

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

FUNCTION MEDIA, L.L.C.,

v.

GOOGLE, INC. AND YAHOO!, INC.

Civil Case No. 2:07-cv-279 (CE)

JURY TRIAL DEMANDED

**DECLARATION OF JASON W. WOLFF IN SUPPORT
OF GOOGLE INC.'S MARKMAN BRIEF**

I, Jason W. Wolff, declare based on my personal knowledge, information, and belief as follows:

1. I am a principal with Fish & Richardson P.C., counsel for Google Inc.

2. Attached as Exhibit A is a true and correct copy of Function Media's Response to the First Office Action in United States Patent and Trademark Office ("USPTO") Re-examination Control No. 95/001,061, dated Dec. 23, 2008 ("045 Re-exam Response"). Because it is voluminous and it is not cited in its entirety in Google's brief, a complete copy of Re-examination Control No. 95/001,061, will be provided on CD-ROM for the Court's convenience. If the Court prefers, Google can provide these documents as hard-copies.

3. Attached as Exhibit B is a true and correct copy of Function Media's Response to the First Office Action in USPTO Re-examination Control No. 95/001,073, dated Feb. 23, 2009 ("025 Re-exam Response"). Because it is voluminous and it is not cited in its entirety in Google's brief, a complete copy of Re-examination Control No. 95/001,073, will be provided on CD-ROM for the Court's convenience. If the Court prefers, Google can provide these documents as hard-copies.

4. Attached as Exhibit C is a true and correct copy of Function Media's Response to the First Office Action in USPTO Re-examination Control No. 95/001,069, dated Jan. 21, 2009 ("059 Re-exam Response"). Because it is voluminous and it is not cited in its entirety in

Google's brief, a complete copy of Re-examination Control No. 95/001,069 will be provided on CD-ROM for the Court's convenience. If the Court prefers, Google can provide these documents as hard-copies.

5. Attached as Exhibit D is a true and correct copy of excerpts from the condensed transcript of the Deposition of Michael Dean, conducted on April 16, 2009. Counsel for Function Media consented via e-mail to lift the confidentiality designation for these portions of the transcript.

6. Attached as Exhibit E is a true and correct copy of excerpts from the condensed transcript of the Deposition of Lucinda Stone, conducted on April 17, 2009. Counsel for Function Media has consented via e-mail to lift the confidentiality designation for these portions of the transcript.

7. Attached as Exhibit F is a true and correct copy of the Declaration of Roy M. Jenevein, Ph.D., Regarding Claim Construction, served Feb. 27, 2009.

8. Attached as Exhibit G1 is a true and correct copy of the Prosecution History of U.S. Patent 6,829,587. Also included are true and correct copies of U.S. Patent 6,401,075 to Mason (Exhibit G2) and U.S. Patent 6,430,603 to Hunter (Exhibit G3), which were discussed in Applicants' Amendment dated Aug. 12, 2003.

9. Attached as Exhibit H1 is a true and correct copy of the Prosecution History of U.S. Patent 7,249,059. Also included are true and correct copies of U.S. Patent 6,167,382 to Sparks (Exhibit H2) and U.S. Patent 6,119,101 to Peckover (Exhibit H3), which were discussed in Applicants' Amendment of Sept. 5, 2006.

10. Attached as Exhibit I1 is a true and correct copy of the Prosecution History of U.S. Patent 6,446,045. Also included is a true and correct copy of U.S. Patent 6,038,545 to Mandeberg (Exhibit I2), which was discussed in Applicants' Amendment of January 22, 2002.

11. Attached as Exhibit J1 is a true and correct copy of the Prosecution History of U.S. Patent 7,240,025. Also included is a true and correct copy of U.S. Patent 5,5543,856 to Rosser (Exhibit J2), which was discussed in Applicants' Amendment of Feb. 13, 2006.

12. Attached as Exhibit K is claim 47 of the '025 patent with Function Media's proposed constructions substituted where appropriate.

13. Attached as Exhibits L1 and L2 are true and correct copies of the Aaddzz references, which are cited in the reexaminations.

14. Attached as Exhibit M is a true and correct copy of the AdForce reference, which was cited in the reexaminations.


15. Attached as Exhibit N is a true and correct copy of U.S. Patent 6,985,882 to Del Sesto, which was cited in the reexaminations.

16. Attached as Exhibit O is a true and correct copy of U.S. Patent 6,026,368 to Brown, which is cited in the reexaminations.

17. The separately submitted CD-ROM, Exhibit P, has a true and correct copy of each of the re-examinations identified in ¶¶ 2, 3, and 4 above. The PDF files on the CD-ROM are organized in folders corresponding to the specific patent for which each pertains. Within each folder are two sets of PDF files. One PDF file in each folder has the prefix "Control No" followed by the Control No. for the particular re-examination; these files were downloaded from the USPTO Public PAIR website (<http://portal.uspto.gov/external/portal/pair>) on May 15, 2009. The second group of files within each folder includes materials that were (at the time) not available on the USPTO Public PAIR website; these materials can be identified by the date prefixes in each PDF file name. The second group of files includes (1) non-patent literature (generally has the term "App" or "OTHER" in the file name) cited in the re-examinations, (2) Patent Owner responses and Requestor comments that had not been loaded to the USPTO Public Pair website, and (3) color copies of materials that are included as black and white copies in the materials from the USPTO Public PAIR website.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 15th day of May, 2009, at San Diego, California.



Jason W. Wolff