

1 RUSSELL J. FRACKMAN (State Bar No. 49087)
JEFFREY D. GOLDMAN (State Bar No. 155589)
2 MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
3 Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
4 Facsimile: (310) 312-3100

5 JEFFREY N. MAUSNER (State Bar No. 122385)
BERMAN, MAUSNER & RESSER
6 11601 Wilshire Boulevard, Suite 600
Los Angeles, California 90025-1742
7 Telephone: (310) 473-3333
Facsimile: (310) 473-8303

8 DANIEL J. COOPER (State Bar No. 198460)
9 PERFECT 10, INC.
72 Beverly Park Drive
10 Beverly Hills, California 90210
Telephone: (310) 205-9817
11 Facsimile: (310) 205-9638

12 Attorneys for Plaintiff

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 PERFECT 10, a California corporation,

18 Plaintiff,

19 v.

20 GOOGLE, INC., a corporation; and
DOES 1 through 100, inclusive,

21 Defendants.
22
23

CASE NO. CV 04-09484 AHM (SHx)

**DECLARATION OF JEFFREY N.
MAUSNER IN SUPPORT OF
MOTION OF PLAINTIFF
PERFECT 10, INC. FOR
PRELIMINARY INJUNCTION**

Date: September 19, 2005
Time: 10:00 a.m.
Ctrm: The Honorable A. Howard
Matz

EXHIBIT 118

FILE COPY

1 WINSTON & STRAWN LLP
ANDREW P. BRIDGES (SBN: 122761)
2 MICHAEL S. BROPHY (SBN: 197940)
JENNIFER A. GOLINVEAUX (SBN: 203056)
3 101 California Street, Suite 3900
San Francisco, CA 94111-5894
4 Telephone: (415) 591-1000
Facsimile: (415) 591-1400
5 E-mail: abridges@winston.com, mbrophy@winston.com,
jgolinveaux@winston.com

6 Attorneys For Defendant and Counterclaimant
7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

11 PERFECT 10, INC., a California
corporation,

12 Plaintiff,

13 vs.

14 GOOGLE INC., a corporation; and
15 DOES 1 through 100, inclusive,

16 Defendant.

Case No. CV04-9484 NM (CWx)

**DEFENDANT GOOGLE INC.'S
RESPONSE TO PLAINTIFF'S
CORRECTED FIRST SET OF
REQUESTS FOR ADMISSION**

17
18 GOOGLE INC., a corporation,

19 Counterclaimant,

20 vs.

21 PERFECT 10, INC., a California
corporation,

22 Counter-defendant.

24 PROPOUNDING PARTY: PLAINTIFF PERFECT 10, INC.

25 RESPONDING PARTY: DEFENDANT GOOGLE INC.

26 SET NUMBER: ONE

27
28 EXHIBIT 118 Page 2

1 calculated to lead to the discovery of admissible evidence. Google admits that it has
2 not used image recognition software to determine the copyright ownership of images.
3 Subject to and without waiving the foregoing objections and its General Objections,
4 Google otherwise denies the request.

5 **REQUEST FOR ADMISSION NO. 22:**

6 Admit that Perfect 10 cannot prevent through technological means would-be
7 infringers from scanning photographs from its magazine.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

9 Google objects to this request as vague and ambiguous. Subject to and without
10 waiving its General Objections, Google denies this request.

11 **REQUEST FOR ADMISSION NO. 23:**

12 Admit that if Perfect 10 used robot exclusion headers on perfect10.com to
13 prevent GOOGLE from copying images from perfect10.com, that would not prevent
14 GOOGLE from copying Perfect 10 images from websites that misappropriated Perfect
15 10 images.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

17 Google objects to this request as vague, ambiguous, hypothetical, and
18 argumentative. Google admits that websites can make reproductions of Perfect 10
19 images without assistance from Google and without Google copying images from
20 perfect10.com. Subject to and without waiving the foregoing objections and its
21 General Objections, Google otherwise denies the request.

22 **REQUEST FOR ADMISSION NO. 24:**

23 Admit that when a GOOGLE image search is conducted, the reduced-size
24 images which appear reside on GOOGLE servers.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

26 Google objects to this request as vague, ambiguous and unintelligible. Google
27 admits that its servers store reduced-size extracts of images. Subject to and without
28

1 waiving the foregoing objections and its General Objections, Google otherwise denies
2 the request.

