

EXHIBIT 5

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 6



Andrew J. Wu
Vice President, Intellectual Property Counsel
IPVALUE Management, Inc.
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February 2, 2011

Hon. Bernard Zimmerman
U.S. Magistrate Judge
U.S. District Court for the Northern District of California

Re: Google and YouTube v. IPVALUE, No. C11-80016 MISC RS (BZ)

Dear Judge Zimmerman,

IPVALUE Management, Inc. ("IPVALUE") hereby responds to your Order dated January 28, 2011. As set forth below, IPVALUE has agreed to produce documents relevant to the underlying patent litigation, including communications with Xerox or others regarding the patents-in-suit, and any prior art to the patents. IPVALUE, however, should not be required to produce internal documents that were never communicated to Xerox. The internal musings of a non-party are irrelevant to the determination of whether the patents are valid and infringed, and should not be required, particularly where production of those internal documents would dramatically increase the burden of production.

IPVALUE is a patent licensing company that works with a select number of technology leaders, such as Xerox (including PARC), British Telecom, and NXP, to obtain a return on their R&D investments through commercialization of their patent portfolios. IPVALUE typically communicates with these companies and potential licensees through a limited number of IPVALUE contact persons. Other team members support those contact persons, but their communications are primarily internal to IPVALUE.

Already, IPVALUE has agreed to produce any responsive, non-privileged documents that were sent to or by Xerox. IPVALUE will also produce any responsive, non-privileged documents that were communicated to or from the defendants in the Delaware action or other companies with which Xerox or IPVALUE had relevant licensing communications. IPVALUE also would be willing to produce prior art to the patents-in-suit, although IPVALUE disclosed all such documents to Xerox, and therefore IPVALUE's documents are cumulative to those in Xerox's possession.

Beyond prior art or IPVALUE's external communications, Google, Inc. and YouTube LLC (together, "Google") appear to be "fishing" for documents that would have no relevance even if they existed. Google theorizes that "an IPValue employee analyzing the patents in suit could have ... found a reason why the asserted claims ... do not read on the accused products." (Motion, at 6:17-20.) Even if such documents existed, the issue of infringement will be resolved based on proof of how Google's products actually work, as

- 2 -

shown by Google's confidential technical information—information to which IPVALUE has never had access. The internal opinions of a non-party regarding infringement will not constitute the sort of factual evidence of how the accused products work that is relevant to infringement. Likewise, the issue of validity will be determined by the actual prior art, not IPVALUE's internal opinions regarding validity. A hypothetical statement regarding "the value of the patents-in-suit, the prospects of the instant lawsuit, and flaws in Xerox's infringement case" (Motion at 6:20-23) would merely be the opinion of one non-party employee based on publicly-available information; it would not constitute either the technical evidence that would be dispositive of infringement, or the financial records that would drive the damages calculation. Google cites no authority for the proposition that a non-party's internal documents are relevant in an infringement case, and the cases it does cite are inapposite.¹ Given this lack of relevance, the burden on IPVALUE cannot be justified. *IP Co., LLC v. Cellnet Tech., Inc.*, No. C08-80126 MISC MMC (BZ), 2008 WL 3876481, at *1 (N.D. Cal. Aug. 18, 2008) ("Rule 45 emphasizes the need to minimize the burden of a subpoena on a nonparty").

Collecting and producing the internal documents that Google seeks would place a staggering and undue additional burden on IPVALUE by dramatically increasing both the number of employees from whom documents must be collected, and the document types that must be collected from each person. Although as many as ten individuals or more worked on the Xerox matter over a period of approximately four years, most of them had minimal or no external communications. Although external communications can be collected through a search of e-mail files, collecting all internal documents would require, generally, collection of paper files, archives, servers, and individual hard drives. In short, production of the internal documents sought by Google would require roughly a third of IPVALUE's employees to review and collect four years worth of documents; all of which documents are either irrelevant or cumulative to information Google can get from other sources. IPVALUE is a 39-employee company, with limited administrative staff, and this collection would significantly disrupt its operations.

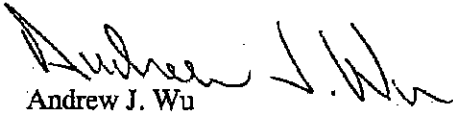
Further, producing internal documents will raise additional complications. Significantly, many of the internal documents include information that is confidential to IPVALUE, which IPVALUE has not shared with Xerox and/or Xerox's attorneys. Internal documents are likely to include information that is confidential to IPVALUE's other clients or is subject to other clients' privileges. Also, IPVALUE's internal documents are highly likely to include privileged communications between IPVALUE's in-house attorneys and other IPVALUE employees, such that ordering production of internal documents will require preparation of a much larger privilege log. These complications add to the burden on IPVALUE, all in the name of Google's quest for utterly irrelevant documents.²

For all the foregoing reasons, Google's motion to compel should be denied. However, IPVALUE will fully brief and argue these issues if necessary.

¹ For example, *Phoenix Solutions, Inc. v. Wells Fargo Bank, N.A.*, 254 F.R.D. 568, 582-83 (N.D. Cal. 2008), concerned a plaintiff's refusal to produce licensing and settlement communications with third parties regarding the patents in suit. IPVALUE is not a party, and has agreed to produce communications with third parties.

² A number of IPVALUE's objections to the subpoena have not been addressed in the instant Motion. If the instant motion is granted, those objections would still need to be resolved. For example, IPVALUE objected to Request Nos. 11 and 12 -- which seek documents relating to broad areas of technology licensing, not limited to the patents-in-suit, Xerox, or Google -- as vastly overbroad, unduly burdensome, vague, and ambiguous.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew J. Wu". The signature is written in a cursive style with a large initial "A".

Andrew J. Wu
CA Bar No. 214442

EXHIBIT 7



[HOME](#)
 [COMPANY](#)
 [PARTNERS](#)
 [TEAM](#)
 [INVESTORS](#)
 [LINKS](#)
 [CONTACT](#)

COMPANY

- [Overview](#)
- [Careers](#)

COMPANY

IPVALUE was created in 2001 within the iFormation Group, a partnership between General Atlantic and Goldman Sachs. The firm was founded to meet a need voiced by C-level officers of global technology enterprises to maximize returns from their IP portfolios, within the overall context of their on-going business strategies and operations. In 2002, IPVALUE partnered with BT and began intellectual property commercialization operations. Since that time, IPVALUE has steadily generated significant returns from IP for its growing list of partners.

