

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

BRIGHT RESPONSE, LLC  
F/K/A POLARIS IP, LLC

v.

GOOGLE INC., et al.

NO. 2:07CV-371-TJW-CE

**DEFENDANTS' RESPONSE TO BRIGHT RESPONSE'S MOTION IN LIMINE NO. 2  
TO EXCLUDE CERTAIN TESTIMONY OF CHUCK WILLIAMS**

## Introduction

Bright Response seeks to exclude the testimony of Chuck Williams that the EZ Reader application was deployed in the first quarter of 1996. According to Bright Response, Mr. Williams has no personal knowledge of EZ Reader's deployment, and his testimony about the date of deployment is based entirely on a single email.

Bright Response is incorrect. Mr. Williams, who founded and became CEO of the company that developed EZ Reader, has extensive personal knowledge of the application, including its date of deployment. As he testified during his deposition, his knowledge of EZ Reader is based on his own personal recollection, which was refreshed by reviewing documents and emails from the time period in which EZ Reader was developed.

In particular, Mr. Williams' personal knowledge of EZ Reader's deployment date is based on his personal experiences. For example, Mr. Williams was involved in drafting a magazine article in the first quarter of 1996 that referred to EZ Reader's successful deployment. In addition, Mr. Williams recalls Brightware's submission of an article to the Innovative Applications of Artificial Intelligence Conference in the first quarter of 1996, stating that EZ Reader had been successfully deployed. These and other facts establish that Mr. Williams has sufficient personal knowledge to testify regarding the date EZ Reader was deployed.

Bright Response also contends that Mr. Williams' testimony should be excluded because Defendants failed to disclose him. The record shows, however, that it is Bright Response who failed to disclose Mr. Williams. In fact, Bright Response knew about Mr. Williams' unique and extensive personal knowledge for over seven years, and yet failed to disclose it to Defendants. Defendants, in contrast, disclosed Mr. Williams' personal knowledge promptly after learning about it.

## **Factual Background**

### A. Defendants' Discovery of Mr. Williams' Personal Knowledge

On or about May 3, 2010, counsel for Google discovered an article in the March/April 1995 issue of PCAI magazine entitled "Smart Front-Office Applications." (Kennedy Decl. ¶ 2.) The article depicted a hybrid case-based and rule-based system. (*Id.*) The article's author was Chuck Williams, who according to the article was the executive vice-president and chief technical officer of Inference Corporation. (*Id.*)

After tracking down Mr. Williams through Internet research, counsel for Google contacted him on May 10, 2010. (*Id.*) During that conversation, counsel for Google learned that Mr. Williams had personal knowledge of the EZ Reader system, which had been developed by Brightware, a company that Mr. Williams started after leaving Inference. (*Id.*)

Defendants produced the PCAI magazine article to Bright Response on or about May 24, 2010. (*Id.* at ¶ 3.) In its next Rule 26(a) supplemental disclosures, served on June 17, 2010, Google disclosed Mr. Williams to Bright Response. (Kennedy Decl. Ex. H.) Similarly, Yahoo disclosed Mr. Williams in its supplemental initial disclosures, dated July 2, 2010. (*Id.* at Ex. B.)

On July 8, 2010 Bright Response attempted to serve on Mr. Williams a subpoena demanding the production of documents by July 14, as well as a subpoena demanding a deposition on July 15. (Kennedy Decl. Exs. C, D.) Despite the unusually short notice and the fact that Mr. Williams was not personally served with the subpoenas, he complied, producing to Bright Response several thousand emails and documents, and appearing for deposition. (Kennedy Decl. ¶ 4.)

### B. Mr. Williams' Personal Knowledge of the EZ Reader System

Mr. Williams was the co-founder and chief technical officer of Inference Corporation. (Kennedy Decl. Ex. A at 20:7-10.) He was responsible for the development and marketing of

many of the company's products, including ART\*Enterprise, which would later be used as the technological platform for EZ Reader. (*Id.* at 20:11-16, 22:9-15, 36:10-13, 37:1-4, 28:3-12, 30:7-10.)

