

Exhibit 5

Monterio, Charles

From: Brothers, Kenneth
Sent: Thursday, February 02, 2012 6:03 PM
To: 'Noona, Stephen E.'
Cc: David Perlson; David Bilsker; Emily O'Brien; Margaret P. Kammerud; 'Burns, Robert'; Courtney, Mary L.; zz-IPEngine; Sherwood, Jeffrey; 'Donald C. Schultz'
Subject: RE: Google/IP Engine Pretrial
Attachments: DSMDB-#3019983-v2-Discovery_Plan.DOC

Steve:

Your chart and dates look fine to plaintiff, and may be submitted as such. Thank you.

Enclosed is a revised discovery plan that incorporates all of your dates, and further fleshes out additional dates consistent with our prior discussions with defendants. I have attempted to articulate what I believe is our current understanding regarding fact depositions. I ask that defense counsel please either confirm their agreement with this Discovery Plan, or advise of any disagreements ASAP, so we can know the issues prior to the Rule 16(b) conference.

Thanks, Ken

From: Noona, Stephen E. [mailto:senoona@kaufcan.com]
Sent: Thursday, February 02, 2012 1:04 PM
To: Brothers, Kenneth; Sherwood, Jeffrey; 'Donald C. Schultz'
Cc: David Perlson; David Bilsker; Emily O'Brien; Margaret P. Kammerud; 'Burns, Robert'; Courtney, Mary L.
Subject: RE: Google/IP Engine Pretrial

Ken: Here is the chart that we discussed. I have included the May 31, 2012 date for the Markman, and the dates preceding it as per our discussions and with the understanding that the plaintiff is going to supplement to its infringement contentions to detail its allegations of infringement and to reflect the technical documentation that Google has now produced. Given the dates for the briefing and exchanging terms and constructions, Defendants suggest that this supplementation occur by February 17, 2012. Defendants can then supplement invalidity contentions on March 2. Please confirm that your agreement to this schedule for supplementation and that the remaining dates are acceptable so I can forward them to Judge Jackson's Clerk. Thanks,...SEN.

Stephen E. Noona
Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510-1665

T (757) 624.3239
F (757) 624.3169
senoona@kaufcan.com
www.kaufCAN.com

From: Brothers, Kenneth [mailto:BrothersK@dicksteinshapiro.com]
Sent: Thursday, February 02, 2012 11:51 AM
To: Noona, Stephen E.
Subject: RE: Google/IP Engine Pretrial

Steve:

Have you heard from AOL re the 5/31 date? Would you kindly circulate your proposed set of dates per our call, so we can fold them into the discovery plan and continue our discussions with David et al.?

Thanks, Ken

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To reply to our email administrator directly, send an email to postmaster@dicksteinshapiro.com

Dickstein Shapiro LLP
www.dicksteinshapiro.com

From: Noona, Stephen E. [mailto:senoona@kaufcan.com]
Sent: Monday, January 30, 2012 6:26 PM
To: Noona, Stephen E.; David A. Perlson (davidperlson@quinnemanuel.com); 'Margaret P. Kammerud'; Brothers, Kenneth; Sherwood, Jeffrey; 'Donald C. Schultz'; 'wrsnow@cwm-law.com'; 'Burns, Robert'; 'Alexander, Cortney'
Subject: RE: Google/IP Engine Pretrial

So far, I understand that The May 31, 2012 date is acceptable to the plaintiffs and most of the defendants. Bob, Courtney, please confirm that the date works for AOL. Thanks,...SEN.

Stephen E. Noona
Kaufman & Canoles, P.C.
 150 W. Main Street, Suite 2100
 Norfolk, VA 23510-1665

T (757) 624.3239
 F (757) 624.3169
senoona@kaufcan.com
www.kaufCAN.com

From: Noona, Stephen E.
Sent: Monday, January 30, 2012 11:15 AM
To: David A. Perlson (davidperlson@quinnemanuel.com); Margaret P. Kammerud; Brothers, Kenneth; Sherwood, Jeffrey; 'Donald C. Schultz'; wrsnow@cwm-law.com; Burns, Robert; Alexander, Cortney
Subject: Google/IP Engine Pretrial

I spoke today with the Court's Courtroom Clerk. **She indicated that the Court was changing the pretrial conference time from the morning to 3:30 p.m. ET on 2/13/2012.** She indicated that the Judge would probably make an appearance for a part of the conference. We talked about a Markman and she said the Judge's calendar was jammed in May. She gave me the following dates: **May 31, 2012, June 7 or June 14, 2012.** I indicated that the parties envisioned one day for the Markman Hearing. The Judge has requested that the Second Claim Construction Brief needs to be filed between

4/12/2012

3 and 4 weeks before the Markman Hearing and the Joint Hearing Statement 2 weeks before the date. We need to agree on a Markman date quickly as the dates are filing up. Please let me know. Also, she is unsure whether the Magistrate or Judge will conduct Final Pretrial (Sometimes the Judge decides to do it) and therefore she will set it before the Magistrate Judge. She indicated that she understands that the Judge will most likely allow a consolidation of fact discovery cutoff dates as we discussed so long as the parties agree. Once we agree upon the Markman date, I will circulate proposed dates as discussed--we need to get those to her soon. Please call if you have questions,... SEN.

