

EXHIBIT X

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

BRIGHT RESPONSE, LLC,)
)
Plaintiff(s),)
) Case No.
vs.)
) 2:07-cv-371-CE
GOOGLE, INC., et al.,)
)
Defendant(s).)
_____)

VIDEOTAPED DEPOSITION OF DR. L. KARL BRANTING

Held at Quinn, Emanuel, Urquhart
50 California Street, Suite 2200
San Francisco, California

Thursday, July 22, 2010
9:02 a.m. - 6:16 p.m.

REPORTED BY: JAMES BEASLEY, CSR No. 12807

<p style="text-align: right;">Page 63</p> <p>1 there's no interactivity, but in fact there is a 2 reference to this alternative mechanism. 3 Q. Okay. Does anything in Paragraph 112 say 4 any of those references, the ART*Enterprise or CBR 10:51 5 Express can be noninteractive? 6 A. The statement that those others can be 7 noninteractive is elsewhere. 8 Q. Dr. Branting, I'm asking you for all of the 9 support in your report for your conclusion -- and I 10:51 10 asked you to be specific, so if it's someplace in 11 your report, then show me, please. 12 A. Okay. So I guess what I'm saying is in 112 13 it doesn't explicitly say that Claim 33 is 14 satisfied, but it states that Allen uses the same 10:52 15 case-based reasoning engine as CBR Express. 16 And elsewhere there's a discussion of that 17 fact that CBR Express has other ways, there's 18 another mechanism for non-interactivity. 19 Q. Okay. I did didn't ask you anything about 10:52 20 Claim 33 just now. 21 A. Okay. Sorry. 22 Q. Okay. So you say elsewhere there's a 23 discussion of the fact that CBR Express is 24 noninteractive, and I'm asking you to point me to 10:53 25 it.</p>	<p style="text-align: right;">Page 65</p> <p>1 together in your report as one document, as the CBR 2 Express manuals, correct? 3 A. That's right. 4 Q. Okay. And is the CBR Express Reference 10:54 5 Manual incorporated by reference explicitly into the 6 User's Guide? 7 A. Well, in my opinion, yes. 8 Q. Okay. Can you show me where? 9 A. Well, there are three different places in 10:55 10 the text. Okay. First on Page 46 in the footnote. 11 And in two other locations; unfortunately, 12 I think I don't have my notes with me as to exactly 13 where it is, so it will take me a minute. I thought 14 it was on Page 10, but I don't see it there. 10:56 15 Anyway, two other places. 16 Q. Do you have your notes with you today? 17 A. Well, I do; they're on my computer, though. 18 Q. Where's your computer? 19 A. It's in the next room. 10:56 20 Q. And what do you have on your computer that 21 would help you answer this question? 22 A. I wrote down the three different places 23 where the User's Guide incorporates -- explicitly 24 refers to the Reference Manual. 10:56 25 Q. And what document is that -- are those</p>
<p style="text-align: right;">Page 64</p> <p>1 A. Oh, okay. 2 Okay. So in Paragraphs 137 and 138, 3 there's a discussion of the manner in which CBR 4 Express can be noninteractive. 10:53 5 Q. Okay. And here you're referring to the CBR 6 Express manuals, correct? 7 A. Right. 8 Q. And you're referring to two manuals 9 together, the CBR Express User's Guide that we 10:53 10 marked as Exhibit 6, together with part of a 11 Reference Manual, correct? 12 A. That's right. 13 (Discussion off the record.) 14 MR. FENSTER: So let me hand you what's 10:54 15 been marked as Branting Exhibit 7. 16 (Exhibit 7 was marked for 17 identification.) 18 BY MR. FENSTER: 19 Q. And this is a -- this is a portion of a CBR 10:54 20 Express Reference Manual, correct? 21 A. Yes, it is. 22 Q. And this Reference Manual is different than 23 the User's Guide of Exhibit 6, correct? 24 A. Yes. 10:54 25 Q. Okay. But nevertheless you refer to these</p>	<p style="text-align: right;">Page 66</p> <p>1 notes in? 2 A. It's just a text document consisting of my 3 notes. 4 MR. FENSTER: I ask for production of that 10:57 5 document. He's clearly relied on it. 6 MR. WHITE: Clearly relied upon it? 7 MR. FENSTER: Yeah. 8 MR. WHITE: We'll consider it. 9 MR. FENSTER: Well, I want it today during 10:57 10 the deposition so that we don't have to ask for 11 another deposition. 12 MR. WHITE: We can talk about it during a 13 break, maybe. 14 THE WITNESS: In any case, there are three 10:57 15 different places where the User's Guide explicitly 16 refers to and incorporates the Reference Manual. 17 BY MR. FENSTER: 18 Q. Okay. And if you go get your computer, 19 you'll be able to find the other two? 10:57 20 A. Uh-huh. 21 MR. FENSTER: Okay. Why don't we take a 22 break and do that. 23 THE VIDEOGRAPHER: Okay. I'm going to end 24 the tape here. This is the end of Tape 1. We're 10:57 25 off the record at 10:57.</p>

