a user and locating documents related to those topics." 1:6-9. "The system also analyzes the contents of the selected computer documents to identify relevant

<p>identification and frequency analysis of terms of the selected portion. For each of the topics, a new tag is added to the source document. A tag includes a term, preferably from the text of the document, and a reference to the topic associated with the term. These tags are preferably stored with the source document.” 3:25-35.</p> <p>“The user selects a portion 304 of the source document 300, which may be the entire source document 300, or any lesser portion of it, such as a selected set of words, a sentence, paragraph, or the like. The selected portion 304 is provided to the tagging module 120, which is coupled to the knowledge base 130.” 7:59-65. “The tagging module 120 determines the topics in the knowledge base 130 that are about the selected portion 304. Preferably the tagging module 120 applies some type of linguistic analysis to the selected portion, including either syntactic or semantic analysis methods to determine the topics that are most representative or relevant to the selected portion 304.” 7:66-8:5.</p> <p>See Figs. 6-8.</p> <p>To the extent this reference does not teach this claim element, this reference in combination with the knowledge of one of ordinary skill in the art renders this claim element obvious. See, e.g.:</p> <p>U.S. Patent Application Pub. No. 2002/0147738 ¶ 15</p> <p>Mase at p. 377-379; Fig. 1</p> <p>PCT Application Pub. No. WO 01/44992 at 17:15-32,18:16-22</p> <p>U.S. Patent No. 6,236,768 at Table 2; 5:12-28</p> <p>U.S. Patent No. 6,546,386 at 2:10-18, 2:57-61</p> <p>U.S. Patent No. 7,225,180 at Figs. 9b and 9c; 18:47-63, 20:3-18, 20:19-29</p> <p>HyPursuit at pgs. 181, 182, 185, 186, 191</p> <p>Finkelstein at pgs. 408, 410</p> <p><u>U.S. Patent No. 6,473,752 at 1:6-9, 3:5-8, 9:26-29, 9:65-10:2, 12:18-24</u></p> <p>U.S. Patent No. 6,606,644 at 11:4-17</p>	<p>terms in the contents of the documents, and more generally to identify topics to which the contents are related.” 3:5-8.</p> <p>“Those skilled in the art will appreciate that relevant terms can be generated in a variety of ways, and can be extracted from the contents of the entire document or only from the content of the portions of the document with which the user interacts.” 9:25-29.</p> <p>“Those skilled in the art will appreciate that topics of user interest can be generated in a variety of ways, that the importance of a topic can be calculated in a variety of ways (i.e., using of a variety of importance measures), and that the topics can be prioritized in a variety of ways.” 9:65-10:2.</p> <p>“Those skilled in the art will appreciate that other methods of generating topics related to document contents are possible. These may include methods that do not use extracted terms . . . or generating a new term that is broad enough to include multiple extracted and related terms.” 12:18-24.</p> <p>See Figs. 2,5,6,9.</p> <p>To the extent this reference does not teach this claim element, this reference in combination with the knowledge of one of ordinary skill in the art renders this claim element obvious. See, e.g.:</p> <p>U.S. Patent Application Pub. No. 2002/0147738 ¶ 15</p> <p>Mase at p. 377-379; Fig. 1</p> <p>PCT Application Pub. No. WO 01/44992 at 17:15-32,18:16-22</p> <p>U.S. Patent No. 6,236,768 at Table 2; 5:12-28</p> <p>U.S. Patent No. 6,546,386 at 2:10-18, 2:57-61</p> <p>U.S. Patent No. 7,225,180 at Figs. 9b and 9c; 18:47-63, 20:3-18, 20:19-29</p> <p>HyPursuit at pgs. 181, 182, 185, 186, 191</p> <p>Finkelstein at pgs. 408, 410</p> <p><u>U.S. Patent No. 6,122,647 at 3:25-35, 7:66-8:5; Figs. 6-8</u></p> <p>U.S. Patent No. 6,606,644 at 11:4-17</p>
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U.S. Patent No. 6,829,780 at 11:16-40	U.S. Patent No. 6,829,780 at 11:16-40
U.S. Patent No. 7,225,142 at 9:33-37	U.S. Patent No. 7,225,142 at 9:33-37
U.S. Patent No. 7,451,099 at 27:14-34, 27:46-51; Fig 16A	U.S. Patent No. 7,451,099 at 27:14-34, 27:46-51; Fig 16A

The Google versions of these charts merely use a different citation convention (in which, for example, patents are referenced using the name of the first inventor), but are otherwise identical to Yahoo's. Thus, all of Defendants' charts recite the same double-spaced lists of citations over and over—to the point where there are cumulatively approximately 180 pointless repetitions. Through such sleight-of-hand, Defendants have succeeded in adding well over 100 extraneous pages to the combined set of Defendants' contentions.

Second, 10 months after Xerox served its interrogatories, Defendants have failed to provide any contentions for why any asserted claim is invalid for any reason arising under 35 U.S.C. §§ 101 or 112, even though both Defendants have pleaded Sections 101 and 112 as a basis for their invalidity defenses and counterclaims.

Third, in the litigation thus far, Defendants have asserted some 38 discrete references as alleged prior art. However, only 14 references are mentioned in the invalidity charts that Defendants provided in their Responses. Thus, over ten months after Xerox first requested detailed invalidity contentions and over seven months after Defendants served Xerox with laundry lists of purported prior art references, Defendants have still failed to offer claim charts of any kind for 24 of those references. It appears, then, that Defendants do not intend to rely on this prior art. May we therefore assume that Defendants have withdrawn these 24 references?

Separately, each of the issues above would render Defendants' invalidity contentions substantially incomplete. Taken together, they represent a disregard for Defendants' discovery obligations, and a contradiction of Defendants' representations to the Court regarding the extent of their supplementations.

After stalling for many months and then finally promising to supplement their contentions in January, Defendants then waited nearly three more weeks before serving their deficient contentions. Given this history of repeated delays, Xerox expects that Defendants will remedy the above problems immediately. Thus, please confirm by Thursday, March 10, that Defendants will provide comprehensive, detailed invalidity contentions on or before March 22 that address each of the deficiencies enumerated above. Otherwise, Xerox will be forced to raise this issue with the Court.

In addition, in light of the Court's February 28, 2011, order confirming that dependent Claims 2, 3, 5, 10 and 19 are part of this action, Xerox requests that Defendants either provide detailed invalidity contentions for those claims by March 22, or provide a reasonable date thereafter by which they will do so.

Very truly yours,

/s/

Scott A. Leslie

Jeremy Brodsky
Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025

Andrea Roberts
Quinn Emanuel Urquhart & Sullivan LLP
555 Twin Dolphin Drive, 5th Floor
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VIA EMAIL

EXHIBIT 9

{In Archive} Re: Xerox v. Google - Letter re Invalidity Contentions 

matthew.lehr, anthony.fenwick, david.lisson, jeremy.brodsky,
Scott Leslie to: angela.quach, felicia.yu, jblumenfeld, mnoreika, rhorwitz,
dmoore, Google-Xerox

03/17/2011 07:49 PM

Cc: Richard Stark, aharasymiak, ahale, jday, Imaguire, AMayo

Bcc: Xerox033

Archive: This message is being viewed in an archive.

Counsel -

As you know, Xerox sent you a letter last Tuesday, March 8, detailing the many ways in which Defendants' latest invalidity contentions are still critically deficient, despite the concerns Xerox has been raising for months. In that letter, we asked for Defendants' response by Thursday, March 10. It is now one week past that date, yet Defendants have failed to respond in any way. In the meantime, Xerox has served each Defendant with detailed infringement contentions.

It is imperative that Xerox receive complete invalidity contentions in advance of the Markman briefing in this case. Accordingly, we once again request that Defendants immediately supplement their invalidity contentions to remedy the deficiencies set forth in detail in my March 8 letter.