Stephen E. Noona
Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510-1665

T (757) 624.3239
F (757) 624.3169
senoona@kaufcan.com
www.kaufCAN.com

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Disclosure Required by Internal Revenue Service Circular 230: This communication is not a tax opinion. To the extent it contains tax advice, it is not intended or written by the practitioner to be used, and it cannot be used by the taxpayer, for the purpose of avoiding tax penalties that may be imposed on the taxpayer by the Internal Revenue Service.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

I/P ENGINE, INC., v. AOL, INC. et al.,	Plaintiff, Defendant.	Civ. Action No. 2:11-cv-512
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[PROPOSED] JOINT DISCOVERY PLAN

Plaintiff I/P Engine, Inc. (“I/P Engine”) and Defendants AOL, Inc., Google, Inc., IAC Search & Media, Inc., Gannett Company, Inc. and Target Corporation jointly submit this proposed Discovery Plan. In a series of meet and confers in October and early November, 2011, the undersigned counsel for the parties conferred to consider the nature and basis of their claims and defenses, to arrange for the disclosures required by Rule 26(a)(1) of the Federal Rules of Civil Procedure (“Federal Rules” or “Rule”), and to develop this proposed discovery plan. On November 4, 2011, the parties entered into a Stipulation (attached as Exhibit A) in which, among other things, the parties agreed to commence discovery. The parties exchanged written discovery during the week of November 7, 2011, have made considerable document productions, and continue to meet and confer regarding document production, interrogatories, and requests to admit. The parties also have had ongoing discussions about this Discovery Plan, as well as a plan for the processing of electronically-stored documents, and have submitted an agreed Protective Order.

On January 17, 2012, the Court issued its Rule 26(f) Pretrial Order, and scheduled a Rule 16(b) Scheduling Conference for February 13, 2012, at 9:00 a.m. The parties conducted the

required meet and confer on January 27, 2012. The parties jointly submit the following discovery plan.

I. DISCLOSURE SCHEDULE

A. Initial Disclosures

The parties served their Rule 26(a)(1)(A) disclosures on November 18, 2011. The parties shall file Updated Rule 26(a)(1)(A) disclosures on February 22, 2012.

B. Claim Charts

Pursuant to a Stipulation dated November 4, 2011 agreed upon by the parties, Plaintiff served preliminary claim charts on November 7, 2011.

C. Invalidity and Unenforceability Contentions

Separate from and in addition to any responses to Plaintiff's written discovery, Defendants served Invalidity and Unenforceability Contentions on January 24, 2012, which the parties agreed would identify as specifically as possible the following:

- 1) The facts and assertions related to Defendants' invalidity positions under 35 U.S.C. §§ 102 and 103, including each item of prior art that Defendants contend anticipates each specified claim and each item or combination of prior art that Defendants contend renders each claim obvious and the motivation to combine such items.
- 2) A claim chart that compares allegedly invalidating prior art to each asserted claim on a claim limitation by claim limitation basis. Where Defendants contend that a claim limitation is governed by 35 U.S.C. § 112, sixth paragraph, Defendants shall identify the function recited in the claim and the corresponding structure(s), act(s) or material(s) in each item of prior art that correspond to the structure identified in the patent specification that performs the claimed function.
- 3) Facts and assertions relevant to invalidity positions under 35 U.S.C. § 112, including any grounds for invalidity for any of the asserted claims based on indefiniteness, enablement or written description.
- 4) Facts and assertions relevant to any contention that any patent in suit is unenforceable.

D. Supplementation of Claim Charts and Invalidity and Unenforceability Contentions

The parties shall timely supplement their respective claim charts and contentions when additional information becomes known. Plaintiff shall supplement its Claim Charts on or before February 17, 2012. Defendants shall supplement their Invalidity and Unenforceability Contentions on or before March 2, 2012. If a party believes in good faith that the Court's claim construction ruling so requires, no later than 7 days after the Court's ruling, a party may supplement its Claim Charts or Invalidity and Unenforceability Contentions solely to address the Court's claim construction.

II. AMENDMENTS TO THE PLEADINGS

All motions seeking to amend pleadings must be filed by February 22, 2012. All motions seeking to join new parties must be filed by February 22, 2012. Motions for amendment or joinder after those dates will not be allowed except for good cause.

III. PROTECTIVE ORDER

The parties submitted a stipulated Protective Order to this Court on January 19, 2012, which was entered by the Court on January __, 2012. The parties mutually agreed that, pending the Court's entry a the Protective Order, all documents produced pursuant to this Plan, or pursuant to Rule 26(a)(1), or in response to discovery requests, or any depositions taken, shall be treated by the receiving party as Attorneys Eyes Only. In no event shall any party withhold producing its documents based on confidentiality concerns (other than third-party obligations) or the fact that the Protective Order has not yet been entered.

IV. DISCOVERY OF ELECTRONICALLY-STORED INFORMATION

On or before February 10, 2012, the parties shall present a stipulation for the preservation and production of electronically-stored information ("ESI") or, in the event that the parties

cannot agree on an ESI stipulation, each party shall file a motion regarding ESI discovery. In no event shall any party refrain from preserving or collecting documents for production based on the fact that the parties have not yet entered into a stipulation. During these negotiations, all parties agree to provide detailed information, upon request, about their efforts to preserve, collect and produce ESI, so that any other party and, if necessary, the Court may properly assess the scope and nature of such efforts to ensure compliance with Rule 26(b).

