

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

SOFTWARE RIGHTS ARCHIVE, LLC

Plaintiff,

v.

GOOGLE INC., YAHOO! INC.,  
IAC SEARCH & MEDIA, INC., AOL LLC,  
and LYCOS, INC.

Defendants.

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Civil Action No. 2:07-cv-511 (CE)

JURY TRIAL DEMANDED

**DECLARATION OF RAJ DUVVURI IN SUPPORT OF  
PLAINTIFF'S MOTION TO COMPEL GOOGLE TO DISCLOSE *FUNCTION MEDIA*  
DISCOVERY AND TRANSCRIPT**

I, Raj Duvvuri, declare as follows:

1. I am an attorney licensed to practice in the State of Texas. I am an associate with the law firm of Smyser Kaplan & Veselka, L.L.P., counsel for Software Rights Archive, LLC in this matter. The following facts are within my personal knowledge, and, if called upon to do so, I could and would testify competently thereto.

2. Exhibit 1 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of Function Media, L.L.C.'s First Amended Complaint for Patent Infringement dated July 24, 2007.

3. Exhibit 2 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of a *Function Media* Order, dated December 4, 2009, granting depositions of Sergey Brin and Susan Wojcicki.

4. Exhibit 3 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of excerpts from Google's Website.

5. Exhibit 4 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of copy of a March 31, 2010 letter from Lee L. Kaplan to Thomas B. Walsh.

6. Exhibit 5 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of copy of a May 11, 2010 letter from Thomas B. Walsh to Lee L. Kaplan.

7. Exhibit 6 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of Google Inc.'s Answer, Defenses and Counterclaims in Response to Plaintiff's First Amended Complaint in the *Function Media* lawsuit dated September 24, 2007.

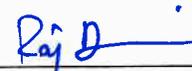
8. Exhibit 7 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of excerpts from Plaintiff's Initial Disclosures dated November 24, 2008.

9. Exhibit 8 to this Motion to Compel Google to Disclose *Function Media* Discovery and Transcript is a true and correct copy of a Function Media Order granting the production of deposition testimony and exhibits from the *Viacom* case dated December 22, 2009.

I declare under penalty of perjury under the laws of the United States and Texas that the foregoing is true and correct.

Date: May 24, 2010

SMYSER KAPLAN & VESELKA, L.L.P.



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Raj Duvvuri  
Attorney for Plaintiff  
Software Rights Archive, LLC

# **EXHIBIT 1**

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

FUNCTION MEDIA, L.L.C.	§	
	§	
Plaintiff,	§	Civil Action No. 2-007-CV-279
	§	
vs.	§	
	§	Honorable John T. Ward
GOOGLE, INC. AND YAHOO!, INC.	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

**I. NATURE OF THE ACTION**

Plaintiff Function Media, L.L.C. ("Function Media") brings this action against defendants Google, Inc. ("Google") and Yahoo!, Inc. ("Yahoo") for patent infringement under the patent laws of the United States, Title 35, United States Code.

**II. JURISDICTION AND VENUE**

1. This is an action under the patent laws of the United States, 35 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331, 1337 and 1338(a).

2. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and (d) and 1400(b) because plaintiff Function Media is a Texas limited liability company whose principal place of business is in Tyler, Texas. The inventors of the three patents at issue in this lawsuit, Michael Dean and Lucinda Stone, are residents of Tyler, Texas. Moreover, both Google and Yahoo do business in this District and have committed acts of infringement in this District.

**III. PARTIES**

3. All facts herein are alleged on information and belief except those facts concerning the activities of Function Media, Michael Dean and Lucinda Stone.

4. Function Media is the assignee and owner of three patents at issue in this action, U.S. Patent Nos. 6,446,045, 7,240,025, and 6,829,587, and 7,249,059. It was assigned the three patents at issue by the co-inventors of each of those patents, namely Michael Dean and Lucinda Stone.

5. On information and belief, Google is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

6. On information and belief, Yahoo is a Delaware corporation with its principal place of business at 701 First Avenue Sunnyvale, CA 94089.

**INFRINGEMENT OF U.S. PATENT NO. 6,446,045**

7. On September 3, 2002 United States Patent No. 6,446,045 (the ‘045 patent’) was duly and legally issued for an invention entitled ‘Method for Using Computers to Facilitate and Control the Creating of a Plurality of Functions.’ Function Media was assigned the ‘045 patent and continues to hold all rights and interest in the ‘045 patent. A true and correct copy of the ‘045 patent is attached hereto as Exhibit A.

8. Google has infringed and continues to infringe the ‘045 patent by its manufacture, use, sale, importation, and/or offer for sale of products and services utilizing Google’s AdSense and AdWords technologies, Google Print Ads, and other products and services related to internet and print advertising, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale of infringing products. Google is liable for its infringement of the ‘045 patent pursuant to 35 U.S.C. § 271.

9. Google’s acts of infringement have caused damage to Function Media, and Function Media is entitled to recover from Google the damages sustained by Function Media as a result of Google’s wrongful acts in an amount subject to proof at trial. Google’s infringement of Function Media’s exclusive rights under the ‘045 patent will continue to damage Function Media, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

10. Upon information and belief, Google's infringement of the '045 patent is willful and deliberate, entitling Function Media to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

11. Yahoo has infringed and continues to infringe the '045 patent by its manufacture, use, sale, importation, and/or offer for sale of products and services utilizing Yahoo's Publisher, Content Match, Sponsored Search, SmartAds and Advertising technologies and other products and services related to internet and print advertising, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale of infringing products. Yahoo is liable for its infringement of the '045 patent pursuant to 35 U.S.C. § 271.

12. Yahoo's acts of infringement have caused damage to Function Media, and Function Media is entitled to recover from Yahoo the damages sustained by Function Media as a result of Yahoo's wrongful acts in an amount subject to proof at trial. Yahoo's infringement of Function Media's exclusive rights under the '045 patent will continue to damage Function Media, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

13. Upon information and belief, Yahoo's infringement of the '045 patent is willful and deliberate, entitling Function Media to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**INFRINGEMENT OF U.S. PATENT NO. 7,240,025**

14. On July 3, 2007, United States Patent No. 7,240,025 (the "'025 patent'") was duly and legally issued for an invention entitled 'An Internet Advertising System and Method..' Function Media was assigned the '025 patent and continues to hold all rights and interest in the '025 patent. A true and correct copy of the '025 patent is attached hereto as Exhibit B.

