

EXHIBIT H

quinn emanuel trial lawyers | san francisco

50 California Street, 22nd Floor, San Francisco, California 94111 | TEL. (415) 875-6600 FAX: (415) 875-6700

February 19, 2009

VIA ELECTRONIC MAIL

Christin Cho
Dovel & Luner LLP
201 Santa Monica Boulevard, Suite 600
Santa Monica, CA 90401

Re: Performance Pricing, Inc. v. Google Inc. et al.

Dear Christin:

I write regarding Plaintiff's contention discovery in the above referenced matter.

We have recently become aware of the attached Order in *Jacobs Chuck Mfg. Co. v. Shandong Weida Mach., et al.*, Civil Action No. 2:05-CV-185 (E.D. Tex. 2006). In that case, a defendant moved to compel plaintiffs to respond to a contention interrogatory seeking identification of the elements of the asserted claims that plaintiffs contended were not found in the prior art references identified by defendants, and including "the basis and all reasons why Plaintiffs contend such element(s) are not present." *Id.* at 1.

Defendant filed a motion to compel on June 6, 2006, over five months before the scheduled claim construction hearing. *See* Docket Nos. 41, 67. Judge Ward agreed with the plaintiff "that the interrogatory is premature, and for that reason" denied the motion to compel. *Jacobs Chuck* at 1. Judge Ward found that "if the court required the plaintiffs to answer such an interrogatory at this stage of the case, the court would run the risk of requiring information protected by the attorney client privilege and work product doctrine." *Id.* at 1-2. The Court further held that a response to this interrogatory at this stage in the case "would require the disclosure of the attorneys' evaluation of the cited prior art, in light of several possible claim constructions." *Id.* at 2. Judge Ward also held that for the same reason it is appropriate to defer expert opinions

quinn emanuel urquhart oliver & hedges, llp

LOS ANGELES | 865 South Figueroa Street, 10th Floor, Los Angeles, CA 90017 | TEL (213) 443-3000 FAX (213) 443-3100
NEW YORK | 51 Madison Avenue, 22nd Floor, New York, NY 10010 | TEL (212) 849-7000 FAX (212) 849-7100
SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, CA 94065 | TEL (650) 801-5000 FAX (650) 801-5100
TOKYO | Akasaka Twin Tower Main Building, 6th Floor, 17-22 Akasaka 2-Chome, Minato-ku. 107-0052 | TEL +81 3 5561-1711 FAX +81 3 5561-1712
LONDON | Ground Floor, 90 Long Acre, London England | TEL +44 (0) 20-7716-5866 FAX +44 (0) 20-7716-5867
51307/28005071

until after the issuance of the claim construction, the “[d]eferral of the obligation to answer this type of contention interrogatory is also appropriate.” *Id.* The Court made clear that this ruling would apply equally to a Plaintiff seeking early contention discovery. Specifically, Judge Ward stated that he saw:

no reason why this holding would not apply equally to the reverse situation- an interrogatory served by plaintiff early on in the case asking a defendant to identify all of the limitations of an asserted claim that the defendant contends are not found in an asserted product.

Id. at 2 n.1.

The Order in *Jacobs Chuck* confirms what has been Google’s position all along--that it is not required provide a response to Plaintiff’s contention discovery at this time because these demands are premature under the schedule set by the Docket Control order in this case. This reasoning would apply equally to Plaintiff’s demand that Google supplement its response to Plaintiff’s Interrogatory No. 1 and Plaintiff’s demand for a 30(b)(6) witness regarding Google’s non-infringement contentions.

The only case that Plaintiff has cited in support of its view that supplementation is required now is *MyMail Ltd. v. America Online, Inc. et al.*, Case No. 6:04-cv-189 (E.D. Tex. 2004). However, it is clear that *Jacobs Chuck*, not *MyMail*, addresses the issue of timing of the contention discovery at issue here squarely. Accordingly, if you continue to believe that you are entitled to this discovery now, please explain why given the order in *Jacobs Chuck*. Especially in light of the issues regarding what we view to be the lack of clarity regarding Plaintiff’s position expressed in my February 17 letter, we think it appropriate to get Plaintiff’s position in advance of providing any supplementation to Plaintiff’s Interrogatory No. 1.

As always, we remain willing to meet and confer to resolve any discovery issues, and hope that you similarly remain willing to work together on these issues in a timely and efficient manner. If you believe that a live discussion would be helpful, we are available to do so.

Cordially,

/s/ Emily C. O’Brien

Emily C. O’Brien
51307/2800507.1