3 **REQUEST FOR ADMISSION NO. 25:**

4 Admit that reduced-size images have been accessible to Internet users from
5 GOOGLE servers when the site from which those images are purportedly derived is
6 not accessible.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

8 Google objects to this request as vague and ambiguous. Subject to and without
9 waiving the foregoing objections and its General Objections, Google admits the
10 request.

11 **REQUEST FOR ADMISSION NO. 26:**

12 Admit that GOOGLE has copied onto its servers Perfect 10 copyrighted images
13 that are at least 4" x 5" in size.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

15 Google objects to this request as vague, ambiguous, and argumentative.
16 Subject to and without waiving the foregoing objections and its General Objections,
17 Google denies the request.

18 **REQUEST FOR ADMISSION NO. 27:**

19 Admit that GOOGLE has displayed to consumers Perfect 10 copyrighted
20 images that are at least 4" x 5" in size.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

22 Google objects to this request as vague and ambiguous. Subject to and without
23 waiving the foregoing objections and its General Objections, Google denies the
24 request.

25 **REQUEST FOR ADMISSION NO. 28:**

26 Admit that GOOGLE has made available for downloading by consumers
27 Perfect 10 copyrighted images that are at least 4" x 5" in size.

28 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 Google objects to the request as vague, ambiguous, and argumentative. Subject
2 to and without waiving the foregoing objections and its General Objections, Google
3 denies the request.

4 **REQUEST FOR ADMISSION NO. 213:**

5 Admit that full sized copies of Perfect 10's photographs are stored on Google's
6 servers.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 213:**

8 Google objects to the request as vague, ambiguous, and argumentative. Subject
9 to and without waiving the foregoing objections and its General Objections, Google
10 denies the request.

11 **REQUEST FOR ADMISSION NO. 214:**

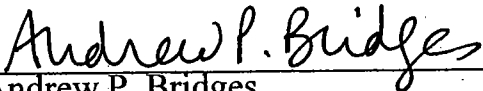
12 Admit that full sized copies of Perfect 10's photographs are delivered to Internet
13 users from Google's servers.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 214:**

15 Google objects to the request as vague, ambiguous, and argumentative. Subject
16 to and without waiving the foregoing objections and its General Objections, Google
17 denies the request.

18 Dated: April 18, 2005

WINSTON & STRAWN LLP

19
20 
21 Andrew P. Bridges
22 Michael S. Brophy
23 Jennifer A. Golinveaux
24 Attorneys for Defendant and Counterclaimant
25 Google, Inc.
26
27
28

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 WINSTON & STRAWN LLP
ANDREW P. BRIDGES (SBN: 122761)
2 MICHAEL S. BROPHY (SBN: 197940)
JENNIFER A. GOLINVEAUX (SBN: 203056)
3 101 California Street, Suite 3900
San Francisco, CA 94111-5894
4 Telephone: (415) 591-1000
Facsimile: (415) 591-1400
5 E-mail: abridges@winston.com

6 Attorneys for Defendant and Counterclaimant
7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 PERFECT 10, INC., a California
corporation,

12 Plaintiff,

13 vs.

14 GOOGLE INC., a corporation; and
15 DOES 1 through 100, inclusive,

16 Defendant.

17
18 GOOGLE INC., a corporation,

19 Counterclaimant,

20 vs.

21 PERFECT 10, INC., a California
corporation,

22 Counter-defendant.
23

Case No. CV04-9484 NM (CWx)

**DEFENDANT GOOGLE INC.'S
RESPONSE TO PLAINTIFF'S
THIRD SET OF REQUESTS FOR
ADMISSIONS**

24 PROPOUNDING PARTY:

PLAINTIFF PERFECT 10, INC.

25 RESPONDING PARTY:

DEFENDANT GOOGLE INC.