Best,

Scott

Scott A. Leslie
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1778 (phone)
(212) 474-3700 (fax)

Scott Leslie

Counsel - Please see the attached letter.

03/08/2011 09:10:07 PM

From: Scott Leslie/NYC/Cravath
To: matthew.lehr@davispolk.com, anthony.fenwick@davispolk.com, david.lisson@davispolk.com, jeremy.brodsky@davispolk.com, angela.quach@davispolk.com, felicia.yu@davispolk.com, jblumenfeld@mnat.com, mnoreika@mnat.com, rhorwitz@potteranderson.com, dmoore@potteranderson.com, Google-Xerox@quinnemanuel.com
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Date: 03/08/2011 09:10 PM
Subject: Xerox v. Google - Letter re Invalidity Contentions

Counsel -

Please see the attached letter.

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[attachment "2011-03-08 - Ltr. to Defendants re Invalidity Contentions.pdf" deleted by Scott Leslie/NYC/Cravath]

EXHIBIT 10

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March 18, 2011

VIA EMAIL

Scott Leslie
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825 Eighth Ave.
New York, NY 10019

Re: *Xerox Corp. v. Google Inc. et al.*, C.A. No. 10-136-LPS-MPT

Dear Scott:

I write in response to your March 8 and March 17 correspondence regarding Google's (and Yahoo!'s) invalidity contentions. I will focus on your requests for supplementation rather than your unproductive accusations that, as usual, pepper your correspondence.

Given the Court's ruling, Google will supplement its responses as to dependent claims.

We disagree that Google's contentions are not clear. For example, Google contends that those references it charted anticipate, at least, claims 1 and 18. To the extent Xerox argues that any element of an asserted claim is missing from a prior art reference, Google contends that the particular reference in combination with one or more of the other references cited would have rendered the asserted claim obvious. We will supplement to attempt to remedy Xerox's asserted confusion, including with regard to sections 101 and 112.

Your statement in your March 17 email that Xerox needs supplemental invalidity contentions from Google "in advance of the Markman briefing in this case" is not well-taken and untimely. We do not agree that any further supplementation is necessary to give Xerox whatever notice it needs for claim construction briefing purposes and in any event Xerox did not give Google enough notice of this purported concern to address before claim construction briefing.

quinn emanuel urquhart & sullivan, llp

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Very truly yours,

/s/

Andrea Pallios Roberts

01980.51645/4039053.2

01980.51645/4039053.2

EXHIBIT 11

RE: Xerox v. Google **Scott Leslie** to: Lisson, David

03/18/2011 08:39 PM

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"AMayo@ashby-geddes.com", "Andrea P Roberts", "Quach, Angela", "Fenwick,
Anthony I.", "dmoore@potteranderson.com", "Yu, Felicia", Google-Xerox,
Cc: "jblumenfeld@mnat.com", "jday@ashby-geddes.com", "Brodsky, Jeremy",
"Imaguire@ashby-geddes.com", "Lehr, Matthew B.", "mnoeika@mnat.com",
"rhorwitz@potteranderson.com", Richard Stark
Bcc: Xerox033

Andrea and David -

Andrea's letter of today does not address a single substantive problem detailed in Xerox's March 8 and March 17 correspondence regarding the ways in which Google's (and Yahoo's) invalidity contentions are unacceptably deficient. Nonetheless, Xerox assumes that by agreeing to "supplement to attempt to remedy Xerox's asserted confusion, including with regard to sections 101 and 112", Google will remedy all of those problems in its revised contentions. Because Yahoo has joined in Google's position on this issue, Xerox assumes that the same goes for Yahoo. Please let us know immediately if those assumptions are incorrect.

As for the claim that "Xerox did not give Google enough notice of this purported concern to address before claim construction briefing", that is simply not credible. Accordingly, Xerox expects that Defendants will supplement their invalidity contentions by no later than April 1, and acknowledge that they will do so by close of business on Monday, March 21.

Best,

Scott

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(212) 474-3700 (fax)

"Lisson, David"	Scott, Yahoo! joins in the positions articulated by...	03/18/2011 05:14:00 PM
From:	"Lisson, David" <david.lisson@davispolk.com>	
To:	"Andrea P Roberts" <andreaproberts@quinnemanuel.com>, Scott Leslie <SLeslie@cravath.com>, Richard Stark <RStark@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, "ahale@cravath.com" <ahale@cravath.com>, "jday@ashby-geddes.com" <jday@ashby-geddes.com>, "Imaguire@ashby-geddes.com" <Imaguire@ashby-geddes.com>	
Cc:	Google-Xerox <Google-Xerox@quinnemanuel.com>, "rhorwitz@potteranderson.com" <rhorwitz@potteranderson.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "Lehr, Matthew B." <matthew.lehr@davispolk.com>, "Fenwick, Anthony I." <anthony.fenwick@davispolk.com>, "Brodsky, Jeremy" <jeremy.brodsky@davispolk.com>, "Quach, Angela" <angela.quach@davispolk.com>, "Yu, Felicia" <felicia.yu@davispolk.com>, "jblumenfeld@mnat.com" <jblumenfeld@mnat.com>, "mnoeika@mnat.com" <mnoeika@mnat.com>	
Date:	03/18/2011 05:14 PM	
Subject:	RE: Xerox v. Google	

Scott,

Yahoo! joins in the positions articulated by counsel for Google in today's letter from Andrea Roberts.

Best,

David

David J. Lisson

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Davis Polk

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From: Andrea P Roberts [mailto:andreaproberts@quinnemanuel.com]

Sent: Friday, March 18, 2011 12:32 PM

To: Scott Leslie; Richard Stark; aharasymiak@cravath.com; ahale@cravath.com; jday@ashby-geddes.com; lmaguire@ashby-geddes.com; AMayo@ashby-geddes.com

Cc: Google-Xerox; rhorwitz@potteranderson.com; dmoore@potteranderson.com; Lehr, Matthew B.; Fenwick, Anthony I.; Lisson, David; Brodsky, Jeremy; Quach, Angela; Yu, Felicia; jblumenfeld@mnat.com; mnoreika@mnat.com

Subject: Xerox v. Google

Scott,

Please see attached.

Andrea Pallios Roberts

Quinn Emanuel Urquhart & Sullivan, LLP

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EXHIBIT 12



{In Archive} Re: Xerox v. Google - Letter re Invalidity Contentions

Lisson, David <david.lisson@davispolk.com> to: @quinnemanuel.com',
'andreaproberts@quinnemanuel.com',
"RStark@cravath.com", "aharasymiak@cravath.com",
Cc: "ahale@cravath.com", "jday@ashby-geddes.com",
"Imaguire@ashby-geddes.com", "AMayo@ashby-geddes.com"

03/22/2011 12:20 AM

Archive: This message is being viewed in an archive.

Scott,

Yahoo! joins in the positions articulated below.

Best,
David

From: Andrea P Roberts <andreaproberts@quinnemanuel.com>
To: 'Scott Leslie' <SLeSie@cravath.com>; Lehr, Matthew B.; Fenwick, Anthony I.; Lisson, David; Brodsky, Jeremy; Quach, Angela; Yu, Felicia; 'jblumenfeld@mnat.com' <jblumenfeld@mnat.com>; 'mnoeika@mnat.com' <mnoeika@mnat.com>; 'rhorwitz@potteranderson.com' <rhorwitz@potteranderson.com>; 'dmoore@potteranderson.com' <dmoore@potteranderson.com>; Google-Xerox <Google-Xerox@quinnemanuel.com>
Cc: 'Richard Stark' <RStark@cravath.com>; 'aharasymiak@cravath.com' <aharasymiak@cravath.com>; 'ahale@cravath.com' <ahale@cravath.com>; 'jday@ashby-geddes.com' <jday@ashby-geddes.com>; 'Imaguire@ashby-geddes.com' <Imaguire@ashby-geddes.com>; 'AMayo@ashby-geddes.com' <AMayo@ashby-geddes.com>
Sent: Mon Mar 21 23:44:48 2011
Subject: RE: Xerox v. Google - Letter re Invalidity Contentions

Scott,

We disagree with your assessment of our responses to Xerox's Interrogatory No. 7 and our letter regarding same. In any event, to the extent it was not clear, we will supplement them to (a) chart the newly asserted dependent claims and (b) attempt to address the asserted confusion identified in your March 8 letter to the extent we understand it. Google expects to further supplement its response to this interrogatory by April 8. To the extent it appears we are unable to do so in this timeframe we will let you know.

