EXHIBIT B

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

**REPORT OF DEFENDANTS' EXPERT
L. KARL BRANTING, PH.D, J.D.
CONCERNING INVALIDITY OF CLAIMS 26, 28, 30, 31, 33, AND 38
OF U.S. PATENT NO. 6,411,947**

I. INTRODUCTION

1. My name is L. Karl Branting. I have been retained by Defendants Google Inc. ("Google"), AOL LLC ("AOL"), and Yahoo! Inc. ("Yahoo") to give my expert opinion as to the validity of the patent claims asserted by Bright Response, LLC, in the above-captioned matter. Below, I set forth the reasons that I believe the patent to be invalid.

2. My analysis covers claims 26,[1] 28, 30-31, 33, and 38 of U.S. Patent No. 6,411,947 (hereinafter "the '947 patent" or "Rice '947"). It is my opinion that each of the asserted claims are invalid at least for anticipation and/or obviousness in light of the prior art.

3. I receive $350 per hour for my work. My compensation is not dependent upon the outcome of this case.

4. The matters referenced in this report are based upon my personal knowledge, and if called upon as a witness I could testify completely as to these matters.

5. The opinions set forth in this report are entirely my own and do not reflect any position by The MITRE Corporation. In expressing these opinions I am not acting on behalf of or as an employee of The MITRE Corporation but solely on my own behalf.

II. QUALIFICATIONS

6. I am Lead Artificial Intelligence Engineer in the Department of Information Discovery and Understanding, at The MITRE Corporation, headquartered in McLean, Virginia.

7. I received a Ph.D. in computer science from the University of Texas at Austin in 1991. In addition, I received a J.D. from Georgetown University Law Center in 1980 and a B.A., magna cum laude in philosophy, from the University of Colorado in 1975.

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[1] While Plaintiff is no longer asserting infringement of claim 26 directly, all of the asserted claims depend from claim 26.

8. I was a professor of computer science at the University of Wyoming from December, 1990, until July, 2001, and a visiting lecturer at North Carolina State University from August 2003 until July 2004.

9. I am an expert in artificial intelligence ("AI") and case-based reasoning ("CBR") My Ph.D. dissertation set forth research showing how cases and rules can be combined to automate legal analysis. See section V.B.5.

10. I designed and supervised the development of CARMA, a case-based reasoning system supported by the USDA and used by ranchers in Western States since 1996. CARMA acts as an automated extension agent to help ranchers determine the most effective and economical response to grasshopper infestations. CARMA is currently available for 10 Western States.

11. I was the North American Co-Chair of The Third International Conference on Case-Based Reasoning, held in Seon, Germany, July 27-30, 1999.

12. My publications on CBR include a book, an edited collection, and approximately 40 refereed journal and conference papers. In addition, I have published refereed papers on the topics of social network analysis, machine learning, automated question-answering systems, name-matching, and computer systems to assist victims of domestic violence. A substantially complete listing of my publications in chronological order can be found in my curriculum vitae, which is attached as Exhibit 2.

13. My academic and research awards include the following: an NSF CAREER Award, 1995-1998, for case-based reasoning research; a 2001 Innovative Application of Artificial Intelligence award for the development of CARMA; selection as a United States Supreme Court Fellow, August 2000-July 2001; and selection as a Fulbright Senior Scholar for

research in Case-Based Reasoning at the University of Kaiserslautern, September 1998-June 1999.

14.   I have reviewed extensive materials relating to this case including the asserted patent, the patent history, claim construction briefs and order, and numerous technical papers and articles discussing the scope and content of the prior art in the timeframe relevant for the asserted patent.   In all cases, I have applied the claim constructions propounded by the Court in its Memorandum Opinion and Order dated June 18, 2010 or constructions agreed by the parties for terms not expressly construed by the Court. The materials relied upon are listed in Exhibit 1.

15.   In this report, where I have cited a reference as prior art, either the reference predates the filing date of the Patent or I have been informed by counsel for Defendants that Defendants will be able to prove at trial that the reference is prior art as to the Patent.

16.   I may present my opinions in the form of a tutorial or otherwise and reserve the right to respond to any evidence Plaintiff Bright Response, LLC ("Bright Response") may present concerning the subject matter of this report.

17.   It may be necessary for me to supplement this report based on material that subsequently comes to light in this case, and I reserve the right to do so. I may be asked to present demonstrative evidence at trial, and I reserve the right to do so.