<p style="text-align: right;">Page 67</p> <p>1 (Recess taken at 10:57 a.m.)</p> <p>2 THE VIDEOGRAPHER: This is the beginning of</p> <p>3 Tape 2. We're back on the record at 11:04 a.m.</p> <p>4 MR. FENSTER: I'll just state for the</p> <p>11:04 5 record that during the break, which we took to allow</p> <p>6 Mr. -- Dr. Branting to go get his notes to answer</p> <p>7 the question, Mr. White would not let him go get</p> <p>8 the -- get his notes to answer the question unless I</p> <p>9 waived the right to what -- to get what I think</p> <p>11:04 10 we're entitled to, which is the production of that</p> <p>11 document.</p> <p>12 So he refused to have Dr. Branting get</p> <p>13 the -- get his notes, and we've been sitting here</p> <p>14 waiting while he's reading through the -- through</p> <p>11:04 15 the notes -- through the document.</p> <p>16 MR. WHITE: Okay. And so obviously that's</p> <p>17 not exactly what we discussed, as you know.</p> <p>18 So the question is -- you asked him where</p> <p>19 in this exhibit it references another exhibit, and</p> <p>11:05 20 he told you that he found one and he thinks that</p> <p>21 there's two others in those -- in the document</p> <p>22 somewhere.</p> <p>23 He said he has a note somewhere that would</p> <p>24 tell him quickly where those other two references</p> <p>11:05 25 are, but obviously he can also find that answer by</p>	<p style="text-align: right;">Page 69</p> <p>1 okay.</p> <p>2 Q. So you found another reference that you</p> <p>3 think incorporates Exhibit 7; is that right?</p> <p>4 A. Yes, I found two, but for some reason I'm</p> <p>11:06 5 having trouble finding the third.</p> <p>6 Q. Where is the second?</p> <p>7 A. Okay. So the two that I found so far -- so</p> <p>8 there's one on Page 46, Footnote 4. There's one on</p> <p>9 Page 24.</p> <p>11:07 10 Q. Where on Page 24?</p> <p>11 A. The second paragraph.</p> <p>12 Q. Okay. So to be clear, what we're -- what I</p> <p>13 asked you to find is you stated your opinion that</p> <p>14 Exhibit 7, the Reference Manual, is incorporated by</p> <p>11:07 15 reference into the User's Guide, Exhibit 6, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you said that your basis for that was</p> <p>18 three places in the text --</p> <p>19 A. Well, it's not -- that's not the sole</p> <p>11:07 20 basis. There's also the fact that these two</p> <p>21 documents were delivered to people who purchased</p> <p>22 this product. They were delivered together. So</p> <p>23 they were sort of treated as a whole.</p> <p>24 Q. Okay. So -- and that's -- and the portions</p> <p>11:07 25 in the text that you rely on are -- one is on</p>
<p style="text-align: right;">Page 68</p> <p>1 reading the document.</p> <p>2 You've asked to speed up the process by</p> <p>3 having him look at those notes, and I said we're</p> <p>4 happy to do that, so long as you don't use that to</p> <p>11:05 5 bootstrap an argument that now the entire document</p> <p>6 is discoverable because he relied upon it for his</p> <p>7 testimony today.</p> <p>8 He has not relied upon that document for</p> <p>9 his testimony, and I'm not going to let you force</p> <p>11:05 10 him to do that and then demand production of that</p> <p>11 document.</p> <p>12 So the offer still stands that I'll have</p> <p>13 him look up the answer and get you a quick response</p> <p>14 to your question if you agree not to use that as a</p> <p>11:05 15 basis to demand production of that document.</p> <p>16 And it's my understanding that you rejected</p> <p>17 that. If you change your position, let me know, and</p> <p>18 we will be happy to have him look at those one.</p> <p>19 BY MR. FENSTER:</p> <p>11:05 20 Q. So, Dr. Branting, you have been looking</p> <p>21 through Exhibit 6 --</p> <p>22 A. I have, and I found another one.</p> <p>23 You know, I can just do a quick search on</p> <p>24 my computer without -- what's wrong with doing that?</p> <p>11:06 25 Then we wouldn't have to involve the piece of -- oh,</p>	<p style="text-align: right;">Page 70</p> <p>1 Page 24, and specifically the statement that says:</p> <p>2 "There is additional information on</p> <p>3 database initialization available</p> <p>4 in the CBR Express Reference</p> <p>11:08 5 Manual";</p> <p>6 is that right?</p> <p>7 A. That's true.</p> <p>8 Q. Okay. And you understand that to be an</p> <p>9 express incorporation by reference?</p> <p>11:08 10 A. Yes.</p> <p>11 Q. Okay. And on Page 40 -- and the other one</p> <p>12 that you pointed to was Page 46, Footnote 4,</p> <p>13 correct?</p> <p>14 A. Right.</p> <p>11:08 15 Q. And there it says:</p> <p>16 "The CBR Express Reference Manual</p> <p>17 contains a section on how to</p> <p>18 customize this text to include only</p> <p>19 the information of use in your</p> <p>11:08 20 environment,"</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it's your understanding that that is an</p> <p>24 express incorporation by reference; is that right?</p> <p>11:09 25 A. Yes.</p>

