

## **WILEY DECLARATION EX. 4**

**Issued by the  
UNITED STATES DISTRICT COURT**

EASTERN

TEXAS

Bright Response, LLC

**SUBPOENA IN A CIVIL CASE**

V.  
Google Inc., et al.

Case Number: <sup>1</sup> 2:07-CV-371-CE  
(E.D. TEX.)

**TO: ACCLAIM FINANCIAL GROUP LLC c/o DAVID PRIDHAM  
207 C NORTH WASHINGTON AVENUE  
MARSHALL, TX 75670**

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

PLACE OF DEPOSITION	DATE AND TIME

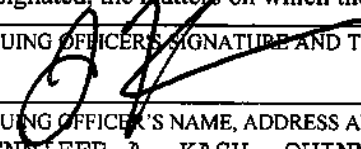
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE EXHIBIT A, ATTACHED

PLACE QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP C/O JENNIFER A. KASH 50 CALIFORNIA STREET 22ND FLOOR SAN FRANCISCO, CA 94111	DATE AND TIME FEBRUARY 2, 2009 10:00 A.M.
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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 Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  ATTORNEY FOR DEFENDANT	DATE JANUARY 12, 2009
--	--------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER JENNIFER A. KASH QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP 50 CALIFORNIA STREET 22ND FLOOR SAN FRANCISCO, CA 94111 (415) 875-6600
--

(See Federal Rule of Civil Procedure 45 (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

**Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:**

**(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

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

(iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) DUTIES IN RESPONDING TO A SUBPOENA.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding 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 for a protective order, the person responding must show that the information 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) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena 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; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) CONTEMPT.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## EXHIBIT A

### **I. DEFINITIONS**

1. “PLAINTIFF,” or “BRIGHT RESPONSE,” shall mean plaintiff Bright Response, LLC, and its agents, officers, employees, representatives and attorneys, and any and all of its predecessor or successor companies, corporations or business entities.

2. “ACCLAIM FINANCIAL GROUP,” “YOU,” or “YOUR” shall mean Acclaim Financial Group, LLC, and its agents, officers, employees, representatives and attorneys, and any and all of its parent, subsidiary, predecessor or successor companies, corporations or business entities.

3. "ANTHONY ANGOTTI," "FRED COHEN," "JULIE HSU," "ROSANNA PICCOLO," and "AMY RICE" shall mean the named inventors of U.S. Patent No. 6,411,947.

4. “DOCUMENT” or “DOCUMENTS” shall include all written, graphic or otherwise recorded material, including without limitation, microfilms or other film records or impressions, tape recordings or computer cards, floppy disks or printouts, any and all papers, photographs, films, recordings, memoranda, books, records, accounts, communications, letters, telegrams, correspondence, notes of meetings, notes of conversations, notes of telephone calls, inter-office memoranda or written communications of any nature, recordings of conversations either in writings or upon any mechanical or electrical recording devices, including electronic mail (“e-mail”), notes, papers, reports, analyses, invoices, canceled checks or check stubs, receipts, minutes of meetings, time sheets, diaries, desk calendars, ledgers, schedules, licenses, financial statements, telephone bills, logs, and any differing versions of any of the foregoing, whether so denominated, formal, informal or otherwise, as well as copies of the foregoing which differ in any way, including by the addition of handwritten notations or other written or printed matter of any nature, from the original. The foregoing specifically includes information stored in a computer database and capable of being generated in documentary form, such as electronic mail.

5. “THING” as used herein means any physical object other than a “DOCUMENT.”

(a) "PERSON" refers to any individual, corporation, proprietorship, association, joint venture, company, partnership or other business or legal entity, including governmental bodies and agencies.

6. "REFLECT," "REFLECTING," "RELATE TO," "REFER TO," "RELATING TO," and "REFERRING TO" shall mean relating to referring to, concerning, mentioning, reflecting, pertaining to, evidencing, involving, describing, discussing, commenting on, embodying, responding to, supporting, contradicting, or constituting (in whole or in part), as the context makes appropriate.

7. The "'947 PATENT" shall mean U.S. Patent No. 6,411,947.

8. The term "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, provisional, 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.