Andrea Pallios Roberts
Quinn Emanuel Urquhart & Sullivan, LLP

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copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

From: Scott Leslie [mailto:SLeslie@cravath.com]
Sent: Thursday, March 17, 2011 4:49 PM
To: matthew.lehr@davispolk.com; anthony.fenwick@davispolk.com; david.lisson@davispolk.com; jeremy.brodsky@davispolk.com; angela.quach@davispolk.com; felicia.yu@davispolk.com; jblumenfeld@mnat.com; mnoreika@mnat.com; rhorwitz@potteranderson.com; dmoore@potteranderson.com; Google-Xerox
Cc: Richard Stark; aharasymiak@cravath.com; ahale@cravath.com; jday@ashby-geddes.com; lmaguire@ashby-geddes.com; AMayo@ashby-geddes.com
Subject: Re: Xerox v. Google - Letter re Invalidity Contentions

Counsel -

As you know, Xerox sent you a letter last Tuesday, March 8, detailing the many ways in which Defendants' latest invalidity contentions are still critically deficient, despite the concerns Xerox has been raising for months. In that letter, we asked for Defendants' response by Thursday, March 10. It is now one week past that date, yet Defendants have failed to respond in any way. In the meantime, Xerox has served each Defendant with detailed infringement contentions.

It is imperative that Xerox receive complete invalidity contentions in advance of the Markman briefing in this case. Accordingly, we once again request that Defendants immediately supplement their invalidity contentions to remedy the deficiencies set forth in detail in my March 8 letter.

Best,

Scott

Scott A. Leslie
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
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(212) 474-3700 (fax)

From: Scott Leslie/NYC/Cravath
To: matthew.lehr@davispolk.com, anthony.fenwick@davispolk.com, david.lisson@davispolk.com, jeremy.brodsky@davispolk.com, angela.quach@davispolk.com, felicia.yu@davispolk.com, jblumenfeld@mnat.com, mnoreika@mnat.com, rhorwitz@potteranderson.com, dmoore@potteranderson.com, Google-Xerox@quinnemanuel.com
Cc: Richard Stark/NYC/Cravath, aharasymiak@cravath.com, sleslie@cravath.com, ahale@cravath.com, jday@ashby-geddes.com, lmaguire@ashby-geddes.com, AMayo@ashby-geddes.com
Date: 03/08/2011 09:10 PM
Subject: Xerox v. Google - Letter re Invalidity Contentions

Counsel -

Please see the attached letter.

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[attachment "2011-03-08 - Ltr. to Defendants re Invalidity Contentions.pdf" deleted by Scott Leslie/NYC/Cravath]

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EXHIBIT 13

Scott Leslie/NYC/Cravath
03/28/2011 09:43 PM

To Andrea P Roberts <andreaproberts@quinnemanuel.com>
cc "ahale@cravath.com" <ahale@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, "AMayo@ashby-geddes.com" <AMayo@ashby-geddes.com>, "angela.quach@davispolk.com" <angela.quach@davispolk.com>, "Fenwick, Anthony I." <anthony.fenwick@davispolk.com>, David Perlson <davidperlson@quinnemanuel.com>, "Lisson, David" <david.lisson@davispolk.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "felicia.yu@davispolk.com" <felicia.yu@davispolk.com>, Google-Xerox <Google-Xerox@quinnemanuel.com>, "jblumenfeld@mnat.com" <jblumenfeld@mnat.com>, "jday@ashby-geddes.com" <jday@ashby-geddes.com>, "Brodsky, Jeremy" <jeremy.brodsky@davispolk.com>, "Imaguire@ashby-geddes.com" <Imaguire@ashby-geddes.com>, "matthew.lehr@davispolk.com" <matthew.lehr@davispolk.com>, "mnoreika@mnat.com" <mnoreika@mnat.com>, "rhorwitz@potteranderson.com" <rhorwitz@potteranderson.com>, Richard Stark <RStark@cravath.com>

bcc Xerox033

Subject 2011-03-28 E-MAIL to A. Roberts from S. Leslie Re: Xerox not to Supplement Responses to Defendants' Interrogatories



Andrea -

Xerox does not agree that supplementation of its responses to Defendants' Interrogatory Nos. 3-5 and Google's Interrogatory No. 4 is appropriate at this time.

First, regarding Google's Interrogatory No. 4, which asks Xerox to identify "any and all inspection, testing, evaluation, or analysis" of Google's infringing products, the substance of that investigation is protected by attorney-client privilege, work product protection or both, as Xerox explained in its October 7, 2010, letter to Google. And as Xerox stated in that letter, "[t]o the extent documents were generated during the course of inspection, testing, evaluation or analysis, Xerox will disclose the bases for any claims of privilege regarding those documents when the parties exchange privilege logs". With that in mind, please let us know when Defendants will be in a position to exchange privilege logs in this case.

Second, regarding Defendants' Interrogatory Nos. 3-5, as Xerox also explained in its October 7 letter, Xerox objected to those interrogatories based in part on Defendants' failure to disclose any bases for their purported obviousness defenses (or, for that matter, for any other invalidity defense). Xerox also specifically objected to Interrogatory Nos. 4 and 5 because they seek premature expert discovery, and to Interrogatory No. 4 to the extent it seeks irrelevant information. Nothing has changed since last October. For example, despite Xerox's repeated requests for detail concerning Defendants' invalidity contentions, Defendants have provided nothing more than repetitive laundry lists of citations to purported prior art references that lack any indication as to how any reference allegedly invalidates or renders obvious the claims of the '979 Patent.

Defendants have now committed to supplementing their invalidity contentions by April 8. Xerox will consider supplementing its responses to Defendants' Interrogatories after receipt of appropriately detailed invalidity contentions from Defendants.

On the subject of invalidity contentions, your March 21, 2011, email indicates that Defendants will address

the deficiencies listed in my March 8 letter "to the extent [Defendants] understand it". Although my letter was quite clear concerning each deficiency in Defendants' prior invalidity contentions, to ensure that there is no misunderstanding, Xerox again reiterates the problems that Defendants' supplemental responses must correct:

1. Defendants' revised contentions must provide a detailed claim-by-claim basis for each and every invalidity defenses that Defendants intend to assert, including without limitation any defenses under 35 U.S.C. §§ 101 or 112.
2. To the extent Defendants intend to assert anticipation or obviousness defenses on the basis of any reference, Defendants must state on a claim-by-claim basis specifically where each claim limitation (for example, "organized classification of document content", "classification label", "entity", etc.) purportedly may be found in that reference. Defendants must provide this information for all references listed in their prior responses to the extent Defendants are still relying on those references.
3. To the extent Defendants allege obviousness and rely on a combination of references, Defendants should identify on a claim-by-claim basis which specific limitations are found in which reference and indicate the alleged reason or motivation to combine those references as of the relevant date, as well as any facts allegedly evidencing that reason or motivation.

If Defendants do not fully understand any of the foregoing, or if Defendants do not agree that their supplemental invalidity contentions will contain the foregoing information, please let us know immediately and please identify with specificity the areas of confusion or disagreement.

Best,

Scott

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New York, NY 10019
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(212) 474-3700 (fax)

Andrea P Roberts

Scott, I write to follow up on Google's request th...

