

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ECF

<p>AMERICAN CHEMICAL SOCIETY,</p> <p>Plaintiff,</p> <p>v.</p> <p>GOOGLE INC.,</p> <p>Defendant.</p>

Case No. 1:04CV02131 RBW

STIPULATED PROTECTIVE ORDER

This Protective Order ("Order") is entered pursuant to the stipulation between Plaintiff American Chemical Society ("ACS") and Defendant Google Inc. The parties recognize that some of the documents, information or material to be produced in this lawsuit may contain confidential information, including, but not limited to, trade secrets, know-how or financial, technical, marketing, personnel, or commercial information, such as business records, licenses, and corporate policies and procedures. The production of such confidential documents, information, or materials shall be governed by this Order, which is entered pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

Therefore, it is ORDERED THAT:

1. This Order shall be applicable to and govern the production or disclosure of documents, things, information, or other materials, depositions, answers to interrogatories, responses to requests for admissions, and all other discovery taken pursuant to the Federal Rules of Civil Procedure or any alternative dispute resolution proceeding, as well as testimony adduced at trial, matters in evidence, and other

information that is designated as "Confidential" or "Confidential – Attorneys' Eyes Only" (collectively, "Designated Material"), which is hereafter produced or furnished, directly or indirectly, voluntarily or involuntarily, by or on behalf of any party or non-party (a "Producing Party") in connection with this action.

2. The confidential nature of materials produced in this action shall be indicated as follows:

(a) Any information, documents, testimony or materials that the Producing Party properly regards as proprietary, confidential, as implicating privacy concerns, or as business information not disclosed in the ordinary course of business may be designated as "Confidential."

(b) Any information, documents, testimony, or materials that the Producing Party properly regards as relating to (i) revenues, costs, profits, or financial matters; (ii) bids, proposals, offers, or other documents relating to the acquisition of or competition for business; (iii) business, sales, or marketing plans and activities; or (iv) a trade secret may be designated as "Confidential – Attorneys' Eyes Only."

3. A Producing Party that is a non-party to this action may designate material as "Confidential" or "Confidential – Attorneys' Eyes Only" in accordance with Paragraph 2. If a Producing Party (including parties and non-parties to this action) inadvertently fails to designate a document or information as Designated Material at the time of production, that person or party shall have ten business days after such production to designate the documents or other information.

4. If a Producing Party has information that is subject to discovery and the Producing Party has an obligation to a non-party to maintain the confidentiality of that

information, the Producing Party shall request, in writing, the permission of such non-party to produce such information to the requesting party subject to the terms of this Order. If permission is denied, the Producing Party shall notify the requesting party of such denial within ten business days of receipt of such denial. The requesting party may seek any appropriate relief from this Court and may pursue any other appropriate avenues of relief.

5. Designated Material shall be used by the recipient solely for the purpose of prosecuting, conducting, or defending this litigation, and any subsequent appeal.

6. Subject to the provisions of Paragraph 8, information designated as "Confidential" may be disclosed only to the following persons:

(a) any party and any director, officer, or employee of a party, other than in-house counsel identified in Subparagraph 7(b), if such person directly works on or has oversight responsibility for this litigation, with disclosures only to the extent necessary to perform such work or oversight; and

(b) those individuals to whom Designated Materials may be disclosed under the terms of Paragraph 7 below.

7. Subject to the provisions of Paragraph 8, information designated as "Confidential – Attorneys' Eyes Only" may be disclosed only to the following persons:

(a) outside counsel for the receiving party directly working on this litigation and all paralegal assistants and stenographic and clerical employees working under the direct supervision of such counsel;

(b) in-house counsel, who have agreed in writing to comply with the terms of this Order, for the receiving party or its affiliates directly working on this

litigation and all legal assistants and stenographic and clerical employees working under the direct supervision of such counsel;

(c) independent experts or consultants (“Independent Experts”) of the receiving party who are not employed by the receiving party, and who have been expressly retained by the receiving party or its attorney to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;

(d) Independent Experts who have been retained by the receiving party solely for the purpose of conducting a consumer survey about whether Google’s use of the term “Google Scholar” causes consumer confusion or dilutes the “SciFinder Scholar” and/or “Scholar” marks claimed by ACS (“Survey Experts”); provided, however, that (i) the Survey Expert’s usual and normal business has been the design and/or development of surveys in the trademark, service mark and/or trade dress field for at least the past five (5) years; and (ii) such Survey Expert must not be a principal or an employee of any competitor of Google at the time of disclosure or for at least one (1) year thereafter;

(e) upon agreement of the Producing Party or with leave of Court, any person of whom testimony is taken, except that such person may only be shown Designated Material during his or her testimony, and may not retain any Designated Material;

(f) the Court and its personnel, including ADR officers;

(g) court reporting personnel involved in taking or transcribing testimony in this action; and

(h) any person that the Court designates in the interest of justice, upon terms that the Court deems proper.

