

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

**DEFENDANTS' REQUEST FOR RELIEF**

During the August 2, 2010 pretrial motion hearing, the Court stated that it would consider appropriate requests to remedy the prejudice suffered by Google, including jury instructions. (Tr. at 6.) In their Motion for Discovery Sanctions, Defendants demonstrated that they have been prejudiced by Bright Response's discovery violations regarding the EZ Reader prior art, including:

1. failing to produce its 2003 communications with Chuck Williams regarding EZ Reader;
  2. failing to disclose Mr. Williams as a person having knowledge of key issues in this case, including the deployment of EZ Reader;
  3. failing to produce a 2004 declaration of Anthony Angotti regarding EZ Reader until the day Plaintiff's invalidity summary judgment opposition brief was due;
  4. selective production of e-mail correspondence of Amy Rice regarding EZ Reader;
- and

5. failing to prepare its 30(b)(6) designee regarding topics related to EZ Reader.<sup>1</sup>

(Dkt. No. 478.)

Defendants respectfully submit the following to cure such prejudice:

an instruction to the jury that Bright Response failed to produce to Defendants two declarations of Anthony Angotti, emails of Amy Rice, and potentially other documents in the possession of counsel of Bright Response's affiliate, and that the jury can infer that such documents support that EZ Reader was in public use prior to the April 3, 1996 critical date of the '947 patent.

The requested relief is directly tied to Bright Response's discovery violations, each of which involved key witnesses and their knowledge or documents regarding the EZ Reader system.

### **Conclusion**

For the foregoing reasons, Defendants' Request for Relief should be granted.

DATED: August 2, 2010

Respectfully submitted,

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<sup>1</sup> As discussed in Google's Motion to Continue, Plaintiff still has failed to confirm it has produced non-privileged documents from Angotti, Rice, or Latham and Watkins regarding the EZ Reader.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served today with a copy of this document via the Court’s ECF system per Local Rule CV-5(a)(3), as well as by electronic mail. Any other counsel of record will be served via electronic mail, facsimile transmission and/or first class mail on today’s date.

By                   /s/ Todd Kennedy                    
   Todd Kennedy