15. Google has infringed and continues to infringe the '025 patent by its manufacture, use, sale, importation, and/or offer for sale of products and services utilizing Google's AdSense and AdWords technologies and other products and services related to internet advertising, and its

contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale of infringing products. Google is liable for its infringement of the '025 patent pursuant to 35 U.S.C. § 271.

16. Google's acts of infringement have caused damage to Function Media, and Function Media is entitled to recover from Google the damages sustained by Function Media as a result of Google's wrongful acts in an amount subject to proof at trial. Google's infringement of Function Media's exclusive rights under the '025 patent will continue to damage Function Media, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

17. Upon information and belief, Google's infringement of the '025 patent will be willful and deliberate, entitling Function Media to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

18. Yahoo has infringed and continues to infringe the '025 patent by its manufacture, use, sale, importation, and/or offer for sale of products and services utilizing Yahoo's Publisher, Content Match, Sponsored Search, SmartAds and Advertising technologies and other products and services related to internet advertising, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale of infringing products. Yahoo is liable for its infringement of the '025 patent pursuant to 35 U.S.C. § 271.

19. Yahoo's acts of infringement have caused damage to Function Media, and Function Media is entitled to recover from Yahoo the damages sustained by Function Media as a result of Yahoo's wrongful acts in an amount subject to proof at trial. Yahoo's infringement of Function Media's exclusive rights under the '025 patent will continue to damage Function Media, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

20. Upon information and belief, Yahoo's infringement of the '025 patent will be willful and deliberate, entitling Function Media to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**INFRINGEMENT OF U.S. PATENT NO. 6,829,587**

21. On September 3, 2002 United States Patent No. 6,829,587 (the "587 patent") was duly and legally issued for an invention entitled 'Method for Using Computers to Facilitate and Control the Publishing of Presentations to a Plurality of Print Media Venues.' Function Media was assigned the '587 patent and continues to hold all rights and interest in the '587 patent. A true and correct copy of the '587 patent is attached hereto as Exhibit C.

22. Google has infringed and continues to infringe the '587 patent by its manufacture, use, sale, importation, and/or offer for sale of products and services utilizing Google Print Ads, AdSense, and other products and services related to print advertising, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale of infringing products. Google is liable for its infringement of the '587 patent pursuant to 35 U.S.C. § 271.

23. Google's acts of infringement have caused damage to Function Media, and Function Media is entitled to recover from Google the damages sustained by Function Media as a result of Google's wrongful acts in an amount subject to proof at trial. Google's infringement of Function Media's exclusive rights under the '587 patent will continue to damage Function Media, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

24. Upon information and belief, Google's infringement of the '587 patent is willful and deliberate, entitling Function Media to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**INFRINGEMENT OF U.S. PATENT NO. 7,249,059**

25. On July 24, 2007, United States Patent No. 7,249,059 (the "059 patent") was duly and legally issued for an invention entitled 'Method for Using Computers to Facilitate and Control the Creating of a Plurality of Functions.' Function Media was assigned the '059 patent

and continues to hold all rights and interest in the '059 patent. A true and correct copy of the '059 patent is attached hereto as Exhibit D.

26. Google has infringed and continues to infringe the '059 patent by its manufacture, use, sale, importation, and/or offer for sale of products and services utilizing Google's AdSense and AdWords technologies, Google Print Ads, My Client Center, and other products and services related to internet and print advertising, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale of infringing products. Google is liable for its infringement of the '059 patent pursuant to 35 U.S.C. § 271.

27. Google's acts of infringement have caused damage to Function Media, and Function Media is entitled to recover from Google the damages sustained by Function Media as a result of Google's wrongful acts in an amount subject to proof at trial. Google's infringement of Function Media's exclusive rights under the '059 patent will continue to damage Function Media, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

28. Upon information and belief, Google's infringement of the '059 patent will be willful and deliberate, entitling Function Media to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

29. Yahoo has infringed and continues to infringe the '059 patent by its manufacture, use, sale, importation, and/or offer for sale of products and services utilizing Yahoo's Publisher, Content Match, Sponsored Search, SmartAds Advertising, and Ambassador technologies and other products and services related to internet and print advertising, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale of infringing products. Yahoo is liable for its infringement of the '059 patent pursuant to 35 U.S.C. § 271.

30. Yahoo's acts of infringement have caused damage to Function Media, and Function Media is entitled to recover from Yahoo the damages sustained by Function Media as a result of Yahoo's wrongful acts in an amount subject to proof at trial. Yahoo's infringement of Function Media's exclusive rights under the '059 patent will continue to damage Function

Media, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

31. Upon information and belief, Yahoo's infringement of the '059 patent will be willful and deliberate, entitling Function Media to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**JURY DEMAND**

32. Function Media demands a trial by jury on all issues.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Function Media, L.L.C., requests entry of judgment in its favor and against Google, Inc. and Yahoo!, Inc. as follows:

a) Declaration that Google, Inc. and Yahoo!, Inc. have infringed U.S. Patent Nos. 6,446,045 and 7,240,025, and 7,249,059, and that Google, Inc. has infringed U.S. Patent No. 6,829,587;

b) Permanently enjoining Google, Inc., and Yahoo!, Inc., and the respective officers, agents, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent Nos. 6,446,045, 7,240,025, and 7,249,059 and permanently enjoining Google, Inc., and its respective officers, agents, employees, and those acting in privity with it from further infringement, contributory infringement, and/or inducing infringement of U.S. Patent No. 6,829,587;

c) Awarding the damages arising out of Google, Inc. and Yahoo!, Inc.'s infringement of U.S. Patent Nos. 6,446,045, 7,240,025, and 7,249,059 and Google, Inc.'s infringement of U.S. Patent No. 6,829,587 including enhanced damages pursuant to 35 U.S.C. § 284, to Function Media, L.L.C., together with prejudgment and post-judgment interest, in an amount according to proof;

- d) An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- e) For such other costs and further relief as the Court may deem just and proper.

