


# EXHIBIT H

Issued by the		
UNITED STATES DISTRICT COURT		
Northern District of Texas		
BRIGHT RESPONSE, LLC		SUBPOENA IN A CIVIL CASE
V.		Case Number: <sup>1</sup> 2:07-cv-00371-CE
GOOGLE, INC., ET AL.		U.S. Dist Ct. E.D. Texas
TO:	Johanna Shelton c/o David Perlson, Qunn Emmanuel, 50 California St., Ste. 2200 San Francisco, CA 94111	
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.		
PLACE OF TESTIMONY		COURTROOM
		DATE AND TIME
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.		
PLACE OF DEPOSITION		DATE AND TIME
X	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):	
	See Exhibit A, which is incorporated by reference.	
PLACE		DATE AND TIME
The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007		9/4/09 9:00 am
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.		
PREMISES		DATE AND TIME
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).		
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)		DATE
 , Attorney for Plaintiff, Bright Response, LLC		8/12/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER		
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035		
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)		
<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.		

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google.” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/NXN/nXn” “Plaintiff” or “NXN” or “nXn” means nXn Tech, LLC and Its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
4. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
5. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
6. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
7. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
8. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
9. Number. The use of the singular form of any word includes the plural and vice versa.
10. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
11. “’947 Patent” means U.S. Patent No. 6,411,947.
12. “Patent-in-Suit” means the ’947 Patent.

13. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ‘947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

14. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

15. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

16. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

17. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

18. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

19. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by you in your lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.

7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon


Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.



<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> Northern District of Texas				
BRIGHT RESPONSE, LLC			<b>SUBPOENA IN A CIVIL CASE</b>	
V.			Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.			U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	Pablo Chavez c/o David Perlson, Qunn Emmanuel, 50 California St., Ste. 2200 San Francisco, CA 94111			
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.				
PLACE OF TESTIMONY			COURTROOM	
			DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.				
PLACE OF DEPOSITION			DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):			
	See Exhibit A, which is incorporated by reference.			
PLACE			DATE AND TIME	
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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)				DATE
 , Attorney for Plaintiff, Bright Response, LLC				8/12/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER				
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035				
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)				

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

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(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

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to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

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(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google.” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/NXN/nXn” “Plaintiff” or “NXN” or “nXn” means nXn Tech, LLC and Its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
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6. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
7. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
8. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
9. Number. The use of the singular form of any word includes the plural and vice versa.
10. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
11. “’947 Patent” means U.S. Patent No. 6,411,947.
12. “Patent-in-Suit” means the ’947 Patent.

13. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ‘947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

14. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

15. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

16. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

17. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

18. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

19. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by you in your lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.


7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon

Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> Northern District of Texas				
BRIGHT RESPONSE, LLC			<b>SUBPOENA IN A CIVIL CASE</b>	
V.			Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.			U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	Richard Sutherland Whitt c/o David Perlson, Qunn Emmanuel, 50 California St., Ste. 2200 San Francisco, CA 94111			
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.				
PLACE OF TESTIMONY			COURTROOM	
			DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.				
PLACE OF DEPOSITION			DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):			
	See Exhibit A, which is incorporated by reference.			
PLACE			DATE AND TIME	
The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007			9/4/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.				
PREMISES			DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).				
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)				DATE
 , Attorney for Plaintiff, Bright Response, LLC				8/12/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER				
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035				
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)				

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google.” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/NXN/nXn” “Plaintiff” or “NXN” or “nXn” means nXn Tech, LLC and Its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
4. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
5. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
6. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
7. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
8. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
9. Number. The use of the singular form of any word includes the plural and vice versa.
10. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
11. “’947 Patent” means U.S. Patent No. 6,411,947.
12. “Patent-in-Suit” means the ’947 Patent.

13. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ‘947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

14. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

15. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

16. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

17. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

18. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

19. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by you in your lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.


7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon

Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

Issued by the		
UNITED STATES DISTRICT COURT		
Northern District of Texas		
BRIGHT RESPONSE, LLC		SUBPOENA IN A CIVIL CASE
V.		Case Number: <sup>1</sup> 2:07-cv-00371-CE
GOOGLE, INC., ET AL.		U.S. Dist Ct. E.D. Texas
TO:	Rob Tai c/o David Perlson, Qunn Emmanuel, 50 California St., Ste. 2200 San Francisco, CA 94111	
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.		
PLACE OF TESTIMONY		COURTROOM
		DATE AND TIME
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.		
PLACE OF DEPOSITION		DATE AND TIME
X	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):	
	See Exhibit A, which is incorporated by reference.	
PLACE		DATE AND TIME
The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007		9/4/09 9:00 am
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.		
PREMISES		DATE AND TIME
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).		
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)		DATE
 , Attorney for Plaintiff, Bright Response, LLC		8/12/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER		
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035		
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)		
<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.		