03/25/2011 03:29:45 PM

From: Andrea P Roberts <andreaproberts@quinnemanuel.com>
To: Scott Leslie <SLeslie@cravath.com>, David Perlson <davidperlson@quinnemanuel.com>
Cc: "ahale@cravath.com" <ahale@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, "AMayo@ashby-geddes.com" <AMayo@ashby-geddes.com>, "angela.quach@davispolk.com" <angela.quach@davispolk.com>, "Fenwick, Anthony I." <anthony.fenwick@davispolk.com>, "Lisson, David" <david.lisson@davispolk.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "felicia.yu@davispolk.com" <felicia.yu@davispolk.com>, Google-Xerox <Google-Xerox@quinnemanuel.com>, "jblumenfeld@mnat.com" <jblumenfeld@mnat.com>, "jday@ashby-geddes.com" <jday@ashby-geddes.com>, "Brodsky, Jeremy" <jeremy.brodsky@davispolk.com>, "Imaguire@ashby-geddes.com" <Imaguire@ashby-geddes.com>, "matthew.lehr@davispolk.com" <matthew.lehr@davispolk.com>, "mnoreika@mnat.com" <mnoreika@mnat.com>, "rhorwitz@potteranderson.com" <rhorwitz@potteranderson.com>, Richard Stark <RStark@cravath.com>
Date: 03/25/2011 03:29 PM
Subject: RE: Xerox v. Google

Scott,

I write to follow up on Google's request that Xerox supplement its responses to Defendants' Interrogatory Nos. 3-5 and Google's Interrogatory No. 4. Please let us know whether Xerox will agree to supplement its responses to these interrogatories as well.

Thanks.

Andrea Pallios Roberts

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From: Scott Leslie [mailto:SLeslie@cravath.com]

Sent: Wednesday, March 23, 2011 4:14 PM

To: David Perlson

Cc: ahale@cravath.com; aharasymiak@cravath.com; AMayo@ashby-geddes.com; Andrea P Roberts; angela.quach@davispolk.com; Fenwick, Anthony I.; Lisson, David; dmoore@potteranderson.com; felicia.yu@davispolk.com; Google-Xerox; jblumenfeld@mnat.com; jday@ashby-geddes.com; Brodsky, Jeremy; Imaguire@ashby-geddes.com; matthew.lehr@davispolk.com; mnoreika@mnat.com; rhorwitz@potteranderson.com; Richard Stark

Subject: RE: Xerox v. Google

David -

In addition to supplementing its response to Defendants' Interrogatory No. 1, Xerox also expects to supplement its response to Defendants' Interrogatory No. 6 on Friday. Otherwise, Xerox is still considering Defendants' other requests.

Best,

Scott

Scott A. Leslie
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(212) 474-1778 (phone)
(212) 474-3700 (fax)

From: David Perlson <davidperlson@quinnemanuel.com>
To: David Perlson <davidperlson@quinnemanuel.com>, Scott Leslie <SLeslie@cravath.com>
Cc: Andrea P Roberts <andreaproberts@quinnemanuel.com>, "ahale@cravath.com" <ahale@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, "AMayo@ashby-geddes.com" <AMayo@ashby-geddes.com>, "angela.quach@davispolk.com" <angela.quach@davispolk.com>, "Fenwick, Anthony I." <anthony.fenwick@davispolk.com>, "Lisson, David" <david.lisson@davispolk.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "felicia.yu@davispolk.com" <felicia.yu@davispolk.com>, Google-Xerox <Google-Xerox@quinnemanuel.com>, "jblumenfeld@mnat.com" <jblumenfeld@mnat.com>, "jday@ashby-geddes.com" <jday@ashby-geddes.com>, "Brodsky, Jeremy" <jeremy.brodsky@davispolk.com>, "Imaguire@ashby-geddes.com" <Imaguire@ashby-geddes.com>, "matthew.lehr@davispolk.com" <matthew.lehr@davispolk.com>, "mnoreika@mnat.com" <mnoreika@mnat.com>, "rhorwitz@potteranderson.com" <rhorwitz@potteranderson.com>, Richard Stark <RStark@cravath.com>
Date: 03/23/2011 06:51 PM
Subject: RE: Xerox v. Google

Scott, following up on this. Thanks

From: David Perlson
Sent: Wednesday, March 23, 2011 7:30 AM
To: Scott Leslie
Cc: Andrea P Roberts; ahale@cravath.com; aharasymiak@cravath.com; AMayo@ashby-geddes.com; angela.quach@davispolk.com; Fenwick, Anthony I.; Lisson, David; dmoore@potteranderson.com; felicia.yu@davispolk.com; Google-Xerox; jblumenfeld@mnat.com; jday@ashby-geddes.com; Brodsky, Jeremy; Imaguire@ashby-geddes.com; matthew.lehr@davispolk.com; mnoreika@mnat.com; rhorwitz@potteranderson.com; Richard Stark
Subject: Re: Xerox v. Google

Scott, will xerox be supplementing the other interrogatories we requested.

On Mar 23, 2011, at 7:27 AM, "Scott Leslie" <SLeslie@cravath.com> wrote:
Andrea -

Xerox expects to supplement its response to Defendants' Interrogatory No. 1 by this Friday, March 25. To the extent Xerox is unable to do so, we will let you know. Also, please note that the depositions next week are scheduled to take place on March 30 and April 1, as opposed to March 31 and April 1 as indicated in your emails.

Best,

Scott

Scott A. Leslie
Cravath, Swaine & Moore LLP
825 Eighth Avenue
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(212) 474-1778 (phone)

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From: Andrea P Roberts <andreaproberts@quinnemanuel.com>
To: Andrea P Roberts <andreaproberts@quinnemanuel.com>, Scott Leslie <SLeslie@cravath.com>
Cc: "ahale@cravath.com" <ahale@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, Richard Stark <RStark@cravath.com>, "AMayo@ashby-geddes.com" <AMayo@ashby-geddes.com>, "angela.quach@davispolk.com" <angela.quach@davispolk.com>, "Fenwick, Anthony I." <anthony.fenwick@davispolk.com>, "Lisson, David" <david.lisson@davispolk.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "rhowitz@potteranderson.com" <rhowitz@potteranderson.com>, "felicia.yu@davispolk.com" <felicia.yu@davispolk.com>, "jblumenfeld@mnat.com" <jblumenfeld@mnat.com>, "jdav@ashby-geddes.com" <jdav@ashby-geddes.com>, "Brodsky, Jeremy" <jeremy.brodsky@davispolk.com>, "Imaquire@ashby-geddes.com" <Imaquire@ashby-geddes.com>, "matthew.lehr@davispolk.com" <matthew.lehr@davispolk.com>, "mnoreika@mnat.com" <mnoreika@mnat.com>, Google-Xerox <Google-Xerox@quinnemanuel.com>
Date: 03/22/2011 09:35 PM
Subject: RE: Xerox v. Google

Scott,

I write to follow-up on the email below. We need a prompt response in order to consider Xerox's request that Defendants take the 30(b)(6) depositions of Xerox on the topic of conception/reduction to practice on March 31 or April 1.

Andrea Pallios Roberts
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From: Andrea P Roberts
Sent: Friday, March 18, 2011 3:18 PM
To: Scott Leslie
Cc: ahale@cravath.com; aharasymiak@cravath.com; Richard Stark; AMayo@ashby-geddes.com;

angela.quach@davispolk.com; Fenwick, Anthony I.; Lisson, David; dmoore@potteranderson.com; rhowitz@potteranderson.com; felicia.yu@davispolk.com; jblumenfeld@mnat.com; jday@ashby-geddes.com; Brodsky, Jeremy; lmaguire@ashby-geddes.com; matthew.lehr@davispolk.com; mnoreika@mnat.com; Google-Xerox

Subject: Xerox v. Google

Scott,

I write to follow up on Google's September 30, 2010 request (in the attached letter) that Xerox supplement its responses to Defendants' Interrogatory Nos. 1, 3, 4, 5, and 6, and Google's Interrogatory No. 4. Xerox refused to supplement its responses to these interrogatories at that time because it contended that they were sufficient given the stage of the litigation. Now that Xerox has reviewed and completed its document production, please supplement these responses as necessary.