In 1995, Mr. Williams founded and became CEO of Brightware, which utilized some of Inference's technology to create applications such as EZ Reader. (*Id.* at 20:17-21, 25:8-26:10, 37:1-4.) In his role as CEO, Mr. Williams had extensive personal knowledge of the EZ Reader project. (*Id.* at 38:22-39:1.) Mr. Williams received reports on a wide variety of matters related to EZ Reader "ranging all the way from the business relationship with Chase . . . down to various aspects of the function of the application, details about what it does and, and why it was important to Chase, and down to certain details about the designs and technical function of the application." (*Id.* at 38:12-21.) At his deposition, Mr. Williams testified: "I probably would have had more technical information about EZ Reader than many because Brightware was contemplating constructing a commercial product that did similar things." (*Id.* at 38:23-39:1.)

Mr. Williams was also kept informed of the details regarding EZ Reader's deployment. At his deposition, Mr. Williams confirmed that EZ Reader had been successfully deployed to send responses to customer emails. (*Id.* at 40:10-15.) When asked to identify the basis for his understanding, Mr. Williams answered that he relied on his own recollection, refreshed by various documents:

The basis for the understanding is, A, ***my recollection***; B, there are certain documents that I found, producing information for you, that where I, for example, published an article that states it.

(*Id.* at 40:18-21 (emphasis added).)

Mr. Williams specifically recalls that EZ Reader was deployed no later than the final weekend in March 1996. (Williams Decl. ¶ 6.) His recollection is based on his own experiences. First, Mr. Williams recalls that Brightware submitted an article for publication to

the Innovative Applications of Artificial Intelligence Conference (“IAAI Conference”) entitled “EZ Reader: Embedded AI for Automatic Electronic Mail Interpretation and Routing.” (*Id.*) The article states that “[p]hase I of EZ Reader was deployed in the first quarter of 1996, and handles up to 80% of incoming mail automatically, depending on message content.” (Williams Decl. Ex. A.)

In addition, Mr. Williams recalls publishing an article in the San Francisco Chronicle and Chief Executive magazine referring to the EZ Reader’s deployment. The article, entitled “Artificial Intelligence on the Internet,” states that “Chase Manhattan Bank uses an AI system on the Internet to automatically respond to incoming email questions from customers and prospects.” (Williams Decl. Ex. B.) Mr. Williams recalls that the article, which refers to EZ Reader, was drafted in the first quarter of 1996, and he specifically recalls suggesting in that time period that the Chase example be added to the article. (Williams Decl. ¶ 7.)

During his deposition, Mr. Williams was asked about the specific date when EZ Reader was deployed. He testified: “I have reason to believe it was near the end of March 1996.” (Kennedy Decl. Ex. A at 43:12-13.) Mr. Williams made clear, however, that “it is quite possible it would have been responding to real Chase customer emails before that date. (*Id.* at 50:19-21.) When asked why he believed EZ Reader had been deployed near the end of March 1996, Mr. Williams responded: “It was various emails that were sent to me by people on the project.” (*Id.* at 41:21-25.) Mr. Williams testified about one e-mail in particular—a March 28, 1996 e-mail from Amy Rice, who had worked on the development of EZ Reader. In that email, Ms. Rice stated: “this weekend they are going to turn on the Chase Web site for the first time and everyone is getting frantic. Should be interesting.” (Kennedy Decl. Ex. E.) Mr. Williams

testified that, based on his knowledge of Brightware's business and Ms. Rice's role in the company, her email refers to the final deployment of the EZ Reader application:

There are, there are several aspects about this email that collectively make me convinced that that language refers to EZ Reader. That is one of those aspects, but there are other aspects as well.

It's, it's, it's the document as a whole and my understanding of the Brightware business and the way we did business and when, when and why we would put things in those overview slides and on our website.

I, I understand what the entire email is talking about, I understand Amy's role, and in that context it's clear to me that her reference here is specifically referring to EZ Reader.

....

Q. Can I get your understanding about what the relationship was between the Chase website referred to here and EZ Reader?

MR. SMITH: Object to form.

A. Well, EZ Reader was used to respond to emails pertaining to interactions that their customers would have typically on one or more of their websites or areas of their websites, and so turning on some function on a website would drive traffic into EZ Reader, and turning on EZ Reader itself could be expressed in that kind of way.

In other words, it's a, it's a, it's a -- rather than saying turn on EZ Reader for the Chase website, in the context of EZ Reader one might just say turn on the Chase website.