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			



(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google.” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/NXN/nXn” “Plaintiff” or “NXN” or “nXn” means nXn Tech, LLC and Its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
4. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
5. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
6. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
7. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
8. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
9. Number. The use of the singular form of any word includes the plural and vice versa.
10. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
11. “’947 Patent” means U.S. Patent No. 6,411,947.
12. “Patent-in-Suit” means the ’947 Patent.

13. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ‘947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

14. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

15. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

16. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

17. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

18. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

19. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by you in your lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.


7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon

Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> Northern District of Texas				
BRIGHT RESPONSE, LLC			<b>SUBPOENA IN A CIVIL CASE</b>	
V.			Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.			U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	Alan Davidson c/o David Perlson, Qunn Emmanuel, 50 California St., Ste. 2200 San Francisco, CA 94111			
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.				
PLACE OF TESTIMONY			COURTROOM	
			DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.				
PLACE OF DEPOSITION			DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):			
	See Exhibit A, which is incorporated by reference.			
PLACE			DATE AND TIME	
The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007			9/4/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.				
PREMISES			DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).				
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)				DATE
 , Attorney for Plaintiff, Bright Response, LLC				8/12/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER				
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035				
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)				

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).



## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google.” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/NXN/nXn” “Plaintiff” or “NXN” or “nXn” means nXn Tech, LLC and Its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
4. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
5. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
6. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
7. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
8. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
9. Number. The use of the singular form of any word includes the plural and vice versa.
10. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
11. “’947 Patent” means U.S. Patent No. 6,411,947.
12. “Patent-in-Suit” means the ’947 Patent.

13. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ‘947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

14. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

15. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

16. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

17. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

18. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

19. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by you in your lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.


7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon

Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> Northern District of Texas				
BRIGHT RESPONSE, LLC			<b>SUBPOENA IN A CIVIL CASE</b>	
V.			Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.			U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	Harry Wingo c/o David Perlson, Qunn Emmanuel, 50 California St., Ste. 2200 San Francisco, CA 94111			
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.				
PLACE OF TESTIMONY			COURTROOM	
			DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.				
PLACE OF DEPOSITION			DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):			
	See Exhibit A, which is incorporated by reference.			
PLACE			DATE AND TIME	
The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007			9/4/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.				
PREMISES			DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).				
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)				DATE
 , Attorney for Plaintiff, Bright Response, LLC				8/12/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER				
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035				
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)				

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google.” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/NXN/nXn” “Plaintiff” or “NXN” or “nXn” means nXn Tech, LLC and Its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
4. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
5. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
6. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
7. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
8. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
9. Number. The use of the singular form of any word includes the plural and vice versa.
10. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
11. “’947 Patent” means U.S. Patent No. 6,411,947.
12. “Patent-in-Suit” means the ’947 Patent.



13. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ‘947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

14. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

15. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

16. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

17. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

18. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

19. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by you in your lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.


7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon

Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> For the District of Columbia			
BRIGHT RESPONSE, LLC		<b>SUBPOENA IN A CIVIL CASE</b>	
V.		Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.		U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	Dutko Worldwide 412 First Street, SE, Suite 100 Washington, DC 20003		
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.			
PLACE OF TESTIMONY		COURTROOM	
		DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.			
PLACE OF DEPOSITION		DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):		
	See Exhibit A, which is incorporated by reference.		
PLACE		DATE AND TIME	
Oleander Reporting, 1522 K Street, NW, Suite 720, Washington, DC 20005		9/11/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.			
PREMISES		DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).			
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)			DATE
 , Attorney for Plaintiff, Bright Response, LLC			8/17/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER			
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035			
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)			

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/Bright Response, LLC/Bright Response” “Plaintiff” or “Bright Response” or “BR” means Bright Response, LLC and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “You/Dutko Worldwide/Dutko” “You” or “Dutko Worldwide” or “Dutko” means Dutko Worldwide and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
4. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
5. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
6. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
7. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
8. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
9. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
10. Number. The use of the singular form of any word includes the plural and vice versa.
11. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

12. “’947 Patent” means U.S. Patent No. 6,411,947.