V. FACT DISCOVERY SCHEDULE AND LIMITATIONS

The scope of discovery shall be governed by the Federal Rules of Civil Procedure, as modified by the following provisions, subject to the parties' right to seek (or agree upon) additional or modified discovery provisions under appropriate circumstances.

A. Timing of Fact Discovery

All fact discovery including, written, document and deposition discovery, shall be concluded no later than September 4, 2012.

B. Fact Witness Depositions

The parties agree that Plaintiff shall have the right to a Rule 30(b)(6) deposition on liability issues, a Rule 30(b)(6) deposition on damages issues; and the right to depose each fact witness affiliated with a defendant and who has been disclosed pursuant to Rule 26(a) (currently 14 individuals for all defendants).

The length of deposition time shall be determined solely by the official court reporter or videographer. The party requesting the deposition shall be responsible for arranging the reporter and location, unless otherwise agreed by the parties.

C. Depositions of Inventors

Defendants shall have the right to depose each of the named inventors for a total of 14 hours pursuant to Rule 30(b)(1) and/or Rule 30(b)(6). Defendants will designate one attorney for

each inventor that is deposed who will take the lead in asking questions for all Defendants; provided, that the designation of a lead counsel for the examination will not preclude counsel for any other Defendant from making a reasonable, non-duplicative examination, or from asking reasonable, non-duplicative follow up questions.

D. Requests for Admission

Collectively, Defendants may serve up to 35 Requests for Admission on Plaintiff, and Plaintiff may serve up to 35 Requests for Admission collectively on Defendants. These limits shall not apply to Requests for Admission that solely address the authenticity of documents.

VI. EXPERT DISCOVERY SCHEDULE AND LIMITATIONS

A. Timing of Expert Discovery

All expert discovery shall be completed by September 11, 2012.

B. Expert Designations

The parties will undertake reasonable efforts to avoid the designation of duplicative expert witnesses. The parties shall identify testifying experts for which expert disclosures are required by Rule 26(a)(2) on or before June 15, 2012.

C. Expert Disclosures

The parties shall exchange expert disclosures required by Rule 26(a)(2) of the Federal Rules on all issues on which they bear the burden of proof on July 16, 2012. The parties shall exchange rebuttal expert disclosures on August 16, 2012. The parties shall exchange reply expert disclosures on August 31, 2012. Simultaneous with each expert disclosure, the disclosing party shall produce all documents not previously produced that were considered by the expert in connection with expert disclosures required by Rule 26(a)(2).

D. Supplemental Expert Disclosures

If the Court's claim construction ruling is issued subsequent to the party's expert disclosures and if a party believes in good faith that the Court's claim construction ruling so requires, no later than 30 days after the Court's ruling, a party may supplement its expert disclosures solely to address the Court's claim construction.

E. Expert Depositions

During expert discovery, each testifying expert witness may be deposed for no more than seven hours total on each expert report (e.g., up to 7 hours on infringement/non-infringement; 7 hours on invalidity/validity; 7 hours on inequitable conduct or other unenforceability issues; 7 hours on damages).

VII. OTHER MATTERS

A. Service of Pleadings, Motions, Other Papers and Discovery Requests and Responses

All pleadings, motions and other papers that are filed are to be served on the other party electronically as provided by the Federal Rules and local rules. In addition, the parties agree to serve by email all discovery requests and written responses and the other papers that are not filed. When calculating response dates, in accordance with the Federal Rules as to electronic service, each party shall receive 3 additional days for responding to all pleadings, motions and other papers filed, and all discovery requests and written responses and the other papers that are not filed.

B. Drafts and Counsel Communications with Experts

The parties agree that no notes, drafts, or other type of preliminary written work by or for experts concerning the subject matter of this litigation shall be the subject of discovery or inquiry at trial. No communication, whether written or verbal, between or among any expert(s) and

counsel for the party retaining said expert(s) concerning the subject matter of this litigation shall be the subject of discovery or inquiry at trial. The foregoing shall not apply to any communications or documents upon which the expert relied in forming his or her opinion as expressed in an affidavit, disclosure, report, or testimony, or on which an expert intends to reply as a basis for an opinion expressed in an affidavit, disclosure, report, or testimony, in connection with this litigation; such communications may be subject to discovery and inquiry at trial. Materials, communications, and other information exempt from discovery under this paragraph shall be treated as attorney work product.

C. Privilege Logs

The parties' privilege logs shall comply with Section 8.F of the Protective Order. Each party shall endeavor in good faith to provide their initial privilege log by no later than February 1, 2012. Each party's log shall timely be supplemented within 30 days after each document production made after January 2, 2012.

D. 30(b)(6) Witness Designations

The parties agree to attempt in good faith to identify the corporate representative being offered to testify as a witness pursuant to Rule 30(b)(6) and the topics on which the witness is being offered to testify seven days in advance of the agreed-upon deposition date.

E. Third Party Materials

Unless otherwise agreed to by the parties on a specific basis, the parties shall attempt in good faith to provide or make available all materials obtained from third parties pursuant to Rule 45 of the Federal Rules within three business days of the receipt of such materials.