(83:18-84:5; 84:17-85:6.)

In addition, Mr. Williams testified about a different email from Ms. Rice that refreshed his recollection that EZ Reader was deployed in the first quarter of 1996. That email, dated March 29, 1996, states: "While the [knowledge base] allows EZ Reader to perform with a very high (95-98%) accuracy on ChaseDirect messages, it does not at all guarantee the same performance with messages for other business areas." (Kennedy Decl. Ex. F (emphasis added).) The email further states that "we need to systematically augment the knowledge base with new types of incoming messages from the Chase Web server (plus new responses) and retest the

application for accuracy and quality.” (*Id.* (emphasis added).) Mr. Williams testified that this email also refreshed his recollection about the date of EZ Reader’s deployment:

[T]his Exhibit 2 is referring to expansion of EZ Reader into other areas, and that it says specifically the first deployment of EZ Reader was specifically for Chase Direct, and, therefore, their – that was Chase Direct was not the only function on the Chase website.

(Kennedy Decl. Ex. A at 85:22-86:2.)

Mr. Williams made clear that his recollection about EZ Reader’s deployment was refreshed by “a whole collective set of information,” and that these two communications were not the only ones that refreshed his recollection:

Q. Okay. Referring to the time period before, I guess, what we'll call the production installation event, which, for the sake of argument, was March 30 or March 31, 1996, besides an email from Amy Rice, do you recall any other emails besides that one that related to that coming event?

A. I recall a number of communications regarding various events in the testing leading to that event for several months prior to that.

Q. But none of those other events, besides the one that we've mentioned from Amy Rice, referred to the, an actual production installation event being imminent?

A. No. There are others. I'm sorry. I just, I just remembered them. There are others. Yes, there are, there are other communications.

MR. THOMPSON: Actually, why don't we end now, because we need to change tapes.

(Kennedy Decl. Ex. A at 55:6-21.)

But, after the tape was changed and the parties went back on the record, counsel for Bright Response failed to ask Mr. Williams about the other information that supported his recollection. (*Id.* at 56.)

C. Bright Response's Failure to Disclose Mr. Pridham's 2003 Communications with Mr. Williams

In reviewing the documents that Mr. Williams gathered in response to Bright Response's subpoena, Defendants discovered that Bright Response's counsel, David Pridham, had attempted to retain Mr. Williams as a consultant in February 2003. Mr. Pridham sent an email to Mr. Williams, stating that he wanted to retain Mr. Williams for various purposes, including "[p]roviding historical context to the EZ Reader project and the implementation at Chase Manhattan Bank." (Kennedy Decl. Ex. G.) Mr. Pridham stated that "[t]he fees are certainly negotiable but typically experts receive \$2,500 - \$3,000 a day for time and services (not inclusive of reasonable expenses)." (*Id.*) Mr. Williams declined to assist Mr. Pridham. (*Id.*) In a subsequent email on February 19, 2003, Mr. Pridham again attempted to get Mr. Williams to assist him, stating: "I think you may be the only person who would provide this information." (*Id.*)

Despite Mr. Pridham's substantive communications with Mr. Williams, and Mr. Pridham's stated belief that Mr. Williams was the only person who could provide the information about EZ Reader, Bright Response failed to disclose Mr. Williams in its Rule 26(a) disclosures. Upon learning of these discovery violations, Defendants contacted Bright Response's counsel, who admitted that Mr. Pridham had spoken with Mr. Williams before the commencement of this case. (Perlson Decl. (attached to Dkt. 478) ¶ 3.) Bright Response, however, claimed that Mr. Pridham had determined that Mr. Williams did not have much information and, therefore, "forgot" about him. (*Id.* at ¶ 3.)



## Argument

### **I. DEFENDANTS TIMELY DISCLOSED MR. WILLIAMS TO BRIGHT RESPONSE, WHO HAD KNOWN ABOUT HIS PERSONAL KNOWLEDGE OF EZ READER FOR OVER SEVEN YEARS.**

Plaintiff’s statement that Williams was “late disclosed” by Yahoo! is without merit. It is Plaintiff that failed to timely disclose Williams, despite having been aware of his knowledge for *over seven years*. In fact, as shown by the February 2003 email exchange between Mr. Pridham and Mr. Williams, Bright Response knew that Mr. Williams was “the *only* person who would provide this information,” including the “historical context to the EZ Reader project and the implementation at Chase Manhattan Bank.” (Kennedy Decl. Ex. G.) Nevertheless, Bright Response withheld Mr. Williams’ personal knowledge from the Defendants.