13. “Patent-in-Suit” means the ’947 Patent.

14. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ’947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

15. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

16. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

17. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

18. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

19. If you object to any part of a request and refuse to answer that part, state your



objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

20. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

21. “Google Lobbyists” means all Dutko Worldwide personnel participating in lobbying efforts on behalf of Google, Inc. since April 2, 1992, including, but not limited to Kim Bayliss, Roger Fleming, Louis Lehrman, Steve Perry, and Andy Scott Wright.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by Google Lobbyists in lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.


6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.

7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> For the District of Columbia				
BRIGHT RESPONSE, LLC			<b>SUBPOENA IN A CIVIL CASE</b>	
V.			Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.			U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	Franklin Square Group 900 7 <sup>th</sup> Street NW, Suite 750 Washington, DC 20001			
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.				
PLACE OF TESTIMONY			COURTROOM	
			DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.				
PLACE OF DEPOSITION			DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):			
	See Exhibit A, which is incorporated by reference.			
PLACE			DATE AND TIME	
Oleander Reporting, 1522 K Street, NW, Suite 720, Washington, DC 20005			9/11/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.				
PREMISES			DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).				
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)				DATE
 , Attorney for Plaintiff, Bright Response, LLC				8/17/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER				
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035				
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)				

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. ““Plaintiff/Bright Response, LLC/Bright Response” “Plaintiff” or “Bright Response” or “BR” means Bright Response, LLC and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “You/Franklin Square Group/Franklin Square” “You” or “Franklin Square Group” or “Franklin Square” means Franklin Square Group and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
4. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
5. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
6. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
7. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
8. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
9. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
10. Number. The use of the singular form of any word includes the plural and vice versa.
11. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether

through the ownership of voting securities, by contract, or otherwise.

12. “’947 Patent” means U.S. Patent No. 6,411,947.

13. “Patent-in-Suit” means the ’947 Patent.

14. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ’947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

15. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

16. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

17. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

18. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

19. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

20. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

21. “Google Lobbyists” means all Franklin Square Group personnel participating in lobbying efforts on behalf of Google, Inc. since April 2, 1992, including, but not limited to Josh, Ackil, Kara Calvert and Matthew Tanielian.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by Google Lobbyists in lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.




6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.

7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> For the District of Columbia				
BRIGHT RESPONSE, LLC			<b>SUBPOENA IN A CIVIL CASE</b>	
V.			Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.			U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	King & Spalding 1700 Pennsylvania Avenue, NW, Suite 200 Washington, D.C. 20006-4706			
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.				
PLACE OF TESTIMONY			COURTROOM	
			DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.				
PLACE OF DEPOSITION			DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):			
	See Exhibit A, which is incorporated by reference.			
PLACE			DATE AND TIME	
Oleander Reporting, 1522 K Street, NW, Suite 720, Washington, DC 20005			9/11/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.				
PREMISES			DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).				
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)				DATE
 , Attorney for Plaintiff, Bright Response, LLC				8/17/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER				
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035				
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)				

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/Bright Response, LLC/Bright Response” “Plaintiff” or “Bright Response” or “BR” means Bright Response, LLC and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “You/King & Spalding” “You” or “King & Spalding” means King & Spalding and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
4. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
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7. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
8. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
9. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
10. Number. The use of the singular form of any word includes the plural and vice versa.
11. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

12. “’947 Patent” means U.S. Patent No. 6,411,947.
13. “Patent-in-Suit” means the ’947 Patent.
14. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ’947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.
15. “Identify,” when used with reference to:
  - (a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;
  - (b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;
  - (c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and
  - (d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.
16. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.
17. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.
18. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.
19. If you object to any part of a request and refuse to answer that part, state your

objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

20. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

21. “Google Lobbyists” means all King & Spalding personnel participating in lobbying efforts on behalf of Google, Inc. since April 2, 1992, including, but not limited to Daniel Coats, Archibald Galloway, Claudia Hrvatin, Allison Kassir, Connie Mack, Jason Mckitrick, Viraj Mirani, Thomas Spulak, William Talmadge and Andrew Woods.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by Google Lobbyists in lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.


7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.



<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> For the District of Columbia			
BRIGHT RESPONSE, LLC		<b>SUBPOENA IN A CIVIL CASE</b>	
V.		Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.		U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	McBee Strategic Consulting 601 Pennsylvania Avenue NW Suite 800 – North Building Washington, DC 20004		
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.			
PLACE OF TESTIMONY		COURTROOM	
		DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.			
PLACE OF DEPOSITION		DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):		
	See Exhibit A, which is incorporated by reference.		
PLACE		DATE AND TIME	
Oleander Reporting, 1522 K Street, NW, Suite 720, Washington, DC 20005		9/11/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.			
PREMISES		DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).			
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)			DATE
 , Attorney for Plaintiff, Bright Response, LLC			8/17/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER			
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035			
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)			

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. ““Plaintiff/Bright Response, LLC/Bright Response” “Plaintiff” or “Bright Response” or “BR” means Bright Response, LLC and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “You/McBee Strategic Consulting/McBee” “You” or “McBee Strategic Consulting” or “McBee” means McBee Strategic Consulting and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
4. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
5. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
6. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
7. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
8. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
9. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
10. Number. The use of the singular form of any word includes the plural and vice versa.
11. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether

through the ownership of voting securities, by contract, or otherwise.

12. “’947 Patent” means U.S. Patent No. 6,411,947.

13. “Patent-in-Suit” means the ’947 Patent.

14. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ’947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

15. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

16. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

17. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

18. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

19. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

20. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

21. “Google Lobbyists” means all McBee Strategic Consulting personnel participating in lobbying efforts on behalf of Google, Inc. since April 2, 1992, including, but not limited to Angela Becker-Dippmann, Robert Chamberlin, Robert Hobart, Jeff Markey, Steve McBee, Michael Sheehy, Ashley Slater and Samuel Whitehorn.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by Google Lobbyists in lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.


6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.

7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> For the District of Columbia			
BRIGHT RESPONSE, LLC		<b>SUBPOENA IN A CIVIL CASE</b>	
V.		Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.		U.S. Dist Ct. E.D. Texas	
TO:	Podesta Group 1001 G Street, NW Suite 900 East Washington, DC 20001		
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.			
PLACE OF TESTIMONY		COURTROOM	
		DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.			
PLACE OF DEPOSITION		DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):		
	See Exhibit A, which is incorporated by reference.		
PLACE		DATE AND TIME	
Oleander Reporting, 1522 K Street, NW, Suite 720, Washington, DC 20005		9/11/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.			
PREMISES		DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).			
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)			DATE
 , Attorney for Plaintiff, Bright Response, LLC			8/17/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER			
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035			
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)			

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/Bright Response, LLC/Bright Response” “Plaintiff” or “Bright Response” or “BR” means Bright Response, LLC and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “You/Podesta Group/Podesta” “You” or “Podesta Group” or “Podesta” means Podesta Group and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
4. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
5. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
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7. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
8. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
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11. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

12. “’947 Patent” means U.S. Patent No. 6,411,947.

13. “Patent-in-Suit” means the ’947 Patent.

14. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ’947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

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(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

16. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

17. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

18. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

19. If you object to any part of a request and refuse to answer that part, state your

objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

20. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

21. “Google Lobbyists” means all Podesta Group personnel participating in lobbying efforts on behalf of Google, Inc. since April 2, 1992, including, but not limited to Daniele Baierlein, Paul Brathwaite, Sharon Cohen, Kimberley Fritts, Randall Gerard, Elizabeth Inadomi, Claudia James, Anthony Podesta, Walter Pryor, Ed Rothschild, John Scofield, Tom Sparkman, Michelle Tessier, Donni Turner, and Nicole Young.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

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6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.

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9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

Issued by the		
UNITED STATES DISTRICT COURT		
For the District of Columbia		
BRIGHT RESPONSE, LLC		SUBPOENA IN A CIVIL CASE
V.		Case Number: <sup>1</sup> 2:07-cv-00371-CE
GOOGLE, INC., ET AL.		U.S. Dist Ct. E.D. Texas
TO:	Van Ness Feldman 1050 Thomas Jefferson Street, NW 7 <sup>th</sup> Floor Washington, DC 20007	
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.		
PLACE OF TESTIMONY		COURTROOM
		DATE AND TIME
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.		
PLACE OF DEPOSITION		DATE AND TIME
X	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):	
	See Exhibit A, which is incorporated by reference.	
PLACE		DATE AND TIME
Oleander Reporting, 1522 K Street, NW, Suite 720, Washington, DC 20005		9/11/09 9:00 am
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.		
PREMISES		DATE AND TIME
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).		
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)		DATE
 , Attorney for Plaintiff, Bright Response, LLC		8/17/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER		
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035		
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)		
<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.		