Compelling Business Model

IPVALUE partners with owners of significant intellectual property portfolios to commercialize their IP assets. IPVALUE has successfully delivered on a pure performance-based business model – one that aligns incentives between IPVALUE and its Partners. IPVALUE typically invests its capabilities and resources and only gets rewarded upon creating successful outcomes. Furthermore, IPVALUE's compensation is proportional to the magnitude of the success created and is directly linked to the timing of the outcomes. Most of IPVALUE's transactions involve the sale or licensing (including cross licensing) of our Partners' patents, including litigation when necessary.

World Class Expertise

IPVALUE's operations are powered by a best-in-class team of professionals in licensing, negotiations, law, business, and technology. Their backgrounds include work at the world's leading technology companies, such as AT&T, IBM, Intel, and Lucent. These professionals have decades of experience in the full range of activities required for patent commercialization, including mining, valuation, technical assessment (including reverse engineering and patent proofs), legal analyses, and in negotiating and closing transactions.

Trusted by Partners

IPVALUE serves as a trusted IP advisor and transaction facilitator for some of the world's leading innovators, including BT, Xerox, Palo Alto Research Center, Multimedia Patent Trust, and Round Rock Research. Partners typically engage with IPVALUE through exclusive multi-year relationships and rely upon IPVALUE to complement internal IP activities, offset risks and expenses, and leverage our best practices, resources, and networks. IPVALUE employs a proven set of processes to ensure transparency, monitoring and control as required by our Partners, working closely with stakeholders within our Partners' organizations (such as with the Legal Department / GC / Chief IP Counsel), Finance Department / CFO, IP staff, and Internal Business Unit heads) to forge a consensus basis for effective monetization.

Unmatched Track Record

IPVALUE has delivered over \$600M in IP transaction revenues to our Partners from patent sales and licensing deals. In addition to the revenue generated, the value of the operational freedom created by cross-licenses is significant. IPVALUE maintains exclusive, multi-year relationships with premier technology enterprises, who have trusted IPVALUE to manage commercialization of over 15,000 patent families.

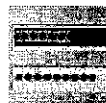
AREAS OF EXPERTISE

IPVALUE has commercialized patents in a broad range of technology areas.



Hardware

- Computers
- Displays, Printers, Storage
- Consumer Electronics
- Biotech



Software

- PC Applications
- eCommerce
- Security
- Infrastructure



Communications

- Mobile Communications
- Voice/data Networks
- Enterprise Networks
- Network Services



Semiconductors

- Materials
- Processing
- Packaging
- Devices

EXHIBIT 8

1 PETER C. McMAHON (State Bar No. 161841)
KATHERINE DEBSKI (State Bar No. 271528)
2 MCMAHON SEREPCA LLP
985 Industrial Road, Suite 201
San Carlos, CA 94070-4157
3 Tel: 650-637-0600
4 Fax: 650-637-0700

5 Attorneys for Third Party
IPVALUE MANAGEMENT, INC.

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

10 GOOGLE, INC., and YOUTUBE, LLC,

11 Plaintiff(s),

12 v.

13 IPVALUE MANAGEMENT INC.,

14 Defendant.
15

Case No. C11-80016 MISC RS (BZ)

**DECLARATION OF ANDREW J. WU
IN SUPPORT OF THIRD PARTY
IPVALUE MANAGEMENT, INC.'S
OPPOSITION TO GOOGLE, INC.'S
AND YOUTUBE, LLC'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**

1 I, Andrew J. Wu, declare as follows:

2 1. I am a Vice President and Intellectual Property Counsel ("IP Counsel") at
3 IPVALUE Management, Inc. ("IPVALUE"). I submit this declaration in support of *IPVALUE's*
4 *Opposition To Google, Inc.'s and YouTube, LLC's Motion To Compel Production of Documents*
5 *from Third Party IPVALUE* ("Opposition"). I have personal knowledge of the facts set forth
6 herein, and, if called upon to testify thereto, I am competent to do so and would do so.

7 2. IPVALUE is a patent licensing company that works with a select number
8 of a handful of technology leaders, such as Xerox, British Telecom (BT), and NXP
9 Semiconductors, to obtain a return on their R&D investments through commercialization of their
10 patent portfolios.

11 3. In my capacity as IP Counsel for IPVALUE, I have been involved with
12 IPVALUE's production of discovery materials in response to other third party subpoenas. In
13 addition, in my position, I am aware of IPVALUE's general business practices and the impact on
14 IPVALUE's resources that are required to comply with subpoenas. I have carefully reviewed the
15 document requests that are contained in the subpoena that was served on IPVALUE on or about
16 November 11, 2011 by Google ("Subpoena"). Moreover, I am aware of the objections to the
17 Subpoena that were served by IPVALUE on or about November 26, 2010. Since filing of
18 Google's motion to compel, I have been directly involved in the meet and confer discussions
19 between Google and IPVALUE in order to narrow the issues, and I am personally aware to the
20 remaining issues between the parties and the impact on IPVALUE that remains due to Google's
21 intransigence on those issues.

22 4. In my capacity as IP Counsel for IPVALUE, I am aware of the
23 organization and the job duties of myself and IPVALUE's other IP Counsel. IPVALUE is
24 organized into certain groups. One group includes generally technical and financial specialists.
25 One group focuses on license negotiations, whose members are typically designated as "Vice
26 President, Licensing." The Legal group focuses on providing legal advice to the company, and
27 its members are designated as "Vice President, IP Counsel." Their duties are to advise the
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1 company regarding legal issues, such as patent infringement theories, and defenses to patent
2 assertion.

3 5. Because the entire function of an IP Counsel is to provide legal advice, a
4 very high percentage of the data and documents of IPVALUE's IP Counsel will relate to advice
5 and counseling to other IPVALUE personnel. Moreover, since it is these IP Counsels' job duty
6 to provide legal advice -- it would be necessary to perform an extremely thorough privilege
7 review. I expect that we would have to collect and log well over 1000 documents. That process
8 would be incredibly disruptive to IPVALUE. IPVALUE will not have the man-power resources
9 to conduct such a privilege review or generate the privilege log without severely negatively
10 impacting these individuals' job responsibilities. IPVALUE will have to hire the professional
11 services of McMahon Serepca LLP to conduct the privilege review and prepare the privilege log.