VIII. PRETRIAL AND MARKMAN HEARINGS

A. Claim Construction Procedures

If necessary, the parties shall submit a Joint Motion for Expedited Markman Hearing on or before February 10, 2012. The parties agree that a Markman hearing, if necessary, shall be held on May 31, 2012, or as soon thereafter as practicable for the Court. In advance of a hearing date, the parties involved shall prepare and submit briefs in accordance with the following briefing schedule:

- 1) The parties shall exchange a list of claim terms to be construed on March 29, 2012
- 2) The parties shall exchange proposed constructions for the exchanged claim terms on April 5, 2012. The proposed constructions are not binding on any party and cannot be cited by any party. The parties shall make reasonable, good faith efforts to identify specific support for their proposed constructions (i.e., by reference to the column and line numbers of the specification, page numbers of the file history, and/or specific reference to other evidence that the party intends to rely upon). Shortly thereafter, the parties shall meet and confer to agree on the claim terms to be construed by the Court. If one party does not believe a term requires construction but the other party does, such term shall be included in the list of terms for potential construction by the Court.
- 3) The parties shall serve and file opening claim construction briefs, limited to 30 pages, on April 12, 2012 setting forth their arguments in support of their claim construction positions.
- 4) The parties shall serve and file responsive claim construction briefs, limited to 20 pages, on May 3, 2012.
- 5) Plaintiff will serve and file a jointly prepared Prehearing Statement on Claim Construction on May 17, 2012 including a chart showing the claim terms in contention, each party's proposed construction of each claim term in contention, and the alleged support for each party's construction.

B. Daubert Motions and Motions in Limine

The parties agree that all Daubert motions to exclude experts or expert testimony and all motions in limine shall comply with the following briefing schedule:

- 1) The parties shall serve and file any Daubert Motion or Motion in Limine on September 10, 2012.

- 2) The parties shall serve and file any responsive briefs opposing a party's Daubert Motion or Motion in Limine on September 24, 2012.
- 3) The parties shall serve and file any reply briefs in support of a party's Daubert Motion or Motion in Limine on October 1, 2012.
- 4) The parties will advise the Court of any agreements regarding Motions in Limine on October 4, 2012.

C. Dispositive Motions

Dispositive Motions shall be filed by September 11, 2012 and set for hearing on the earliest available motions day thereafter. A motion for summary judgment may be made in accordance with the schedule established by the Court or agreed upon by the parties. For summary judgment purposes, the parties involved shall prepare and submit briefs in accordance with the following briefing schedule:

- 1) The parties shall serve and file any motion for summary judgment on September 4, 2012.
- 2) The parties shall serve and file any responsive briefs opposing a party's motion for summary judgment on September 25, 2012.
- 3) The parties shall serve and file any reply briefs in support of a party's motion for summary judgment on October 2, 2012.

IX. SETTLEMENT CONFERENCES

A settlement conference may be requested at any time in this litigation. The Court may refer the parties to consult with a United States Magistrate Judge regarding settlement.

X. TRIAL

A. Magistrate Judge

The parties do not agree to proceed to trial before a Magistrate Judge.

B. Jury Trial

A jury trial has been demanded.

C. Trial date and Trial Time

The parties agreed that this litigation will be set for trial by jury to commence on October 16, 2012, and the final pretrial conference to be held on October 5, 2012, or as soon thereafter as practicable for the Court. Assuming that all parties remain in this litigation and that all patents-in-suit are still at issue, the parties estimate that trial by jury of all claims, defenses and counterclaims will take 10 days. In advance of trial, the parties involved shall prepare in accordance with the following schedule:

- 1) The parties shall exchange pretrial disclosures including deposition designations, witness lists, exhibit lists and fact stipulations on September 14, 2012.
- 2) The parties shall exchange objections to a party's pretrial disclosures including objections to deposition designations, objections to witness lists, objections to exhibit lists, objections to fact stipulations, and counter designations on September 19, 2012.
- 3) The parties shall exchange objections to counter designations on September 24, 2012.
- 4) The parties shall meet and confer regarding pretrial disclosures, the marking of exhibits and the preparation of stipulations on September 28, 2012.
- 5) The parties shall file a final pretrial order on October 5, 2012.
- 6) Plaintiff will serve proposed Jury Instructions and Verdict Sheet on September 28, 2012.
- 7) Defendants will serve responses or objections to the proposed Jury Instructions and Verdict Sheet on October 2, 2012.
- 8) The parties will file and serve Proposed Voir Dire and Jury Instructions on October 9, 2012.

This stipulation may be submitted to the Court by any party.

Dated: February ____, 2012

By: _____
Jeffrey K. Sherwood (Virginia Bar No. 19222)
Frank C. Cimino, Jr.
Kenneth W. Brothers
DeAnna Allen

DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

By: _____
Donald C. Schultz (Virginia Bar No. _____)
W. Ryan Snow
CRENSHAW, WARE & MARTIN PLC
150 West Main Street
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735

Counsel for Plaintiff I/P Engine, Inc.

Dated: February _____, 2012

By: _____
David Bilsker
QUINN EMANUEL URQUHART &
SULLIVAN LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

By: _____
Stephen E. Noona (Virginia Bar No. 25367)
KAUFMAN & CANOLES, P.C.
150 West Main Street
Post Office Box 3037
Norfolk, VA 23514
Telephone: (757) 624.3000
Facsimile: (757) 624.3169

Counsel for Defendants AOL, Inc., Google, Inc., IAC
Search & Media, Inc., Gannett Company, Inc. and
Target Corporation

By: _____
Robert L. Burns
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190
Telephone: (571) 203-2700
Facsimile: (202) 408-4400

By: _____
Cortney S. Alexander
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
3500 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, GA 94111
Telephone: (404) 653-6400
Facsimile: (415) 653-6444

Counsel for Defendant AOL, Inc.

