

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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BID FOR POSITION, LLC,

Plaintiff,

-v-

AOL, LLC, GOOGLE, INC., MICROSOFT CORP.  
and MIVA, INC.

Defendant.

CIVIL ACTION NO. 2:07-CV-582

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MIVA, INC.,

Counterclaim Plaintiff,

-v-

BID FOR POSITION, LLC,

Counterclaim Defendant.

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**MIVA, INC.'S MOTION FOR LEAVE TO FILE A FIRST AMENDED ANSWER,  
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO  
BID FOR POSITION'S COMPLAINT FOR PATENT INFRINGEMENT**

Miva, Inc. ("Miva"), by counsel, states as follows as its Motion for Leave to File an Amended Answer and Counterclaims and Memorandum in Support:

1. As a consequence of discovery conducted thus far in this case, Miva believes that it has grounds to amend its Answer, Affirmative Defenses and Counterclaims to add allegations of inequitable conduct on the part of the plaintiff, Bid for Position, Inc.

2. Miva's proposed First Amended Answer, Affirmative Defenses and Counterclaims to Bid for Position's Complaint for Patent Infringement is attached as Exhibit 1. This pleading adds a new Fifth Affirmative Defense (paragraphs 26 through 40) and a new Third Counterclaim (paragraphs 12 through 13) directed to allegations of inequitable conduct.

3. Miva has provided a copy of the proposed First Amended Answer, Affirmative Defenses and Counterclaims to Bid for Position's Complaint for Patent Infringement to counsel for Bid for Position. Bid for Position has informed Miva that it does not oppose this Motion.

4. Granting this Motion will not delay the progress of this case, and will not result in any change in the pretrial schedule adopted by the Court.

5. In the interests of justice, and pursuant to Fed. R. Civ. P. 15 and the Local Rules of this Court, the Court should grant Miva's Motion. A Consent Order granting the relief sought is being filed contemporaneously with this Motion.

Dated: May 20, 2008

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of May, 2008, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the parties listed below:

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