Given that Xerox is asking Defendants to take the 30(b)(6) depositions of Xerox on the topic of conception/reduction to practice on March 31 or April 1, Defendants will need Xerox's full and complete supplementation of its response to Defendants' Interrogatory No. 1 right away, and no later than Friday, March 25. Please promptly confirm that Xerox agrees to do so. Defendants' ability to take this 30(b)(6) deposition on one of these dates will be dependent, at least in part, on Xerox's agreement to do so.

Thanks,

Andrea Pallios Roberts

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EXHIBIT 14



Xerox v. Google

Matthew Cannon <matthewcannon@quinnemanuel.com>

Sc
ott
Le

04/07/2011 09:35 PM

Cc: Google-Xerox, "Horwitz, Richard L." , "Moore, David E.",
"Fenwick, Anthony I.", "Lisson, David"

Counsel-

Defendants have been working diligently to supplement their interrogatory responses regarding our invalidity contentions. However, due in part to all the recent activity in this case, Defendants will require until next week to provide supplemental responses to Xerox's Interrogatory No. 7.

Best,

Matt

Matthew Cannon

Quinn Emanuel Urquhart & Sullivan, LLP

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EXHIBIT 15

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MINH VAN NGO
KEVIN J. ORSINI

SPECIAL COUNSEL
SAMUEL C. BUTLER
GEORGE J. GILLESPIE, III

OF COUNSEL
PAUL C. SAUNDERS

April 8, 2011

Xerox Corp. v. Google Inc., et al., Civ. A. No. 10-136-LPS

Dear Matthew:

I write in response to your email of April 7.

As you know, Xerox identified pervasive deficiencies in Defendants' supplemental invalidity contentions on March 8 and requested that those deficiencies be corrected or Xerox would be forced to seek the assistance of the Court. Defendants ignored this request. Xerox repeated its request on March 17. Defendants then responded on March 21 and promised that they would correct their invalidity contentions three weeks later, on April 8—one week after the date Xerox requested and a full month after Xerox identified the critical problems in Defendants' existing contentions. In reliance on Defendants' commitments, Xerox did not seek relief from the Court.

Now, one day before the deadline, Defendants unilaterally break their commitments and provide a vague commitment to correct their invalidity contentions sometime next week. This is not acceptable. Xerox served its interrogatories over eleven months ago and has yet to receive anything approaching adequate invalidity contentions. Responsive *Markman* briefs are due in a week, and Defendants invalidity contentions are clearly material to their claim construction positions. Please confirm that Defendants will supplement their contentions no later than Monday, April 11.

Very truly yours,

/s/

Scott A. Leslie

Matthew Cannon
Quinn Emanuel Urquhart & Sullivan LLP
50 California Street, 22nd Floor
San Francisco, CA 94111

COPY TO

David Lisson
Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025

VIA EMAIL

EXHIBIT 16

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PHILIP A. GELSTON
RORY O. MILLSON
RICHARD W. CLARY
WILLIAM P. ROGERS, JR.
JAMES D. COOPER
STEPHEN L. GORDON
DANIEL L. MOSLEY
PETER S. WILSON
JAMES C. VARDELL, III
ROBERT H. BARON
KEVIN J. GREHAN
STEPHEN S. MADSEN
C. ALLEN PARKER

MARC S. ROSENBERG
SUSAN WEBSTER
DAVID MERCADO
ROWAN D. WILSON
PETER T. BARBUR
SANDRA C. GOLDSTEIN
THOMAS G. RAFFERTY
MICHAEL S. GOLDMAN
RICHARD HALL
JULIE A. NORTH
ANDREW W. NEEDHAM
STEPHEN L. BURNS
KEITH R. HUMMEL
DANIEL SLIFKIN
JEFFREY A. SMITH
ROBERT I. TOWNSEND, III
WILLIAM J. WHELAN, III
SCOTT A. BARSHAY
PHILIP J. BOECKMAN
ROGER G. BROOKS
WILLIAM V. FOGG
FAIZA J. SAEED
RICHARD J. STARK

THOMAS E. DUNN
MARK I. GREENE
SARKIS JEBEJIAN
DAVID R. MARRIOTT
MICHAEL A. PASKIN
ANDREW J. PITTS
MICHAEL T. REYNOLDS
ANTONY L. RYAN
GEORGE E. ZOBITZ
GEORGE A. STEPHANAKIS
DARIN P. MCATEE
GARY A. BORNSTEIN
TIMOTHY G. CAMERON
KARIN A. DEMASI
LIZABETHANN R. EISEN
DAVID S. FINKELSTEIN
DAVID GREENWALD
RACHEL G. SKAISTIS
PAUL H. ZUMBRO
JOEL F. HEROLD
ERIC W. HILFERS
GEORGE F. SCHOEN
ERIK R. TAVZEL

CRAIG F. ARCELLA
TEENA-ANN V. SANKOORIKAL
ANDREW R. THOMPSON
DAMIEN R. ZOUBEK
LAUREN ANGELILLI
TATIANA LAPUSHCHIK
ERIC L. SCHIELE
ALYSSA K. CAPLES
JENNIFER S. CONWAY
MINH VAN NGO
KEVIN J. ORSINI

SPECIAL COUNSEL
SAMUEL C. BUTLER
GEORGE J. GILLESPIE, III

OF COUNSEL
PAUL C. SAUNDERS

April 18, 2011

Xerox Corp. v. Google Inc., et al., Civ. A. No. 10-136-LPS

Dear Jeremy and Andrea:

I write regarding Defendants' ongoing failure to provide adequate responses to Xerox's Interrogatory No. 7, which seeks detailed invalidity contentions, and Interrogatory No. 8, which seeks detailed non-infringement contentions.

First, as you know, Xerox identified numerous specific deficiencies in Defendants' second set of supplemental invalidity contentions on March 8 and requested that those deficiencies be promptly corrected. For example, as Xerox stated, although "Defendants falsely complained that Xerox did not identify where specific claim limitations such as 'category', 'classification label', etc. were found in Defendants' products," "Defendant's own invalidity contentions [made] no effort to explain where any of those limitations (or any other limitations, for that matter) are found in any prior art reference". In addition, Defendants "failed to provide any contentions for why any asserted claim is invalid for any reason arising under 35 U.S.C. §§ 101 or 112, even though both Defendants have pleaded Sections 101 and 112 as a basis for their invalidity defenses and counterclaims". Finally, although Defendants had identified some 38 discrete references as alleged prior art in the litigation, they addressed only 14 references in their invalidity charts.

After receiving no response to its March 8 letter, Xerox repeated its request on March 17. Google finally responded on March 18, stating that it "will supplement to attempt to remedy Xerox's asserted confusion" regarding Google's invalidity contentions—a position that Yahoo then joined. Xerox responded that same day noting that although Google's response did not address a single substantive problem detailed in Xerox's March 8 and March 17 correspondence, Xerox expected Defendants' interrogatory responses to correct all of the problems cited therein. Xerox also requested that Defendants notify Xerox immediately if Xerox's expectations were incorrect.

On March 21, Defendants promised they would correct their invalidity contentions by April 8 “to address the asserted confusion identified in [Xerox’s] March 8 letter to the extent [Defendants] understand it”. So that there would be absolutely no misunderstanding, Xerox reiterated once more, on March 28, 2011, that it expected Defendants’ corrected invalidity contentions to address the specific issues identified in Xerox’s prior correspondence, including the following:

“1. Defendants’ revised contentions must provide a detailed claim-by-claim basis for each and every invalidity defenses that Defendants intend to assert, including without limitation any defenses under 35 U.S.C. §§ 101 or 112.