26 SET NUMBER:

THREE

1 Admit that Google has a method for preventing a URL from appearing in
2 Google web search results.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 244:**

4 Google objects to the request as vague and ambiguous. Subject to and without
5 waiving the General Objections and specific objections above, Google admits that it
6 has a method for preventing a URL from appearing as a link in Google web search
7 results but it does not have a method, within the normal operation of its search engine,
8 that guarantees that a URL does not appear in Google web search results. Google
9 denies the remainder, if any, of the request.
10

11 **REQUEST FOR ADMISSION NO. 245:**

12 Admit that Google has a method for preventing an image from appearing in
13 Google image search results.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 245:**

15 Google objects to the request as vague and ambiguous. Subject to and without
16 waiving the General Objections and specific objections above, Google admits that it
17 has a method for preventing a thumbnail image associated with a specific URL from
18 appearing as a linked image in Google image search results but it does not have a
19 method, within the normal operation of its search engine, that guarantees that an
20 image does not appear in Google image search results. Google denies the remainder,
21 if any, of the request.
22

23 **REQUEST FOR ADMISSION NO. 246:**

24 Admit that as of June 30, 2004, Google had a technological method for
25 preventing a URL from appearing in Google web search results without shutting down
26 Google's servers.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 246:**
28

1 Google objects to the request as vague and ambiguous. Subject to and without
2 waiving the General Objections and specific objections above, Google admits that, as
3 of June 30, 2004, it had a method for preventing a URL from appearing as a link in
4 Google web search results without shutting down Google's servers but it did not have
5 a method, within the normal operation of its search engine, that guaranteed that a URL
6 did not appear in Google web search results. Google denies the remainder, if any, of
7 the request.

8
9 **REQUEST FOR ADMISSION NO. 247:**

10 Admit that as of June 30, 2004, Google had a technological method for
11 preventing an image from appearing in Google image search results without shutting
12 down Google's servers.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 247:**

14 Google objects to the request as vague and ambiguous. Subject to and without
15 waiving the General Objections and specific objections above, Google admits that, as
16 of June 30, 2004, it had a technological method for preventing a thumbnail image
17 associated with a specific URL from appearing as a linked image in Google image
18 search results but it did not have a method, within the normal operation of its search
19 engine, that guaranteed that an image did not appear in Google image search results.
20 Google denies the remainder, if any, of the request.

21
22 **REQUEST FOR ADMISSION NO. 248:**

23 Admit that as of June 30, 2001, Google had a technological method for
24 preventing a URL from appearing in Google web search results without shutting down
25 Google's servers.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 248:**

27 Google objects to the request as vague and ambiguous. Google further objects
28 on the ground that the request is irrelevant and not reasonably calculated to lead to the

1 discovery of admissible evidence. Subject to and without waiving the General
2 Objections and specific objections above, Google admits that, as of June 30, 2001, it
3 had a technological method for preventing a URL from appearing as a link in Google
4 web search results without shutting down Google's servers but it did not have a
5 method, within the normal operation of its search engine, that guaranteed that a URL
6 did not appear in Google web search results. Google denies the remainder, if any, of
7 the request.

8
9 **REQUEST FOR ADMISSION NO. 249:**

10 Admit that as of June 30, 2003, Google had a technological method for
11 preventing an image from appearing in Google image search results without shutting
12 down Google's servers.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 249:**

14 Google objects to the request as vague and ambiguous. Subject to and without
15 waiving the General Objections and specific objections above, Google admits that, as
16 of June 30, 2003, it had a technological method for preventing a thumbnail image
17 associated with a specific URL from appearing as a linked image in Google image
18 search results but it did not have a method, within the normal operation of its search
19 engine, that guaranteed that an image did not appear in Google image search results.
20 Google denies the remainder, if any, of the request.

21
22 **REQUEST FOR ADMISSION NO. 250:**

23 Admit that as of June 30, 2004, Google had a method for readily preventing a
24 URL from appearing in Google web search results.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 250:**

26 Google objects to the request as vague, ambiguous, and argumentative.
27 Google also objects to the request as redundant and improperly burdensome. Subject
28 to and without waiving the General Objections and specific objections above, Google

1 admits that it has a method for preventing a URL from appearing as a link in Google
2 web search results but it does not have a method, within the normal operation of its
3 search engine, that guarantees that a URL does not appear in Google web search
4 results. Google denies the remainder, if any, of the request.
5

6 **REQUEST FOR ADMISSION NO. 251:**

7 Admit that as of June 30, 2004, Google had a method for readily preventing an
8 image from appearing in Google web search results.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 251:**

