

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

Case No.: 06-60905-CIV-ALTONAGA/Turnoff

F & G RESEARCH, INC.,

Plaintiff,

vs.

GOOGLE INC.,

Defendant.

**DECLARATION OF ALLEN D. BRUFISKY IN SUPPORT OF
PLAINTIFF'S REPLY TO GOOGLE'S RESPONSE TO
THE MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS**

I, Allen D. Brufsky, hereby declare as follows:

1. I am registered patent attorney representing Plaintiff F&G Research, Inc., the plaintiff herein.
2. The parties employed Patrick J. Flinn, Esq., a patent attorney with Alston & Byrd LLP in Atlanta, Georgia, as an ENE (early neutral evaluator), to obtain an "early" non-binding read on the scope and meaning of the claim
3. Mr. Flinn was not employed to opine on infringement, but only the scope and meaning of the claim.
4. On May 25, 2007, Mr. Flinn presented his findings and conclusions.
5. Mr. Flinn concluded that the only hardware required by the claim was some "means" to generate a control signal to initiate the steps specified in claim 12.

6. However, when Mr. Flinn was questioned by me as to whether the “means” could exist in the software, he did state that it could lead to direct infringement of the claim and he would not opine on inducement, as he felt the Court had already addressed that question, although in the context of a scrolling mouse.

7. Mr. Flinn stated that if the software performed this function (i.e., generating the control signal or a non-scrolling mouse could be used to do so) there could be an infringement.

I declare under penalty of perjury that the foregoing is true and correct.



Allen D. Brufsky, Esc