12 6. There is one IPVALUE attorney, Mr. Paul Riley, who was at one time a
13 Vice President, IP Counsel, and is now a Vice President, Licensing. Because Mr. Riley has
14 performed in both roles, IPVALUE has never sought to exclude his documents from collection
15 or the privilege log.

16 7. As an organization that focuses on patent licensing, IPVALUE deals with
17 many, many patents. Some of the portfolios IPVALUE is working to commercialize include
18 hundreds or thousands of patents. Because we deal with so many different patents, our
19 communications will typically refer to the patent number of the patent at issue, as well as the
20 name of client (such as Xerox, BT, or NXP). This is particularly true regarding a potential
21 licensee, such as Google, that may be impacted by the patents of more than one client.

22 8. IPVALUE has obtained one estimate relating to the cost of the
23 professional services of an electronic discovery firm to harvest, cull, process, and prepare for
24 attorney review the scope of documents demanded by the meet a confer efforts of Google.
25 Depending upon the number of custodians ordered to produce, and the number of search terms
26 imposed -- a conservative estimate of the information for each custodian would subject
27 IPVALUE to electronic discovery costs ranging between \$20,000 - \$35,000. Since IPVALUE is
28 a 39-employee company, this expense would be significant. However, if the 59 search terms

1 proposed by Google are required – those costs could exponentially increase as the amount of
2 data increases.

3 9. IPVALUE has produced all external communications regarding assertion
4 of the patents in question to Xerox for its privilege review, and I am informed and believe that
5 those documents have been (or will be shortly) produced on a rolling basis.

6 10. I have attached to this declaration a true and correct copy of an email
7 string documenting most of the meet and confer since the February 3, 2001 teleconference in this
8 matter.

9 I declare under penalty of perjury under the laws of the United States of America
10 that the foregoing is true and correct. Executed in Mountain View, California on March 4, 2011

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12 Andrew J. Wu

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Andrew Wu

From: David Perlson [davidperlson@quinnemanuel.com]
Sent: Thursday, March 03, 2011 7:26 PM
To: 'peter@msslip.com'; Andrew Wu; Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Peter, I'm not sure that we are actually close to agreement.

Taking the last issue first, we are confused by Andrew's statement regarding commitments made by Cravath. Cravath served objections and responses to the subpoena Google served on IPValue as IPValue's counsel. In response to Google's document requests, IPValue (through its counsel) agreed to produce several categories of documents. (See Ex. F to the Declaration of Eugene Novikov in support of Google's Motion to Compel). Those requests were not the subject of Google's motion to compel because IPValue had already agreed to produce them. Similarly, Google has not been focusing on those documents during these negotiations because we assumed that IPValue was going to produce what it already committed to produce. Please confirm that IPValue's position as to these documents has not changed.

Regarding search terms, it is not clear whether IPValue is agreeing to Google's list. Can you please confirm that IPValue has agreed? Also, we did not receive response regarding the damages documents IP Value intends to withhold.

Finally, like DSC, IPValue's business is to analyze and investigate patents, including the '979 patent. Thus, when an employee of IPValue, even if an attorney, goes through the process of evaluating a patent and targets to assert that patent against, that is a business function and documents relating to that function are not privileged or work product. Based on your email below, it sounds like IPValue's in-house counsel are involved in these functions. If so, they should be included in the list of custodians whose files are searched. This is our position. Communications between Quinn and Google have nothing to do with this.

The parties have been negotiating these issues for several weeks now and Google has already granted IPValue a one-week extension to file its opposition. This is after Google spent time meeting and conferring with Cravath before filing its motion to compel. We cannot continue to delay resolution of this issue. Does IP Value need a full week to prepare a response to Google's motion to compel?

Thanks,

David

From: Peter C. McMahon [mailto:peter@msslip.com]
Sent: Thursday, March 03, 2011 4:08 PM
To: 'Andrew Wu'; David Perlson; Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew, David,

From the sound of the last few emails, it seems that Google and IPValue are very close to an agreement – am I understanding that correctly?

Also, if IPValue is going to obtain the services of EDisc. Vendor – I will need until at least mid-week next week to get that in place, with the agreed to terms and custodians.

Can we stipulate to another week extension? If so, I'd like to get that on file ASAP – rather than surprising Magistrate Zimmerman again.

Please let me know.

Regards,

Peter

From: Andrew Wu [mailto:andrew.wu@ipvalue.com]
Sent: Thursday, March 03, 2011 3:56 PM
To: David Perlson; Andrea P Roberts
Cc: peter@msllp.com
Subject: RE: Xerox v. Google / subpoena to IPVALUE

David,

Regarding excluding IPVALUE's IP counsel from the document collection and privilege log (as suggested by Judge Zimmerman), again, IPVALUE's in house counsel provide legal advice to the organization. In the context of patent licensing, they provide advice regarding the legal aspects of patent assertion; employees other than in house counsel address the business aspects. One exception is Paul Riley, who was previously in the VP IP Counsel role, and who is now a VP of Licensing; since his current role is a licensing role rather than a counsel role, we are not excluding him from the document collection or privilege log requirements. I don't want to misconstrue your e-mail, but if it is your position that no communications are privileged if they further the business goals of the client, please confirm -- that rule would apply to Google and Quinn Emmanuel's communications as well.

Regarding search terms, in light of Google's insistence on a large number of search terms, including Boolean terms, we believe an outside vendor will be required. We are looking into that option, as well as whether the cost will be reasonable.

Regarding Cravath's agreement with Google, I am not aware of any such agreement. IPVALUE has not asked Cravath to limit its production except for IPVALUE privilege.

I will take a look at the Protective Order.

Thanks,
Andrew



ANDREW J. WU
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INTELLECTUAL PROPERTY COUNSEL
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TELEPHONE: 650-230-4777
FAX: 650-425-3384

From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Wednesday, March 02, 2011 6:32 PM
To: Andrew Wu; Andrea P Roberts
Cc: 'peter@msllp.com'
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew,

As we have previously stated, under the circumstances of this case and IPValue's relationship with Xerox, we do not believe that cost-shifting is warranted, and IP Value has not demonstrated otherwise.

