

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner,

v.

ALFONSO CIOFFI, MEGAN ELIZABETH ROZMAN,
MELANIE ANN ROZMAN, AND MORGAN LEE ROZMAN,
Patent Owners.

Cases CBM2017-00009, CBM2017-00016
Patent RE43,529

Cases CBM2017-00010, CBM2017-00015
Patent RE43,528

Cases CBM2017-00011, CBM2017-00014
Patent RE43,500

EXHIBIT 2002

DECLARATION OF ERIC BENISEK IN SUPPORT OF PATENT OWNER'S
PRELIMINARY RESPONSE

I, Eric Benisek, do hereby state as follows:

1. I am an attorney and partner at the law firm Vasquez, Benisek, & Lindgren, LLP.
2. I am lead counsel in *Cioffi, et al. v. Google, Inc.*, No. 2:13-cv-00103 (E.D. Tex.) (“the district court litigation”).
3. I provide this declaration to summarize events of the district court litigation.
4. U.S. Patent Nos. RE43,500 (“the ’500 Patent”), RE43,528 (“the ’528 Patent”), and RE43,529 (“the ’529 Patent”) are the subject of claims of infringement against Google, Inc. (“Petitioner/Defendant”) in the district court litigation.
5. I understand that the Petitioner/Defendant has filed petitions for covered business method (“CBM”) review proceedings against the ’500 Patent, the ’528 Patent, and the ’529 Patent as follows:

U.S. Patent No.	CBM Proceedings
The ’500 Patent	CBM2017-00011
	CBM2017-00014
The ’528 Patent	CBM2017-00010
	CBM2017-00015
The ’529 Patent	CBM2017-00009

U.S. Patent No.	CBM Proceedings
	CBM2017-00016

6. A complaint for the district court litigation was filed by Cioffi et al. (“Patent Owner/Plaintiff”) on February 5, 2013, which named the Petitioner/Defendant as a defendant against claims of infringement of the ’500 Patent, ’528 Patent, and ’529 Patent.

7. The Petitioner/Defendant answered the complaint on April 11, 2013.

8. Pursuant to Local Rule 3-1 of the Eastern District of Texas, the Patent Owner/Plaintiff served the Petitioner/Defendant infringement contentions on July 25, 2013.

9. Pursuant to Local Rule 3-2 of the Eastern District of Texas, production of relevant documents by the Patent Owner/Plaintiff occurred on July 25, 2013 and continued thereafter.

10. Pursuant to Local Rule 3-3 of the Eastern District of Texas, the Petitioner/Defendant served the Patent Owner/Plaintiff invalidity contentions on November 25, 2013

11. Pursuant to Local Rule 3-4 of the Eastern District of Texas, production of relevant documents by the Petitioner/Defendant occurred on November 25, 2013, and continued thereafter.

12. In June 2014, the Petitioner/Defendant sought discovery on the Patent Owner/Plaintiff related to the *Markman* briefing including noticing and taking the depositions of the Patent Owner/Plaintiff's technical expert, Dr. H.E. ("Buster") Dunsmore, and co-inventor, Alfonso Cioffi.

13. The *Markman* briefing commenced by the Patent Owner/Plaintiff filing its *Markman* brief on July 14, 2014 to which the Petitioner/Defendant responded by filing its *Markman* brief on July 31, 2014.

14. A *Markman* hearing was conducted on August 14, 2014 with an order construing claim terms issuing on August 28, 2014.

15. Thereafter, in September, October and November of 2014, substantial document and deposition discovery was undertaken including nine depositions and the production of tens of thousands of documents.

16. Subsequent to and based on the order construing claim terms of the '500 Patent, '528 Patent and '529 Patent, the Patent Owner/Plaintiff and Petitioner/Defendant stipulated to non-infringement, and a notice of appeal to the Court of Appeals for the Federal Circuit was filed on December 9, 2014.

17. The Patent Owner/Plaintiff filed an appeal brief with the Federal Circuit on April 11, 2015, to which the Petitioner/Defendant responded by filing a brief on May 20, 2015.

18. An oral hearing was conducted before a panel of the Federal Circuit on October 7, 2015.

19. The Federal Circuit issued its decision in *Cioffi v. Google, Inc.*, 632 F. App'x 1013 (Fed. Cir. 2015) on November 17, 2015.

20. On January 19, 2016, the Petitioner/Defendant sought *en banc* review of the Federal Circuit's November 17, 2015 decision.

21. On April 17, 2016, the Federal Circuit denied the Petitioner/Defendant's request for *en banc* review.

22. On April 18, 2016, the Federal Circuit issued mandamus remanding the case back to the district court.

23. On August 12, 2016, the parties exchanged opening expert reports. The Patent Owner/Plaintiff served (i) the expert report of Dr. Aveil Rubin on infringement of the patents-in-suit, and (ii) the expert report of Walter Bratic on damages. The Petitioner/Defendant served two invalidity reports: (i) one from Dr. Michael Kogan based on various violations of 35 U.S.C. §§ 112 and 251, and (ii) one from Dr. William Arbaugh based on 35 U.S.C. §§ 102 and 103.

24. On August 16, 2016, the Petitioner/Defendant petitioned the U.S. Supreme Court for a writ of Certiorari to overturn the Federal Circuit's November 17, 2015 decision, and on November 14, 2016, the Patent Owner/Plaintiff opposed Petitioner/Defendant's petition for writ of Certiorari. The U.S. Supreme Court

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