

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

BID FOR POSITION, LLC,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 2:07cv582 (JBF-TEM)

AOL LLC and
GOOGLE INC.,

Defendants/Counterclaim Plaintiffs.

**JOINT MOTION TO MAKE PUBLIC PORTIONS OF CERTAIN BRIEFS,
DECLARATIONS, AND EXHIBITS FILED UNDER SEAL**

Plaintiff Bid For Position, LLC (“Plaintiff”) and Defendants Google Inc. and AOL LLC (collectively “Defendants”), by counsel, move to make public certain portions of certain briefs, declarations, and exhibits filed under seal during the course of the above-captioned matter for purposes of Bid For Position LLC v. AOL LLC and Google Inc, Appeal No. 2009-1068 , now pending before the U.S. Court of Appeals for the Federal Circuit and for all other purposes, as required by Federal Circuit Rule 11(d) and in support thereof, state as follows:

1. This Court granted Defendants’ Motion for Summary Judgment of Non-Infringement on October 16, 2008 in a public Order and Opinion (“Order and Opinion of Non-Infringement”), and an Amended Final Judgment was entered on October 31, 2008.
2. On October 31, 2008, Plaintiff filed a Notice of Appeal and is in the process of appealing the decision of this Court to the United States Court of Appeals for the Federal Circuit (the “Appeal”). Federal Circuit Rule 11(d) requires that the parties promptly review the record in the district court to determine whether portions subject to a protective order need to remain protected on appeal and, if a party determines that some portions no longer need to be protected,

that party must seek an agreement with the other party and present any such agreement to the trial court, which may issue an appropriate order.

3. This Court entered a Protective Order (“Protective Order”) in the above-captioned case on April 28, 2008. Plaintiff and Defendants each moved, pursuant to the Protective Order, to seal certain briefing, declarations, and exhibits relating to Defendants’ Motion for Summary Judgment of Non-Infringement. On August 4, 2008, the Court granted Defendants Google Inc. and AOL LLC’s (collectively “Defendants”) motion to seal the Declaration of Clayton Bavor, Jr. and Supporting Exhibits, the Declaration of Rohit Rao and Supporting Exhibits, Exhibits 4 and 5 to the Declaration of Emily C. O’Brien, and portions of Defendants’ Memorandum in Support of Their Motion for Summary Judgment of Non-Infringement. On August 15, 2008, the Court granted Plaintiff Bid For Position, LLC’s (“Plaintiff”) motion to seal portions of Plaintiff’s Brief in Opposition to Defendants’ Motion for Summary Judgment of Non-Infringement, the August 6, 2008 Declaration of Don Turnbull, the August 6, 2008 Declaration of Gregory Dovel and Exhibits 3-9, 21-23 and 25 to the Dovel Declaration. The Court has not yet ruled on Defendants’ motion, filed on August 11, 2008, to seal Exhibits 2-4 to the Declaration of Emily C. O’Brien and portions of the Reply Memorandum in Support of Defendants’ Motion for Summary Judgment of Non-Infringement (collectively “Materials Under Seal”).

4. Pursuant to Federal Circuit Rule 11(d), Defendants reviewed the Materials Under Seal and determined that, particularly in light of the information made public in the Court’s Order and Opinion of Non-Infringement, some of the portions of the Materials Under Seal are no longer contain “Protected Information,” as defined by the Protective Order.

5. Defendants further notified Plaintiff that portions of the following briefing, declarations, and exhibits of the Materials Under Seal should be deemed public for purposes of

the Appeal now pending before the U.S. Court of Appeals for the Federal Circuit and for all other purposes, with the exception of the portions described herein that shall remain confidential (A-I below designated collectively as “Portions of Materials To Be Made Public”):

