

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

BRIGHT RESPONSE, LLC

§

vs.

§

CASE NO. 2:07-CV-371-CE

§

§

GOOGLE INC., ET AL.

§

ORDER

Before the court are the plaintiff Bright Response, LLC's ("Bright Response") motions *in limine* (Dkt. Nos. 439, 453, 460); the defendants AOL, LLC's, America Online, Inc.'s (collectively, "AOL"), Google, Inc.'s ("Google"), Yahoo! Inc.'s ("Yahoo") joint motions *in limine* (Dkt. Nos. 440-51, 457)); Google's and AOL's motions *in limine* (Dkt. Nos. 454-55, 462, 464); and Yahoo's motions *in limine* (Dkt. No. 476). The court has reviewed the parties' respective motions in limine and makes the following rulings:

Bright Response's Motions in Limine

1. DENIED.
2. WITHDRAWN.
3. WITHDRAWN.
4. DENIED.
5. DENIED.
6. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.
7. GRANTED as agreed.
8. GRANTED as agreed.
9. GRANTED as agreed.
10. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.

11. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.
12. DENIED.
13. WITHDRAWN.
14. DENIED.
15. GRANTED. The defendants may not state that a particular product or service was formerly accused of infringement but now is no longer accused of infringement. The defendants may explain, however, that particular products or services are not accused of infringement.
16. GRANTED as agreed.
17. GRANTED.
18. DENIED.
19. GRANTED.
20. GRANTED.
21. GRANTED in part. The defendants may inform the jury that the PTO and its examiners have limited time to examine applications, but the defendants may not speculate about the time spent reviewing the '947 patent's application or discuss the average time the PTO spends reviewing patent applications. Further, the parties may not state or imply the PTO examiners were incompetent. But the defendants may prove that the examiners failed to properly apply prior art to claims and may explain that jury is permitted to decide questions of validity even if the examiners had the same art before them.
22. GRANTED as agreed as to "patent trolls," "pirates," "playing the lawsuit lottery," and "corporate shell game." Otherwise, this motion is DENIED.
23. GRANTED.

24. GRANTED.
25. GRANTED.
26. GRANTED.
27. GRANTED.
28. GRANTED.
29. GRANTED.
30. GRANTED.
31. GRANTED.
32. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.
33. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.

Defendants' Joint Motions *in Limine*

1. DENIED.
2. DENIED.
3. DENIED.
4. DENIED.
5. GRANTED.
6. DENIED.
7. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.
8. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.
9. DENIED.
10. DENIED.
11. GRANTED as agreed.

12. GRANTED as agreed.
13. DENIED.

Google's and AOL's Motions *in Limine*

1. GRANTED. The plaintiff may not use confidential Yahoo license agreements for computation of damages against Google.
2. GRANTED as to the overall size and revenue of the defendants.
3. GRANTED as to conduct during discovery. This motion *in limine* applies to all parties.
4. DENIED with respect to the expert damage analysis in *Function Media v. Google*; the plaintiff may use the royalty calculation from the Stanford-Google agreement. Otherwise, the motion is GRANTED.

Yahoo's Motions *in Limine*

1. GRANTED as to the overall size and revenue of the defendants.
2. GRANTED. The plaintiff may not use confidential Google license agreements for computation of damages against Yahoo.
3. CARRIED. The court will rule on this motion *in limine* prior to the start of evidence.
4. GRANTED.
5. GRANTED as agreed.

SIGNED this 30th day of July, 2010.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE