

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

PA ADVISORS, LLC,	§	
	§	
Plaintiff,	§	
v.	§	
	§	Civil Action No. 2-07-CV-480-RRR
GOOGLE INC., et al.	§	
	§	
Defendants.	§	
	§	

**YAHOO! INC.'S MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BRIEF IN SUPPORT OF ITS  
MOTIONS FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT**

Yahoo!, Inc. (“Yahoo!”) seeks leave to file a supplemental brief presenting additional evidence in support of its Motions for Summary Judgment of Non-Infringement, Dkt. Nos. 356 and 390. Good cause exists to supplement the record as essential information regarding Plaintiff’s infringement expert was not available to Yahoo! prior to the deadline for filing Yahoo!’s Motions for Summary Judgment of Non-Infringement.

**I. BACKGROUND**

Plaintiff served Dr. V. Thomas Rhyne’s (“Dr. Rhyne”) initial expert report regarding infringement on Yahoo! on January 4, 2010. Yahoo! filed its Motion for Summary Judgment of Non-Infringement on January 15, 2010 [Dkt. No 356]. Dr. Rhyne’s supplemental expert report was served on Yahoo! on January 22, 2010. Yahoo! filed its Reply to its Motion for Summary Judgment of Non-Infringement [Dkt. No. 385] and its Second Motion for Summary Judgment of Non-Infringement on January 29, 2010 [Dkt. No. 390]. Yahoo! filed its Reply to its Second Motion for Summary Judgment of Non-Infringement on February 16, 2010 [Dkt. No. 408]. Dr. Rhyne’s deposition occurred on February 18-19, 2010, well **after** Yahoo!’s briefing period for both motions for summary judgment had expired.

## **II. ARGUMENT**

Yahoo! filed its motions for summary judgment of non-infringement without the opportunity to cross-examine Dr. Rhyne on his opinions of infringement. As such, Yahoo! was unable to flesh out Dr. Rhyne's infringement analysis. Good cause exists to allow Yahoo! to file a supplemental brief as it was impossible for Yahoo! to include vital information gained through Dr. Rhyne's deposition in either of its motions for summary judgment of non-infringement or its replies thereto. As a direct consequence, Yahoo! was unable to provide this information to the Court.

If granted permission to file a supplemental brief, Yahoo! seeks to bring to the Court's attention admissions made by Dr. Rhyne during his deposition on February 18, 2010. As the supplemental brief will support, Dr. Rhyne's admissions confirm that summary judgment should be granted on all asserted claims – 1, 3, 4, 6, 43, 45, 47 and 61 of United States Patent No. 6,199,067 (“‘067 patent”).

Yahoo! is not seeking to add new arguments, only to supplement the record with previously unavailable information that further supports Yahoo!'s previously-filed motions for summary judgment of non-infringement.

For the above reasons, Yahoo! respectfully requests the Court to grant it leave to file a supplemental brief in support of its motions for summary judgment of non-infringement.

Respectfully submitted,

/s/ Jennifer H. Doan

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 26<sup>th</sup> day of February, 2010.

/s/ Jennifer H. Doan

Jennifer H. Doan

**CERTIFICATE OF CONFERENCE**

Yahoo!'s counsel has conferred with plaintiff's counsel on the relief requested in this motion and could not come to complete agreement. As such, this motion is being filed as opposed.

/s/ Jennifer H. Doan

Jennifer H. Doan