10 Google objects to the request as vague, ambiguous, and argumentative. Google
11 also objects to the request as redundant and improperly burdensome. Subject to and
12 without waiving the General Objections and specific objections above, Google admits
13 that it had a method for preventing a thumbnail image associated with a specific URL
14 from appearing as a linked image in Google image search results but it did not have a
15 method, within the normal operation of its search engine, that guaranteed that an
16 image did not appear in Google image search results. Google denies the remainder, if
17 any, of the request.
18

19 **REQUEST FOR ADMISSION NO. 252:**

20 Admit that as of June 30, 2004, Google had a method for readily preventing an
21 image from appearing in Google image search results.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 252:**

23 Google objects to the request as vague, ambiguous, and argumentative. Google
24 also objects to the request as redundant and improperly burdensome. Subject to and
25 without waiving the General Objections and specific objections above, Google admits
26 that it has a method for preventing a thumbnail image associated with a specific URL
27 from appearing as a linked image in Google image search results but it does not have a
28 method, within the normal operation of its search engine, that guarantees that an

1 image does not appear in Google image search results. Google denies the remainder,
2 if any, of the request.

3
4 **REQUEST FOR ADMISSION NO. 253:**

5 Admit that as of June 30, 2001, Google had a method for readily preventing a
6 URL from appearing in Google web search results.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 253:**

8 Google objects to the request as vague, ambiguous, and argumentative. Google
9 also objects to the request as redundant and improperly burdensome. Subject to and
10 without waiving the General Objections and specific objections above, Google admits
11 that it had a method for preventing a URL from appearing as a link in Google web
12 search results but it did not have a method, within the normal operation of its search
13 engine, that guaranteed that a URL did not appear in Google web search results.

14 Google denies the remainder, if any, of the request.

15
16 **REQUEST FOR ADMISSION NO. 254:**

17 Admit that as of June 30, 2003, Google had a method for readily preventing an
18 image from appearing in Google image search results.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 254:**

20 Google objects to the request as vague, ambiguous, and argumentative. Google
21 also objects to the request as redundant and improperly burdensome. Subject to and
22 without waiving the General Objections and specific objections above, Google admits
23 that it had a method for preventing a thumbnail image associated with a specific URL
24 from appearing as a linked image in Google image search results but it did not have a
25 method, within the normal operation of its search engine, that guaranteed that an
26 image did not appear in Google image search results. Google denies the remainder, if
27 any, of the request.

28

1 Admit that when a user does a Google Web Search and then clicks on the
2 "Cached" link, the images that appear on his or her screen reside on Google servers
3 when the URL in the user's browser contains the term "http://66.102.7.104/...".

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 261:**

5 Google objects to the request as vague, ambiguous, and argumentative. Subject
6 to and without waiving the General Objections and specific objections above, Google
7 denies the request.

8
9 **REQUEST FOR ADMISSION NO. 262:**

10 Admit that when a user does a Google Web Search and then clicks on the
11 "Cached" link, the images that appear on his or her screen reside on Google servers
12 when the URL in the user's browser contains the term "http://216.239.57.104/...".

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 262:**

14 Google objects to the request as vague, ambiguous, and argumentative. Subject
15 to and without waiving the General Objections and specific objections above, Google
16 denies the request.

17
18 **REQUEST FOR ADMISSION NO. 263:**

19 Admit that if an image found using Google image search shows a URL
20 containing "http://images.google.com...", that image resides on Google's servers.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 263:**

22 Google objects to the request as vague, ambiguous, argumentative, and
23 hypothetical. Subject to and without waiving the General Objections and specific
24 objections above, Google admits the request.

25
26 **REQUEST FOR ADMISSION NO. 264:**

27 Admit that images viewed by doing a Google Web Search and then clicking on
28 the "Cached" link reside on Google's servers.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 264:**

2 Google objects to the request as vague, ambiguous, and argumentative. Subject
3 to and without waiving the General Objections and specific objections above, Google
4 denies the request.

5
6 **REQUEST FOR ADMISSION NO. 265:**

7 Admit that Google can control which images will appear on images.google.com
8 as a result of a Google image search on a particular model name.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 265:**

10 Google objects to the request as vague, ambiguous, and argumentative. Subject
11 to and without waiving the General Objections and specific objections above, Google
12 admits that Google can control which images will appear on images.google.com as a
13 result of a Google image search on a particular term, but Google denies the remainder
14 of the request.

