

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<p>BRIGHT RESPONSE, LLC F/K/A POLARIS IP, LLC Plaintiff</p> <p style="text-align:center">v.</p> <p>GOOGLE INC., et al. Defendants</p>	<p>Case No.: 2:07-cv-371-CE</p> <p>Oral Hearing Requested</p>
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**DEFENDANTS' RESPONSE TO  
BRIGHT RESPONSE, LLC'S MOTION TO EXCLUDE  
EXPERT TESTIMONY FROM DR. L. KARL BRANTING**

Plaintiff's motion to strike or exclude expert testimony from Dr. Karl Branting should be denied because Dr. Branting's opinion regarding the inadequate written description in the '947 patent is fully supported. Defendants' explained the basis for Dr. Branting's opinion in response to Plaintiff's motion in *limine* no. 6. (Dkt. No. 508.)

As shown in his expert report at ¶¶ 23-30, Dr. Branting explained the factual foundation for his opinions and the bases for his opinions regarding the lack of written description in the '947 patent. In particular, Dr. Branting explained his understanding of the '947 patent disclosure that:

23. The '947 patent describes a system designed for automatically processing emails. According to the specification, as businesses go "online" they need to process and respond to an increasing number of emails. Rather than hiring additional employees and/or requiring those employees to work longer hours, the specification details a system for automatically responding to some emails so as to lower the amount of email traffic that employees need to review. ('947 patent, 1:26-59.)

(Sherwin Decl. Ex. 1) (Excerpt of Dr. Branting's Expert Report at ¶ 23.) Based on his review of the '947 patent disclosures, he opines that "one of ordinary skill in the art

would not understand that the specification described in sufficient detail an invention to receive, interpret, and retrieve one or more responses to an Internet search query or an Internet user's click or a web page.” (*Id.* at ¶ 277.)

Further, this Court has noted the importance of analyzing the relevant field of art. (Dkt. No. 481 at 2.) Dr. Branting complied with this requirement by examining many prior art references. (Sherwin Decl. Ex. 1) (Excerpt of Dr. Branting's Expert Report at ¶¶ 43-110.) Therefore, this section of his report is an additional basis to support Dr. Branting conclusion that the '947 patent fails to disclose that “one of ordinary skill in the art would not understand that the specification described in sufficient detail an invention to receive, interpret, and retrieve one or more responses to an Internet search query or an Internet user's click or a web page.” (*Id.* at ¶ 277.)

Finally, Plaintiff's main complaint seems to be that Dr. Branting's discussion is short. That is because this issue is simple and straightforward. If Plaintiff believes that Dr. Branting's conclusions are without merit based on the disclosures in his report, then Plaintiff is free to point that out on cross-examination. It is not a reason, however, to exclude his opinion.

For all of these reasons, Plaintiff's motion to strike or exclude expert testimony from Dr. Karl Branting should be denied.

Dated: July 27, 2010

Respectfully Submitted,

/s/ Jennifer Doan

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on July 27, 2010.

/s/ Jennifer Doan  
Jennifer H. Doan