

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HYPERPHRASE TECHNOLOGIES, LLC and
HYPERPHRASE INC.,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 06 C 0199 bbc

**GOOGLE'S MOTION
TO FIND THIS CASE EXCEPTIONAL PURSUANT TO 35 U.S.C. § 285 AND
TO AWARD POST-REMAND ATTORNEYS' FEES AND EXPENSES**

Pursuant to Fed. R. Civ. P. 54(d)(2) Google Inc. ("Google") respectfully submits this motion seeking its attorneys' fees and expenses incurred since the remand of this case after appeal. As explained more fully in the supporting memorandum filed with this motion, the Court should deem this case exceptional because of litigation conduct by Hyperphrase Technologies, LLC and Hyperphrase, Inc. ("Hyperphrase") and its attorneys. Since remand, Hyperphrase has unreasonably prolonged and complicated this action, causing Google to incur significant additional expense when the case should have been wrapped up expeditiously after remand. For the reasons set forth in the accompanying memorandum, Google respectfully submits that this case is exceptional and that Google is entitled to an award of fees pursuant to 35 U.S.C. § 285.

Dated: January 23, 2009

By: s/James D. Peterson

James A. Friedman
James D. Peterson
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
Phone: (608) 257-3911
Facsimile: (608) 257-0609

Of counsel:

Jason W. Wolff
Fish & Richardson P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Frank E. Scherkenbach
Kurt L. Glitzenstein
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

Attorneys for Defendant Google, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2009, I caused the following documents

- GOOGLE'S MOTION TO FIND THIS CASE EXCEPTIONAL PURSUANT TO 35 U.S.C. § 285 AND TO AWARD POST-REMAND ATTORNEYS' FEES AND EXPENSES;
- GOOGLE'S MEMORANDUM IN SUPPORT OF ITS MOTION TO FIND THIS CASE EXCEPTIONAL PURSUANT TO 35 U.S.C. § 285 AND TO AWARD POST-REMAND ATTORNEYS' FEES AND EXPENSES.

to be electronically filed with the Clerk of the Court using the ECF system which will send notification to the following ECF participants:

Kim Grimmer (kgrimmer@sbgllaw.com)
Jennifer L. Amundsen (jamundson@sbgllaw.com)
SOLHEIM BILLING & GRIMMER, S.C.
One South Pinckney Street
Suite 301
Madison, WI 53703
Telephone: (608) 282-1200
Facsimile: (608) 282-1218

Attorneys for Plaintiffs
HYPERPHRASE TECHNOLOGIES,
LLC and HYPERPHRASE INC.

Raymond P. Niro (niro@nshn.com)
NIRO, SCAVONE, HALLER & NIRO
181 West Madison, Suite 4600
Chicago, Illinois 60602
Phone: (312) 236-0733
Fax: (312) 236-1471

Attorneys for Plaintiffs
HYPERPHRASE TECHNOLOGIES,
LLC and HYPERPHRASE INC.