18.   It may be necessary for me to revise or supplement this report, or submit a supplemental or responsive report, based on any supplemental or responsive report of Bright Response, and I reserve the right to do so.

III.   LEGAL PRINCIPLES

19.   As an expert assisting the Court in determining invalidity, I am obliged to follow existing law. I have therefore been asked to apply the following legal principles to my analysis, and I have done so:

BRANTING EXPERT REPORT ON INVALIDITY   CASE 2:07-cv-371

commercial products profiled include Eclipse, ReMind, CASUEL, and Recall. Watson also lists

a number of deployed academic and deployed applications. (Watson 341-347.) Several

deployed CBR systems also include rule-based reasoning, e.g. CBR-Express, ART*Enterprise,

Eclipse, CASUEL, Recall. (Watson 335-340.)

VI.   THE ASSERTED CLAIMS OF THE '947 PATENT ARE INVALID AS ANTICIPATED

111.   Exhibit 3 of this expert report contains element-by-element claim charts of each

of the asserted claims in this case with references to the prior art, and is fully incorporated in its

entirety to and is part of this report. Further narrative discussion of these references is below.

A.   Allen anticipates claims 26, 28, 30, 31, and 38.

112.   Allen anticipates every asserted claim of the '947 patent except for claim 33. This

is hardly surprising: as the '947 patent discloses, "the rule base 35 (and case base 34) are realized

using the ART*Enterprise® tool." ('947 patent, 5:56-57.) Since ART*Enterprise uses the same

case-based reasoning engine as CBR-Express, and since Allen describes the CBR-Express

system as one of its preferred embodiments, one would expect a great deal of overlap between

the two patents. (Watson 337.) I further spoke with Chuck Williams, one of the principal

developers of ART*Enterprise and CBR-Express, the CTO of Inference, and the founder and

CEO of Brightware. He confirmed that CBR-Express and ART*Enterprise used the same case-

based reasoning engine, which was originally developed for the ART and ART-IM Inference

products.[14]

113.   The '947 patent refers to Allen as "a help-desk application utilizing case based

reasoning" ('947 patent, 2:41-63); of note, it fails to disclose that Allen also contains rule-based

reasoning. The '947 patent identifies only two differences with respect to Allen. The first

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[14]   Telephone conversation on July 2, 2010.

purported difference is that in Allen, but not the '947 patent, "a user must interact with the system to narrow down the results of the case base search to obtain the 'best' case match" and therefore "would not provide satisfactory results if … no user interaction was provided" ('947 patent, 2:53-58). This is factually incorrect: Allen explicitly discloses automatically answering problems in which the sender does not provide any additional information after the message has been received:

> In the description step 201, the application 601 may retrieve a text string description 606 of the customer problem 605. In the case-matching step 202, the application 601 may attempt to match the customer problem 605 to one or more cases 105 in the case base 104 using just the description 606 of the customer problem 605. If the match quality 315 of the case 105 which are matched is high, the application 601 may perform the best-case step 203 and following steps. The action 309 which the application 601 performs is to provide an advice message 607 to the customer service representative 602, who may then provide advice to the customer 604. (Allen 9:19-29.)

114.   The second purported difference is that "the system is not capable of automatically responding to the sender of an electronic message" because "a representative or the user must interactively interpret the set of cases retrieved from the case based to obtain a response to the 'problem'" ('947 patent, 2:58-63). This is not a legitimate distinction: the "sender" of the electronic message in Allen is the customer service representative, not the customer, and Allen responds to the customer service representative as indicated above. Thus, the '947 patent's attempt to distinguish Allen due to who "created" the substance of the message in my opinion is without merit. For example, it is possible that the individual submitting emails to the system discloses by the '947 patent is a secretary or administrative assistant, and also not the "creator" of the substance of the message.

1.   Allen anticipates Claim 26.

115.   **Non-interactive message**: The preamble requires that the method process a "non-interactive electronic message." As detailed in paragraph 113 above, Allen discloses

automatically responding to the electronic message with a solution in the event that it locates a case with a high enough match score. It is only when none of the matches are strong enough that Allen poses additional questions to the user, i.e. requests additional information after the message has been received. Thus, Allen discloses processing a non-interactive electronic message.

