# EXHIBIT A

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

| | | |
|---|---|---|
| **BRIGHT RESPONSE, L.L.C.** | § | **Civil Action No. 2:07-CV-00371-CE** |
| | § | |
| **v.** | § | |
| | § | |
| **GOOGLE, INC., ET AL.** | § | **JURY TRIAL DEMANDED** |

# REBUTTAL EXPERT REPORT OF DR. V. THOMAS RHYNE PURSUANT TO RULE 26(a)(2)(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE (VALIDITY OF THE ASSERTED CLAIMS OF THE '947 PATENT)

predetermined responses back to the source of the telex as required by Step 26(c). As another example, Goodman fails to disclose the classifying method described in Step 28(b1). As yet another example, Goodman does not disclose assigning a score to the stored cases that are compared as required by Step 30(b6).[6] It is my opinion, therefore, that Goodman is a fundamentally different system from the inventions of the '947 patent.

### 2.6 Failure to Apply the Court's Claim Constructions

47. Although Dr. Branting claims to have applied the Court's claim constructions in formulating his opinions (*see* ¶ 14 of his report), upon closer inspection of the Branting Report and its accompanying Exhibit 3, he does not appear to have done so. For example, as discussed in detail below, Dr. Branting fails to show how references such as the Allen patent (referred to as "Allen" hereafter) disclose "an electronic message in which the sender does not provide any additional information after the message has been received." Indeed, as I noted above, at various points in his expert report, Dr. Branting substitutes his own construction, "email," instead of the Court's construction of "non-interactive electronic message," when discussing the Asserted Bright Response Claims. *See, e.g.*, the Branting Report at ¶¶ 23-27, 114, 200, 202, 225, or 228.

48. Also, I have found no mention of the Court's claim constructions anywhere in Exhibit 3.

## 3. DR. BRANTING'S ALLEGATIONS OF ANTICIPATION (SECTION VI)

49. In the "narrative discussions" of § VI of his report, Dr. Branting only addresses five of the seven references he introduced earlier in § V of that report. In these "discussions" he asserts that each of these five references invalidates one or more of claim 26 and the Asserted Bright Response Claims through anticipation. In the following subsections, I address those parts of the Branting Report in concert with the parallel discussions of those same references that are found in Exhibit 3 to that report.

---

[6] The top of page 30 of Goodman discloses the use of a "credit-assignment algorithm that evaluates the correlation between each feature and the variance in case outcome," but Goodman provides no details regarding the actual algorithm being used. There is no disclosure that the computed correlation was a score or, further, whether it used the scoring methods described in Step 30(b6), claim 31, and claim 33.

### 3.1 Allen and Claims 26, 28, 30, 31, and 38[7]

#### 3.1.1 Allen Does Not Anticipate Claim 26

50. In order to anticipate claim 26, among other things, Allen would have to disclose the interpretation of a non-interactive electronic message that is received from a source such as a user's computer. With respect to that requirement, in ¶ 113 of his report Dr. Branting opines that:

> *Allen explicitly discloses automatically answering problems in which the sender does not provide any additional information after the message has been received…*

51. A similar statement is found on page 1 of Exhibit 3:

> *Accordingly, if the match quality is high, Allen is able to respond to the user's message without any further interaction from the user.*

52. While Allen states the possibility of "automatically answering problems in which the sender does not provide any additional information after the message has been received," I note that the disclosure of Allen does not anticipate the "non-interactive electronic message" of claim 26 because, as disclosed, the Allen system *always* provides the capability of having the sender of the message provide additional information after his or her message has been received by that system. Of emphasis here is the requirement that the user "does not provide any additional information" that is found in the Court's construction of the term "non-interactive electronic message," and Allen *does not* disclose a system in which a user does not make that provision. Rather, while Allen does disclose that *some* received messages may not require further user intervention, Allen does not disclose any way that such intervention is prevented. *See* the Allen specification at 9:30-37:[8]

> *However, it may occur that cases 105 which are matched 30 all have low match quality 315. The application 601 may collect a set of question-answer pairs 608 from the cases 105 which are*

---

[7] Dr. Branting does not opine that Allen anticipates claim 33.