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			



(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/Bright Response, LLC/Bright Response” “Plaintiff” or “Bright Response” or “BR” means Bright Response, LLC and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “You/Van Ness Feldman/Van Ness” “You” or “Van Ness Feldman” or “Van Ness” means Van Ness Feldman and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
4. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
5. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
6. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
7. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
8. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
9. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
10. Number. The use of the singular form of any word includes the plural and vice versa.
11. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether

through the ownership of voting securities, by contract, or otherwise.

12. “’947 Patent” means U.S. Patent No. 6,411,947.

13. “Patent-in-Suit” means the ’947 Patent.

14. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ’947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

15. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

16. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

17. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

18. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

19. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

20. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

21. “Google Lobbyists” means all Van Ness Feldman personnel participating in lobbying efforts on behalf of Google, Inc. since April 2, 1992, including, but not limited to Shelley Fidler and Tracy Nagelbush.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by Google Lobbyists in lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.


6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.

7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

9. All Documents that refer or relate to AOL LLC or America Online's products and services with respect to automatic processing of electronic communications, including any investigations of AOL LLC or America Online's products, and/or attempts to distinguish AOL LLC or America Online's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Cushion Technologies LLC or Bright Response, LLC.

10. All Documents that refer or relate to any and all versions of software marketed as EZ Reader and/or Art\**Enterprise*, including any similar and/or subsequent software marketed, sold, offered, or developed under any different names.

<b>Issued by the</b> <b>UNITED STATES DISTRICT COURT</b> For the District of Columbia			
BRIGHT RESPONSE, LLC		<b>SUBPOENA IN A CIVIL CASE</b>	
V.		Case Number: <sup>1</sup> 2:07-cv-00371-CE	
GOOGLE, INC., ET AL.		U.S. Dist Ct. E.D. Texas	
<b>TO:</b>	Wilmer, Cutler & Pickering 2445 M. St. NW Suite 500 Washington, DC 20037		
YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.			
PLACE OF TESTIMONY		COURTROOM	
		DATE AND TIME	
YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.			
PLACE OF DEPOSITION		DATE AND TIME	
<b>X</b>	YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):		
	See Exhibit A, which is incorporated by reference.		
PLACE		DATE AND TIME	
Oleander Reporting, 1522 K Street, NW, Suite 720, Washington, DC 20005		9/11/09 9:00 am	
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.			
PREMISES		DATE AND TIME	
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).			
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)			DATE
 , Attorney for Plaintiff, Bright Response, LLC			8/17/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER			
Ari Rafilson, The Rafilson Law Firm, PLLC, 1318 Royal Palm Lane, Carrollton, TX 75007 (214) 789-4035			
(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)			

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE			
	DATE		PLACE
SERVED			
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p>			
Executed on			
	DATE		SIGNATURE OF SERVER
		ADDRESS OF SERVER	
Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:			

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).



## **ATTACHMENT A**

### **DEFINITIONS AND INSTRUCTIONS**

1. “Google” The word "Google" means Google Inc. and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
2. “Plaintiff/Bright Response, LLC/Bright Response” “Plaintiff” or “Bright Response” or “BR” means Bright Response, LLC and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
3. “You/Wilmer Cutler & Pickering/Wilmer Cutler” “You” or “Wilmer Cutler & Pickering” or “Wilmer Cutler” means Wilmer Cutler & Pickering and its past and present direct and indirect parents, subsidiaries, affiliates, divisions, business units, predecessors in interest, and further includes their respective past and present officers, directors, agents, employees, members and representatives, and all other persons acting on behalf of any of them.
4. “Document.” The term “document” means the documents and things within the broadest scope of the Federal Rules of Civil Procedure, including electronically stored information, data, source code, materials stored in any media, and any other information stored magnetically, optically or electronically.
5. “Communication.” The term “communication” includes without limitation, communications by whatever means transmitted (i.e., whether oral, written, electronic, or other methods used), as well as any note, memorandum, correspondence or other record thereof.
6. “Person.” The term “Person” refers both to natural persons and entities including individual proprietorships, partnerships, corporations, groups, governmental bodies, associations, joint ventures and other organizations, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.
7. “All/each.” The terms “all” and “each” shall be construed as “and”, “each”, and “and/or.”
8. “Any.” The term “any” should be understood in either its most or least inclusive sense as will bring within scope of the discovery request all responses that might otherwise be construed to be out of its scope.
9. “And/or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
10. Number. The use of the singular form of any word includes the plural and vice versa.
11. “Affiliate.” “Affiliate” is defined as a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Relative to the definition of “affiliate,” control means the possession, direct or indirect, or the power to direct or cause the direction of management and policies of a person, whether

through the ownership of voting securities, by contract, or otherwise.