Monterio, Charles

From: David Perlson [davidperlson@quinnemanuel.com]
Sent: Thursday, March 01, 2012 2:54 PM
To: Brothers, Kenneth
Cc: Margaret P. Kammerud; QE-IP Engine; senoona@kaufcan.com; zz-IPEngine
Subject: RE: I/P Engine v. Google et al.: agenda for proposed meet and confer
Attachments: 4631416_1_[Proposed] Stipulation -- TrackChanges for 4602741v1-v2 (3).doc

Ken, below are matters we wish to discuss (as mentioned previously) as well as some responses below to issues you raise that may help discussion.

- 1) Plaintiff's interrogatory responses as explained in our letters on 2/17 and 2/27.
- 2) Plaintiff's Privilege logs as explained in our 2/17 letter.
- 3) Plaintiff's infringement contentions as explained in our 2/27 letter.
- 4) Hudson Bay documents.

From: Brothers, Kenneth [mailto:BrothersK@dicksteinshapiro.com]
Sent: Wednesday, February 29, 2012 5:21 PM
To: Margaret P. Kammerud; David Perlson; QE-IP Engine; senoona@kaufcan.com
Cc: zz-IPEngine
Subject: I/P Engine v. Google et al.: agenda for proposed meet and confer

Counsel:

I/P Engine proposes a meet and confer tomorrow at 4 pm ET/ 1 pm PT. I/P Engine's list of pending issues follows:

- **Search terms**
 - We have proposed additional search terms as requested to Google's agreed list of terms and are awaiting response from Google. We need to resolve this issue, obtain specific commitments re production dates, or declare an impasse and move to compel.

See letter sent this am.

- **Firm commitments on production dates for other Google document productions, other than custodial searches**
 - Document requests targeted at evaluating the accused product's competitiveness.

As we indicated in our meet and confer last week, these documents will be produced if located during the custodial document searches. There is no central repository for such documents.

- Documents related its discussions and/or analysis regarding the advertising systems of other defendants and third parties.

4/12/2012

As we indicated in our meet and confer last week, these documents will be produced if located in the custodial document searches. There is no central repository for such documents.

- o Expert Reports from other litigations

We have completed the collection of our non-infringement reports and will have them processed for production next week. We are working with certain third parties to account for their sensitivity to producing confidential information in damages reports. The last notice letter was sent 2/24, so the third party to whom it was sent has until March 9 to object. We have collected the relevant documents and will send them for processing immediately after March 9. Accordingly, they should be produced sometime the week of March 12.

- o Expert deposition transcripts from other litigations concerning non-infringement and damages.

We will have non-infringement deposition transcripts processed for production next week. We are working with certain third parties to account for their sensitivity to producing confidential information in damages-related depositions. The last notice letter was sent 2/24, so the third party to whom it was sent has until March 9 to object. We have collected the relevant documents and will send them for processing immediately after March 9. Accordingly, they should be produced sometime the week of March 12.

- o Google specific unredacted Bright Response trial transcript.

We are reviewing this transcript for third party confidential material and preparing it for production with the other materials. Because certain confidential information from plaintiff Bright Response appears in the Google-specific sections of the transcript, we are waiting for a response to our related notice letter. Accordingly, the transcript also should be produced sometime the week of March 12.

- **Outstanding Motion to Compel by Google**

- o Response to I/P Engine's proposal for possible resolution.

The issue can be resolved by Plaintiff providing firm dates as we have stated repeatedly.

- **Technical Document Productions of Target and Gannett**

- o Letter of Feb. 16 re Target's deficiencies

Are you representing that the technical production was 100% complete?

We have produced the tech documents from Target's limited tech files. Additional tech documents will be produced if located in the custodial document searches.

- o Status of production of revenue data
- o Production of custodial documents: apply same parameters as Google searches

We sent a responsive letter on 2/28. Target is continuing to gather revenue data, and we will produce the data once it is complete. We are conducting interviews with potential documents custodians in order to continue moving forward with the document collection process as the parties negotiate search terms.

Gannett is also collecting revenue data, and we have been conducting custodian interviews with Gannett employees in anticipation of custodial document collection.

- **Production of Emails**
 - Status of deferral agreement
 - Formalize agreement or discuss procedures

There was no such agreement as we have previously indicated.

- **ESI Stipulation**

Draft sent to Plaintiff yesterday (2/29).

- **Discovery Plan**

See attached which we can discuss.

From: Brothers, Kenneth [mailto:BrothersK@dicksteinshapiro.com]
Sent: Thursday, March 01, 2012 7:46 AM
To: David Perlson
Cc: Margaret P. Kammerud; QE-IP Engine; senoona@kaufcan.com; zz-IPEngine
Subject: RE: I/P Engine v. Google et al.: agenda for proposed meet and confer

Use the following dial-in number for today's meet and confer 3 pm ET, noon PT

DIAL IN NUMBER: 888-839-7346

PARTICIPANT PASS CODE: 202 420 4128

From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Thursday, March 01, 2012 10:38 AM
To: Brothers, Kenneth
Cc: Margaret P. Kammerud; QE-IP Engine; senoona@kaufcan.com; zz-IPEngine
Subject: Re: I/P Engine v. Google et al.: agenda for proposed meet and confer

Ok thanks

On Mar 1, 2012, at 7:36 AM, "Brothers, Kenneth" <BrothersK@dicksteinshapiro.com> wrote:

Sorry, no, I have a conflict at 2 pm ET/11 am PT. How about 3 pm ET/noon PT?