To clarify what is meant by "business function" in this context, in Diagnostic Systems Corp. v. Symantec, the court explained that documents 'created when DSC employees were functioning in the capacity of business executives furthering the business goals of DSC,' were not privileged. On the other hand, documents created when employees were functioning primarily as attorneys representing DSC were privileged. Accordingly here, documents created by or communications with IPValue's in-house counsel that are in furthering the business goals of IPValue--in this context, for example, to license the '979 patent--are not privileged. Can IPValue represent that IPValue's counsel did not do work related to IP Value's attempts to license or otherwise enforce the '979 patent? If IPValue cannot make such a representation, then we cannot agree that IPValue need not search their files. If IPValue can we would be willing to table our request to search these individual's files for now, but we would retain our right to ask for their files to be searched if it later appears that they may have non-privileged documents.

Regarding search terms, please provide an update on IPValue's capability of running Boolean searches. Based on your email below, we would suggest adding "not Multimedia Patent Trust" or "not MPT" to the various search strings that might identify documents relating to that matter. As for the other suggested limitations of search terms, we do not agree to cut words like "complaint" as such documents may be responsive to Google's document requests. If they are, but IP Value asserts they are privileged, then they should be included on a privilege log. Further, the search terms proposed by Google are likely to identify responsive documents and IPValue has not suggested otherwise with any specific showing. We also do not see a reason to limit production to the time the complaint was filed. While we acknowledge that discovery as to damages has been bifurcated, we are not clear as to what you intend to exclude on that basis. For what requests does IPValue intend to withhold documents?

Finally, Cravath, acting as IPValue's counsel, already committed to producing certain categories of external communications. We expect that IPValue will live up to that commitment. As Cravath likely also informed you, we already have a protective order in this case (attached), which can be used by third parties.

David

From: Andrew Wu [mailto:andrew.wu@ipvalue.com]
Sent: Tuesday, March 01, 2011 5:46 PM
To: David Perlson; Andrea P Roberts
Cc: peter@msllp.com
Subject: RE: Xerox v. Google / subpoena to IPVALUE

David,

Here are my responses to the points raised in your previous e-mail:

- Regarding cost shifting, we have proposed that Google share half of the costs, based on Judge Zimmerman's suggestion and relevant authority. Google has refused to share any of the costs. If Google is willing to pay any of IPVALUE's costs, please let me know.

- The IP Counsel at IPVALUE provide legal advice to the company. Although I'm not sure what you mean by a business function, the IP Counsel serve a legal, not business, function. In the corporate setting, many in house counsel have a Vice President title, and that title does not prevent them from providing legal advice to the company, or having those communications protected by the attorney-client privilege. Regarding your inquiry, we expect that there are over 1000 documents that would have to be logged. (Since this may end up being the largest component of IPVALUE's costs, this issue is somewhat tied to the cost-shifting issue). To date, Google has not agreed to limit collection on IPVALUE's in house counsel. Let me know if Google has changed position.
- Regarding search terms, Google has not agreed to drop any of its 59 proposed search terms. Let me know if your position has changed. We have proposed the search terms below because we believe they will encompass all non-privileged internal electronic documents stored in connection with the assertion of the '979 patent against Google and Yahoo. If there are a few more search terms (reasonable in scope), we are open to considering. Also, in response to your inquiry, IPVALUE has assisted in at least one other assertion against Google. That assertion involved Quinn Emanuel's client, the Multimedia Patent Trust (MPT). Again, we assume that Google has no interest in production of those documents.

As it stands, and without waiving any objections, IPVALUE's current proposal is as follows:

- Non-privileged external e-mail to Xerox relating to the assertion of the '979 patent against Google, Yahoo, and Right Media. This should encompass all external communications with Xerox regarding the assertion of the patent in suit, or regarding infringement assertions against the defendants in the patent case. We have already collected most of these documents, and are providing them on a rolling basis to Xerox's attorneys for review regarding Xerox confidentiality and privilege.
- External communications with Google and/or Yahoo relating to the assertion of the '979 patent. This should encompass communications regarding the patent in suit, Google and YouTube's infringement of the patents in suit, and the lawsuit.
- All other external communications relating to the assertion of the '979 patent sent to or from other companies against which IPVALUE/Xerox has asserted the '979 patent. This should encompass communications with other parties regarding the patent in suit.
- Non-privileged internal e-mail in the e-mail files of IPVALUE employees, other than in house counsel, that worked on the assertion of the '979 patent against Google and/or Yahoo/Right Media, that include the Search Terms. These employees were identified in Xerox's Initial Disclosures and/or Xerox's response to Google and YouTube's Interrogatory No. 4.
- IPVALUE organizes electronic documents in a document management system ("Worksite"). Non-privileged documents in the Worksite files relating to assertion of Xerox patents against Google and Yahoo that include the Search Terms. This should encompass all internal electronic documents stored in connection with the assertion of the '979 patent against Google and Yahoo.

The Search Terms are as follows:

6778979
979
Grefenstette
Shanahan
Xerox /20 patent
Organized classification of document content
Automatically identifying a set of entities
Automatically categorizing the selected document content
Automatically formulating the query to restrict a search

Formulat! /3 query
DocSouls
Document Souls
XLP56
XLP57
XLP58

All of these categories would be filtered for false hits and privileged information. Also, documents relating to damages would not be included. Google agrees to pay for half of the out-of-pocket expenses of IPVALUE's production, including half of the fees to prepare any privilege log. The files and e-mails of IPVALUE's in house counsel (identified above) would not be searched or logged, nor would e-mails to IPVALUE's in house counsel. Also, the date cut-off will be the date of filing of the complaint. Finally, we'll need to work out a Protective Order regarding IPVALUE confidentiality.

If you have any other issues regarding IPVALUE's proposal, or any other suggestions that could help resolve this dispute, please let me know immediately. Obviously, time is short if we are going to keep to the current briefing schedule.

Thanks,
Andrew



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From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Monday, February 28, 2011 1:26 PM
To: Andrew Wu; Andrea P Roberts
Cc: peter@msllp.com
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew, see responses to your bullet points below:

- Regarding cost-shifting, my proposal was based on Judge Zimmerman's comment asking if cost-shifting would ease the burden on IPVALUE. His comment reflected the protections to third parties afforded by Rule 45 and the corresponding body of case law demonstrating that cost shifting is appropriate in circumstances such as ours. Indeed, it is highly likely that, for the expansive production Google seeks (which we have tried to accommodate), IPVALUE may have to rely on professional services to accomplish the harvesting and review of its data or suffer significant losses in employee productivity. I'm sure you are aware that such professional services can be very expensive. We understand (and we

believe Judge Zimmerman does too) that a certain amount of burden is appropriate for IPVALUE to bear as a cost of doing business. However, beyond that – it is only reasonable that the Subpoenaing Party should bear at least some of the expense.

Is it your position that you do not recall that part of the discussion, or that cost-shifting is unacceptable despite Judge Zimmerman's comment? If it is the former, we may be able to get a transcript of the call.

I recall that Judge Zimmerman said that if IP Value asserted burden, it would need to make a detailed showing of burden to make such an objection, and that one possible way of addressing such a burden could be cost-shifting. There was no ruling that it would be appropriate here and Google's position remains that it is not for the reasons previously stated.

While IP Value is free to seek to obtain a transcript of the call, we continue to believe it will not reveal anything inconsistent with Google's position.

- Regarding exclusion of in house counsel, we would exclude the following:

Steve Shin, VP and IP Counsel
Sanjay Prasad, VP and IP Counsel (former employee)
Mitch Rosenfeld, VP and IP Counsel (former employee)
Keith Wilson, Sr. VP, Legal

Although I do not know exactly what documents were at issue in the *DSC* case, our situation is very different. The *DSC* opinion describes a management team of 5 attorneys who functioned both as attorneys and as corporate executives. IPVALUE is a larger organization with a defined legal group, comprised of IP counsel, whose role is to provide legal advice.

Is it IP Value's position that the above individuals have no business role with IP Value at all? Each one of the individuals you list is a vice-president, not just counsel—just like in *DSC*. Also, do you have a sense of the volume of emails these individuals would have been involved in relating to the '979 patent? It would seem that before you exclude them entirely from a search it would be appropriate to have some idea of the volume of materials you seek to avoid reviewing to understand the burden you are asserting.

- Regarding search terms, your list of 60 proposed searches, is unworkable and would encompass many documents that have nothing to do with Xerox's suit against Google and Yahoo. As Google is well aware, IPVALUE has been involved in assertion of patents against Google involving patent-owners other than Xerox. Documents relating to those assertions, or relating to Xerox assertions (or possible assertions) of patents unrelated to the patent in suit in your case. Let me know if you disagree. Further, search terms that are expressly directed toward privileged communications (such as "complaint" or "lawsuit") will only needlessly increase the privilege log. Also, at the moment, we have no way of running Boolean searches on the documents, although we are working on a solution.

I was not aware that IPVALUE has been involved in assertion of other patent owners against Google. How many such assertions have there been such that you think the "Google" terms will bring up a number of irrelevant documents. I do not agree, however, that words such as complaint or lawsuit are expressly directed toward privileged communications.

Nor do I see how it would "needless" increase the privilege log, which is supposed to log responsive and privileged documents. If they are not responsive, they do not need to be logged. If they are responsive, they should be. Please update on Boolean searching. Obviously, that can be a useful way of limiting search terms.

We look forward to your responses to above.

David

From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Wednesday, February 23, 2011 3:25 PM
To: David Perlson; Andrew Wu
Cc: Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew, one thing I forgot to mention. Please let us know if IP Value used any shorthand, abbreviations, or codes to refer to anything that might be relevant to subpoena—i.e. codes for Google, Yahoo!, '979 patent, etc ... If so, we would like them added to the search terms as well.

Thanks

From: David Perlson
Sent: Wednesday, February 23, 2011 3:15 PM
To: David Perlson; 'Andrew Wu'
Cc: Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew, below is a list of suggested search terms. Please let us know your thoughts. Also, please respond to my inquiries below.

Thanks

6778979
979
Grefenstette
Shanahan
Xerox /20 patent
(Google or Yahoo!)/5 "prior art"
Organized classification of document content
Automatically identifying a set of entities
Automatically categorizing the selected document content
Automatically formulating the query to restrict a search
Formulat! /3 query
AdSense for Content
Content Ads
AFC
(Google or Yahoo!) w/10/prior art/
(Google or Yahoo!) w/10 979
(Google or Yahoo!) w/10 automat*
(Google or Yahoo!) w/10 complaint*
(Google or Yahoo!) w/10 court*
(Google or Yahoo!) w/10 generat*
(Google or Yahoo!) w/10 infring*
(Google or Yahoo!) w/10 investigat*
(Google or Yahoo!) w/10 Xerox
(Google or Yahoo!) w/10 judg*
(Google or Yahoo!) w/10 law
(Google or Yahoo!) w/10 laws

(Google or Yahoo!) w/10 lawsuit*
(Google or Yahoo!) w/10 lawyer
(Google or Yahoo!) w/10 legal*
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(Google or Yahoo!) w/10 sue
(Google or Yahoo!) w/10 sued
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(Google or Yahoo!) w/10 suit
(Google or Yahoo!) w/10 violat*
(Google or Yahoo!) w/25 licens*
(Google or Yahoo!) w/25 offer*
(Google or Yahoo!) w/25 proposal*
(Google or Yahoo!) w/5 case
(Google or Yahoo!) w/5 cases
(Google or Yahoo!) w/5 content*
(Google or Yahoo!) w/5 context*
(Google or Yahoo!) w/5 exchang*
(Google or Yahoo!) w/5 market*
(Google or Yahoo!) w/ match*
(Google or Yahoo!) w/ matter*
(Google or Yahoo!) w/5 network
Content Match
Y!Q
Contextual Search
Right Media
RMX
Yahoo! Publisher Network
Yahoo! Search Marketing
DocSouls
Document Souls
XLP56
XLP57
XLP58

From: David Perlson
Sent: Tuesday, February 22, 2011 10:53 AM
To: 'Andrew Wu'
Cc: Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew, as we indicated, under the circumstances of IP Value's involvement in this case we do not believe cost shifting to Google is warranted and that remains our position. I don't think that position is inconsistent with anything Judge Zimmerman said. If you are referring to something specific from the call let me know.

Regarding the second point, can you please identify the in-house counsel who you would like to preclude from the search. As made clear in the attached opinion, the mere status of someone as an attorney does not alone render them immune to discovery. Can IP Value represent that none of the in house counsel you seek to exclude from searching have any documents of the type that were found to not be privileged in the attached case?

Regarding search terms, we will come up with a counter-proposal.

David

From: Andrew Wu [mailto:andrew.wu@ipvalue.com]
Sent: Thursday, February 17, 2011 4:17 PM
To: David Perlson
Cc: Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

David,

Regarding cost-shifting, it was Judge Zimmerman's suggestion that cost-shifting could ease the burden on IPVALUE. We are willing to be reasonable, of course. The most burdensome part of the out of pocket expense could well be preparation of a privilege log (depending on the scope of such a log). We may be willing to limit our request for cost-shifting to the privilege log.

