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10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 PERFECT 10, INC., a California  
14 Corporation

15 Plaintiff,

16 vs.

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

19 Defendant.

20 Case No. CV04-9484 AHM (SHx)

21 **GOOGLE'S OPPOSITION TO**  
22 **PERFECT 10'S MOTION FOR**  
23 **PRELIMINARY INJUNCTION**

24 Date: November 7, 2005  
25 Time: 10:00 a.m.  
26 Location: Courtroom 14

27  
28  
Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

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1 **I. INTRODUCTION**

2 Over four years after sending demands to Google, and over nine months after  
3 filing this action, Perfect 10 has moved for a preliminary injunction to force Google to  
4 endure a process by which Perfect 10, without court review, may continuously dictate  
5 to Google how Google must alter the Web index at the heart of its search engine.

6 Perfect 10's motion fails every criterion. Perfect 10 has not proved probable, or  
7 even reasonably possible, success on the merits. It cannot show irreparable harm, and  
8 indeed its own delays make this motion a non-starter even without considering the  
9 other factors. The balance of hardships weighs against an injunction. Finally, the  
10 public interest is extremely strong in avoiding an injunction that would hobble  
11 Google's widely used and beneficial search engine.

12 **II. FACTUAL BACKGROUND**

13 **A. GOOGLE'S SEARCH ENGINE AND RELATED ACTIVITIES**

14 **1. Web And Image Search Engine**

15 Google's search engine systematically and comprehensively explores the  
16 vastness of the World Wide Web, retrieves and stores pages and files located on the  
17 Web in storage called a "cache," indexes those pages and files, and delivers to users  
18 search results based on the likely relevance of those pages and files to search terms  
19 entered by users. The Web is an open, network service that operates over the Internet  
20 by means of the hypertext transfer protocol ("HTTP"), which enables the linking of a  
21 vast number of documents across the Internet. "Browser" software programs such as  
22 Internet Explorer and Netscape enable the transfer and display, across the Web, of  
23 pages that are formatted using Hypertext Markup Language ("HTML") as well as  
24 images, word processing documents, and other files. The Web connects resources and  
25 users in countless ways. Declaration of John Levine ("Levine Dec.") ¶7.

26 Google's search engine has become one of the most significant and widely used  
27 research tools in the world. The variety of its research uses is immense and Google is  
28

1 a staple educational resource. See Levine Dec. ¶14; Declaration of Andrew P. Bridges  
2 (“Bridges Dec.”) ¶2 and Ex. C.<sup>1</sup>

3 Google delivers search results at no charge to either users or providers of  
4 information. Google does not require accounts or subscriptions for its general public  
5 search engine use that is at issue in this litigation. Declaration of Alexander  
6 Macgillivray (“Macgillivray Dec.”) ¶4. Like a number of other media, Google’s  
7 search engine is primarily advertising-supported, as described below.

8 When the Google Web Search engine receives a query, it searches its index for  
9 pages relevant to the query. It then returns Web page links with snippets of relevant  
10 text. It also provides a link to Google’s “cached” copy of the text portion of the Web  
11 page. By clicking on the “cached” link, the user will cause the cached page to appear.  
12 While it may seem that the cached page contains images, in fact the images are not  
13 from the Web Search cache; in fact, a user’s web browser fetches any images from  
14 their original location and not from Google’s servers.<sup>2</sup> Macgillivray Dec. ¶2; Levine  
15 Dec. ¶21. Google also provides a link for a version of the cached page that will  
16 disable this browser function. Macgillivray Dec. ¶2.

17 When the Google Image Search engine responds to a query, it searches its index  
18 for image files (stored in an index apart from the index for Web page files) that are  
19 relevant to the query based on the text of their associated Web pages. (Google does  
20 not have a technology that is able to translate the pixels of an image into a searchable  
21

22 <sup>1</sup> In addition to its research functions, the Google search engine has a news reporting  
23 function as it updates its search results to reflect the current status of the Web. Google  
24 Alerts delivers updated search results to a user. See [www.google.com/alerts?hl=en](http://www.google.com/alerts?hl=en)  
(copy attached as Ex. B to Bridges Dec.). In addition, Google’s ranking of search  
25 results and its assignment of “PageRank” scores to pages gives Google’s opinion of  
26 the significance and relevance of pages and files on the Web. See *Search King, Inc. v.*  
*Google Technology, Inc.*, 2003 WL 21464568 at \*4 (W.D. Okla. May 27, 2003); see  
27 also H. Davis, *Building Research Tools with Google for Dummies* (2005), pg. 47 (Ex.  
28 C to Bridges Dec.). (“Research Tools”).

<sup>2</sup> In the HTML programming customary for Web pages, images are not part of the  
page itself. Instead, the HTML code for a Web page identifies a separate file where  
the image is stored. When a browser shows a Web page with images, the browser  
obtains the text and images from different locations and knits them together into a  
single display. Levine Dec. ¶16.

1 textual description.) *See also Research Tools* at 137 (Ex. C to Bridges Dec.).

2 The Image Search engine returns results consisting of a page of “thumbnail”  
3 images – small low-resolution extracts of original images that aid the user in  
4 identifying and locating the image most relevant to the research. Macgillivray Dec.  
5 ¶3. The browser obtains “thumbnail” images from Google’s server, together with  
6 information about the Web page associated with the image. The user then can choose  
7 to click on the image thumbnail and show more information about the image and  
8 cause the user’s browser (typically Internet Explorer, Netscape, Mozilla Firefox, or  
9 Opera) to open a “window” on the screen that will display the underlying Web page in  
10 a process called “framing.” Macgillivray Dec. ¶3. *See also Research Tools* at 138-39  
11 (Bridges Dec. Ex. C.). **Dr. Zada’s declaration, its exhibit 8 with the narration by**  
12 **Patrick Swart, and the accompanying Swart Declaration mislead the Court when**  
13 **they refer to the new window in the browser display and then refer and point to**  
14 **the address bar of the browser, which continues to show a “google.com” location,**  
15 **to imply that the lower window is coming from google.com. The new material**  
16 **displayed in the browser’s lower window comes from the underlying site, not**  
17 **from Google.**<sup>3</sup>

## 18 2. Google's Advertising Programs

19 Google has two web advertising programs, AdWords for advertisers and  
20 AdSense for web publishers. Macgillivray Dec. ¶9 and Ex. A.

21 Through Google's AdWords program, advertisers purchase advertising

22 <sup>3</sup> The address bar to which the demonstration misleadingly points corresponds to the  
23 *top* window of the browser, which displays only a selected “thumbnail,” and not to the  
24 *bottom* window of the browser, which displays the source Web page or image file of  
25 Google's search result. In fact, despite the misleading commentary and declarations  
26 (at 1:15-1:22 of the demonstration), the display on the demonstration CD specifically  
27 says “Below is the image in its **original context** on the page [www.3thehardway.nl/.../vibesorensen002.html](http://www.3thehardway.nl/.../vibesorensen002.html)” (emphasis in original). When the demonstration navigates  
28 within that window, at 1:22-2:27 of the demonstration, the display is coming from the  
underlying Web site and not from Google, contrary to the narrative of the  
demonstration. The division of the display into distinct windows drawing from  
diverse sources, sometimes called “framing,” is a common function of Internet  
browsers, and the browser carries out the navigation function shown in the  
demonstration without involvement by Google. Levine Dec. ¶24, n 1.

