

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FUNCTION MEDIA, L.L.C.,	§	
	§	
Plaintiff,	§	Civil Action No. 2007-CV-279
	§	
vs.	§	
	§	
GOOGLE, INC. AND YAHOO, INC.,	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

**MOTION TO CONSOLIDATE ARGUMENT ON
GOOGLE, INC.'S AND FUNCTION MEDIA'S
MOTIONS TO EXCLUDE EXPERT OPINIONS**

On December 17, Google filed a motion to exclude certain opinions of FM's damages expert, Walt Bratic. Likewise, FM has filed, concurrently with the submission of this motion, a separate motion to exclude certain opinions of Google's experts, Mr. Wagner and Mr. Lanning.¹

The issues in the motions are, to some extent, complimentary. For example, Google argues in its motion for the exclusion of Mr. Bratic's opinions regarding acquisitions. In so doing, Google at least implicitly relies upon the acquisitions opinions of Mr. Wagner – which FM's motion seeks to exclude.

This Court had indicated that it will hear argument on Google's motion to exclude on "January 5 or soon thereafter," if Google indicates it will forego a reply brief on its motion to exclude. Google has not yet done so, to FM's knowledge. In any event, if Google foregoes its reply brief, then FM will forego its own reply brief, and the motions should be heard jointly, at some point after Google responds in opposition to FM's motion to exclude.

¹ Mr. Wagner's deposition was taken on December 22, 2009, and FM filed its motion to exclude the next day – relying, in part, on that deposition.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Counsel for plaintiff has conferred with counsel for defendant on December 23, 2009 and counsel for defendant is opposed as to the disposition of the matters raised in this motion.

/s/ Joseph S. Grinstein _____
Joseph S. Grinstein

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2009, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Joseph S. Grinstein _____
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