[8] On page 5 of Exhibit 3 when discussing Step 26(c), the author of that claim chart stopped the citation at 9:29, thereby omitting the citation regarding the interactive processing of "low" quality messages that is described immediately thereafter as shown above.

> *matched. The application 601 may present a set of questions 609 from the question-answer pairs 608 to the customer service representative 602, who would provide a set of answers 610 to the application 601 (typically by asking the customer 604).*

53. As the above citation makes clear, Allen does not disclose a system wherein the user "does not provide any additional information," and there is no way that the Allen system, in operation, can ever assure that all of the received electronic messages are of sufficiently high match quality that no subsequent interaction with the sender is needed to complete processing of those messages. Allen never suggests such a modification, as well.

54. Simply put, the Allen system is designed to operate interactively with a user.[9] For example, the user interface is described as "an interactive terminal" through which the Allen processor may present information or questions to the user. *See* the Allen patent at 3:23-28. Using that terminal, the Allen system presents a "sequence of questions to the user" and retrieves answers from the user about the problem to be resolved. *See* the Allen patent at 4:4-10 and 4:59-65. In contrast, the '947 patent describes a method for automatically processing non-interactive electronic messages wherein the sender *never* interacts with that method once the electronic message has been sent off for processing and before the predetermined response corresponding to the interpretation of the electronic message is provided.

55. Next, in ¶ 114 of his report, Dr. Branting opines that:

> *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* [sic] *to obtain a response to the 'problem'" ('947 patent, 2:58-63). 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* [sic] *by the '947 patent is a secretary or*

[9] Dr. Branting admits this fact in his ¶ 115 of his report where he opines that "…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." *Also see* Branting Report at ¶ 121.

> *administrative assistant, and also not the "creator" of the substance of the message.*

56. With regard to the last sentence of the above quote from the Branting Report, I find it unclear as to what Dr. Branting's opinion regarding this portion of the '947 patent has to do with whether Allen anticipates the Asserted Bright Response Claims. In any event, Dr. Branting misinterprets the statement from the '947 patent. As I discussed above, Allen fundamentally describes an interactive system that requires the user or customer service representative to interact with the system to identify the "best" case. This interaction includes seeking questions and answers "about the problem and ***cases 105 which were found***." *See* the Allen specification at 4:7-10 (emphasis added). The specification of the '947 patent does not distinguish Allen based on the person entering the information, but rather on the interactive nature of the system.

57. For all these reasons, it is my opinion that Dr. Branting has not provided clear and convincing evidence that Allen discloses the "non-interactive electronic message" of claim 26. Thus, Allen does not anticipate claim 26. In addition, because Allen does not anticipate claim 26, it cannot anticipate claims 28, 30, 31, 33, or 38, all of which depend on claim 26.

### 3.1.2 Allen Does Not Anticipate Claim 28

58. In ¶ 121 of his report Dr. Branting opines that:

> *If the match quality of a case is high, then Allen classifies the message as "automatic" and provides an automatic response to the user, as shown for element 26(c) above. (Id. 9:23-29.) If the match qualities of the cases are all low, Allen classifies the case as requiring assistance from a human operator, and poses a series of questions to the user. (Id., 9:30-41.)*

59. A similar reliance on the processing of both "high" and "low" quality messages is found on pages 6 and 7 of Exhibit 3 where the author of that claim chart discusses Step 28(b1).

60. As the citation to the Branting Report made above shows, Dr. Branting's assertion that Allen discloses the "classification" step of claim 28 is based on the processing of both "high" and "low" quality messages. However, that assertion is in direct opposition to the manner in which he previously asserted that the messages received by the Allen system meet the "non-interactive electronic message" limitation of claim 26 based on processing only "high" quality messages. He cannot have it both ways here, and as I explained above, the Allen system