From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Thursday, March 01, 2012 10:02 AM
To: Brothers, Kenneth
Cc: Margaret P. Kammerud; QE-IP Engine; senoona@kaufcan.com; zz-IPEngine
Subject: Re: I/P Engine v. Google et al.: agenda for proposed meet and confer

Ken can we do 11 am pacific? I have a conflict at 1.

On Feb 29, 2012, at 5:21 PM, "Brothers, Kenneth" <BrothersK@dicksteinshapiro.com> wrote:

Counsel:

I/P Engine proposes a meet and confer tomorrow at 4 pm ET/ 1 pm PT. I/P Engine's list of pending issues follows:

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 - We have proposed additional search terms as requested to Google's agreed list of terms and are awaiting response from Google. We need to resolve this issue, obtain specific commitments re production dates, or declare an impasse and move to compel.
- **Firm commitments on production dates for other Google document productions, other than custodial searches**
 - Document requests targeted at evaluating the accused product's competitiveness.
 - Documents related its discussions and/or analysis regarding the advertising systems of other defendants and third parties.
 - Expert Reports from other litigations
 - Expert deposition transcripts from other litigations concerning non-infringement and damages.
 - Google specific unredacted Bright Response trial transcript.
 - We need specific commitments re production dates, or declare an impasse and move to compel.
- **Outstanding Motion to Compel by Google**
 - Response to I/P Engine's proposal for possible resolution.
- **Technical Document Productions of Target and Gannett**
 - Letter of Feb. 16 re Target's deficiencies
 - Are you representing that the technical production was 100% complete?
 - Status of production of revenue data
 - Production of custodial documents: apply same parameters as Google searches
- **Production of Emails**
 - Status of deferral agreement
 - Formalize agreement or discuss procedures
- **ESI Stipulation**
- **Discovery Plan**

Kenneth W. Brothers

Partner

Dickstein Shapiro LLP

1825 Eye Street NW | Washington, DC 20006

Tel (202) 420-4128 | eFax (202) 379-9023 | Fax (202) 420-2201

brothersk@dicksteinshapiro.com

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Dickstein Shapiro LLP

www.dicksteinshapiro.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

I/P ENGINE, INC.,) Plaintiff,) Civ. Action No. 2:11-cv-512
v.		
AOL, INC. et al.,) Defendant.	

[PROPOSED] JOINT DISCOVERY PLAN STIPULATION

Plaintiff I/P Engine, Inc. ("I/P Engine") and Defendants AOL, Inc., Google, Inc., IAC Search & Media, Inc., Gannett Company, Inc. and Target Corporation jointly submit this proposed ~~every Plan. In a series of meet and confers in October and early November, 2011, the undersigned counsel for the parties conferred to consider the nature and basis of their claims and defenses, to arrange for the disclosures required by Rule 26(a)(1) of the Federal Rules of Civil Procedure ("Federal Rules" or "Rule"), and to develop this proposed discovery plan. On November 4, 2011, the parties entered into a Stipulation (attached as Exhibit A) in which, among other things, the parties agreed to commence discovery. The parties exchanged written discovery during the week of November 7, 2011, have made considerable document productions, and continue to meet and confer regarding document production, interrogatories, and requests to admit. The parties also have had ongoing discussions about this Discovery Plan, as well as a plan for the processing of electronically stored documents, and have submitted an agreed Protective Order Stipulation.~~

~~On January 17, 2012, the Court issued its Rule 26(f) Pretrial Order, and scheduled a Rule 16(b) Scheduling Conference for February 13, 2012, at 9:00 a.m. The parties conducted the~~

required meet and confer on January 27, 2012. The parties jointly submit the following discovery plan.

I. DISCLOSURE SCHEDULE SUPPLEMENTATION OF CLAIM CHARTS AND INVALIDITY AND UNENFORCEABILITY CONTENTIONS

A. Initial Disclosures

The parties served their Rule 26(a)(1)(A) disclosures on November 18, 2011. The parties shall file Updated Rule 26(a)(1)(A) disclosures on February 22, 2012.

B. Claim Charts

Pursuant to a Stipulation dated November 4, 2011 agreed upon by the parties, Plaintiff served preliminary claim charts on November 7, 2011.

C. Invalidity and Unenforceability Contentions

Separate from and in addition to any responses to Plaintiff's written discovery, Defendants served Invalidity and Unenforceability Contentions on January 24, 2012, which the parties agreed would identify as specifically as possible the following:

- 1) The facts and assertions related to Defendants' invalidity positions under 35 U.S.C. §§ 102 and 103, including each item of prior art that Defendants contend anticipates each specified claim and each item or combination of prior art that Defendants contend renders each claim obvious and the motivation to combine such items.
- 2) A claim chart that compares allegedly invalidating prior art to each asserted claim on a claim limitation by claim limitation basis. Where Defendants contend that a claim limitation is governed by 35 U.S.C. § 112, sixth paragraph, Defendants shall identify the function recited in the claim and the corresponding structure(s), act(s) or material(s) in each item of prior art that correspond to the structure identified in the patent specification that performs the claimed function.
- 3) Facts and assertions relevant to invalidity positions under 35 U.S.C. § 112, including any grounds for invalidity for any of the asserted claims based on indefiniteness, enablement or written description.
- 4) Facts and assertions relevant to any contention that any patent in suit is unenforceable.