I proposed to limit collection regarding IPVALUE's in house legal counsel, i.e., those whose job is to provide legal advice to the company. Some of our other employees are attorneys and/or have legal degrees, but their roles relate to, for example, negotiations, or technical analysis. Their documents would be collected (although we would still review for privilege). We are not trying to over-exclude.

For e-mails to/from Xerox, I proposed searching for 979 or Google, Yahoo, or Right Media; for the other categories, I believe that searching for 979 will capture the relevant documents. If documents existed regarding assertion of patents other than the patent-in-suit, or that had no connection to patent assertion, they would not be even arguably relevant. If there are other search terms that you think would be reasonable, please let me know.

Regards,
Andrew



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From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Tuesday, February 15, 2011 7:00 PM
To: Andrew Wu
Cc: Andrea P Roberts; David Perlson
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew, given your response, your suggestion that Google should foot the bill is not acceptable. It is also not consistent with Cravath's prior representations that certain documents would be collected and produced without mention of such

cost-shifting. To be clear, is it IP Value's position that no documents will be produced unless Google agrees to pay out of pocket costs?

Further, while I think we need more information to understand it, it seems your proposal is unduly limiting. Who do you intend to exclude that has done work regarding the 979 patent? As you know, merely because someone is a lawyer does not make a communication or document authored by them privileged.

Also, is your suggestion that you would be searching only for documents or email using the number 979? Although this discussion should have occurred long ago, we are willing to discuss reasonable terms for searching documents. This single term does not seem reasonable.

Thanks,

David

From: Andrew Wu [mailto:andrew.wu@ipvalue.com]
Sent: Tuesday, February 15, 2011 4:45 PM
To: David Perlson; Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

David,

The details of our relationship with Xerox are confidential. I can say that IPVALUE typically works on a success-fee basis. I do not believe that IPVALUE has been compensated for its work on this litigation. Could you provide a response to my proposal regarding the document production?

Thanks,
Andrew



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From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Tuesday, February 15, 2011 11:34 AM
To: David Perlson; Andrew Wu; Andrea P Roberts
Subject: RE: Xerox v. Google / subpoena to IPVALUE

Andrew, following up on our inquiry here.

Thanks,

David

From: David Perlson
Sent: Thursday, February 10, 2011 2:17 PM
To: Andrew Wu; Andrea P Roberts
Subject: Re: Xerox v. Google / subpoena to IPVALUE

Andrew we will review and get back to you. One threshold issue we would like an answer on is does IP value hold any interest based on the outcome of this litigation. If not has it been compensated by Xerox in connection with the work it has done or is currently doing relating to the patent. These inquiries are relevant to IP values claims of burden. Thanks

Andrew Wu wrote:

Hi Dave,

Per my voicemail, we have been trying to identify a reasonable scope of production that will capture the documents Google seeks. Without waiving any objections, we think something along the lines of the following may work:

- Non-privileged external e-mail to Xerox that include the number 979, or that include the terms Google, Yahoo, or "Right Media." This should encompass all external communications with Xerox regarding the assertion of the patent in suit, or regarding infringement assertions against the defendants in the patent case.
- External communications with Google and/or Yahoo that include the number 979. This should encompass communications regarding the patent in suit, Google and YouTube's infringement of the patents in suit, and the lawsuit.
- All other external communications that include the number 979 sent to or from other companies against which Xerox had asserted the '979 patent. This should encompass communications with other parties regarding the patent in suit.
- Non-privileged internal e-mail in the e-mail files of IPVALUE employees, other than in house counsel, that worked on the assertion of the '979 patent against Google and/or Yahoo/Right Media, that include the number 979. These employees were identified in Xerox's Initial Disclosures and/or Xerox's response to Google and YouTube's Interrogatory No. 4.
- IPVALUE organizes electronic documents in a document management system ("Worksite"). Non-privileged documents in the Worksite files relating to assertion of Xerox patents against Google and Yahoo that include the number 979. This should encompass all internal electronic documents stored in connection with the assertion of the '979 patent against Google and Yahoo.

All of these categories would be filtered for false hits and privileged information. Also, documents relating to damages would not be included. Google agrees to pay for the out-of-pocket expenses of IPVALUE's production, including the fees to prepare any privilege log. The files and e-mails of IPVALUE's in house counsel would not be searched or logged, nor would e-mails to IPVALUE's in house counsel.

Please let me know your thoughts.

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EXHIBIT 9

PAGES 1 - 62

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE BERNARD ZIMMERMAN, MAGISTRATE JUDGE

GOOGLE INC. AND YOUTUBE LLC,)
)
PLAINTIFFS,)
)
VS.) NO. C 11-80016 MSC RS
)
IPVALUE MANAGEMENT INC.,) SAN FRANCISCO, CALIFORNIA

DEPENDANT,) WEDNESDAY
) MARCH 30, 2011
) 9:00 O'CLOCK A.M.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: QUINN EMANUEL URQUHART OLIVER & HEDGES
555 TWIN DOLPHIN DRIVE, SUITE 580
REDWOOD SHORES, CALIFORNIA 94035
650-801-5100
BY: ANDREA PALLIOS ROBERTS, ATTORNEY AT LAW

AND
JOHN LABARRE, IN-HOUSE LITIGATION
COUNSEL FOR GOOGLE, INC.