2. To the extent Defendants intend to assert anticipation or obviousness defenses on the basis of any reference, Defendants must state on a claim-by-claim basis specifically where each claim limitation (for example, “organized classification of document content”, “classification label”, “entity”, etc.) purportedly may be found in that reference. Defendants must provide this information for all references listed in their prior responses to the extent Defendants are still relying on those references.

3. To the extent Defendants allege obviousness and rely on a combination of references, Defendants should identify on a claim-by-claim basis which specific limitations are found in which reference and indicate the alleged reason or motivation to combine those references as of the relevant date, as well as any facts allegedly evidencing that reason or motivation.”

Xerox ended that email by stating that “[i]f Defendants do not fully understand any of the foregoing, or if Defendants do not agree that their supplemental invalidity contentions will contain the foregoing information, please let us know immediately and please identify with specificity the areas of confusion or disagreement”. Xerox received no further response from Defendants.

Xerox relied on Defendants’ promise to provide the requested supplementation on April 8 and did not seek immediate relief from the Court. Yet on the eve of their own proposed deadline, Defendants emailed Xerox stating that they would be unable to provide the corrected contentions on April 8, saying only that their delays were “due in part to all the recent activity in this case”. Xerox responded by noting that Defendants’ unilateral postponement of the submission of adequate invalidity contentions was not acceptable given that Xerox served its interrogatories 11 months earlier and responsive *Markman* briefs, to which Defendants’ invalidity contentions clearly relate, were due in one week. Xerox then requested that Defendants confirm that they would supplement their contentions by April 11.

Although April 11 came and went without any response, both Defendants ultimately provided third sets of supplemental invalidity contentions on April 15. However, these third supplemental contentions fail to address almost all of the deficiencies Xerox identified in its March 8 letter. In fact, Defendants have simply

submitted the exact same deficient invalidity charts that they submitted two months ago, along with three additional charts (which suffer the same problems as their 13 other charts) for dependent claims 2, 3 and 19, which Defendants had previously not addressed at all. Remarkably, Defendants have not provided any claim charts for the handful of additional Oracle Corp. purported prior art references they now identify (for the first time) in their third supplemental responses, nor for 22 previously identified references. Defendants still do not identify where any specific claim limitations (such as “organized classification of document content”, “classification label”, “entity”, etc.) are found in any reference. Defendants have not identified any specific motivation to combine any particular obviousness references, nor have they identified which specific claim limitations are found in which reference. And Defendants still have not provided any basis for their purported Section 101 defenses.

Defendants’ unjustified delays are not acceptable. Defendants have had more than enough time to draft detailed invalidity contentions addressing all of the references that they intend to assert in this case. Yet one year after Xerox served its interrogatories seeking these contentions, and after Defendants have repeatedly delayed responding to requests for more information and even sought extensions on their own deadlines for such responses, Defendants have failed to provide adequate invalidity contentions. Xerox therefore requests that Defendants submit adequate invalidity contentions (addressing all of the deficiencies Xerox has identified) no later than Thursday at noon Eastern time, and confirm by tomorrow, April 19, that they will do so. If Defendants refuse, Xerox will be forced to seek immediate relief from the Court.

Second, regarding Xerox’s Interrogatory No. 8, Xerox provided Defendants with detailed supplemental infringement contentions on March 15, 2011, and requested on March 28 that Defendants in turn correct their deficient non-infringement contentions no later than April 12, 2011. Defendants have ignored this request.

Xerox therefore requests that Defendants also confirm by tomorrow, April 19, that they will supplement their non-infringement contentions by April 29. Again, if Defendants refuse, Xerox will seek relief from the Court.

Very truly yours,

/s/

Scott A. Leslie

Jeremy Brodsky
Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025

Andrea Roberts
Quinn Emanuel Urquhart & Sullivan LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065-2139

VIA EMAIL

EXHIBIT 17



RE: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

Andrea P Roberts <andreaproberts@quinnemanuel.com> to: ott 04/21/2011 02:47 PM
Sc
Le

Cc: "ahale@cravath.com", "aharasymiak@cravath.com",
"AMayo@ashby-geddes.com", "Quach, Angela", "Lisson, David",
"dmoore@potteranderson.com", "Yu, Felicia",

History: This message has been forwarded.

Scott,

Google will supplement its response to interrogatory no. 8 concerning contentions regarding non-infringement. It may, however, not be until early May that we are able to do so.

We disagree that Google's invalidity contentions require supplementation as you suggest in your April 18 letter. Google, however, does agree to supplement its response to interrogatory no. 7 insofar as it relates to invalidity 35 U.S.C. § 101.

Further, we note that Xerox has to date failed to supplement its interrogatory responses to Defendants' interrogatory nos. 3-5, which request Xerox to provide contentions regarding why the patents are not invalid and related issues. Please confirm that Xerox will supplement its responses to these interrogatories and provide a timeframe for doing so.

Regards,

Andrea Pallios Roberts
Quinn Emanuel Urquhart & Sullivan, LLP

555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
650-801-5023 Direct
650.801.5000 Main Office Number
650.801.5100 FAX
andreaproberts@quinnemanuel.com
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From: Scott Leslie [<mailto:SLeslie@cravath.com>]

Sent: Monday, April 18, 2011 4:29 PM

To: Fenwick, Anthony I.

Cc: ahale@cravath.com; aharasymiak@cravath.com; AMayo@ashby-geddes.com; Quach, Angela; Lisson, David; dmoore@potteranderson.com; Yu, Felicia; Google-Xerox; jblumenfeld@mnat.com; jday@ashby-geddes.com; Brodsky, Jeremy; Imaguire@ashby-geddes.com; Lehr, Matthew B.; mnoreika@mnat.com; rhorwitz@potteranderson.com; Richard Stark

Subject: RE: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

Tony -

We've confirmed that Xerox's March 28 letter concerning non-infringement contentions never made its

way outside of our email system to Defendants. Obviously, Defendants cannot have ignored that which they did not receive, and we sincerely apologize for the confusion.

That letter simply noted that Xerox had provided Defendants with detailed supplemental infringement contentions on March 15, 2011, and accordingly, Xerox expected that Defendants would be able to promptly supplement their responses to Xerox's Interrogatory No. 8, which seeks Defendants' non-infringement contentions. That expectation still stands, and Xerox requests that Defendants make that supplementation by April 29.

Once again, we apologize for the mix-up.

Best,

Scott

Scott A. Leslie
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1778 (phone)
(212) 474-3700 (fax)

From: "Fenwick, Anthony I." <anthony.fenwick@davispolk.com>
To: "Scott Leslie" <SLeslie@cravath.com>, "Lehr, Matthew B." <matthew.lehr@davispolk.com>, "Lisson, David" <david.lisson@davispolk.com>, "Brodsky, Jeremy" <jeremy.brodsky@davispolk.com>, "Quach, Angela" <angela.quach@davispolk.com>, "Yu, Felicia" <felicia.yu@davispolk.com>, "jblumenfeld@mnat.com" <jblumenfeld@mnat.com>, "mnoreika@mnat.com" <mnoreika@mnat.com>, "rhorwitz@potteranderson.com" <rhorwitz@potteranderson.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "Google-Xerox@quinnemanuel.com" <Google-Xerox@quinnemanuel.com>
Cc: Richard Stark <RStark@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, "ahale@cravath.com" <ahale@cravath.com>, "jday@ashby-geddes.com" <jday@ashby-geddes.com>, "Imaguire@ashby-geddes.com" <Imaguire@ashby-geddes.com>, "AMayo@ashby-geddes.com" <AMayo@ashby-geddes.com>
Date: 04/18/2011 06:03 PM
Subject: RE: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

Scott,

You write that Xerox "requested on March 28 that Defendants in turn correct their deficient non-infringement contentions no later than April 12, 2011..." and that "Defendants have ignored this request." Can you please clarify what March 28 "request" you are referring to, as nobody on our side seems to have a record of it? And I would hate to falsely suggest that we failed to respond to the request because it was made in a shrill and over-the-top kind of manner -- or because there are only so many hours in the day -- if the real reason was that it was never actually communicated.