Incredibly, Bright Response now asks the Court to exclude Mr. Williams’ testimony about the date of EZ Reader’s deployment because his recent disclosure by Defendants “requir[ed] a deposition just two weeks out from trial.” (Mot. at 3.) Unlike Bright Response, however, Defendants disclosed Mr. Williams’ personal knowledge, and did so within a reasonable time. Google disclosed Mr. Williams in its Fifth Supplemental Initial Disclosures dated June 17, 2010—shortly after learning of his personal knowledge about EZ Reader. (Kennedy Decl. ¶ 1, Ex. H.) Similarly, Yahoo disclosed Mr. Williams in its supplemental initial disclosures, dated July 2, 2010. (Id. at Ex. B.)

Because Bright Response alone is responsible for the recency of Mr. Williams’ deposition, it cannot now seek to preclude his testimony on that basis.<sup>1</sup>

---

<sup>1</sup> In fact, as explained in Defendants’ motion for sanctions (Dkt. 478), Bright Response should be sanctioned for, among other things, withholding its own counsel’s correspondence with Mr. Williams and for failing to disclose him to Defendants.

## **II. MR. WILLIAMS' TESTIMONY REGARDING THE DATE OF EZ READER'S DEPLOYMENT IS ADMISSIBLE AND SHOULD NOT BE EXCLUDED.**

Mr. Williams has extensive personal knowledge of EZ Reader's development and deployment, and should be allowed to testify to the jury regarding that knowledge. Mr. Williams' knowledge regarding the date of EZ Reader's deployment is not "is based only on an email," as Bright Response asserts. (Mot. at 1.) Rather, it is based on a number of personal experiences that Mr. Williams had regarding the application. In addition to testifying about some of the bases for his personal knowledge, Mr. Williams has executed a declaration, filed with this brief, further demonstrating his personal knowledge regarding EZ Reader's deployment.

### **A. Mr. Williams' Testimony is Based on his Own Personal Knowledge, Which Was Refreshed by Certain Documents.**

Mr. Williams has extensive personal knowledge regarding the development of the EZ Reader application. This knowledge extends back to Mr. Williams' time at Inference Corporation, where he was responsible for developing the ART\*Enterprise platform that was used for EZ Reader's development. (Kennedy Decl. Ex. A at 20:11-16, 22:9-15, 36:10-13, 37:1-4, 28:3-12, 30:7-10.) Throughout the development of EZ Reader, Mr. Williams stayed close to the project, receiving various reports regarding "quite a wide variety of matters," related to the project, including "various aspects of the function of the application, details about what it does and, and why it was important to Chase, and down to certain details about the designs and technical function of the application." (Kennedy Decl. Ex. A at 38:12-21.) Mr. Williams also paid particular attention to the EZ Reader project because "Brightware was contemplating constructing a commercial product that did similar things." (*Id.* at 38:22-39:1.)

It is no surprise, then, that Mr. Williams testified that he recalls the events surrounding EZ Reader's deployment. He stated that his testimony regarding EZ Reader's deployment is

based on “A, *my recollection*; B, there are certain documents I found . . . . So a *combination* of my vague *recollection* and then *reminding* myself by looking at specific things I wrote at around that time. . . .” (*Id.* at 40:18-41:7 (emphasis added).) Similarly, he testified that “[t]here were various emails between the people directly involved on the project and myself that had various references that collectively helped me, you know, *reconstitute some of these old memories.*” (Kennedy Decl. Ex. A at 41:8-25 (emphasis added).)

In his declaration, Mr. Williams confirms that his testimony that EZ Reader was deployed no later than March 1996 “is based on my own personal knowledge of EZ Reader that I acquired as a result of my role of CEO of Brightware.” (Williams Decl. ¶ 6.) As an example of his personal knowledge, Mr. Williams recalls that, shortly after EZ Reader was deployed, he published an article in a San Francisco newspaper and Chief Executive magazine referring to its deployment. (*Id.* at ¶ 7; *see also* Kennedy Decl. Ex. A at 41:11-17.) Mr. Williams located on his computer a draft of that article, in a file dated April 25, 1996—less than one month after the critical date of the ‘947 patent. (Kennedy Decl. ¶ 4.) Mr. Williams recalls that the article was being drafted in the first quarter of 1996, and he specifically recalls suggesting in that time period that the Chase example be added to the article. (Williams Decl. ¶ 6.)