FOR DEFENDANT: MCMAHON SEREPCA LLP
985 INDUSTRIAL ROAD, SUITE 201
SAN CARLOS, CALIFORNIA 94070
BY: PETER C. MCMAHON, ESQUIRE
KATHERINE DEBSKI, ATTORNEY AT LAW

FURTHER APPEARANCES ON NEXT PAGE.
REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR
OFFICIAL REPORTER - US DISTRICT COURT
COMPUTERIZED TRANSCRIPTION BY ECLIPSE

1 FURTHER APPEARANCES:
2 ALSO FOR DEFENDANT:
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1 MARCH 30, 2011 9:00 O'CLOCK A.M.
2
3 PROCEEDINGS
4 THE CLERK: CALLING CIVIL ACTION C 11-80016, GOOGLE,
5 INC. ET AL VERSUS IPVALUE MANAGEMENT.
6 COUNSEL, STARTING WITH THE PLAINTIFFS, PLEASE STATE
7 YOUR NAMES.
8 MS. ROBERTS: ANDREA PALLIOS ROBERTS FOR PLAINTIFF
9 GOOGLE.
10 MR. MCMAHON: GOOD MORNING, YOUR HONOR. PETER
11 MCMAHON ON BEHALF OF IPVALUE MANAGEMENT. THIS IS MY ASSOCIATE,
12 KATHERINE DEBSKI.
13 MS. DEBSKI: GOOD MORNING, YOUR HONOR. KATHERINE
14 DEBSKI ON BEHALF OF IPVALUE.
15 THE COURT: WELL, FOLKS -- IS THERE SOMEONE ELSE WHO
16 WANTS TO MAKE AN APPEARANCE? NOT ALL RIGHT.
17 I'LL THANK YOU FOR APPEARING HERE ON SHORT NOTICE. ON
18 THE OTHER HAND, I'M SURE YOU WOULD NOT WANT TO BE HERE WHEN YOU
19 FIND OUT WHAT I'M ABOUT TO TELL YOU.
20 THIS MOTION IS NOT IN VERY GOOD SHAPE FOR DECISION.
21 AND WHAT I'M FRANKLY INCLINED TO DO IS EITHER LEAVE YOU IN THE
22 COURTROOM OR SEND YOU TO THE JURY ROOM. I THINK YOU REALLY NEED
23 TO HAVE A SESSION IN WHICH YOU MEET AND CONFER IN AN EFFORT TO
24 TRY TO RESOLVE THIS DISPUTE.
25 I GUESS YOU DIDN'T LISTEN TO ME THE LAST TIME.

1 NOW, PART OF THE PROBLEM IS PROCEDURAL. IT IS TRUE
2 THAT GOOGLE DID NOT FILE A RULE 37-2 STATEMENT, WHICH MAKES IT
3 MORE DIFFICULT FOR ME TO FIGURE OUT WHAT YOU ALL ARE FIGHTING
4 ABOUT.
5 IT IS NOT CLEAR THAT ONE IS REQUIRED IN A THIRD-PARTY
6 SUBPOENA CASE. AND IT'S NOT FRANKLY CLEAR. I DON'T KNOW HOW
7 HELPFUL IT WOULD HAVE BEEN BECAUSE YOU ALL CAN'T EVEN AGREE ON
8 WHAT YOU DISAGREE OR AGREE ABOUT. BUT, NONETHELESS, THAT WAS A
9 PROBLEM.
10 AND THEN, OF COURSE, THERE'S NO PROVISION FOR A
11 SURREPLY. BUT THAT DIDN'T SEEM TO STOP THE DEFENDANT FROM
12 FLUNG ONE WITHOUT EVEN ASKING FOR LEAVE.
13 THE BIGGEST PROBLEM I'M HAVING IS I HONESTLY CAN'T
14 TELL WHAT THE PARTIES ARE FIGHTING OVER, AND I ASKED MY LAW
15 CLERK TO TAKE A LOOK AT THIS, AND HE AND I CAN'T EVEN AGREE ON
16 WHAT IT IS YOU PARTIES, YOU PEOPLE ARE OR ARE NOT FIGHTING OVER.
17 AND THAT'S WHY I'M THINKING I MAY HAVE TO, IN EFFECT,
18 HAVE A MEET AND CONFER SESSION TODAY.
19 HAS THE DEFENDANT PRODUCED ANYTHING?
20 MR. MCMAHON: YES, YOUR HONOR.
21 THE COURT: AS OF THIS MORNING?
22 MR. MCMAHON: YES, YOUR HONOR.
23 THE COURT: WHAT HAVE YOU PRODUCED?
24 MR. MCMAHON: WITH RESPECT TO THE EXTERNAL
25 COMMUNICATIONS, IPVALUE HAS PRODUCED EIGHT CUSTODIAN RECORDS TO

1 MR. MCMAHON: WE'VE TRIED VERY HARD.
 2 THE COURT: -- IS I HAD ASSUMED THAT FOLKS OF YOUR
 3 CALIBER WOULD BE WILLING TO MEET AND CONFER IN GOOD FAITH, AND
 4 SO HENCEFORTH -- THERE MAY BE FURTHER DISPUTES HERE -- I'M GOING
 5 DO GET YOU AN ORDER THAT YOU HAVE TO MEET AND CONFER ON THE
 6 RECORD.
 7 ALL RIGHT. SO WE'VE GOT ONE ISSUE HERE. LET'S TALK
 8 ABOUT THE -- COME BACK TO YOUR BUSINESS MODEL .
 9 PART OF WHAT'S TROUBLING ME IS THEY ARE SAYING THAT
 10 YOU'RE NOT REALLY A THIRD PARTY, THAT, IN EFFECT, WHAT XEROX HAS
 11 DONE IS IT HAS OUTSOURCED SOME OF WHAT MOST COMPANIES DO WHEN
 12 THEY ARE, IN EFFECT, PREPARING FOR -- WHEN THEY ARE CONCERNED
 13 THAT OTHER COMPANIES MAY BE INFRINGING ON THEIR PATENTS.
 14 AND MORE TO THE POINT THAT YOU ACTUALLY HAVE A
 15 FINANCIAL STAKE IN THIS LITIGATION BECAUSE THEY TELL ME THAT YOU
 16 ARE ON A CONTINGENCY BASIS.
 17 MR. WU: SO SOME OF WHAT THEY ARE SAYING IS TRUE AND
 18 SOME IS NOT. WHAT WE ARE -- WE PROVIDE LICENSING SERVICES FOR
 19 COMPANIES. SO COMPANIES LIKE XEROX, WE ADVISE THEM ON HOW TO
 20 COMMERCIALIZE THEIR ENTIRE PORTFOLIO. TENS OF THOUSANDS OF
 21 PATENTS.
 22 WE LOOK AT THE ENTIRE PORTFOLIO. WE LOOK AT WHAT IS
 23 BEING USED IN THE INDUSTRY, AND WE TELL THEM:
 24 "HERE'S WHAT YOU CAN BE DOING WITH THE
 25 PORTFOLIO."

