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Blake A. Field VS Google, Inc.,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

6 BLAKE A. FIELD,
7 Plaintiff,
8
9 vs.
10 GOOGLE, INC., a corporation
11 Defendant.
12 AND RELATED COUNTERCLAIMS

Case No. CV-S-04-0413-RCJ-LRL

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO EXTEND
DISCOVERY**

13 COMES NOW Plaintiff Blake A. Field to file his Opposition to Defendant's Motion to
14 Extend Discovery.

I. INTRODUCTION

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16 As Defendant represents in its Motion, on April 13, 2005, this Court entered a
17 Stipulation and Order extending the time to complete certain fact witness depositions, leaving
18 all other discovery deadlines intact. (See Motion at pp. 2, lines 20-24.) Contrary to Defendant's
19 representations, the need to move back expert disclosures was not inadvertently overlooked by
20 the parties in that stipulation. Plaintiff certainly considered it, however, had no issue meeting the
21 deadline as it then existed. Moreover, it is clear that Defendant likewise considered the expert
22 disclosure deadline and determined either (1) there was no need for expert evidence in this
23 matter or (2) properly reasoned that Plaintiff's deposition testimony in no way could affect its
24 expert's opinions.

25 On May 13, 2005, Plaintiff conducted the deposition of Defendant's Person Most
26 Knowledgeable regarding the standard operation of the Google cache and the inclusion of
27 Plaintiff's works in the Google cache. Apparently, only after this revealing deposition does
28 Defendant desire to attempt to turn this matter into a battle of the experts. Realizing its time

1 constraints, Defendant endeavored to have Plaintiff stipulate to extend expert designations,
2 which on May 17 Plaintiff agreed to consider. Further rumination on the matter during the night
3 of the 17th led Plaintiff to inform Defendant the following morning that Plaintiff was not
4 amenable to such a stipulation. Plaintiff's position remains rooted in the notion that Plaintiff's
5 deposition testimony could in no way affect Defendant's expert discovery needs.

6 **II. ARGUMENT**

7 **A. Plaintiff's deposition testimony could in no way affect Defendant's expert's 8 opinions.**

9 Defendant posits that Plaintiff's deposition testimony is necessary for its expert to
10 express his opinions. It is a ponderous notion that Plaintiff's testimony could affect or inform
11 such opinions. Defendant has already admitted that each of the web pages containing Plaintiff's
12 works were stored within the Google cache, and that Google reproduced and distributed each of
13 the cached copies of those pages to at least one internet user. Thus, this matter is properly an
14 affirmative defense case – indeed, Defendant's counterclaims assume Defendant's use of
15 Plaintiff's exclusive rights of reproduction and distribution, yet asserts affirmative defenses
16 against those actions in a declaratory relief setting.

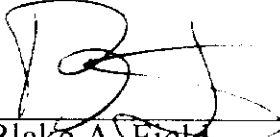
17 Certainly, Plaintiff's testimony could only inform Defendant's affirmative
18 defenses/counterclaims of implied license and estoppel – testimony which in no way could
19 affect the expert's opinion. The notion of expert opinions on issues of implied licence and
20 estoppel is incomprehensible – such matters go solely to the relations of parties. Rather,
21 Defendant's purported internet expert would necessarily restrict his opinions to Defendant's
22 Digital Millennium Copyright Act (17 U.S.C. § 512(a)-(d)) affirmative defenses – technical
23 defenses which factual evidence supporting such would be in the exclusive control of Defendant
24 itself. Thus, there never was a need to elicit Plaintiff's testimony prior to Defendant's expert
25 designation, which is precisely why the deadline to designate was not moved back by
26 stipulation.
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CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing PLAINTIFF' OPPOSITION TO DEFENDANT'S MOTION TO EXTEND DISCOVERY was served on June 1, 2005 by placing same in the United States mail, postage pre-paid to:

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Blake A. Field