116. **Receiving an electronic message**: A user enters facts into the "Search Panel," e.g. "customer requests price adjustment; purchased merchandise day before sale.":
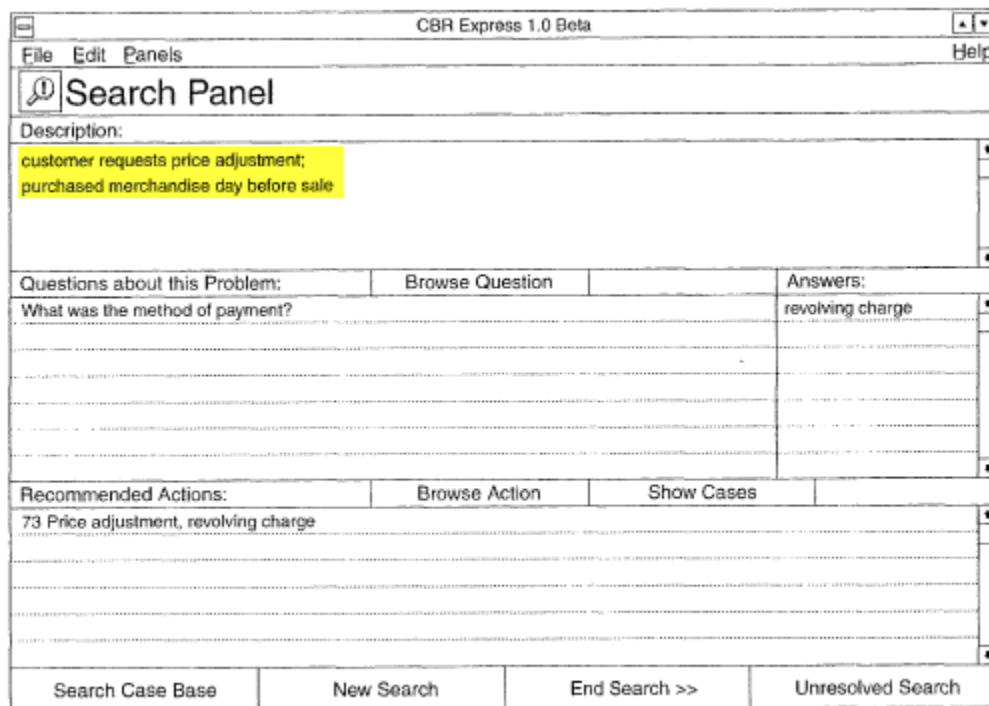

FIG. 6B

(Highlighting added)

Allen then "retrieves a text string description [] of the customer problem." (Allen 9:19-21). Accordingly, Allen receives an electronic message from a source, i.e. the customer service representative.

117. **Interpreting the message**: The second step of claim 26, "interpreting the electronic message using a rule base and case base knowledge engine" is performed by Allen when it "attempts to match the problem to one or more cases in the case base" (Allen 3:66-4:1;

54

EXHIBIT 3

Claim Language from US 6,411,947	Disclosure in Allen
26. A method for automatically processing a non-interactive electronic message using a computer, comprising the steps of:	Allen discloses a method for automatically processing non-interactive electronic messages. For example: "In the description step 201, the application 601 may retrieve a text string description 606 of the customer problem 605. In the case-matching step 202, the application may attempt to match the customer problem 605 to one or more cases 105 in the case base 104 using just the description 606 of the customer problem 605. If the match quality 315 of the case 105 which are matched is high, the application 601 may perform the best-case step 203 and following steps. The action 309 which the application performs is to provide an advice message 607 to the customer service representative 602, who may then provide advice to the customer." (Allen, col. 9, lines 19-29). Accordingly, if the match quality is high, Allen is able to respond to the user's message without any further interaction from the user. Allen further discloses that the method use a computer. For instance, Allen discloses that an "automated processor 110 may execute a software inference engine 111 for reasoning using the case base 104 and rule base 102." (Allen, col. 2, lines 61-63). Allen further discloses that "the processor 110 may comprise an IBM compatible PC configured to be able to execute the MicroSoft Windows 3.0 and DOS 3.1 software, and having a hard disk drive, a mouse, and a VGA display." (Allen, col. 3, lines 49-52).
(a) receiving the electronic	Allen discloses receiving an electronic message from a source, i.e. a description of the facts of a particular problem or situation: