

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

BRIGHT RESPONSE, LLC

vs.

GOOGLE INC., ET AL.

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

ORDER

Pending before the court is the defendants Google, Inc.'s and Yahoo! Inc.'s motion to exclude testimony and opinions of Dr. V. Thomas Rhyne (Dkt. No. 525). The motion to exclude is GRANTED in part and DENIED in part.

The court agrees with the defendants regarding the order of steps in claim 28: step (b1) must occur before step(c). Thus, Dr. Rhyne is permitted to offer infringement opinions that do not contradict claim 28's order of steps. The court also grants the request to exclude testimony that claim 33 is satisfied without performing a dividing step. The court grants the defendants' motion to exclude Dr. Rhyne's opinion regarding the public use of the EZ Reader project. Finally, Dr. Rhyne may not testify that obviousness and lack of written description are mutually exclusive. The balance of the motion to exclude is DENIED.

SIGNED this 3rd day of August, 2010.


 CHARLES EVERINGHAM IV
 UNITED STATES MAGISTRATE JUDGE