

EXHIBIT 5

Fassl, Sheri (Secy-Chi-IP/Tech)

From: John Shonkwiler [jshonkwiler@novackmacey.com]
Sent: Monday, October 26, 2009 4:46 PM
To: Finn, Herbert (Shld-Chi-IP/Tech)
Cc: P. Andrew Fleming; John B. Haarlow; Dunning, Jeffrey (Assoc-Chi-IP/Tech)
Subject: RE: Specht/Google - Protective Order

Herb,

We have never agreed to an attorneys' eyes only designation, nor have we ever suggested to you to we would consider agreeing to any protective order that included one. Indeed, as we've told you all along, we're not convinced that any protective order is necessary in this case. The point of this exercise was to try to identify all disputed points before going to the Court so that all disputes concerning the protective order can be resolved together. Meanwhile, discovery has proceeded without interruption under our temporary agreement to treat all discovery materials on an attorneys' eyes only basis – so we reject your accusation that the parties have wasted time.

We continue to believe that all disputes related to the proposed protective order should be identified before we go to the Court, and we should make every effort to resolve whatever issues we can in advance.

John

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From: FinnH@gtlaw.com [mailto:FinnH@gtlaw.com]
Sent: Monday, October 26, 2009 4:27 PM
To: John Shonkwiler
Cc: P. Andrew Fleming; John B. Haarlow; DunningJ@gtlaw.com
Subject: Specht/Google - Protective Order

11/16/2009

John,

We are in receipt of your proposed changes to the draft Protective Order.

When we originally discussed a protective order two months ago, we made it clear that Google would seek an "attorneys' eyes only" level of confidentiality in any protective order. We further indicated that if Plaintiffs were not willing to accommodate an "AEO" level, then there was a fundamental difference between the parties and further discussions would not bring the parties closer to resolution.

While initially reluctant to having an "AEO" level, you indicated that Plaintiffs would consider it. Each draft sent for your review contained two levels of confidentiality, including an "AEO" level broken into 10 specific categories of documents. During our last discussion on the issue, you accepted the "AEO" confidentiality designation. Indeed, while you indicated that you wanted to review the categories, you never objected to the protective order containing "AEO" levels of confidentiality.

Nonetheless, your redraft of last Friday eliminates any "AEO" level of confidentiality. If Plaintiffs insist on not having an "AEO" level of confidentiality in the protective order, then the parties have wasted months. Google is not changing its position. It remains as we discussed the very first time. As Plaintiffs are not prepared to accept an "AEO" level of confidentiality in the protective order, there is little to discuss -- as all your changes to the draft revolve around eliminating the "AEO" level of confidentiality. We will proceed accordingly.

Herb Finn

Herbert H. Finn
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From: John Shonkwiler [<mailto:jshonkwiler@novackmacey.com>]
Sent: Friday, October 23, 2009 11:19 AM
To: Finn, Herbert (Shld-Chi-IP/Tech); Dunning, Jeffrey (Assoc-Chi-IP/Tech)
Cc: P. Andrew Fleming; John B. Haarlow
Subject: Specht v. Google

11/16/2009

Please see attached

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11/16/2009