Respectfully submitted,

BY: /s/ Elizabeth L. DeRieux

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## **EXHIBIT 2**

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

**FUNCTION MEDIA, L.L.C.,**

**Plaintiff,**

**vs.**

**GOOGLE, INC. AND YAHOO, INC.,**

**Defendants.**

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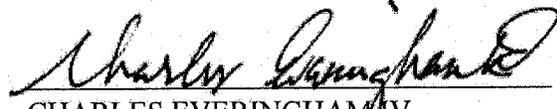
**Civil Action No. 2:07-CV-279**

**JURY TRIAL DEMANDED**

**ORDER GRANTING PLAINTIFF'S EXPEDITED SUPPLEMENTAL  
MOTION TO COMPEL DEPOSITION OF GOOGLE EXECUTIVES**

The Court hereby GRANTS in part Plaintiff Function Media's Expedited Supplemental Motion to Compel Deposition of Google Executives (Dkt. No. 271). The Court hereby orders Sergey Brin and Susan Wojcicki to appear for deposition. Depositions will be limited to two hours for Mr. Brin and three hours for Ms. Wojcicki.

SIGNED this 4th day of December, 2009.

  
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CHARLES EVERINGHAM IV  
UNITED STATES MAGISTRATE JUDGE

# **EXHIBIT 3**

- [Home](#)
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## Google Management

Co-founders Larry Page, president of Products, and Sergey Brin, president of Technology, brought Google to life in September 1998. Since then, the company has grown to more than 10,000 employees worldwide, with a management team that represents some of the most experienced technology professionals in the industry. Eric Schmidt joined Google as chairman and chief executive officer in 2001.

### Board of Directors

- [Eric Schmidt](#), Google Inc.
- [Sergey Brin](#), Google Inc.
- [Larry Page](#), Google Inc.
- [John Doerr](#), Kleiner Perkins Caufield & Byers
- [Ram Shriram](#), Sherpalo
- [John Hennessy](#), Stanford University
- [Paul Otellini](#), Intel
- [Shirley M. Tilghman](#), Princeton University
- [Ann Mather](#)

### Operating Committee

- [Eric Schmidt](#), Chairman of the Board and Chief Executive Officer
- [Larry Page](#), Co-Founder & President, Products
- [Sergey Brin](#), Co-Founder & President, Technology
- [Nikesh Arora](#), President, Global Sales Operations and Business Development
- [Laszlo Bock](#), Vice President, People Operations
- [Shona L. Brown](#), Senior Vice President, Business Operations, Google Inc.
- [W. M. Coughran, Jr.](#), Senior Vice President, Engineering
- [David C. Drummond](#), Senior Vice President, Corporate Development and Chief Legal Officer
- [Alan Eustace](#), Senior Vice President, Engineering & Research
- [Urs Hölzle](#), Senior Vice President, Operations & Google Fellow
- [Jeff Huber](#), Senior Vice President, Engineering
- [Omid Kordestani](#), Senior Advisor, Office of the CEO and Founders
- [Patrick Pichette](#), Senior Vice President & Chief Financial Officer
- [Jonathan Rosenberg](#), Senior Vice President, Product Management
- [Rachel Whetstone](#), Vice President, Public Policy and Communications
- [Susan Wojcicki](#), Vice President, Product Management

### Key executives by function:

#### Engineering

- [Vinton G. Cerf](#), Vice President & Chief Internet Evangelist
- [Stuart Feldman](#), Vice President, Engineering
- [Jen Fitzpatrick](#), Vice President, Engineering
- [Ben Fried](#), Chief Information Officer
- [Vic Gundotra](#), Vice President, Engineering
- [Udi Manber](#), Vice President, Engineering
- [Nelson Mattos](#), Vice President, Engineering, EMEA
- [Brian McClendon](#), Vice President, Engineering

Find on this site:



responsibility for Google's day-to-day operations with Eric Schmidt and Sergey Brin.

The son of Michigan State University computer science professor Dr. Carl Victor Page, Larry's love of computers began at age six. While following in his father's footsteps in academics, he became an honors graduate from the University of Michigan, where he earned a bachelor's degree in engineering, with a concentration on computer engineering. During his time in Ann Arbor, Larry built an inkjet printer out of Lego™ bricks.

While in the Ph.D. program in computer science at Stanford University, Larry met Sergey Brin, and together they developed and ran Google, which began operating in 1998. Larry went on leave from Stanford after earning his master's degree.

In 2002, Larry was named a World Economic Forum Global Leader for Tomorrow. He is a member of the National Advisory Committee (NAC) of the University of Michigan College of Engineering, and together with co-founder Sergey Brin, Larry was honored with the Marconi Prize in 2004. He is a trustee on the board of the X PRIZE, and was elected to the National Academy of Engineering in 2004.

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**Sergey Brin**  
**Co-Founder & President, Technology**

Sergey Brin, a native of Moscow, received a bachelor of science degree with honors in mathematics and computer science from the University of Maryland at College Park. He is currently on leave from the Ph.D. program in computer science at Stanford University, where he received his master's degree. Sergey is a recipient of a National Science Foundation Graduate Fellowship as well as an honorary MBA from Instituto de Empresa. It was at Stanford where he met Larry Page and worked on the project that became Google. Together they founded Google Inc. in 1998, and Sergey continues to share responsibility for day-to-day operations with Larry Page and Eric Schmidt.

Sergey's research interests include search engines, information extraction from unstructured sources, and data mining of large text collections and scientific data. He has published more than a dozen academic papers, including *Extracting Patterns and Relations from the World Wide Web*; *Dynamic Data Mining: A New Architecture for Data with High Dimensionality*, which he published with Larry Page; *Scalable Techniques for Mining Casual Structures*; *Dynamic Itemset Counting and Implication Rules for Market Basket Data*; and *Beyond Market Baskets: Generalizing Association Rules to Correlations*.

Sergey has been a featured speaker at several international academic, business and technology forums, including the World Economic Forum and the Technology, Entertainment and Design Conference. He has shared his views on the technology industry and the future of search on the *Charlie Rose Show*, CNBC, and

CNNfn. In 2004, he and Larry Page were named "Persons of the Week" by ABC World News Tonight.

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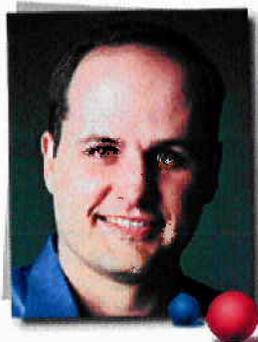
**Nikesh Arora**  
**President, Global Sales Operations and Business Development**

Nikesh oversees all revenue and customer operations, as well as marketing and partnerships. Since joining Google in 2004, he has held several positions with the company. Most recently, he led Google's global direct sales operations. He also developed and managed the company's operations in the European, Middle Eastern and African markets and was responsible for creating and expanding strategic partnerships in those regions for the benefit of Google's growing number of users and advertisers.

