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Cc: Justin A. Nelson[jnelson@SusmanGodfrey.com]; Joseph S. Grinstein[jgrinstein@susmangodfrey.com]; Max L. Tribble[MTRIBBLE@SusmanGodfrey.com]; Stacy Schulze[sschulze@SusmanGodfrey.com];

Subject: FM: Discovery issues

Sent: Mon 6/8/2009 6:39:15 PM

From: Jeremy Brandon

Dear Counsel,

I wanted to raise several issues regarding discovery.

1. The Google list of "persons with knowledge" has considerably more people than we need to depose and that you would ever have time to call to trial as witnesses. We will depose them all if we have to, to avoid having a witness at trial whom we didn't depose. But that will drive up costs for both sides. We therefore propose that you narrow down your list of persons with knowledge to those you reasonably intend to call to trial, with the understanding that if your list excludes someone you later decide to call, you can add them later but we get the chance to depose them. Thoughts?

2. What's the status of Google's production of docs from the Overture litigation (depo transcripts, exhibits, pleadings, orders, expert reports, affidavits, and hearing transcripts)? What's the status of Google's production of docs related to the Applied Semantic acquisition, the Double-Click acquisition, and other relevant acquisitions? Also, what's the status of Google's supplementation of its rog responses to reflect both the recent document productions and the representations that Christy made in her Feb. 23 letter?

3. We have come across several ads-related patents and patent applications that Google has not produced in this litigation. (One example is Patent App. No. 20050267799.) In light of this, I guess I don't understand how Google can say that "it performed a reasonable search for ads-related patents and patent applications and it has produced all that it believes are responsive." We again ask Google to produce all ads-related patents and applications, including those that have not been published. Please also update Google's interrogatory responses to reflect all produced patents and patent apps, including (of course) applications that identify one or more of the patents-in-suit.

4. In speaking with my consulting expert, it seems we are still missing certain pieces of the source code. I will follow-up with my expert and get back to you shortly re this.

5. Please provide operable and fully functional user accounts for AdWords (online), AFS (online), AFC (online), AdWords Editor, and MCC. If it is Google's position that Susman Godfrey and/or our experts can create and use our own accounts for purposes of this litigation, please confirm this in writing. Please also confirm that doing so is even possible for the listed accounts. If it's not possible, please provide us with operable accounts.

6. Are you planning to depose Mohammad Hasan? I had previously offered June 22 and June 29 for his deposition but never heard back. I no longer know whether these dates are available. If you'll let me know your plans, I'll check.

7. We still need dates for the following requested depositions:

(a) Susan Wojcicki

- (b) Sridhar Ramaswamy
- (c) Rama Ranganath
- (d) Alex Kinnier
- (e) Bhavesh Mehta
- (f) T. Hutchinson
- (g) Topic 4 from the First 30(b)(6) Notice, which we can amend to include document custodian/searching questions
- (h) Remaining topics from the Second 30(b)(6) Notice

With respect to Ms. Wojcicki and Mr. Ramaswamy, FM is willing to work with you on scheduling (including by agreeing to dates in August). But FM is not willing to take a "wait and see" approach. Each of these witnesses has unique knowledge that FM is entitled to discover, and we ask that you let us know now whether you intend to prevent their depositions.

We believe we've already adequately explained the basis for these depositions. And, as you and I have discussed, FM doesn't believe it's required to marshal all of its evidence in advance of these depositions. Even a cursory glance through the documents reveals that Ms. Wojcicki and Mr. Ramaswamy are intimately involved in the Accused Products.

This isn't a slip-and-fall-on-an-airplane case where we're seeking to depose, without basis, the uninvolved CEO of the airline. Ms. Wojcicki, for example, has unique knowledge and a unique perspective on the Accused Products -- a fact that is amply demonstrated by the USA Today article alone, wherein she is quoted as saying that she herself came up with the idea behind AFC. ("It was a really novel idea at the time to serve ads that were targeted dynamically' to a specific Web page, says Wojcicki, sitting in a conference room at the Googleplex company headquarters." "In 2003, she came up with her multimillion-dollar brainstorm: AdSense." "Wojcicki's idea turned into a runaway smash."). We're entitled to explore this "really novel idea" that Ms. Wojcicki believes she came up with. I again ask you to let me know if Google believes that Ms. Wojcicki was misquoted, or her views misrepresented, in any way. Moreover, and in any event, the produced documents show that Ms. Wojcicki is anything but hands-off when it comes to developing/implementing/marketing/strategizing re the Accused Products. She's heavily involved, as you must know.

And Mr. Ramaswamy, of course, is listed in Google's Initial Disclosures. Had he nothing unique to say, it is unclear why you would have listed him. In any event, his name appears all over the documents that Google produced in this litigation (including several emails to/from Mr. Ramaswamy specifically). This is not surprising, given his Google bio: "Since joining Google in 2003, Sridhar and his teams have taken a lead role in defining the vision and direction of AdWords." Let me know if you think we're required to identify specific documents re Mr. Ramaswamy that Google produced to us.

If you do not intend to provide dates for Ms. Wojcicki and Mr. Ramaswamy on the basis of the information already provided, please confirm this in an email. And please tell us when we can meet and confer on a motion to compel.

8. Finally, we're going to need to depose Larry Page. From our review of the documents, Mr. Page was intimately involved in the creation of the Accused Products and is still directly involved in major decisions involving the products.

I'd appreciate a prompt response.

Regards,

jeremy

P.S. Jason -- I just picked up your voicemail re the corrupted docs and the search of Mr. Feng's files. Re the corrupted files, what's the suffix / Bates ranges that Google used when producing the repaired files? Re Mr. Feng, please holler at me on my cell (202.277.0066) whenever it's convenient.