Tony

[Anthony I. Fenwick](#)

Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025
650 752 2015 tel
650 752 3615 fax
anthony.fenwick@davispolk.com

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From: Scott Leslie [<mailto:SLeslie@cravath.com>]

Sent: Monday, April 18, 2011 12:45 PM

To: Lehr, Matthew B.; Fenwick, Anthony I.; Lisson, David; Brodsky, Jeremy; Quach, Angela; Yu, Felicia; jblumenfeld@mnat.com; mnoreika@mnat.com; rhorwitz@potteranderson.com; dmoore@potteranderson.com; Google-Xerox@quinnemanuel.com

Cc: Richard Stark; aharasymiak@cravath.com; sleslie@cravath.com; ahale@cravath.com; jday@ashby-geddes.com; Imaguire@ashby-geddes.com; AMayo@ashby-geddes.com

Subject: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

Counsel -

Please see the attached.

Best,

Scott

Scott A. Leslie
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1778 (phone)
(212) 474-3700 (fax)

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image001.jpg

EXHIBIT 18



RE: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

Lisson, David <david.lisson@davispolk.com> to: 'Andrea P Roberts', Scott Leslie, 'ahale@cravath.com', "aharasymiak@cravath.com", "AMayo@ashby-geddes.com", "Quach, Angela", "dmoore@potteranderson.com", "Yu, Felicia", Google-Xerox, 04/22/2011 12:32 PM

History: This message has been replied to.

Scott,

Yahoo! will also supplement its response to Xerox's Interrogatory No. 8 and will attempt to do so in early May.

In addition, we will consider supplementation of Yahoo!'s response to Xerox's Interrogatory No. 7 insofar as it relates to 35 U.S.C. § 101 and may provide supplementation as to that issue. We do not agree that any further supplementation of Interrogatory No. 7 is required.

Best,
David

David J. Lisson
David Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025
650 752 2013 tel
650 752 3613 fax
david.lisson@davispolk.com
DavisPolk

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From: Andrea P Roberts [mailto:andreaproberts@quinnemanuel.com]
Sent: Thursday, April 21, 2011 11:48 AM
To: Scott Leslie; Fenwick, Anthony I.
Cc: ahale@cravath.com; aharasymiak@cravath.com; AMayo@ashby-geddes.com; Quach, Angela; Lisson, David; dmoore@potteranderson.com; Yu, Felicia; Google-Xerox; jblumenfeld@mnat.com; jday@ashby-geddes.com; Brodsky, Jeremy; Imaguire@ashby-geddes.com; Lehr, Matthew B.; mnoreika@mnat.com; rhorwitz@potteranderson.com; Richard Stark
Subject: RE: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

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Andrea Pallios Roberts

Quinn Emanuel Urquhart & Sullivan, LLP

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From: Scott Leslie [mailto:SLeslie@cravath.com]

Sent: Monday, April 18, 2011 4:29 PM

To: Fenwick, Anthony I.

Cc: ahale@cravath.com; aharasymiak@cravath.com; AMayo@ashby-geddes.com; Quach, Angela; Lisson, David; dmoore@potteranderson.com; Yu, Felicia; Google-Xerox; jblumenfeld@mnat.com; jday@ashby-geddes.com; Brodsky, Jeremy; Imaguire@ashby-geddes.com; Lehr, Matthew B.; mnoreika@mnat.com; rhorwitz@potteranderson.com; Richard Stark

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To: "Scott Leslie" <SLeslie@cravath.com>, "Lehr, Matthew B." <matthew.lehr@davispolk.com>, "Lisson, David" <david.lisson@davispolk.com>, "Brodsky, Jeremy" <jeremy.brodsky@davispolk.com>, "Quach, Angela" <angela.quach@davispolk.com>, "Yu, Felicia" <felicia.yu@davispolk.com>, "jblumenfeld@mnat.com" <jblumenfeld@mnat.com>, "mnoreika@mnat.com" <mnoreika@mnat.com>, "rhorwitz@potteranderson.com" <rhorwitz@potteranderson.com>, "dmoore@potteranderson.com" <dmoore@potteranderson.com>, "Google-Xerox@quinnemanuel.com" <Google-Xerox@quinnemanuel.com>
Cc: Richard Stark <RStark@cravath.com>, "aharasymiak@cravath.com" <aharasymiak@cravath.com>, "ahale@cravath.com" <ahale@cravath.com>, "jday@ashby-geddes.com" <jday@ashby-geddes.com>, "Imaguire@ashby-geddes.com" <Imaguire@ashby-geddes.com>, "AMayo@ashby-geddes.com" <AMayo@ashby-geddes.com>
Date: 04/18/2011 06:03 PM
Subject: RE: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

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Tony

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650 752 2015 tel
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From: Scott Leslie [<mailto:SLeslie@cravath.com>]
Sent: Monday, April 18, 2011 12:45 PM
To: Lehr, Matthew B.; Fenwick, Anthony I.; Lisson, David; Brodsky, Jeremy; Quach, Angela; Yu, Felicia; jblumenfeld@mnat.com; mnoreika@mnat.com; rhorwitz@potteranderson.com; dmoore@potteranderson.com; Google-Xerox@quinnemanuel.com
Cc: Richard Stark; aharasymiak@cravath.com; sleslie@cravath.com; ahale@cravath.com; jday@ashby-geddes.com; Imaguire@ashby-geddes.com; AMayo@ashby-geddes.com
Subject: Xerox v. Google - Letter re Invalidity and Non-Infringement Contentions

Counsel -

Please see the attached.

Best,

Scott

Scott A. Leslie
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1778 (phone)
(212) 474-3700 (fax)

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image001.jpg

EXHIBIT 19

**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' SECOND SET OF INTERROGATORIES TO
PLAINTIFF XEROX CORPORATION (NOS. 8-11)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants Google Inc. and Yahoo! Inc. jointly request that Plaintiff Xerox Corporation ("Xerox") respond to the following interrogatories in writing, under oath, and in accordance with the following instructions and definitions, within thirty (30) days from the date of service thereof. Xerox shall supplement all responses to these Interrogatories as required by the Federal Rules of Civil Procedure.

DEFINITIONS

1. "XEROX," "YOU," "YOUR," and "PLAINTIFF" means Xerox Corporation, and its officers, directors, current and former employees, counsel, agents, consultants, representatives, and any other persons acting on behalf of any of the foregoing, and Xerox Corporation's affiliates, parents, divisions, joint ventures, licensees, franchisees, assigns, predecessors and successors in interest, and any other legal entities, whether foreign or domestic, that are owned or controlled by Xerox Corporation, and all predecessors and successors in interest to such entities.

2. "DEFENDANTS" shall mean Google Inc. and Yahoo! Inc.

3. "979 PATENT" means U.S. Patent No. 6,778,979.
4. "PATENT-IN-SUIT" shall refer to the '979 PATENT, individually and collectively.
5. "DOCUMENT" shall include, without limitation, all written, graphic or otherwise recorded material, including without limitation, microfilms or other film records or impressions, electronically stored information regardless of the form of storage medium, tape recordings or computer cards, floppy disks or printouts, any and all papers, photographs, films, recordings, memoranda, books, records, accounts, communications, letters, telegrams, correspondence, notes of meetings, notes of conversations, notes of telephone calls, inter-office memoranda or written communications of any nature, recordings of conversations either in writings or upon any mechanical or electrical recording devices, including email, notes, papers, reports, analyses, invoices, canceled checks or check stubs, receipts, minutes of meetings, time sheets, diaries, desk calendars, ledgers, schedules, licenses, financial statements, telephone bills, logs, and any differing versions of any of the foregoing, whether so denominated, formal, informal or otherwise, as well as copies of the foregoing which differ in any way, including by the addition of handwritten notations or other written or printed matter of any nature, from the original. The foregoing specifically includes information stored in a computer database and capable of being generated in documentary form, such as electronic mail.
6. "COMMUNICATION" shall mean, without limitation, any transmission, conveyance or exchange of a word, statement, fact, thing, idea, DOCUMENT, instruction, information, demand or question by any medium, whether by written, oral or other means, including but not limited to, electronic communications and electronic mail.