<p style="text-align: right;">Page 71</p> <p>1 Q. Okay. And you think there's a third 2 portion that you can't find right now, despite 3 having spent the last 10 minutes looking through 4 Exhibit 6, correct? 11:09 5 MR. WHITE: Object to form. 6 THE WITNESS: That's right. 7 BY MR. FENSTER: 8 Q. And you could find it if you looked at your 9 notes quickly, right? 11:09 10 A. Or if I did a search on my computer. 11 Q. Okay. 12 A. I mean, we can just do -- anyone can search 13 the text of this document and find the third one 14 that's eluding me right this moment. 11:09 15 Q. Okay. So when you refer to the CBR Express 16 manuals in your report, you are referring 17 collectively to both the User's Guide and the 18 reference guide, correct? 19 A. Yes, that's correct. 11:09 20 Q. And that's because it's your belief that 21 they are -- that they constitute a single document 22 because one is incorporated by reference into the 23 other, correct? 24 A. Well, not just that, but also because they 11:10 25 were distributed to purchasers of CBR Express</p>	<p style="text-align: right;">Page 73</p> <p>1 continue looking through this document? 2 MR. FENSTER: I'd like for him to get the 3 answer. 4 So if you can get the answer quickly by 11:11 5 searching the document or by searching your notes, 6 however you want to do it, at -- with advice from 7 your counsel, then I would be appreciative if you 8 would do so. 9 MR. WHITE: All right. We can discuss that 11:11 10 at a break. 11 You don't want him to continue manually 12 reading this document, correct? 13 MR. FENSTER: No. Off the record. 14 THE VIDEOGRAPHER: We're off the record at 11:11 15 11:11 a.m. 16 (Recess taken at 11:11 a.m.) 17 THE VIDEOGRAPHER: We're back on the record 18 at 11:18 a.m. 19 BY MR. FENSTER: 11:18 20 Q. So, Dr. Branting, did you have a chance to 21 search for the third reference that -- in Exhibit 6 22 that you believe incorporates by reference 23 Exhibit 7? 24 A. Yes, I did. It's on Page 7 on the second 11:18 25 paragraph. It states:</p>
<p style="text-align: right;">Page 72</p> <p>1 together and were clearly intended to be used 2 together. 3 MR. WHITE: Dr. Branting has stopped 4 looking for the third reference. Do you want him to 11:10 5 continue? 6 THE WITNESS: Do you want me to keep going? 7 I -- honestly, I could step -- I could do a quick 8 computer search. If it would be helpful, it would 9 not take long. 11:10 10 MR. FENSTER: I would be happy to get the 11 answer to my question, however you want to get it. 12 So if you want to go off the record and go search 13 your computer, that's fine. 14 MR. WHITE: Are you going to demand that, 11:10 15 then, whatever he looks at be produced? 16 THE WITNESS: I'm just going to search the 17 manual again. 18 (Overlapping speakers.) 19 THE WITNESS: Sorry. Excuse me. 11:10 20 MR. FENSTER: If he searches the manual, 21 then that's not going to be a basis for getting his 22 notes. I think I've got a basis for his notes based 23 on his prior -- on his prior testimony, and I'm not 24 waiving that, Jason. 11:10 25 MR. WHITE: Okay. Do you want him to</p>	<p style="text-align: right;">Page 74</p> <p>1 "The software packages required for 2 user modification of CBR Express 3 and its databases are described in 4 the CBR Express Reference Manual." 11:19 5 Q. Okay. And it's your belief that that is an 6 express incorporation by reference of Document -- of 7 Exhibit 7 into Exhibit 6, correct? 8 A. Yes. 9 Q. And how did you find that answer, how did 11:19 10 you find that reference -- 11 (Overlapping speakers.) 12 THE WITNESS: I just searched the PDF file 13 for Reference Manual. 14 BY MR. FENSTER: 11:19 15 Q. Okay. Thank you. So in Paragraph 137, you 16 state your conclusion -- well, let's see. Strike 17 that. 18 So Paragraphs 137, 138, and 139 is what you 19 base your opinion on that the CBR Express manuals 11:20 20 together disclose a noninteractive electronic 21 message, correct? 22 A. Yes. So -- well, those three paragraphs 23 disclose that -- satisfy that element. 24 Q. Okay. Is there any -- in Paragraph 137, 11:20 25 can you point to anything in the CBR Express manual</p>