With a background as an analyst, Nikesh's main areas of focus have been consulting, IT, marketing and finance. Prior to joining Google, he was chief marketing officer and a member of the management board at T-Mobile. While there, he spearheaded all product development, terminals, brand and marketing activities of T-Mobile Europe. In 1999, he started working with Deutsche Telekom and founded T-Motion PLC, a mobile multimedia subsidiary of T-Mobile International. Prior to joining Deutsche Telekom, Nikesh held management positions at Putnam Investments and Fidelity Investments in Boston.

Nikesh holds a master's degree from Boston College and an MBA from Northeastern University, both of which were awarded with distinction. He also holds the CFA designation. In 1989, Nikesh graduated from the Institute of Technology in Varanasi, India with a bachelor's degree in electrical engineering.

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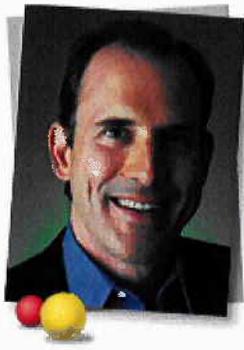


**Laszlo Bock**  
**Vice President, People Operations**

Laszlo Bock leads Google's people function globally, which includes all areas related to the attraction, development and retention of "Googlers."

Laszlo joined Google from the General Electric Company, where most recently he was a vice president of human resources within GE Capital Solutions. He had earlier served as vice president of compensation and benefits for GE Commercial Equipment Financing. Before GE, Laszlo was a management consultant at McKinsey & Company, serving clients in the technology, private equity and media industries on issues of organizational design, talent acquisition and development, and cultural transformation. Laszlo's client work also extended to broader business growth and turnaround strategy. Earlier, he worked as a compensation consultant at Hewitt Associates, an HR consultancy.

Laszlo earned an MBA from the Yale University School of Management and a bachelor's degree in international relations from Pomona College. He is on the Western Region Advisory Board of



consumer offerings to publisher and business services. He directs the teams with a special focus on delivering exceptional user experience, continuous innovation, and highly relevant, accountable, and untraditional marketing.

Prior to joining Google in 2002, Jonathan founded, led and managed some of the most innovative product development teams of the Internet's first era. He was the founding member of @Home's product group and served as senior vice president of online products and services after the merger of Excite and @Home. Prior to that, Jonathan managed the eWorld product line for Apple Computer. Earlier, he was director of product marketing for Knight Ridder Information Services in Palo Alto, California, where he directed development of one of the first commercially deployed online relevance ranking engines and menu-driven Boolean search services for consumers.

Jonathan holds an MBA from the University of Chicago and a bachelor's degree with honors in economics from Claremont McKenna College, where he graduated Phi Beta Kappa.

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**Rachel Whetstone**  
**Vice President, Public Policy and Communications**

Rachel Whetstone joined Google in 2005, after 15 years advising senior politicians and companies on their strategic communications. She leads the company's global teams for public policy and communications.

Rachel has a bachelor's degree in history from Bristol University.

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**Susan Wojcicki**  
**Vice President, Product Management**

Susan Wojcicki is vice president of product management at Google responsible for the design and innovation of all of Google's advertising and measurement platform products, including AdWords, AdSense, DoubleClick and Google Analytics. She has managed AdSense product management since inception in 2002, and has led all advertising programs on Google.com and its advertising network since 2006.

Susan joined Google in 1999 as the company's first marketing manager and worked on the initial viral marketing programs as well as the first Google homepage doodles. She also led the initial development of several key successful consumer products including Google Images, Google Books and Google Video.

Before joining Google, Susan worked at Intel and was a management consultant at Bain & Company and R.B. Webber & Company. She graduated with honors from Harvard University, holds a master's in economics from the University of California at Santa Cruz, and an MBA from UCLA.

# **EXHIBIT 4**

SMYSER KAPLAN & VESELKA, L.L.P.

BANK OF AMERICA CENTER  
700 LOUISIANA SUITE 2300 HOUSTON, TEXAS 77002  
TELEPHONE 713.221.2300 FACSIMILE 713.221.2320

March 31, 2010

Mr. Thomas B. Walsh, IV  
Fish & Richardson P.C.  
5000 Bank One Center  
1717 Main Street  
Dallas, Texas 75201

*By email and U.S. Mail*

Re: *Software Rights Archive, LLC v. Google Inc. et al.*, Case No. 2:07-CV-511 (CE);  
In the United States District Court for the Eastern District of Texas, Marshall  
Division

Dear Tom:

I earlier spoke with you regarding our request for a copy of an unredacted transcript of the *Function Media v. Google* trial and followed it up with a confirming email on March 18. Confirming our telephone call yesterday, we add to that request our request for deposition transcripts of all Google witnesses in the case, both present and former employees as well as any expert or fact witnesses presented by Google. Finally, we request copies of all expert reports provided by Google or Function Media. I think it unnecessary to deliver a lengthy statement on the relevance of such materials, but they undoubtedly relate to the nature of Google's search engine operations and its business, and as such, they are relevant (at the very least) to infringement and damages issues in our case.

As I have earlier stated, you are of course free to make appropriate confidentiality designations under our Protective Order. I look forward to hearing from you.

Please confirm your agreement.

Regards,



Lee L. Kaplan

cc: Mr. Ruffin B. Cordell  
Victor Hardy  
Charley Ainsworth  
Chris Bunt  
Calvin Capshaw  
Elizabeth deRieux

*(All cc's by email)*

# **EXHIBIT 5**

# FISH & RICHARDSON P.C.

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

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DALLAS, TEXAS  
75201

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Thomas B. Walsh, IV  
214 292-4090

Email  
walsh@fr.com

May 11, 2010

Lee L. Kaplan  
Smyser, Kaplan & Veselka L.L.P.  
Bank of America Center  
700 Louisiana Suite 2300  
Houston, TX 77002

Re: *Software Rights Archive, LLC v. Google Inc., et al.*  
Civil Case No. 2:07-cv-511 (CE)



Dear Lee:

ATLANTA

BOSTON

DALLAS

DELAWARE

HOUSTON

MUNICH

NEW YORK

SILICON VALLEY

SOUTHERN CALIFORNIA

TWIN CITIES

WASHINGTON, DC

I write in response to your letter dated March 31, 2010. In that letter you requested unredacted trial transcripts, expert reports, and deposition transcripts from the *Function Media v. Google* case. You stated that these materials “undoubtedly relate to the nature of Google’s search engine operations.”