1 SOMETIMES IT COULD BE SELLING PARTS OF IT. SOMETIMES
 2 THEY COULD BE ASSERTING PARTS OF IT. WE PROVIDE THAT TYPE OF
 3 ADVICE AND --
 4 THE COURT: WHY WOULDN'T XEROX DO THAT IN-HOUSE?
 5 MR. WU: WELL, I CAN'T REALLY SPEAK FOR XEROX.
 6 THE COURT: WHY WOULD ANY COMPANY NOT DO THAT
 7 IN-HOUSE? WHY WOULD THEY HIRE YOU INSTEAD. BECAUSE,
 8 TRADITIONALLY -- I'VE SEEN LOTS OF PATENT LAWSUITS IN THIS
 9 BUILDING. THE FIRST TIME I'VE EVER SEEN ONE THAT HAD THIS SORT
 10 OF INTERMEDIARY, AND I'M TRYING TO FIGURE OUT WHAT TO MAKE OF
 11 IT.
 12 AND IT SEEMS TO ME THAT WHAT YOU ALL ARE SAYING IS:
 13 "IF YOU DO IT YOURSELF, YOU ARE GOING TO HAVE TO
 14 PROVIDE ALL THIS INFORMATION IN DISCOVERY. IF YOU
 15 HIRE US, YOU WON'T AND WE WON'T, BECAUSE WE'RE GOING
 16 TO CLAIM WE'RE A NON-PARTY."
 17 SOMETHING DOESN'T SEEM RIGHT THERE.
 18 MR. WU: WELL, I DON'T THINK THAT'S EVER BEEN AN
 19 ELEMENT OF WHY WE GET HIRED. I MEAN, THE REALITY IS THEY BRING
 20 US --
 21 THE COURT: WELL, THEN, WHY WON'T XEROX -- OKAY,
 22 THEN, I THINK I MAY KNOW THE ANSWER. YOU NEVER ACTUALLY
 23 PRESSED XEROX TO PRODUCE THIS UNDER THE FEDERAL RULES OF
 24 DISCOVERY.
 25 MS. ROBERTS: YOUR HONOR, IT WAS OUR UNDERSTANDING

1 THAT IP VALUE WAS THE APPROPRIATE COMPANY TO DISCUSS THAT WITH.
 2 THE COURT: THAT'S A NONRESPONSE. SOUNDS LIKE YOU'RE
 3 SAYING YOU DIDN'T. WHEN DID YOU LEARN THAT -- WELL, LET'S FIND
 4 OUT.
 5 IS IT THE CASE THAT YOU HAVE A CONTINGENT FEE
 6 INTEREST IN THE SUCCESS OF THIS LITIGATION?
 7 MR. WU: I'M NOT SURE I WOULD CALL THAT AN INTEREST.
 8 WE GET PAID ON CONTINGENCY FOR -- TYPICALLY THAT'S OUR
 9 ARRANGEMENT.
 10 NOW, I ACTUALLY HAVE NEVER SEEN THE AGREEMENT WITH
 11 XEROX, BUT IT PROBABLY IS THAT TYPE OF ARRANGEMENT.
 12 THE COURT: WELL, WHAT ARRANGEMENT DO YOU HAVE WITH
 13 XEROX TO GET REIMBURSED FOR ALL OF THIS? IN EFFECT, WHAT YOU
 14 SEEM TO HAVE DONE IS YOU HAVE AGREED TO ASSUME WHAT WOULD
 15 ORDINARILY BE THEIR DISCOVERY BURDEN.
 16 DO YOU GET REIMBURSED FOR THIS?
 17 MR. WU: WE'RE NOT GETTING REIMBURSED FOR THIS.
 18 THE COURT: SEEMS TO ME THAT MAY BE YOUR PROBLEM.
 19 THIS IS ONE OF THE DIFFICULTIES I'M HAVING. I COME
 20 BACK TO -- I'M TRYING TO FIGURE OUT IN THE ORDINARY COURSE OF
 21 EVENTS, IF XEROX WERE DOING THIS THE WAY -- DOES GOOGLE, FOR
 22 EXAMPLE, USE AN AGENT LIKE IP VALUE?
 23 MR. LABARRE: JOHN LABARRE, IN-HOUSE COUNSEL FOR
 24 GOOGLE. WE DO NOT, YOUR HONOR.
 25 THE COURT: OKAY. SO IF GOOGLE WERE TO SUE XEROX FOR

1 INFRINGEMENT -- I ASSUME GOOGLE BY NOW HAS SOME PATENTS.
 2 MR. LABARRE: THAT IS CORRECT, YOUR HONOR.
 3 THE COURT: SO IF GOOGLE WERE TO SUE XEROX, XEROX
 4 WOULD TAKE DISCOVERY DIRECTLY FROM GOOGLE, AND IT WOULD BE, YOU
 5 KNOW, ORDINARILY EXPECTED THAT ABSENT A SHOWING OF TRUE, YOU
 6 KNOW, UNREASONABLENESS AND DISPROPORTIONATE COST AND ALL OF THAT
 7 THAT GOOGLE WOULD BEAR THE COST OF THAT DISCOVERY.
 8 WHAT YOU SEEM TO BE SAYING IS IF GOOGLE ENGAGES
 9 SOMEBODY LIKE IP VALUE, ONE, GOOGLE NO LONGER HAS TO WORRY ABOUT
 10 THIS DISCOVERY BECAUSE IT DIDN'T DO IT, IP VALUE DID IT.
 11 AND THEN, TWO, IF XEROX TURNS AROUND AND FILES A RULE
 12 45 SUBPOENA AGAINST IP VALUE, IP VALUE JUST SIMPLY SITS BACK AND
 13 SAYS:
 14 "HEY, WE'RE A NON-PARTY, YOU CAN'T BURDEN US."
 15 MR. MCMAHON: THAT'S NOT --
 16 THE COURT: SOMETHING IS WRONG.
 17 MR. MCMAHON: NO, YOUR HONOR. THAT IS NOT WHAT WE
 18 SAID.
 19 THE COURT: OH, WHAT HAVE YOU SAID?
 20 MR. MCMAHON: SO IN THIS CASE, THE WAY THIS HAS
 21 FORMED OUT, WE CLASSIFIED THESE -- THESE, THE PRODUCTION INTO
 22 EXTERNAL COMMUNICATIONS AND INTERNAL COMMUNICATIONS.
 23 WE HAVE BORN THE ENTIRE BURDEN OF COLLECTING,
 24 PRODUCING AND PAYING FOR THE EXTERNAL COMMUNICATIONS.
 25 NOW WE'VE MOVED INTO THE INTERNAL COMMUNICATIONS.

EXHIBIT 10

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**