

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

BRIGHT RESPONSE, LLC,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 2:07-cv-371-ce
	§	
GOOGLE, INC., et al.,	§	
	§	JURY TRIAL DEMANDED
Defendants.	§	
	§	

ORDER

On this day the Court considered Bright Response, LLC’s (“Bright Response”) Motion To Strike Portions Of Defendants’ Invalidity Expert’s Report And Defendants’ Summary Judgment Briefing And Request For Expedited Briefing. The Court, having considered the Motion, finds that the appropriate remedy under the circumstances, after considering the procedural posture of this case, the nature and extent of the omissions and delayed production of prior art references, and the use of those references—along with new arguments and theories—in the expert report of Defendants’ invalidity expert Dr. Karl Branting, finds that the Motion should be granted.

It is therefore ORDERED that (i) all references identified in the Motion as not disclosed and/or not produced, or late-produced, and (ii) the new combination (Nguyen and Watson), and (iii) theories or arguments identified in Plaintiff’s Motion—including the written description argument on which Dr. Branting relies (paragraphs 276-77)—and on which Defendants rely in their summary judgment briefing—and paragraphs 270-275 (Section IX) of Dr. Branting’s report regarding gradient descent algorithms and logistic regression are hereby struck from Dr. Branting’s expert report and from Defendants’ summary judgment briefing; and (iv) given its reliance on an undisclosed written description theory, Yahoo’s Motion for Summary Judgment of

Invalidity For Failure To Satisfy The Written Description Requirement Of 35 U.S.C. § 112 ¶1
(D.I. 387) is struck.