8. Access to Designated Material (as provided for in and subject to the limitations of Paragraph 7) shall be allowed to Independent Experts and Survey Experts only under the following conditions:

(a) Access to Designated Material shall be allowed to an Independent Expert identified in Paragraph 7(c), provided that the following information is made known in writing to the Producing Party and received no less than four business days before the intended date of disclosure to that Independent Expert:

- the identity of that Independent Expert, by name and brief description, including education, present and past employment, and general areas of expertise; and
- all other present and prior relationships of that Independent Expert with any of the parties.

Prior to any Independent Expert reviewing or receiving Designated Material, that Independent Expert must be made aware of the provisions of this Order and manifest his or her assent to be bound thereby by signing a copy of the attached Acknowledgment. The signed Acknowledgment shall be retained by the outside counsel for that party.

If the opposing party objects to disclosure of Designated Material to an Independent Expert, that party shall serve written objections, identifying with particularity the basis for the objection. Such objections shall not be unreasonably made. Service of the objections shall be by personal delivery, overnight courier, or facsimile, and received within three business days after the date of receipt of the identification of an Independent Expert. If the parties cannot agree on disclosure of Designated Material to the proposed Independent Expert, the objecting party shall have the burden of proof. No

Designated Material shall be disclosed to that Independent Expert until the validity of the objection has been resolved, either by negotiation or by the Court.

(b) Notwithstanding the foregoing, a party may provide a Survey Expert with access to Designated Material without following the provisions of Paragraph 8(a) provided that the Survey Expert is first made aware of the provisions of this Order and manifests his or her assent to be bound thereby by signing a copy of the attached Acknowledgment. The signed Acknowledgment shall be retained by the outside counsel for the party who has retained the Survey Expert.

9. The recipient of any Designated Material that is provided under this Order agrees to subject himself or herself to the jurisdiction of this Court for the purpose of any proceedings relating to the performance under, compliance with, or violation of this Order.

10. The recipient of any Designated Material that is provided under this Order shall use its best efforts to maintain them in a manner that limits access only to those persons who have agreed to be bound by this Order.

11. In the case of depositions, the following procedures shall be followed to effect confidentiality designations:

(a) Designation of the portion of the transcript (including exhibits) that contains confidential material shall be made either (i) by a statement to such effect on the record in the course of the deposition or (ii) upon review of such transcript by counsel for the Producing Party, if counsel notifies opposing counsel of the designation within ten business days after counsel's receipt of the transcript. Counsel shall list the numbers of the pages of the transcript containing Designated Material, indicate which confidentiality

designation shall apply, attach the list to the transcript, and mail copies to counsel for all parties. Pending such designation by counsel, the entire deposition transcript, including exhibits, shall be treated as if it had been designated "Confidential – Attorneys' Eyes Only" under this Order. If no designation is made on the record or within ten business days after receipt of the transcript, the transcript shall be considered not to contain any Designated Material.

(b) Counsel for the Producing Party whose Designated Material is about to be disclosed at the deposition may also request that all persons other than the persons who are entitled to have access to such material under this Order leave during the confidential portion of the deposition.

12. Confidential portions of transcripts of depositions shall not be filed with the Court unless it is necessary to do so for purposes of trial, motions, or other related matters. If a deposition transcript or any portion thereof is filed and if it contains Designated Material, the transcript or portion thereof shall bear the appropriate legend and shall be filed in accordance with Paragraph 15.

13. A party shall not be obligated to challenge the propriety of a confidentiality designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. If any party to this litigation disagrees with a designation, such party shall provide to the Producing Party written notice of its disagreement with the designation. The parties shall first try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the designation may request appropriate relief from the Court in a manner consistent with the applicable rules for bringing discovery motions before this Court, including but not limited to the

procedures set forth in Paragraph 8 of the General Order and Guidelines for Civil Cases (Judge Walton).