9. The singular form of words shall include the plural, and the plural shall include the singular.

## **II. INSTRUCTIONS**

1. If any portion of a DOCUMENT or THING is responsive to a request, the entire DOCUMENT or THING shall be produced, redacting only privileged material if any.

2. YOU are to produce the original and each non-identical copy of each DOCUMENT or THING requested herein that is in YOUR possession, custody or control.

3. DOCUMENTS produced pursuant to these requests shall be produced in the original files and shall not be shuffled or otherwise rearranged. DOCUMENTS which were stapled, clipped, or otherwise fastened together shall be produced in that form.

4. THINGS produced pursuant to these requests shall be produced in their present form and shall not be changed or modified in any way.

5. In the event that any DOCUMENT or THING called for by these requests or subsequent requests is to be withheld on the basis of a claim of privilege or immunity from discovery, that DOCUMENT or THING is to be identified by stating:

- (a) the author(s), addressee(s) and any indicated or blind copyee(s);
- (b) the DOCUMENT's or THING's date, number of pages and attachments or appendices;
- (c) the subject matter(s) of the document;
- (d) the nature of the privilege or immunity asserted; and
- (e) any additional facts upon which you would base your claim of privilege or immunity.

6. In the event that any DOCUMENT or THING called for by these requests or subsequent requests has been destroyed or discarded, that DOCUMENT or THING is to be identified by stating:

- (a) the author(s), addressee(s) and any indicated or blind copyee(s);
- (b) the DOCUMENT's or THING's date, number of pages and attachments or appendices;
- (c) the DOCUMENT's or THING's subject matter;
- (d) the date of destruction or discard, manner of destruction or discard, and reason for destruction or discard;
- (e) the PERSONS who were authorized to carry out such destruction or discard; and
- (f) whether any copies of the DOCUMENT or THING presently exist and, if so, the name of the custodian of each copy.

6. These Requests shall be deemed continuing so as to require further and supplemental production in accordance with the Federal Rules of Civil Procedure.

### **III. REQUESTS FOR PRODUCTION**

1. All DOCUMENTS or THINGS that REFER or RELATE to the '947 PATENT or any RELATED PATENTS/APPLICATIONS, including without limitation any DOCUMENTS that RELATE to the prosecution, valuation, 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 or THINGS that REFER or RELATE to any attempts to license, purchase, assign or enforce the '947 PATENT, including any DOCUMENTS that RELATE to the following cases, and/or any other litigation concerning the '947 PATENT:

- A. *Bright Response, LLC f/k/a Polaris IP, LLC v. Google, et al.*, Case No. 2:07-cv-371 CE (E.D. Tex.)
- B. *Polaris IP, LLC v. Sirius Satellite Radio, Inc., et al.*, Case No. 2:06-cv-103 TJW (E.D. Tex.)
- C. *Polaris IP, LLC v. Oracle Corp. et al.*, Case No. 2:06-cv-179 TJW (E.D. Tex.)
- D. *Polaris IP, LLC v. Art Technology Group, Inc.*, Case No. 2:07-cv-116 CE (E.D. Tex.)

3. All DOCUMENTS or THINGS that REFER or RELATE to any compensation, both monetary and/or non-monetary, that YOU, ANTHONY ANGOTTI, FRED COHEN, JULIE HSU, ROSANNA PICCOLO, AMY RICE, Brightware, Inc., Silicon Valley Bank, Firepond Inc., Orion IP LLC, Clear with Computers Inc., Clear with Computers LLC, Polaris IP LLC, Plutus IP Holdings, Plutus IP LLC, TechDev Holdings or BRIGHT RESPONSE LLC and any listed company's parent, subsidiary, predecessor or successor companies paid or received in connection with the assignment, license, sale, or transfer of any rights in or to the '947 PATENT or RELATED PATENTS/APPLICATIONS.

4. All DOCUMENTS or THINGS that REFER or RELATE to any transaction by, between or amongst YOU, ANTHONY ANGOTTI, FRED COHEN, JULIE HSU, ROSANNA PICCOLO, AMY RICE, Brightware, Inc., Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Polaris IP LLC, Plutus IP

Holdings, Plutus IP LLC, TechDev Holdings and/or BRIGHT RESPONSE LLC and any listed company's parent, subsidiary, predecessor or successor companies .

