

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PA ADVISORS, LLC,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 2:07-cv-480-RRR
v.	§	
	§	
GOOGLE, INC., et al.,	§	JURY TRIAL DEMANDED
	§	
Defendants.	§	

**nXn TECH, LLC’S OPPOSITION TO YAHOO! INC.’S MOTION FOR LEAVE TO
FILE SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTIONS FOR SUMMARY
JUDGMENT OF NON-INFRINGEMENT**

nXn Tech, LLC (f/k/a PA Advisors, LLC) (“nXn”) respectfully files this opposition to Yahoo! Inc. (“Yahoo”)’s Motion for Leave to File Supplemental Brief In Support of Its Motions for Summary Judgment of Non-Infringement (“Motion for Leave”). nXn opposes Yahoo’s attempt to introduce unauthorized arguments and evidence for non-infringement of Claim 1 one court day before Yahoo’s non-infringement motions are to be heard.

The Court’s Order of October 1, 2009 (Docket No. 286), required Yahoo to submit a letter brief seeking permission to file any motion for summary judgment. On November 4, 2009, Yahoo filed such a letter brief seeking summary judgment on two bases. *See* Docket No. 297-2. First, Yahoo argued it was entitled to summary judgment on Claim 1 and dependent claims thereto because Yahoo allegedly does not perform step 1(c) of Claim 1, and allegedly does not “direct or control” the performance of this step, as, Yahoo argued, is required under *Muniauction, Inc. v. Thomson Corp. Id.* at 1-2. Second, Yahoo argued that it was entitled to summary judgment on Claim 45 and dependent claims thereto because Yahoo allegedly does not

perform steps (a) through (k) of Claim 45. *Id.* at 2. Based on this representation, Judge Folsom granted Yahoo's request for permission to file a motion for summary judgment "on all issues proposed" in its letter brief, and not on any other issues. Order of Dec. 14, 2009 (Docket No. 330).

Yahoo's First Motion for Summary Judgment followed the first basis of its letter brief, focusing on non-infringement of Claim 1 under the doctrine of divided infringement and the holding thereon in *Muniauction*. See Docket No. 356. However, Yahoo's Second Motion for Summary Judgment was not limited to the second basis of its letter brief, non-infringement of Claim 45. Instead, Yahoo also argued for non-infringement of steps (a) and (i) of Claim 1. See Docket No. 390 at 9-12.

These arguments exceeded the "issues proposed" in Yahoo's letter brief, and were therefore not authorized by the Court's December 13, 2009 Order. These arguments should therefore not be considered by the Court. Moreover, Yahoo makes further arguments regarding non-infringement of steps (a) and (i) in its proposed supplemental brief (Docket No. 472 at 3-5), thus compounding its improper conduct. The Court should therefore deny Yahoo's motion for leave as to these portions of Yahoo's supplemental brief.

Dated: March 1, 2010

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing response of Plaintiff nXn was served on counsel of counsel pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, by electronic mail, on this 1st day of March, 2010.

\s\ Patrick R. Anderson
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