14. Should a Producing Party determine that a document subject to privilege or immunity from discovery has been produced inadvertently, it shall bring it to the attention of the party to whom the document was produced. That party shall return such documents (and all copies thereof) immediately. Such disclosure shall not result in the waiver of any associated privilege or protection.

15. Parties filing Designated Material with the Court shall comply with Local Civil Rule 5.1(j).

16. If any Designated Material is used in any court proceeding in connection with this litigation, it shall not lose its status through such use, and the parties shall take all steps reasonably required to protect its confidentiality during such use.

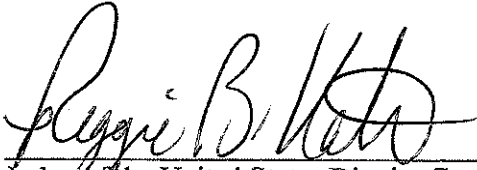
17. Nothing in this Order shall preclude either party to the lawsuit, their attorneys, or any other person from disclosing or using, in any manner or for any purpose, any information or documents lawfully in its possession or obtained from a non-party having the right to disclose such information, even though the same information or documents have been produced in discovery in this lawsuit and designated under this Order.

18. Nothing in this Order shall preclude any attorney of record for a party (a) from showing Designated Material to an individual who prepared or received that document or (b) from disclosing or using, in any manner or for any purpose in this litigation, the party's own information or documents which the party itself has designated as Designated Material.

19. Within 30 days of the conclusion of this litigation, whether by judgment and exhaustion of any appeals or the time to appeal, or by settlement, the attorneys of record shall destroy all Designated Material and all copies thereof. When the material is destroyed, a Certificate of Destruction signed by counsel shall be provided to the Producing Party within ten business days after destruction.

20. This Order is without prejudice to the right of any Producing Party to seek relief from the Court, upon good cause shown, from any of the provisions contained in this Order. The parties may reach an agreement to modify the times or dates set forth in this Order without the consent of the Court.

Dated: March 12, 2006



Judge of the United States District Court

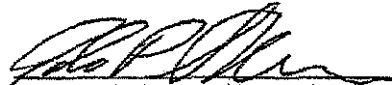
STIPULATION

SO STIPULATED:

Undersigned counsel further stipulate that if for any reason the Court does not enter this proposed Order, the parties agree to maintain the confidentiality of documents and material produced in discovery prior to the Court's ruling, and they agree to use their best efforts to revise this Stipulation as may be requested or required to please the Court.


Dated: March 3, 2006

By:


Roberta L. Horton (413577)
Catherine R. Rowland (480098)
John P. Sheesley (482546)
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, DC 20004
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Counsel for Plaintiff American Chemical Society

Dated: March 3, 3006

By:


Arnold P. Lutzker (101816)
Carl H. Settlemeyer, III (454272)
LUTZKER, LUTZKER & SETTLEMYER, LLP
1000 Vermont Avenue, N.W., Suite 450
Washington, DC 20005
Telephone: (202) 408-7600

Michael H. Page (admitted *pro hac vice*)
Klaus H. Hamm (admitted *pro hac vice*)
KEKER & VAN NEST, LLP
710 Sansome Street
San Francisco, CA 94111-1704
Telephone: (415) 391-5400
Counsel for Defendant Google Inc.

ACKNOWLEDGMENT TO BE BOUND BY ORDER

I hereby acknowledge that I have received a copy of the Order entered in American Chemical Society v. Google Inc., 1:04CV02131 RBW. I have read that Order. I understand the terms, conditions, and restrictions imposed by the Order on one who is given access to confidential documents and information pursuant to the Order, and I agree to be bound by all of the terms, conditions, and restrictions imposed by the Order.

I will return, in accordance with the Order, all confidential documents, material, and information I receive to counsel who provided them to me. I acknowledge that the return or subsequent destruction of such documents, material, and information shall not relieve me from any of the obligations imposed on me by the Order.

I further acknowledge that I understand that I may be subject to sanctions imposed by the Court, including an order of contempt, if I fail to abide by and comply with the Order.

Dated: _____

Name: _____

Occupation: _____

Business Address: _____

Business Telephone: _____