5. All DOCUMENTS or THINGS that REFER or RELATE to YOUR, ANTHONY ANGOTTI's, FRED COHEN's, JULIE HSU's, ROSANNA PICCOLO's, AMY RICE's, Brightware, Inc.'s, Silicon Valley Bank's, Firepond Inc's, Clear with Computers Inc.'s, Clear with Computers LLC's, Orion IP LLC's, Polaris IP LLC's, Plutus IP Holdings', Plutus IP LLC's, TechDev Holdings' or BRIGHT RESPONSE LLC's and any listed company's parent, subsidiary, predecessor or successor companies' attempts to market, promote, sell or license products, services or technology related to automatically processing electronic communications, including the use of rule base and/or case base knowledge engines.

6. All agreements, licenses and covenants-not-to-sue that RELATE to the licensing of patent rights.

7. All DOCUMENTS or THINGS that REFER or RELATE to PLAINTIFF's change of name from Polaris IP, LLC to BRIGHT RESPONSE, LLC, including the reasons, causes and/or motivations therefor.

8. All DOCUMENTS or THINGS that REFER or RELATE to any communications or correspondence between YOU and any other person or entity regarding the technology relating to purported inventions disclosed, described, or claimed in the '947 PATENT or RELATED PATENTS/APPLICATIONS.

9. All DOCUMENTS or THINGS that REFER or RELATE to Google's products and services with respect to automatically processing electronic communications, including any investigations of Google's products and/or attempts to distinguish Google's products from any technology owned or promoted by YOU or ANTHONY ANGOTTI, FRED COHEN, JULIE HSU, ROSANNA PICCOLO, AMY RICE, Brightware, Inc., Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Polaris IP LLC, Plutus IP Holdings, Plutus IP LLC, TechDev Holdings or BRIGHT RESPONSE LLC and any listed company's parent, subsidiary, predecessor or successor companies.



10. All DOCUMENTS or THINGS that REFER or RELATE to AOL LLC or America Online's products and services with respect to automatically processing electronic communications, including any investigations of AOL LLC or America Online's products and services and/or attempts to distinguish AOL LLC or America Online's products and services from any technology owned or promoted by YOU or ANTHONY ANGOTTI, FRED COHEN, JULIE HSU, ROSANNA PICCOLO, AMY RICE, Brightware, Inc., Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Polaris IP LLC, Plutus IP Holdings, Plutus IP LLC, TechDev Holdings or BRIGHT RESPONSE LLC and any listed company's parent, subsidiary, predecessor or successor companies.

11. All DOCUMENTS or THINGS that REFER or RELATE to Yahoo's products and services with respect to the automatic processing of electronic communications, including any investigations of Yahoo's products and services and/or attempts to distinguish Yahoo's products and services from any technology owned or promoted by YOU or ANTHONY ANGOTTI, FRED COHEN, JULIE HSU, AMY RICE, Brightware Inc., Silicon Valley Bank, Firepond Inc., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Plutus IP Holdings, Plutus IP LLC, TechDev Holdings or BRIGHT RESPONSE LLC and any listed company's parent, subsidiary, predecessor or successor companies.

12. All communications with any persons or entities in addition to YOU that have owned the '947 PATENT or RELATED PATENTS/APPLICATIONS.

13. All DOCUMENTS sent by YOU to any other persons or entities that have owned the '947 PATENT.

14. All DOCUMENTS received by YOU from any other persons or entities that have owned the '947 PATENT.

15. All prior art to the '947 PATENT, including publications, references, or THINGS asserted by third parties to be prior art, or evaluated by YOU as potential prior art, including without limitation any references published in 1997 or prior, referring to

automatically processing electronic communications, including the use of case base and/or rule base knowledge engines.

16. All DOCUMENTS or THINGS 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.

17. All DOCUMENTS or THINGS that REFER or RELATE to any sale or offer to sell 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.