D. — Supplementation of Claim Charts and Invalidity and Unenforceability Contentions

The parties shall timely supplement their respective claim charts and contentions when additional information becomes known. Plaintiff shall supplement its Claim Charts on or before February 17, 2012. Defendants shall supplement their Invalidity and Unenforceability Contentions on or before March 2, 2012. If a party believes in good faith that the Court's claim construction ruling so requires, no later than 7 days after the Court's ruling, a party may supplement its Claim Charts or Invalidity and Unenforceability Contentions solely to address the Court's claim construction. [Unclear]

II. — AMENDMENTS TO THE PLEADINGS

~~All motions seeking to amend pleadings must be filed by February 22, 2012. All motions seeking to join new parties must be filed by February 22, 2012. Motions for amendment or joinder after those dates will not be allowed except for good cause.~~

III. — PROTECTIVE ORDER

~~The parties submitted a stipulated Protective Order to this Court on January 19, 2012, which was entered by the Court on January 23, 2012. The parties mutually agreed that, pending the Court's entry a the Protective Order, all documents produced pursuant to this Plan, or pursuant to Rule 26(a)(1), or in response to discovery requests, or any depositions taken, shall be treated by the receiving party as Attorneys Eyes Only. In no event shall any party withhold producing its documents based on confidentiality concerns (other than third-party obligations) or the fact that the Protective Order has not yet been entered.~~

IV. — DISCOVERY OF ELECTRONICALLY STORED INFORMATION

~~On or before February 17, 2012, the parties shall present a stipulation for the preservation and production of electronically stored information ("ESI") or, in the event that the parties~~

~~cannot agree on an ESI stipulation, each party shall file a motion regarding ESI discovery. In no event shall any party refrain from preserving or collecting documents for production based on the fact that the parties have not yet entered into a stipulation. During these negotiations, all parties agree to provide detailed information, upon request, about their efforts to preserve, collect and produce ESI, so that any other party and, if necessary, the Court may properly assess the scope and nature of such efforts to ensure compliance with Rule 26(b).~~

II. V. FACT DISCOVERY SCHEDULE AND LIMITATIONS

The scope of discovery shall be governed by the Federal Rules of Civil Procedure, as modified by the following provisions, subject to the parties' right to seek (or agree upon) additional or modified discovery provisions under appropriate circumstances.

A. ~~Timing of Fact Discovery~~

~~All fact discovery including, written, document and deposition discovery, shall be concluded no later than September 4, 2012.~~

A. ~~B. Fact Witness Depositions~~

The parties agree that Plaintiff shall have the right to a Rule 30(b)(6) deposition on liability issues lasting no longer than 7 hours, a Rule 30(b)(6) deposition on damages issues lasting no longer than 7 hours; and the right to depose each fact witness affiliated with a defendant and who has been disclosed pursuant to Rule 26(a) (currently 14 individuals for all defendants). Defendants have agreed to this expansion of the deposition limitations under the Federal Rules of Civil Procedure with the express understanding that this will be substantially all the depositions that plaintiff will take; any additional depositions by plaintiff must be by leave of Court on motion for good cause shown.

The length of deposition time shall be determined solely by the official court reporter or videographer. The party requesting the deposition shall be responsible for arranging the reporter and location, unless otherwise agreed by the parties.

B. ~~C.~~ Depositions of Inventors

Defendants shall have the right to depose each of the named inventors for a total of 14 hours pursuant to Rule 30(b)(1) and/or Rule 30(b)(6). Defendants will designate one attorney for each inventor that is deposed who will take the lead in asking questions for all Defendants; provided, that the designation of a lead counsel for the examination will not preclude counsel for any other Defendant from making a reasonable, non-duplicative examination, or from asking reasonable, non-duplicative follow up questions.

C. ~~D.~~ Requests for Admission

Collectively, Defendants may serve up to 35 Requests for Admission on Plaintiff, and Plaintiff may serve up to 35 Requests for Admission collectively on Defendants. These limits shall not apply to Requests for Admission that solely address the authenticity of documents.

VI. ~~EXPERT DISCOVERY SCHEDULE AND LIMITATIONS~~

A. ~~Timing of Expert Discovery~~

~~All expert discovery shall be completed by September 11, 2012.~~

B. ~~Expert Designations~~

~~The parties will undertake reasonable efforts to avoid the designation of duplicative expert witnesses. The parties shall identify testifying experts for which expert disclosures are required by Rule 26(a)(2) on or before June 15, 2012.~~

C. ~~Expert Disclosures~~

~~The parties shall exchange expert disclosures required by Rule 26(a)(2) of the Federal Rules on all issues on which they bear the burden of proof on July 16, 2012. The parties shall~~

exchange rebuttal expert disclosures on August 16, 2012. The parties shall exchange reply expert disclosures on August 31, 2012. Simultaneous with each expert disclosure, the disclosing party shall produce all documents not previously produced that were considered by the expert in connection with expert disclosures required by Rule 26(a)(2).