12. “’947 Patent” means U.S. Patent No. 6,411,947.

13. “Patent-in-Suit” means the ’947 Patent.

14. “Related Patents/Applications” shall mean (1) any United States or foreign patent or patent application related to the ’947 Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

15. “Identify,” when used with reference to:

(a) an individual person, means to state his or her name, job title, and city where the person resides and/or regularly works;

(b) a business entity, means to state the full name and address of the entity and the names and positions of the individual or individuals connected with such entity who have knowledge of the information requested;

(c) a document, means to identify the document by bates number, or if it is not bates numbered, to state the type of document (letter, memorandum, email, etc.), its date, author(s) or originator(s), addressee(s), all individuals who received copies of the document, the identity of persons known or presumed by you to have present possession, custody or control thereof, and a brief description of the subject matter and present location. If the document has already been produced, “identify” means to provide the production number of the document; and

(d) a product, software system, or service, means to specify a part number; trade name; catalog number; version number; and any other designation used to refer to the product, software system, or service.

16. Where a requested document has been lost, destroyed, deleted, overwritten, or purged since April 2, 1992 state the reasons for such, the names of the persons having any knowledge of such, and the names of the persons responsible for such.

17. Where a requested identified document is not in your possession, custody, or control, state the names of the persons who have possession, custody, or control of such document. If such document was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify the persons having any knowledge of such disposition, and identify the persons responsible for such disposition.

18. If any document requested is withheld on the basis of a claim of privileged, the nature of the claim of privilege and the nature of the information in respect of which it is claimed shall be set forth. Where the claimed privileged subject matter forms only part of the entire document involved, indicate that such is the case and whether you will produce the document with the privileged portions blocked out or obliterated in a copy thereof.

19. If you object to any part of a request and refuse to answer that part, state your objection and answer the remaining portion of that request. If you object to the scope or time period of a request and refuse to answer for that scope or time period, state your objection and answer the request for the scope or time period you believe is appropriate (including in your answer a specific statement as to why you believe the scope or time period is inappropriate).

20. If the answer to any request is “None,” or if a section is not applicable to you, so indicate rather than leave the space blank. You must preserve and produce all information and documents in your possession, custody, or control which are relevant to the claims or defenses in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence. Especially since you are in the best position to know the nature and extent of discoverable information and documents in your possession, custody, or control, any limits on these discovery requests should not be used to justify the loss, overwriting, purging, deletion, destruction or non-production of anything discoverable. Before you permit any such loss, overwriting, purging, deletion, destruction, you should confer with the Plaintiff to seek to resolve the issue consistent with the Federal Rules of Civil Procedure, Local Rules, Patent Rules and orders of the Court.

21. “Google Lobbyists” means all Wilmer, Cutler & Pickering personnel participating in lobbying efforts on behalf of Google, Inc. since April 2, 1992, including, but not limited to Robert Novick and David Weller.

## **DOCUMENT REQUESTS**

1. All Documents that refer or relate to the '947 Patent or any Related Patents/Applications, including without limitation any Documents that relate to the inventorship, ownership, prosecution, valuation, priority, sale or assignment of the '947 Patent or Related Patents/Applications and including without limitation any opinions, analyses and/or investigations of infringement of such patents.

2. All Documents that refer or relate to Google's policies regarding its intellectual properties.

3. All Documents that refer or relate to Google's policies regarding intellectual properties owned, held, or managed by entities other than Google.

4. All Documents relied on or reviewed by Google Lobbyists in lobbying efforts on behalf of Google.

5. All Documents that refer or relate to any attempts by Google to license or enforce its patents.

6. All Documents that refer or relate to settlement of any litigation in which Google has been involved, including, but not limited to, all related license agreements.

7. All Documents that refer or relate to Google's products and services with respect to automatic processing of electronic communications, including any investigations of Google's products, and/or attempts to distinguish Google's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC or Bright Response, LLC.

8. All Documents that refer or relate to Yahoo's products and services with respect to automatic processing of electronic communications, including any investigations of Yahoo's products, and/or attempts to distinguish Yahoo's products from any technology owned or promoted by Anthony Angotti, Fred Cohen, Julie Hsu, Rosanna Piccolo, Amy Rice, Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, or Bright Response, LLC.

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