The fact that Mr. Williams has a personal recollection of EZ Reader’s deployment is further confirmed by the fact that Brightware submitted an article for publication to the IAAI entitled “EZ Reader: Embedded AI for Automatic Electronic Mail Interpretation and Routing.” (*Id.*) The article states that “Phase I of EZ Reader was deployed in the first quarter of 1996, and handles up to 80% of incoming mail automatically, depending on message content.” (Williams Decl. Ex. A.)

Thus, Bright Response's assertion that Mr. Williams' knowledge "is based only on an email" (Mot. at 1) is demonstrably wrong. Any one of the facts described above would, by itself, show that Mr. Williams has sufficient knowledge to testify at trial regarding the date of EZ Reader's deployment. Indeed, as Bright Response's counsel stated in 2003, Mr. Williams "may be the only person who would provide this information." (Kennedy Decl. Ex. G.)

B. Mr. Williams' Testimony Should Not be Excluded Pursuant to the Hearsay Rule.

Bright Response also argues that "Mr. Williams may not offer any testimony on the point of EZ Reader's deployment and timing because the source for that knowledge is inadmissible hearsay." (Mot. at 4.) As demonstrated above, and as confirmed in Mr. Williams' declaration, the source of his knowledge is his own experience at Brightware in 1996, not a single email, as Bright Response asserts. Accordingly, his testimony is not hearsay.

C. Mr. Williams' Testimony Should Not Be Excluded for Lack of Foundation.

Bright Response argues that "there is no proper foundation for the emails that would render them admissible." (Mot. at 4.) But, as made clear by the requested relief in the motion *in limine* and the proposed order, Bright Response does not seek the exclusion of Mr. Williams' emails.<sup>2</sup> Rather, Bright Response has only requested that Mr. Williams' testimony be excluded. Accordingly, the question is not whether there is a proper foundation for the emails, but rather whether there is a proper foundation for Mr. Williams' testimony. That question is governed by Federal Rule of Evidence 602, which provides as follows:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal

---

<sup>2</sup> Nor could it. As shown by Mr. Williams' declaration, the documents he produced regarding EZ Reader were created and maintained in the regular course of Bright Response's business and are properly admitted under at least the business records exception to the hearsay rule. In the event that Bright Response moves to exclude Mr. Williams' documents, Defendants reserve their right to further explain why they are admissible.

knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.

(Fed. R. Evid. 602.) For the reasons discussed above, this requirement has been met. Mr. Williams' personal knowledge regarding the date of EZ Reader's deployment is more than sufficient to permit him to testify about that issue at trial.

**Conclusion**

For the foregoing reasons, Bright Response's Motion in Limine No. 2 should be denied.

DATED: July 26, 2010

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
*/s/ David A. Perlson*

---

Charles K. Verhoeven, CA Bar No. 170151

LEAD ATTORNEY

David A. Perlson, CA Bar No. 209502

Amy H. Candido, CA Bar No. 237829

QUINN EMANUEL URQUHART & SULLIVAN, LLP

50 California Street, 22nd Floor

San Francisco, California 94111

Telephone: (415) 875-6600

Facsimile: (415) 875-6700

Jennifer Parker Ainsworth

TX Bar No. 00784720

Wilson, Robertson & Cornelius, P.C.

P.O. Box 7339

Tyler, Texas 75711

Telephone: (903) 509-5000

Facsimile: (903) 509-5092

[jainsworth@wilsonlawfirm.com](mailto:jainsworth@wilsonlawfirm.com)

*Attorneys for Defendant Google Inc. and AOL LLC*

William C. Rooklidge

Email: [rookidgew@howrey.com](mailto:rookidgew@howrey.com)

Bar No. 6238352

Howrey, LLP

4 Park Plaza, Suite 1700

Irvine, CA 92614-2559

Telephone: (949) 721-6900

Jason C White

Howrey LLP - Chicago

321 North Clark Street