<p style="text-align: right;">Page 75</p> <p>1 that expressly discloses that the message can be 2 noninteractive? 3 A. In 137? 4 Q. Yes. 11:21 5 A. No. 6 Q. Okay. And there is a figure, a search 7 panel -- 8 A. Uh-huh. 9 Q. -- that's shown in Paragraph -- that's 11:21 10 reproduced in Paragraph 137; do you see that? 11 A. Yes, I do. 12 Q. What is that search panel? 13 A. Well, it's the interface for CBR Express. 14 Q. Okay. And this interface has, in the 11:21 15 middle: "Questions About the Problem"; do you see 16 that? 17 A. I do see that. 18 Q. What are those questions about the problem? 19 A. "Are you having print quality 11:21 20 problems? What does the print 21 quality look like?" 22 Q. Are those questions that are posed to the 23 user? 24 A. Yes, they are. So the interface has a 11:22 25 window in which questions can be posed to the user.</p>	<p style="text-align: right;">Page 77</p> <p>1 distinguish among the possible cases that match the 2 problem being posed. 3 And if the questions have no weight, then 4 that criterion will cause no questions to be posed, 11:23 5 just as -- 6 Q. Does -- 7 A. -- if you had no questions in the system. 8 Q. Does the CBR Express manuals -- strike 9 that. 10 Do the CBR Express manuals expressly state 11 that if the -- strike that. Let me back up. 12 So this is saying that the score for the 13 text can be raised to 100 percent; is that right? 14 A. That's right. 11:24 15 Q. Okay. So can we refer to that as the text 16 score? 17 A. That would be fine. 18 Q. Okay. So does the -- do the CBR Express 19 manuals expressly state that if you raise the text 11:24 20 score to 100, that no questions will be asked to the 21 user? 22 A. Well, the particular sentence that is 23 quoted here doesn't say that, but in the context of 24 the system as a whole, the way the system works, 11:24 25 questions are posed based on their ability to</p>
<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. And you would agree that those 2 questions being posed to the user are an example of 3 an interactive electronic message, correct? 4 A. Well, yes, I would. 11:22 5 Q. Okay. 6 A. So CBR -- yes. 7 Q. Is there anything in Paragraph 138 that you 8 can point to from the CBR Express manuals 9 collectively that expressly discloses that the 11:22 10 message can be noninteractive? 11 A. Well, the quote from the Reference Manual 12 on Page 14 that states that: 13 "One can raise the case score that's 14 attributed to the text to 11:22 15 100 percent," 16 meaning that no questions are asked. 17 Q. Does it mean that no questions are asked or 18 that the questions are ignored? 19 A. Well, it means no questions are asked. 11:23 20 Q. How do you know that? Does it say that 21 expressly? 22 A. It has to do with the nature of 23 question/answering case-based reasoning systems, 24 that the purpose of the question is to -- the 11:23 25 questions are posed based on their ability to</p>	<p style="text-align: right;">Page 78</p> <p>1 distinguish among the cases. 2 So in context it's clear that if questions 3 have no weight, they're not -- they won't be posed. 4 Q. Can you answer my question, please? 11:25 5 MR. WHITE: Object to the form. 6 BY MR. FENSTER: 7 Q. My question is -- 8 A. That as far as I -- as far as I know, the 9 words: "No questions will be asked if the text 11:25 10 weight is 100 percent," don't appear in the 11 Reference Manual. 12 Q. Okay. Do the CBR Express manuals anywhere 13 expressly state that if the text score's raised to 14 100, that no questions will be asked of the user? 11:25 15 MR. WHITE: Object to the form. 16 THE WITNESS: I believe that one of 17 ordinary skill in the art would understand that -- 18 BY MR. FENSTER: 19 Q. That's not my question. 11:25 20 MR. WHITE: You can't interrupt him. 21 You've got to let him finish. 22 THE WITNESS: -- would understand that if 23 questions are ignored, if there's zero weight on -- 24 it would be a very poor design of the system if it 11:26 25 asked a question which had zero significance to the</p>