7. The term "PERSON" shall refer to any individual, corporation, proprietorship, association, joint venture, company, partnership or other business or legal entity, including governmental bodies and agencies.

8. "INFRINGE" and "INFRINGEMENT" means direct infringement, contributory infringement, infringement by inducement, literal infringement, and infringement by the doctrine of equivalents.

9. "PRIOR ART" shall mean the subject matter described in 35 U.S.C. §§ 102 and 103, including but not limited to publications, patents, physical devices, prototypes, uses, sales, and offers for sale, and any DOCUMENTS or OTHER ITEMS evidencing any of the foregoing.

10. "IDENTIFY" in relation to a person means to state his or her full name and: (a) present business address(es), position and business affiliation, and business telephone number; or, if current information is not known, (b) the last known business and home addresses, position and business affiliation, and business telephone numbers. Once any person has been identified properly, it shall be sufficient thereafter when identifying that same person to state the name only.

11. "IDENTIFY" in relation to an entity means to state the entity's: (a) full name; (b) state of incorporation; (c) current or last known business address; and (d) current or last known telephone number. Once an entity has been identified properly, it shall be sufficient thereafter when identifying that same entity to state the name only.

12. "IDENTIFY" in relation to a DOCUMENT means to state: (a) the date the DOCUMENT was created; (b) the author of the DOCUMENT; (c) the recipient of the DOCUMENT; (d) any person or entity receiving a copy of the DOCUMENT by "cc," "bcc," or otherwise; (e) a basic description of the nature of the DOCUMENT, including, if applicable; (f)

the title of the DOCUMENT; and (g) whether the DOCUMENT has been or is being produced in this litigation, the dates or identifier number affixed to the DOCUMENT. DOCUMENTS to be "identified" include DOCUMENTS in XEROX's possession, custody, or control, DOCUMENTS known by XEROX to have existed but no longer exist, and other DOCUMENTS of which XEROX has knowledge or information.

13. "IDENTIFY" in relation to a product or service means to state the product or service name, commercial or trade name, manufacturer, producer, or service provider, model or version number, part number, type, description, or any other representative designation.

14. "IDENTIFY" in relation to a COMMUNICATION means: (a) to state the date of the COMMUNICATION; (b) to identify all DOCUMENTS relating to such COMMUNICATIONS; (c) to describe the content and substance of the COMMUNICATION; (d) to identify the persons who received or were involved in the COMMUNICATION; and (e) to identify the person or persons most knowledgeable about the COMMUNICATION.

15. "REFLECT," "REFLECTING," "RELATE TO," "REFER TO," "RELATING TO," and "REFERRING TO" shall mean relating to, referring to, concerning, mentioning, reflecting, pertaining to, evidencing, involving, describing, discussing, commenting on, embodying, responding to, supporting, contradicting, or constituting (in whole or in part), as the context makes appropriate.

16. The term "ASSERTED CLAIMS" refers to each and every claim of the '979 PATENT that XEROX contends that any DEFENDANT infringes.

17. The term "ACCUSED PRODUCTS" shall refer to each and every product alleged in the COMPLAINT, or otherwise alleged by PLAINTIFF, as directly infringing (or otherwise

falling within, embodying, or meeting), or as inducing or contributing to the infringement of, any claim of the PATENTS-IN-SUIT.

INSTRUCTIONS

The following instructions shall apply to each of the Interrogatories herein:

1. In answering the following Interrogatories, furnish all available information, including information in the possession, custody, or control of any of PLAINTIFF's attorneys, directors, officers, agents, employees, representatives, associates, investigators or division affiliates, partnerships, parents or subsidiaries, and persons under PLAINTIFF's control, who have the best knowledge, not merely information known to PLAINTIFF based on PLAINTIFF's own personal knowledge. If you cannot fully respond to the following Interrogatories after exercising due diligence to secure the information requested thereby, so state, and specify the portion of each Interrogatories that cannot be responded to fully and completely. In the latter event, state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatories cannot be answered fully and completely; and state what knowledge, information or belief PLAINTIFF has concerning the unanswered portion of any such Interrogatories.

2. If any information requested is claimed to be privileged or otherwise immune from discovery, please provide all information falling within the scope of the Interrogatory which is not privileged, and for each item of information contained in a document to which a claim of privilege is made, identify such document with sufficient particularity for purposes of a motion to compel, such identification to include at least the following:

- (a) the basis on which the privilege is claimed;
- (b) the names and positions of the author of the information;

- (c) the name and position of each individual or other person to whom the information, or a copy thereof, was sent or otherwise disclosed;
- (d) the date of the information;
- (e) a description of any accompanying material transmitted with or attached to such information;
- (f) the number of pages in such document or information; and
- (g) whether any business or non-legal matter is contained or discussed in such information.

3. If PLAINTIFF's response to a particular Interrogatory is a statement that PLAINTIFF lacks the ability to comply with that Interrogatory, PLAINTIFF must specify whether the inability to comply is because the particular item or category of information never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in PLAINTIFF's possession, custody, or control, in which case the name and address of any person or entity known or believed by you to have possession, custody, or control of that information or category of information must be identified.

4. PLAINTIFF's obligation to respond to these Interrogatories is continuing and its responses are to be supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 8:

IDENTIFY each element of each ASSERTED CLAIM that YOU contend is not disclosed in each of the references cited by DEFENDANTS in their responses to Plaintiff's Interrogatory No. 7, which were originally served on May 27, 2010 (including any later supplementation or amendments thereto), and set forth in specific detail each fact, opinion,

argument, inference, and DOCUMENT that supports YOUR contention (including the name, address, and telephone number of each PERSON who has firsthand knowledge or possession of each such fact, opinion, and DOCUMENT).

INTERROGATORY NO. 9:

Set forth in specific detail each fact, opinion, argument, inference, and DOCUMENT that supports YOUR contention, if YOU so contend, that the PATENT-IN-SUIT is not rendered obvious by the references cited by DEFENDANTS in their responses to Plaintiff's Interrogatory No. 7, which were originally served on May 27, 2010 (including any later supplementation or amendments thereto), including the name, address, and telephone number of each PERSON who has firsthand knowledge or possession of each such fact, opinion, and DOCUMENT.

INTERROGATORY NO. 10:

Identify with particularity any technical challenges to combining the elements of the ASSERTED CLAIMS YOU contend existed prior to the invention of the PATENT-IN-SUIT and were overcome by the PATENT-IN-SUIT, and IDENTIFY all facts, DOCUMENTS, and reasons that support YOUR position.

INTERROGATORY NO. 11:

If YOU contend each ASSERTED CLAIM in the PATENT-IN-SUIT claims patentable subject matter under 35 U.S.C. § 101, IDENTIFY all facts and DOCUMENTS that support YOUR contention, including whether, for each ASSERTED CLAIM, YOU contend the process claimed (1) is tied to a particular machine or apparatus, or (2) transforms a particular article into

a different state or thing, and if so why, and further whether the ASSERTED CLAIMS claim abstract ideas, and if not why not.

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on May 2, 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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EXHIBIT 20

REDACTED IN ITS ENTIRETY

EXHIBIT 21

REDACTED IN ITS ENTIRETY

EXHIBIT 22

REDACTED IN ITS ENTIRETY

EXHIBIT 23

REDACTED IN ITS ENTIRETY