

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.	§	
	§	

**BRIGHT RESPONSE, LLC'S RESPONSE TO DEFENDANTS'
JOINT MOTION IN LIMINE NO. 11 (INDIRECT INFRINGEMENT)**

Plaintiff Bright Response, LLC (“Bright Response”) files this response to Defendants’ Joint Motion in Limine No. 11 (Dkt. No. 447) concerning the indirect infringement theories. This response disputes the relief requested only with regard to Defendant AOL. Defendant AOL cannot be surprised or prejudiced by any assertion of an indirect infringement theory, i.e., active inducement, because by its own responses to requests for admissions AOL has admitted the necessary interaction with its co-defendant Google: “AOL’s search results returned in response to search queries at search.aol.com and AOL’s Search Marketplace are implemented by Google, and AOL lacks sufficient information regarding Google’s implementation of these search results or of AOL Search Marketplace to respond to this request.” Wiley Decl. Ex. A. “Whoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271(b). As inducement can be demonstrated with evidence that the alleged inducer knew of the patent, knowingly induced the infringing acts, and possessed a specific intent to encourage another’s infringement of the patent, the theory is viable as to AOL based on the above-referenced admission. *See DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304 (Fed. Cir. 2006).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that counsel of record who are deemed to have consented to electronic service are being served this 26th day of July, 2010, with a copy of this document via the Court's CM/ECF systems per Local Rule CV-5(a)(3). Any other counsel will be served electronic mail, facsimile, overnight delivery and/or First Class Mail on this date.

\s\ Elizabeth A. Wiley
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