<p style="text-align: right;">Page 79</p> <p>1 purpose of the system. 2 BY MR. FENSTER: 3 Q. Dr. Branting, I didn't ask you that. Can 4 you answer my -- please try to focus on my 11:26 5 question -- 6 A. Okay. 7 Q. -- and answer my question specifically, 8 okay, and narrowly. 9 A. All right. 11:26 10 Q. Answer what I ask you; will you, please? 11 A. I will. 12 Q. Okay. Do the CBR Express manuals expressly 13 disclose that if the text score is raised to 100, 14 then no questions will be posed to the user? 11:26 15 MR. WHITE: Object to the form. 16 THE WITNESS: Okay. The manuals do not 17 contain those words. 18 BY MR. FENSTER: 19 Q. Do they expressly say it in other words? 11:26 20 A. Well, I think they do. I think that that's 21 what that quote says. Why else -- I mean, that's 22 the ordinary -- a person of ordinary skill would 23 interpret it that way. It wouldn't make it sense to 24 ignore questions that, in fact, it asked. 11:27 25 That would be --</p>	<p style="text-align: right;">Page 81</p> <p>1 on Page 53 of your report? 2 A. Um, yes, I do. 3 Q. Okay. And that is the only portion that 4 you cite from the '664 Patent text itself in support 11:29 5 of your conclusion that the message can be 6 noninteractive, correct? 7 A. As best I can tell now, that's the only 8 quote from the Allen -- from the '664 Patent, that's 9 what you're asking, in support of -- other than the 11:30 10 incorporation by reference, but the only explicit 11 language from the patent itself, I believe, is 12 what's in 113. 13 Q. Okay. And that's at Allen Column 9, Lines 14 19 to 29, correct? 11:30 15 A. Correct. 16 Q. Okay. Now, the portion at Allen Column 9 17 that you quoted in 19 to 29, what that says is that: 18 "If the match quality is high enough, 19 then it will perform -- it may 11:30 20 perform the best case and following 21 steps"; 22 Correct? 23 MR. WHITE: Object to the form. 24 THE WITNESS: That's right. 11:30 25 Sorry.</p>
<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. 2 A. It's just not sensible. 3 Q. Okay. So, in fact, what the CBR Express 4 manuals say is that you are permitted to raise it, 11:27 5 meaning the text score, to 100 percent if you want 6 to ignore questions completely, correct? 7 MR. WHITE: Object to the form. 8 THE WITNESS: Right. And ignore questions 9 means not pose questions. 11:27 10 BY MR. FENSTER: 11 Q. Okay. And what you're quoting there is 12 the -- is from the Reference Manual -- 13 A. That's right. 14 Q. -- not the User Guide, correct? 11:27 15 A. That's right. 16 Q. And did you cite to any disclosure in your 17 report from the User Guide itself, as distinct from 18 the Reference Manual, that says that the message can 19 be noninteractive, expressly? 11:28 20 A. I don't believe so. 21 Q. Now, going back to Paragraph 113 of your 22 report; do you see that? 23 A. Uh-huh. 24 Q. Okay. You cite a portion from the '664 11:29 25 Patent at Columns 9, Lines 19 to 29; do you see that</p>	<p style="text-align: right;">Page 82</p> <p>1 BY MR. FENSTER: 2 Q. It does not expressly say that -- strike 3 that. 4 Now -- so that portion states that if the 11:30 5 match is high enough, then it may go on to do -- 6 perform the best case step in following steps, 7 correct? 8 A. Yes. 9 Q. And if the match is not high enough, then 11:31 10 it will proceed with the interaction with the user, 11 correct? 12 A. Well, yeah, let's see. I don't know if it 13 explicitly -- this particular quote says that, but, 14 yes, that's true. 11:31 15 Q. Okay. 16 A. Provided -- provided there are additional 17 rules. 18 Q. Okay. 19 A. And provided that the user doesn't just 11:31 20 select the top case, which is also an option. 21 Q. The system described in Allen does provide 22 for interaction with the user, at least in some 23 circumstances, correct? 24 A. Yes. 11:31 25 Q. Okay. And what you're saying in</p>