The patents and technologies involved in the Function Media case relate to user interfaces for formatting and managing advertisements. SRA has previously characterized the patents in this case as relating to the “analysis of non-semantic hyperlink relationships.” In other words, the cases are not “undoubtedly relate[d]” Because these materials relate to different underlying technologies and patents, they are neither relevant nor discoverable. *See, e.g., SSL Servs., LLC v. Citrix Sys., Inc.*, Case No. 08-CV-158-TJW, Doc. No. 63 (E.D. Tex. Feb. 10, 2010).

Very truly yours,

A handwritten signature in cursive script that reads 'Thomas B. Walsh, IV'.

Thomas B. Walsh, IV

90433413.doc

# **EXHIBIT 6**

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

FUNCTION MEDIA, L.L.C.,

v.

GOOGLE, INC. AND YAHOO!, INC.

Civil Case No. 2:007-CV-279 (TJW)

JURY TRIAL DEMANDED

**GOOGLE INC.'S ANSWER, DEFENSES AND COUNTERCLAIMS IN RESPONSE  
TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

**ANSWER**

Google Inc. ("Google") responds to the allegations in the First Amended Complaint ("Complaint") by Plaintiff Function Media, L.L.C. ("Plaintiff") with this pleading.

**I. NATURE OF THE ACTION**

The first paragraph of the Complaint contains an introductory paragraph to which no responsive pleading is required. To the extent a response is deemed necessary, Google denies that it has committed patent infringement and further denies that Plaintiff is entitled to any relief from Google.

**II. JURISDICTION AND VENUE**

1. Google admits that Plaintiff's Complaint purports to arise under the patent laws of the United States, 35 U.S.C. § 101 et seq., and admits that, for purposes of this action, Google does not contest that this Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1337, and 1338(a). Google, however, denies that, as to it, any such patent infringement has transpired.

2. Google admits that it does business in the Eastern District of Texas, and admits that, for purposes of this action, it does not contest that venue is proper in the Eastern District of Texas. Google denies that it has committed acts of infringement in the Eastern District of Texas.

Google is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint and, on that basis, denies all such allegations.

### **III. PARTIES**

3. Paragraph 3 of the Complaint, in and of itself, contains no allegations directed towards Google and no responsive pleading is therefore required. To the extent a response is deemed necessary, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint and, on that basis, denies all such allegations.

4. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint and, on that basis, denies all such allegations.

5. Google admits the allegations of paragraph 5 of the Complaint.

6. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint and, on that basis, denies all such allegations.

### **DENIAL OF INFRINGEMENT OF U.S. PATENT NO. 6,446,045**

7. Google admits that U.S. Patent No. 6,446,045 (the "'045 patent") entitled "Method for Using Computers to Facilitate and Control the Creating of a Plurality of Functions" indicates on its face that that it issued on September 3, 2002. Google further admits that the '045 patent is attached to the Complaint as Exhibit A. Google denies that the '045 patent was legally issued. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7 of the Complaint and, on that basis, denies all such allegations.

8. Google denies the allegations contained in paragraph 8 of the Complaint.

9. Google denies the allegations contained in paragraph 9 of the Complaint.

10. Google denies the allegations contained in paragraph 10 of the Complaint.

11. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint with respect to Yahoo, Inc.'s ("Yahoo") conduct, and on that basis, Google denies all allegations in paragraph 11 that are directed to Yahoo.

12. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 12 that are directed to Yahoo.

13. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 13 that are directed to Yahoo.

**DENIAL OF INFRINGEMENT OF U.S. PATENT NO. 7,240,025**

14. Google admits that U.S. Patent No. 7,240,025 (the "'025 patent") entitled "Internet Advertising System and Method" indicates on its face that that it issued on July 3, 2007. Google further admits that the '025 patent is attached to the Complaint as Exhibit B. Google denies that the '025 patent was legally issued. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 14 of the Complaint and, on that basis, denies all such allegations.

15. Google denies the allegations contained in paragraph 15 of the Complaint.

16. Google denies the allegations contained in paragraph 16 of the Complaint.

17. Google denies the allegations contained in paragraph 17 of the Complaint.

18. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 18 that are directed to Yahoo.

19. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 19 that are directed to Yahoo.

20. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 20 that are directed to Yahoo.

**DENIAL OF INFRINGEMENT OF U.S. PATENT NO. 6,829,587**

21. Google denies that U.S. Patent No. 6,829,587 (the "'587 patent") is entitled "Method for Using Computers to Facilitate and Control the Publishing of Presentations to a Plurality of Print Media Venues" and denies that it issued on September 3, 2002. Google admits that the '587 patent is attached to the Complaint as Exhibit C. Google denies that the '587 patent was legally issued. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 21 of the Complaint and, on that basis, denies all such allegations.

22. Google denies the allegations contained in paragraph 22 of the Complaint.

23. Google denies the allegations contained in paragraph 23 of the Complaint.

24. Google denies the allegations contained in paragraph 24 of the Complaint.

**DENIAL OF INFRINGEMENT OF U.S. PATENT NO. 7,249,059**

25. Google admits that U.S. Patent No. 7,249,059 (the "'059 patent") indicates on its face that that it issued on July 24, 2007 but denies that it is entitled "Method for Using Computers to Facilitate and Control the Creating of a Plurality of Functions." Google admits that the '059 patent is attached to the Complaint as Exhibit D. Google denies that the '059 patent was legally issued. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25 of the Complaint and, on that basis, denies all such allegations.

26. Google denies the allegations contained in paragraph 26 of the Complaint.

27. Google denies the allegations contained in paragraph 27 of the Complaint.

28. Google denies the allegations contained in paragraph 28 of the Complaint.

29. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 29 that are directed to Yahoo.

30. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 30 that are directed to Yahoo.

31. Google is without knowledge or information sufficient to sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint with respect to Yahoo's conduct, and on that basis, Google denies all allegations in paragraph 31 that are directed to Yahoo.

**JURY DEMAND**

32. Google admits that the Complaint sets forth a demand for trial by jury on all issues.

**PRAYER FOR RELIEF**

33. Google denies that Plaintiff is entitled to any relief, and denies all of the allegations directed towards Google contained in paragraphs (a) – (e) of Plaintiff's Prayer for Relief.

