

FISH & RICHARDSON P.C.

12390 El Camino Real
San Diego, California
92130

Telephone
858 678-5070

Facsimile
858 678-5099

Web Site
www.fr.com

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

VIA FACSIMILE AND EMAIL

April 30, 2009

Jeremy J. Brandon, Esq.
Susman Godfrey LLP
901 Main Street, Suite 5100
Dallas, TX 75202-3775

Re: *Google Inc. adv. Function Media, L.L.C.*
Eastern District of Texas Marshall Div. - Civil Case No. 2:07-cv-279 (CE)



Dear Jeremy:

I write in response to your recent request for additional 30(b)(6) testimony from Google regarding topics 1 and 2, your requests re the depositions of Messrs. Dean, Ramaswamy, and Ms. Wojicki, as well as Mr. Axe, and our telephone conference on April 27.

You confirmed on our call that there are two open issues on the AdSense side of the products. First, you indicated the handling of the `show_ads.js` callback in AdSense for Search. Second, you also inquired about possible APIs for AdSense direct publishers, and indicated that Function Media desired additional testimony on any Google internal interfaces that permit Google employees to enter data on behalf of any AdSense publisher because your client's position is that such an interface, even though it is internal to Google, is covered by Function Media's asserted patents. Particularly on this second issue, we would like Function Media's formal position on whether it believes this is an infringement because it may indicate there are additional unarticulated claim construction disputes. Such allegations are not clear from Function Media's infringement contentions.

If there any other topics where you believe Google's 30(b)(6) witnesses did not provide sufficient testimony regarding any alleged infringing AdSense or AdWords technology identified in your infringement contentions please promptly identify it so that we may continue with closing out these 30(b)(6) deposition topics. I note that we have already agreed to provide an additional witness for AdSense for Mobile, so there is no need to identify that topic.

Regarding dates for the depositions you have requested, we are working on these. However, we have informed you that Ms. Wojicki and Mr. Ramaswamy are high-ranking corporate officers, and we need to find a solution to handling Function Media's discovery requests with regard to them. We do not believe Ms. Wojicki should be deposed at all, particularly in view of the so-called *Apex* doctrine, and request that you identify why she possesses genuinely relevant information that is not

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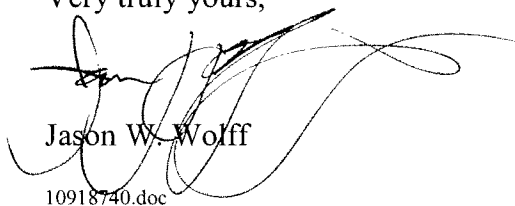
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otherwise available through other less intrusive discovery. With regard to Mr. Ramaswamy, we propose that we postpone his deposition until other witnesses have been deposed and it is clear that there is no other less intrusive way of obtaining information other than through him. While Mr. Dean also falls into this group of key executives, Google will offer him as a witness once we have the clarity on the scope of the 30(b)(6) topics because Mr. Dean (or possibly Mr. Axe) may be the appropriate witness to handle certain open issues, including on your most recent 30(b)(6) notice, which I have already told you is far too broad and unduly burdensome.

As I explained to you on our call on Monday, the burdens to Google and its witnesses, particularly its key executives and senior engineering management are a significant distraction from its business commitments. Because of this burden, Google only intends to offer any such witnesses for deposition once, but as Function Media continues to broaden its already ambiguous topics in the 30(b)(6) notices, the burdens to individual witnesses becomes even greater, particularly when there may be another less senior but just as knowledgeable witness for unresolved or newly noticed topics. In this regard, Google is committed to providing the most appropriate witness(es) for each of the topics, but resolving the threshold issues on the scope of the topics is not a trivial task, particularly given number of topics and patent claims that have been asserted. Furthermore, it takes a significant time commitment to prepare for 30(b)(6) depositions on the scale requested, which includes coordination with multiple employees to verify the accuracy of the expected testimony. We appreciate in advance your understanding.

Very truly yours,



Jason W. Wolff

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