

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 06-60905-CIV-ALTONAGA/Turnoff

F&G RESEARCH, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

**GOOGLE INC.'S REQUEST FOR HEARING ON
MOTION FOR SUMMARY JUDGMENT AND ATTORNEYS' FEES**

Google Inc. ("Google"), by and through its counsel, and pursuant to Local Rules 7.1.B.1 and 7.5, hereby files its Request for Hearing on its Motion for Summary Judgment and Attorneys' Fees ("Request for Hearing"), and in support thereof, respectfully states as follows.

Memorandum of Law

On June 22, 2006, Plaintiff F&G Research, Inc. ("F&G") filed a complaint against Google in which it alleged patent infringement of U.S. Patent No. 5,313,229 ("229 Patent") based on Google's alleged sale of scrolling wheel computer mice (D.E. #1). On September 7, 2006, F&G filed an Amended Complaint in which it alleged contributory infringement of the '229 Patent based on Google's alleged sale of software "compatible" with scrolling mice (D.E. #4).

On December 19, 2006, Google filed a Motion and Memorandum in Support of Motion for Summary Judgment and Attorneys' Fees (D.E. #43) ("Motion for Summary Judgment"). The Motion for Summary Judgment is based, in part, on the fact that Google does not sell or distribute computer mice, much less the specific type of scrolling mice claimed by the '229

Patent. Even if Google sells “compatible” software, Google does not contributory infringe the ‘229 Patent because the software has substantial non-infringing uses such as being used with non-infringing or licensed mice or without mice. Google does not induce infringement because it does not know or care what type of computer mice users choose to use with its software, or whether such mice are licensed, and it does not encourage users to use any specific type of mouse. The Motion for Summary Judgment relies on facts conceded by F&G, including that F&G has licensed a substantial portion of the scrolling mouse market, which establishes substantial non-infringing uses for the Google Earth software. The Motion for Summary Judgment is now fully briefed and in condition for consideration by the Court.

Pursuant to Local Rules 7.1.B.1, Google respectfully requests a hearing on the Motion for Summary Judgment so that Google may further address the reasons why, as a matter of law, it does not infringe the ‘229 Patent. A hearing will facilitate a disposition on the Motion for Summary Judgment and assist the Court in a variety of manners. For example, given the nature of the case, the Court will benefit from hearing discussion about the ‘229 Patent and the limitations of the claim being asserted (claim 12). Given the variety of changing infringement contentions advanced by F&G, the Court will benefit from hearing argument about the applicable patent provisions that preclude all of F&G’s claims and require summary judgment in Google’s favor. For these reasons, it is believed that a hearing will assist the Court in resolving the Motion for Summary Judgment.

Google estimates that the time required to conduct the hearing will likely depend on the number of issues the Court wishes the parties to address. Nonetheless, Google estimates that the time required for argument will be approximately three (3) hours, subject to the Court’s discretion. Thus, Google respectfully requests that the Court grant its Request for Hearing and

schedule same at the Court's earliest convenience, noting that both parties have requested expedited review of the Motion for Summary Judgment so that the issues can be resolved prior to claim construction.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1.A.3, on February 8, 2007, undersigned counsel met and conferred with Allen D. Brufsky, counsel for F&G, in a good faith effort to resolve the issues raised by this request. Mr. Brufsky had no objection to the relief sought in this request.

Dated: February 8, 2007

Respectfully Submitted,

FELDMAN GALE, P.A.

s/ Gregory L. Hillyer

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Attorneys for Defendant Google Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/EFC. I also certify that the document listed above is being served this day on Allen D. Brufsky, Esq., Christopher & Weisberg, P.A., 200 East Las Olas Boulevard, Suite 2040, Ft. Lauderdale, Florida 33301, via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Gregory L. Hillyer