34. To the extent that any allegations of the Complaint have not been previously specifically admitted or denied, Google denies them.

**DEFENSES**

Google, for its Defenses, pleads:

**First Affirmative Defense**

(Failure To State Claim)

35. Plaintiff's Complaint fails to state a claim against Google upon which relief can be granted.

**Second Affirmative Defense**

(Invalidity of U.S. Pat. No. 6,446,045)

36. Each asserted claim of U.S. Pat. No. 6,446,045 is invalid for failure to comply with one or more of the requirements of United States Code, Title, 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

**Third Affirmative Defense**

(Invalidity of U.S. Pat. No. 7,240,025)

37. Each asserted claim of U.S. Pat. No. 7,240,025 is invalid for failure to comply with one or more of the requirements of United States Code, Title, 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

**Fourth Affirmative Defense**

(Invalidity of U.S. Pat. No. 6,829,587)

38. Each asserted claim of U.S. Pat. No. 6,829,587 is invalid for failure to comply with one or more of the requirements of United States Code, Title, 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

**Fifth Affirmative Defense**

(Invalidity of U.S. Pat. No. 7,249,059)

39. Each asserted claim of U.S. Pat. No. 7,249,059 is invalid for failure to comply with one or more of the requirements of United States Code, Title, 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

**Sixth Affirmative Defense**

(Non-Infringement of U.S. Pat. No. 6,446,045)

40. Google has not and does not infringe any valid and enforceable claim of U.S. Pat. No. 6,446,045 under any subsection of 35 U.S.C. § 271.

**Seventh Affirmative Defense**

(Non-Infringement of U.S. Pat. No. 7,240,025)

41. Google has not and does not infringe any valid and enforceable claim of U.S. Pat. No. 6,446,045 under any subsection of 35 U.S.C. § 271.

**Eighth Affirmative Defense**

(Non-Infringement of U.S. Pat. No. 6,829,587)

42. Google has not and does not infringe any valid and enforceable claim of U.S. Pat. No. 6,829,587 under any subsection of 35 U.S.C. § 271.

**Ninth Affirmative Defense**

(Non-Infringement of U.S. Pat. No. 7,249,059)

43. Google has not and does not infringe any valid and enforceable claim of U.S. Pat. No. 7,249,059 under any subsection of 35 U.S.C. § 271.

**Tenth Affirmative Defense**

(Unenforceability of U.S. Pat. No. 7,240,025)

44. The claims of U.S. Pat. No. 7,240,025 (“the ’025 patent”) are unenforceable as a result of inequitable conduct by the applicants, their attorney(s), their agent(s), representative(s), predecessors in interest to the ’025 patent, and/or the person(s) involved in the preparation and/or

prosecution of that patent. Google alleges that the inequitable conduct comprised intentional misrepresentations and/or omissions including without limitation, the following:

a) During the prosecution of the application that led to the '587 patent, the USPTO cited U.S. Pat. No. 6,401,075 to Mason et al. (the "Mason patent"). The Mason patent disclosed technology that was highly material to the patents-in-suit, but the Mason patent filing date was just weeks later than the priority date for the '587 patent.

b) On information and belief, during the prosecution of the application that led to the '025 patent, named inventors Lucinda Stone and Michael Dean, by and through their attorney Henry Croskell ("Attorney Croskell"), engaged an attorney in California, Kenneth S. Roberts ("Attorney Roberts"), to investigate the prior art status of the Mason patent. In this regard, Attorney Roberts submitted a declaration in the application that became the '025 patent suggesting that the Mason patent could not have been based on an invention prior to October 1999.

c) Attorneys Croskell and Roberts were involved in the prosecution of the '025 patent and thus owed a duty of candor and good faith under 37 C.F.R. § 1.56 to disclose information to the USPTO that may be material to the patentability of the '025 patent.

d) On information and belief, the declaration by Attorney Roberts and accompanying statements by Attorney Croskell withheld highly material information pertaining to the Mason patent technology and related prior art.

e) On information and belief, Attorney Roberts was informed by Arthur Behrman and/or additional named inventors on the Mason patent that Global Networks Inc. was formed on or about April 1999 for the purpose of developing an online network for the dissemination of electronic advertisements, which suggests a date of invention six months earlier than the October 1999 date suggested in the Attorney Roberts declaration, and moreover that had this information been shared with the USPTO then Attorney Croskell's assertion that the date of invention for the '025 patent was prior to October 1999 would have been insufficient to overcome an April 1999 date for the Mason patent technology.

f) Furthermore, on information and belief, Attorney Roberts was informed by Mr. Behrman of the October 1999 announcement concerning the development of the Global Networks Inc. system with a third-party international advertising agency. On information and belief, the subject October 1999 announcement was known to Attorney Roberts and was in fact an October 12, 1999 Business Wire announcement that not only disclosed aspects of the Global Networks Inc. system, but also the prior art DoubleClick DART system. The subject October 1999 announcement and information concerning the DoubleClick DART system was not disclosed to the USPTO. This information, and particularly the DoubleClick DART system, was also highly material to the patentability of the subject patent and the state of the art at the time.

g) On information and belief, this information was withheld from the USPTO by those owing a duty of candor and good faith under 37 C.F.R. § 1.56 with the intent to deceive the USPTO as to the true nature and scope of the prior art, including the Global Networks Inc. system and DoubleClick DART technology and thus cause the USPTO to improperly grant the '025 patent.

#### **Eleventh Affirmative Defense**

(Unenforceability of U.S. Pat. No. 7,249,059)

45. The claims of U.S. Pat. No. 7,249,059 ("the '059 patent") are unenforceable as a result of inequitable conduct by the applicants, their attorney(s), their agent(s), representative(s), predecessors in interest to the '025 patent, and/or the person(s) involved in the preparation and/or prosecution of that patent. Google alleges that the inequitable conduct comprised intentional misrepresentations and/or omissions including without limitation, the following:

a) Google reasserts and incorporates by reference its statements from paragraph 44 above and further alleges that the acts and inequitable conduct arising from the prosecution of the '025 patent renders the '059 patent unenforceable too.

b) The '059 patent is a continuation-in-part ("CIP") of an earlier filed application; new matter was added to the '059 patent when it was filed on July 11, 2002.

c) Among the new matter added to the '059 patent as of its filing date of July 11, 2002, is substantial new matter describing "third party professionals."