18. All DOCUMENTS or THINGS that REFER or RELATE to any communications or correspondence between or among YOU, FRED COHEN, JULIE HSU, ROSANNA PICCOLO, AMY RICE, Brightware Inc., Silicon Valley Bank, Firepond Inc., Inference Corp., Clear with Computers Inc., Clear with Computers LLC, Orion IP LLC, Circinus IP LLC, Polaris IP LLC, Plutus IP Holdings, Plutus IP LLC, TechDev Holdings, BRIGHT RESPONSE LLC Chase Manhattan Bank, and any listed company's parent, subsidiary, predecessor or successor companies, or any other customer or potential customer regarding 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.

19. All DOCUMENTS or THINGS that REFER or RELATE to the licensing practices of BRIGHT RESPONSE and all other entities managed or owned by YOU.

20. All DOCUMENTS or THINGS that REFER or RELATE to licensing agreements made by BRIGHT RESPONSE and all other entities managed or owned by YOU.

21. All DOCUMENTS or THINGS that REFER or RELATE to licensing rates utilized by BRIGHT RESPONSE and all other entities managed or owned by YOU.

22. DOCUMENTS sufficient to demonstrate any monies received for the licensing of patents.

23. Documents sufficient to demonstrate who or what entities own or control ACCLAIM FINANCIAL GROUP.

24. Documents sufficient to demonstrate the identities of all entities owned, controlled, or managed by ACCLAIM FINANCIAL GROUP.

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

**BRIGHT RESPONSE, LLC,**

**Plaintiff**

**vs.**

**GOOGLE INC., et al,**

**Defendants.**

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**NO. 2:07-CV-371-CE**

**JURY**

**DEFENDANTS' NOTICE OF  
SUBPOENA FOR PRODUCTION OF  
DOCUMENTS TO ACCLAIM  
FINANCIAL GROUP, LLC**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** pursuant Rule 45 of the Federal Rules of Civil Procedure, Defendants in the above-captioned action demand, by subpoena, a copy of which is attached hereto, the production of documents from Acclaim Financial Group, LLC

**NOTICE IS FURTHER GIVEN THAT** Acclaim Financial Group, LLC is a non-party to the action. So far as it is known to Defendants, David Pridham is the registered agent for Acclaim Financial Group at:

David Pridham  
207 N. Washington Avenue  
Marshall, TX 75670

The requested documents are to be produced on or before 10:00 a.m. PST on February 2, 2009 at:

Quinn Emanuel Urquhart Oliver & Hedges, LLP  
c/o Jennifer A. Kash  
50 California St., 22nd Floor

San Francisco, CA  
(415) 875-6600

Dated: January 12, 2009

By: /s/ Jennifer A. Kash  
Charles K. Verhoeven, CA Bar No. 170151  
LEAD ATTORNEY  
Jennifer A. Kash, CA Bar No. 203679  
David A. Perlson, CA Bar No. 209502  
Quinn Emanuel Urquhart Oliver & Hedges,  
LLP  
50 California Street, 22nd Floor  
San Francisco, CA 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700  
charlesverhoeven@quinnemanuel.com  
jenniferkash@quinnemanuel.com  
davidperslon@quinnemanuel.com

Jennifer Parker Ainsworth  
TX Bar No. 00784720  
Wilson, Robertson & Cornelius, P.C.  
P.O. Box 7339  
Tyler, Texas 75711  
Telephone: (903) 509-5000  
Facsimile: (903) 509-5092  
jainsworth@wilsonlawfirm.com

ATTORNEYS FOR DEFENDANTS  
Google, Inc., AOL LLC, and America  
Online, Inc.

Jason C. White  
Howrey LLP  
321 North Clark Street, Suite 3400  
Chicago, Illinois 60654  
(312) 595-1239  
(312) 595-2250(Facsimile)  
whitej@howrey.com

Michael E. Jones  
State Bar No. 10929400  
POTTER MINTON  
A Professional Corporation  
110 N. College, Suite 500 (75702)  
P. O. Box 359

Tyler, Texas 75710  
(903) 597 8311  
(903) 593 0846 (Facsimile)  
mikejones@potterminton.com

ATTORNEYS FOR DEFENDANTS  
Yahoo! Inc.

### **CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record are being served via electronic mail with a copy of this document on January 12, 2009.

/s/ Jamena Pirone  
Jamena Pirone, *pro hac vice*  
jamenapirone@quinnemanuel.com  
QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP  
50 California Street, 22nd Floor  
San Francisco, California 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700