- A. Defendants’ Memorandum in Support of Defendants’ Motion for Summary Judgment of Non-Infringement [Dkt. 183], except for page 4, lines 3-4; and page 12, lines 16-17, which shall remain confidential;
- B. Declaration of Clayton Bavor in Support of Defendants’ Motion for Summary Judgment of Non-Infringement [Dkt. 153], except for Supporting Exhibits 1 and 2, which shall remain confidential;
- C. Declaration of Rohit Rao in Support of Defendants’ Motion for Summary Judgment of Non-Infringement [Dkt. 154], except for page 3, line 4-7; and Supporting Exhibits 1 and 2, which shall remain confidential;
- D. Declaration of Emily O’Brien in Support of Defendants’ Motion for Summary Judgment of Non-Infringement [Dkt. 155:4], except for Exhibit 4 at page 12, lines 7-12; page 14, lines 7-12; page 18, lines 11-17, lines 25-30; page 24, lines 23-24; page 49, lines 2-4; page 51, lines 12-16, 21-29; page 52, lines 1-33; page 54, lines 4-10; page 57, lines 7-9; page 58, line 18; page 59, lines 12, 19-22; page 60, lines 13-16, 27-30; page 60, line 31-page 61, line 3; page 61, lines 4-5, 11-27, 30-32; page 62, lines 2-3, 18-19, 21-22; page 63, lines 15-16, 18-22, 31; page 64, lines 19-21, 26-28; page 66, lines 16-18, 23-24, 30-31; page 66, line 34-page 67, line 16; page 71, line 16-page 111, line 17; and Exhibit 5 at page 153, lines 1-7, which shall remain confidential;

E. Plaintiff's Opposition to Defendants Motion for Summary Judgment of Non-Infringement [Dkt. 180], except for page 4, lines 9-10; page 5, lines 16-17; page 6, lines 2-4, 13-21; page 12, lines 22-23; page 14, line 17; page 19, line 26-page 20, line 5; page 20, lines 9-11; page 22, lines 4-5; and page 27, lines 13-18, which shall remain confidential;

F. Declaration of Don Turnbull in Support of Plaintiff's Opposition to Defendants Motion for Summary Judgment of Non-Infringement [Dkt. 181], except for page 6, lines 11-19; page 10, lines 13-14; page 13, line 13; page 27, lines 6-8; page 52, line 35-page 53, line 2; page 55, lines 4-8; page 57, lines 13-20, 26-31; page 64, lines 20-21; page 81, lines 17-20; page 82, lines 2-15, 17-37; and page 84, lines 12-17, which shall remain confidential;

G. Declaration of Greg Dovel in Support of Plaintiff's Opposition to Defendants Motion for Summary Judgment of Non-Infringement [Dkt. 182], except for Exhibit 3 at page 21, lines 4-13; Exhibit 4 at page 9, lines 3-11; page 11, lines 5-25; page 15, line 1-page 18, line 18; and page 28, lines 1-25; Exhibit 5 at page 57, lines 16-19; and page 265, lines 5-12; Exhibit 6 at page 47, lines 11-17; page 47, lines 23-26 (footnote 23); and page 55, lines 1-20; Exhibit 7 at page 67, line 23-page 68, line 2; and page 68, line 12-page 72, line 18; Exhibit 8 at page 77, lines 7-13; and page 89, lines 7-13; Exhibit 9 at page 138, line 15-25; and Exhibit 21-23 and 25, which shall remain confidential;

H. Defendants' Reply in Support of Defendants' Motion for Summary Judgment of Non-Infringement [Dkt. 178], except for page 13, lines 21-24 (footnote 7), which shall remain confidential; and

I. Declaration of Emily O'Brien in Support of Defendants' Reply in Support of Defendants' Motion for Summary Judgment of Non-Infringement [Dkt. 179:2], except Exhibit 3 at page 63, lines 1-9, and Exhibits 2 and 4, which shall remain confidential.

6. Plaintiff has agreed that the Portions of Materials To Be Made Public described herein are no longer Confidential and should be deemed public as described herein.

7. Pursuant to Federal Circuit Rule 11(d), Defendants and Plaintiff submitted this Agreed Order to the Court requesting the Portions of Materials To Be Made Public be deemed public as described herein for purposes of the Appeal and all other purposes.

WHEREFORE, based on the foregoing, Plaintiff and Defendants respectfully request this Motion be GRANTED and certain briefs, declarations, and exhibits filed under seal be made public.

Dated: April 3, 2009

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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