15
16 **REQUEST FOR ADMISSION NO. 266:**

17 Admit that Google knows which images will appear on images.google.com as a
18 result of a Google image search on a particular model name.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 266:**

20 Google objects to the request as vague, ambiguous, and argumentative. Subject
21 to and without waiving the General Objections and specific objections above, Google
22 denies the request.

23
24 **REQUEST FOR ADMISSION NO. 267:**

25 Admit that for each image which Google makes available for viewing or
26 downloading via Google image search, Google keeps track of the website to which
27 that image links.

28

1 irrelevant and not reasonably calculated to lead to the discovery of admissible
2 evidence.

3
4 **REQUEST FOR ADMISSION NO. 301:**

5 Admit that Google has no reason to believe that a website which promises nude
6 images of Halle Berry, Nicole Kidman, or Christina Aguilera has licenses or other
7 written authorization to display or copy any of those images.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 301:**

9 Google objects to the request as vague and ambiguous. Google also objects to
10 the request as compound. Google further objects on the ground that the request is
11 irrelevant and not reasonably calculated to lead to the discovery of admissible
12 evidence.

13
14 **REQUEST FOR ADMISSION NO. 302:**

15 Admit that Google has a procedure to control whether a particular URL will
16 appear in its Web Search results.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 302:**

18 Google objects to the request as vague, ambiguous, and argumentative. Google
19 further objects to this request as redundant and burdensome. Subject to and without
20 waiving the General Objections and specific objections above, Google admits that it
21 has a procedure to limit appearance of a URL as a link in Google web search results
22 but it does not have a procedure, within the normal operation of its search engine, that
23 guarantees that a URL does not appear in Google web search results. Google denies
24 the remainder, if any, of the request.

25
26 **REQUEST FOR ADMISSION NO. 303:**

27 Admit that Google has a procedure to know whether a particular URL will
28 appear in its Web Search results.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 303:**

2 Google objects to the request as vague, ambiguous, and argumentative. Google
3 also objects to this request as posing an incomplete hypothetical question. Subject to
4 and without waiving the General Objections and specific objections above, Google
5 denies the request.

6
7 **REQUEST FOR ADMISSION NO. 304:**

8 Admit that Google has a procedure to control whether a particular image of a
9 model will appear in a Google image search on that model's name.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 304:**

11 Google objects to the request as vague, ambiguous, and argumentative. Subject
12 to and without waiving the General Objections and specific objections above, Google
13 admits that it has a procedure for preventing a thumbnail image associated with a
14 specific URL from appearing as a linked image in Google image search results but it
15 does not have a procedure, within the normal operation of its search engine, that limits
16 appearance of an image of a model in Google image search results. Google denies the
17 remainder, if any, of the request.

18
19 **REQUEST FOR ADMISSION NO. 305:**

20 Admit that Google has a procedure to know whether a particular image of a
21 model will appear in a Google image search on that model's name.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 305:**

23 Google objects to the request as vague, ambiguous, and argumentative. Google
24 also objects to this request as posing an incomplete hypothetical question. Subject to
25 and without waiving the General Objections and specific objections above, Google
26 denies the request.

27
28 **REQUEST FOR ADMISSION NO. 306:**

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 image associated with a specific URL from appearing as a linked image in Google
2 image search results but it did not have a procedure, within the normal operation of its
3 search engine, that limited appearance of an image of a model in Google image search
4 results. Google denies the remainder, if any, of the request.
5

6 **REQUEST FOR ADMISSION NO. 309:**


7 Admit that Google has had, since at least June 30, 2004, a procedure to know
8 whether a particular image of a model will appear in a Google image search on that
9 model's name.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 309:**

11 Google objects to the request as vague, ambiguous, and argumentative. Google
12 also objects to this request as posing an incomplete hypothetical question. Subject to
13 and without waiving the General Objections and specific objections above, Google
14 denies the request.
15
16

17
18 Dated: May 27, 2005

WINSTON & STRAWN LLP

19 

20 Andrew P. Bridges
21 Michael S. Brophy
22 Jennifer A. Golinveaux
23 Attorneys for Defendant and
24 Counterclaimant Google, Inc.
25
26
27
28