d) In a response to an Office action from the USPTO filed on April 5, 2006, Attorney Croskell repeatedly referenced the "third party professional" new matter added as of the July 11, 2002 filing date as supporting the pending claims and distinguishing those claims over the prior art of record.

e) In this same response to the USPTO, Attorney Croskell further referred to the USPTO to the Mason patent and the declaration of Attorney Roberts cited during the prosecution of the '025 patent. Attorney Croskell then misleadingly suggested, despite having just identified the "third party professional" new matter added on July 11, 2002 as supporting the patentability of the claims, that the claims of the '059 patent were similarly entitled to "a date of invention for the claimed subject matter that is prior to October 1999."

f) These highly material and misleading statements by Attorney Croskell regarding the Mason patent and the purported dates of invention by Lucinda Stone and Michael Dean improperly led the USPTO to ignore the teachings and date of the invention described in the Mason patent and declaration of Attorney Roberts by convincing the USPTO that the '059 patent was entitled to a date of invention three years earlier than was possible in view of the new matter added to the CIP in its filing on July 11, 2002.

g) On information and belief, these statements by those owing a duty of candor and good faith under 37 C.F.R. § 1.56 were made with the intent to deceive the USPTO as to the true nature and scope of the prior art and dates of invention of the subject matter claimed in the '059 patent and cause the USPTO to improperly grant the '059 patent.

#### **Twelfth Affirmative Defense**

(Claims Barred)

46. Plaintiff's claims are barred in whole or in part based on prosecution history estoppel and/or prosecution history disclaimer.

**Thirteenth Affirmative Defense**

(Costs Barred)

47. Plaintiff is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

**Additional Defenses Reserved**

(Defenses Based on Later Discovered Evidence)

48. Google reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses at law or in equity that may exist now or that may be available in the future based on discovery and further factual investigation in this action.

**COUNTERCLAIMS**

49. For its Counterclaims against Function Media, L.L.C., Google pleads, based on personal knowledge as to all acts or events that it has undertaken or witnessed, and upon information and belief as to all others:

**Nature of the Action**

50. This is an action by defendant and counter-claimant Google pursuant to Rule 13 of the Federal Rules of Civil Procedure for declarations of non-infringement, invalidity, and unenforceability of U.S. Pat. No. 6,446,045 ("the '045 patent"), U.S. Patent No. 7,240,025 ("the '025 patent"), U.S. Patent No. 6,829,587 ("the '587 patent"), and U.S. Patent No. 7,249, 059 ("the '059 patent").

**The Parties**

51. Counter-claimant Google is a corporation organized under the laws of the state of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

52. Upon information and belief, Function Media, L.L.C. is a corporation organized under the laws of the state of Texas and has its principal place of business at 1021 Wilder Way, Tyler, Texas 75703.

### **Jurisdiction and Venue**

53. These counterclaims seek declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Court on these bases, has subject matter jurisdiction of such claims pursuant to 28 U.S.C. §§ 1331 and 1338 as these counterclaims arise under the patent laws of the United States, set forth at Title 35 United States Code.

54. The '045 patent was issued by the United States Patent and Trademark Office on September 3, 2002. Plaintiff, based on averments in its Complaint, claims to be the owner of all right, title and interest in and to the '045 patent, and claims that Google has infringed that patent.

55. The '025 patent was issued by the United States Patent and Trademark Office on July 3, 2007. Plaintiff, based on averments in its Complaint, claims to be the owner of all right, title and interest in and to the '025 patent, and claims that Google has infringed that patent.

56. The '587 patent was issued by the United States Patent and Trademark Office on December 7, 2004. Plaintiff, based on averments in its Complaint, claims to be the owner of all right, title and interest in and to the '587 patent, and claims that Google has infringed that patent.

57. The '059 patent was issued by the United States Patent and Trademark Office on July 24, 2007. Plaintiff, based on averments in its Complaint, claims to be the owner of all right, title and interest in and to the '059 patent, and claims that Google has infringed that patent.

58. Plaintiff has consented to personal jurisdiction by commencing its action for patent infringement in this judicial jurisdiction, as set forth in Plaintiff's First Amended Complaint.

59. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

### **Count I**

60. Google has not and does not infringe any valid and/or enforceable claim of the '045 patent, '587 patent, '025 patent, or '059 patent under 35 U.S.C. § 271.

**Count II**

61. The '045 patent, '587 patent, '025 patent, and '059 patents are invalid for failing to satisfy the requirements of, without limitation, 35 U.S.C. §§ 101, 102, 103, and 112.

**Count III**

62. The '025 patent and the '059 patent are unenforceable because Plaintiff (including its predecessors in interest), through their inventors, attorneys, and agents committed inequitable conduct during the prosecution of the applications that issued as the '025 patent and the '059 patent, which render these patents unenforceable as alleged in paragraphs 44 and 45, which are reasserted here. These acts of inequitable conduct include but are not limited to making material misrepresentations as to the scope and content of the prior art, withholding information material pertaining to the prior art, and making material misrepresentations as to the date of the alleged invention and scope of an earlier declaration submitted to the USPTO. This information concerns both the dates of invention and prior art to the patents-in-suit and is therefore highly material to the patentability of the issued claims and infects the '025 patent and '059 patent.

**Jury Demand**

63. Pursuant to Local Rule CV 38(a) and Fed.R.Civ.P. 38, defendant and counter-claimant Google demands a trial by jury on all issues so triable in this action.

**REQUEST FOR RELIEF ON PLAINTIFF'S COMPLAINT**

64. WHEREFORE, Google asks this Court to enter judgment in Google's favor and against Plaintiff Function Media, L.L.C. by granting the following relief:

a) a dismissal of all claims in Plaintiff's Complaint against Google with prejudice and a complete denial of Plaintiff's requests for damages, costs, attorney fees, and any other form of relief;

b) a permanent injunction restraining Plaintiff and its respective, officers, partners, employees, agents, parents, subsidiaries, and affiliates, and any other persons acting on its behalf or in concert with, from charging or threatening, orally or in writing, that the '045

patent, the '025 patent, the '587 patent, or the '059 patent have been infringed by Google under any subsection of 35 U.S.C. § 271; and

c) an award to Google of its reasonable attorneys' fees, costs, and all interest (including without limitation any attorney awards based upon 35 U.S.C. § 285) and any such other and further relief as the Court finds just and proper.

**REQUEST FOR RELIEF ON GOOGLE'S COUNTERCLAIMS**

65. WHEREFORE, Google asks this Court to enter judgment in Google's favor and against Plaintiff Function Media, L.L.C. by granting the following relief:

a) a declaration that Google does not infringe and has not infringed any valid and enforceable claim of the '045 patent, the '025 patent, the '587 patent, and the '059 patent under any subsection of 35 U.S.C. § 271;

b) a declaration that all claims of the '045 patent, the '025 patent, the '587 patent, and the '059 patent are invalid under 35 U.S.C. §§ 101, 102, 103, and 112;

c) a declaration that all claims of the '025 patent and the '059 patent are unenforceable;

d) a permanent injunction restraining Plaintiff and its respective, officers, partners, employees, agents, parents, subsidiaries, and affiliates, and any other persons acting on its behalf or in concert with it, from suing or threatening to sue for infringement of the '045 patent, the '025 patent, the '587 patent, or the '059 patent on the basis of the making, using, selling, offering for sale or importing of any Google product or service; and

e) an award to Google of its reasonable attorneys' fees, costs, and all interest (including without limitation any attorney awards based upon 35 U.S.C. § 285) and any such other and further relief as the Court finds just and proper.

Dated: September 24, 2007

Respectfully submitted,

FISH & RICHARDSON P.C.

By: \s\Thomas B. Walsh, IV

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E-mail: melissa@gillamsmithlaw.com

Counsel for Defendant  
GOOGLE INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on September 24, 2007 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

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Elizabeth L. DeRieux, Esq.  
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1127 Judson Road, Suite 220  
P.O. Box 3999  
Longview, TX 75601-5157

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Attorneys for Plaintiff  
FUNCTION MEDIA, L.L.C.

\s\Thomas B. Walsh, IV  
Thomas B. Walsh, IV

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# **EXHIBIT 7**



Defendants have infringed and continue to infringe Software Rights Archive's patents-in suit by their manufacture, use, sale, importation, and offer for sale of products and services. Defendants are liable to Software Rights Archive under 35 U.S.C. § 271. The bases for Software Rights Archive's claims are set forth more fully in the existent Complaint and in the Infringement Contentions. Software Rights Archive has produced and will continue to produce documents in accordance with the Federal Rules, the Local Rules and this Court's Discovery Orders.

- (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;

Daniel Egger  
c/o Smyser Kaplan Veselka LLP  
700 Louisiana, Suite 2300  
Houston, Texas 77002  
713-221-2300

Daniel Egger is an inventor of the patented technology and has knowledge of standing, the patents-in-suit, liability, and damages.

Ron Sauers  
3330 Tranquil Trail  
Mebane, NC 27302  
919-563-6518

Mr. Sauers is an inventor of the patented technology and has knowledge regarding the applicable technology, the patents-in-suit, and Libertech.

Shawn Cannon  
P.O. Box 12015  
Research Triangle Park, NC 27709  
919-386-0250

Mr. Cannon is an inventor of the patented technology and has knowledge regarding the applicable technology, the patents-in-suit, and Libertech.

Jeffrey Ait  
c/o Smyser Kaplan Veselka LLP  
700 Louisiana, Suite 2300  
Houston, Texas 77002  
713-221-2300

Mr. Ait has knowledge regarding standing and the Site Technology companies.

On information and belief, Mr. Treynor has knowledge regarding the accused technology.

Jeff Dean  
Google Fellow  
Google Inc.  
1600 Amphitheater Parkway  
Mountain View, California 94043

or through Google's counsel

On information and belief, Mr. Dean has knowledge regarding the accused technology.

Sanjay Ghemawat  
Google Fellow  
Google Inc.  
1600 Amphitheater Parkway  
Mountain View, California 94043

or through Google's counsel

On information and belief, Mr. Ghemawat has knowledge regarding the accused technology.

Amit Singhal  
Google Fellow  
Google Inc.  
1600 Amphitheater Parkway  
Mountain View, California 94043

or through Google's counsel

On information and belief, Mr. Singhal has knowledge regarding the accused technology.

Larry Page  
Google Inc.  
1600 Amphitheater Parkway  
Mountain View, California 94043

or through Google's counsel

Mr. Page has knowledge of the development of the accused technology.

Sergey Brin  
Google Inc.  
1600 Amphitheater Parkway

Mountain View, California 94043

or through Google's counsel

Mr. Brin has knowledge of the development of the accused technology.

Jerry Yang  
Yahoo!  
3400 Central Expressway, Suite 201  
Santa Clara, California 95051

or through Yahoo!'s counsel

Mr. Yang has knowledge of the development of the accused technology.

Foo Hong  
Yahoo!  
3400 Central Expressway, Suite 201  
Santa Clara, California 95051

or through Yahoo!'s counsel

Mr. Hong has knowledge of the development of the accused technology.

Farzad Nazem  
Vice President for Operations  
Yahoo!  
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Santa Clara, California 95051

Mr. Nazem has knowledge of the development of the accused technology.

Jeff Mallett  
Senior Vice President Business Operations  
Yahoo!  
3400 Central Expressway, Suite 201  
Santa Clara, California 95051  
408-731-3347

or through Yahoo!'s counsel

On information and belief, Mr. Mallett has knowledge regarding the accused technology.

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555 12th Street, Suite 500

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record pursuant to Federal Rules of Civil Procedure on this the 14<sup>th</sup> day of November, 2008.

Lee Kaplan (by permission /RD)  
Lee L. Kaplan

# **EXHIBIT 8**

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

FUNCTION MEDIA, L.L.C.

Plaintiffs,

vs.

GOOGLE, INC. AND YAHOO, INC.

Defendants.

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Civil Action No. 2:07-CV-279

JURY TRIAL DEMANDED

**ORDER ON MOTION TO COMPEL PREVIOUSLY-TAKEN  
DEPOSITION TESTIMONY OF GOOGLE EXECUTIVES**

The Court grants Plaintiff's Motion to Compel Previously-Taken Deposition Testimony of Google Executives (Dkt. No. 275) and hereby orders Google to produce: (1) the deposition transcript plus any accompanying deposition exhibits of Eric Schmidt in the *Viacom* case; and (2) any other depositions in the *Viacom* case or otherwise that relate to the reasons why Google acquired a company in the advertising space.

SIGNED this 22nd day of December, 2009.

  
CHARLES EVERINGHAM IV  
UNITED STATES MAGISTRATE JUDGE