D. Supplemental Expert Disclosures

If the Court's claim construction ruling is issued subsequent to the party's expert disclosures and if a party believes in good faith that the Court's claim construction ruling so requires, no later than 30 days after the Court's ruling, a party may supplement its expert disclosures solely to address the Court's claim construction.

E. Expert Depositions

During expert discovery, each testifying expert witness may be deposed for no more than seven hours total on each expert report (e.g., up to 7 hours on infringement/non-infringement; 7 hours on invalidity/validity; 7 hours on inequitable conduct or other unenforceability issues; 7 hours on damages).

III. VII. OTHER MATTERS

A. Service of Pleadings, Motions, Other Papers and Discovery Requests and Responses

All pleadings, motions and other papers that are filed are to be served on the other party electronically as provided by the Federal Rules and local rules. In addition, the parties agree to serve by email all discovery requests and written responses and the other papers that are not filed. When calculating response dates, in accordance with the Federal Rules as to electronic service, each party shall receive 3 additional days for responding to all pleadings, motions and other papers filed, and all discovery requests and written responses and the other papers that are not filed.

B. Drafts and Counsel Communications with Experts

The parties agree that no notes, drafts, or other type of preliminary written work by or for experts concerning the subject matter of this litigation shall be the subject of discovery or inquiry at trial. No communication, whether written or verbal, between or among any expert(s) and counsel for the party retaining said expert(s) concerning the subject matter of this litigation shall be the subject of discovery or inquiry at trial. The foregoing shall not apply to any communications or documents upon which the expert relied in forming his or her opinion as expressed in an affidavit, disclosure, report, or testimony, or on which an expert intends to reply as a basis for an opinion expressed in an affidavit, disclosure, report, or testimony, in connection with this litigation; such communications may be subject to discovery and inquiry at trial. Materials, communications, and other information exempt from discovery under this paragraph shall be treated as attorney work product.

C. Privilege Logs

The parties' privilege logs shall comply with Section 8.F of the Protective Order. ~~Each party shall endeavor in good faith to provide their initial privilege log by no later than February 1, 2012.~~ Each party's log shall timely be supplemented within 30 days after each document production made after January 2, 2012.

D. 30(b)(6) Witness Designations

The parties agree to attempt in good faith to identify the corporate representative being offered to testify as a witness pursuant to Rule 30(b)(6) and the topics on which the witness is being offered to testify seven days in advance of the agreed-upon deposition date.

E. Third Party Materials

Unless otherwise agreed to by the parties on a specific basis, the parties shall attempt in good faith to provide or make available all materials obtained from third parties pursuant to Rule 45 of the Federal Rules within three business days of the receipt of such materials.

VIII. PRETRIAL AND MARKMAN HEARINGS

A. Claim Construction Procedures

~~The parties agree that a Markman hearing, if necessary, shall be held on June 4, 2012, or as soon thereafter as practicable for the Court. In advance of a hearing date, the parties involved shall prepare and submit briefs in accordance with the following briefing schedule:~~

- ~~1) The parties shall exchange a list of claim terms to be construed on March 14, 2012~~
- ~~2) The parties shall exchange proposed constructions for the exchanged claim terms on March 21, 2012. The proposed constructions are not binding on any party and cannot be cited by any party. The parties shall make reasonable, good faith efforts to identify specific support for their proposed constructions (i.e., by reference to the column and line numbers of the specification, page numbers of the file history, and/or specific reference to other evidence that the party intends to rely upon). Shortly thereafter, the parties shall meet and confer to agree on the claim terms to be construed by the Court. If one party does not believe a term requires construction but the other party does, such term shall be included in the list of terms for potential construction by the Court.~~
- ~~3) The parties shall serve and file opening claim construction briefs, limited to 30 pages, on April 12, 2012 setting forth their arguments in support of their claim construction positions.~~
- ~~4) The parties shall serve and file responsive claim construction briefs, limited to 20 pages, on May 3, 2012.~~
- ~~5) Plaintiff will serve and file a jointly prepared Prehearing Statement on Claim Construction on May 17, 2012 including a chart showing the claim terms in contention, each party's proposed construction of each claim term in contention, and the alleged support for each party's construction.~~

B. — Daubert Motions and Motions in Limine

The parties agree that all Daubert motions to exclude experts or expert testimony and all motions in limine shall comply with the following briefing schedule:

- 1) The parties shall serve and file any Daubert Motion or Motion in Limine on September 10, 2012.
- 2) The parties shall serve and file any responsive briefs opposing a party's Daubert Motion or Motion in Limine on September 24, 2012.
- 3) The parties shall serve and file any reply briefs in support of a party's Daubert Motion or Motion in Limine on October 1, 2012. [NEED FOR MIL?]
- 4) The parties will advise the Court of any agreements regarding Motions in Limine on October 4, 2012.

C. — Dispositive Motions

~~Dispositive Motions shall be filed by September 4, 2012 and set for hearing on the earliest available motions day thereafter. A motion for summary judgment may be made in accordance with the schedule established by the Court or agreed upon by the parties. For summary judgment purposes, the parties involved shall prepare and submit briefs in accordance with the following briefing schedule:~~

- ~~1) The parties shall serve and file any motion for summary judgment on September 4, 2012.~~
- ~~2) The parties shall serve and file any responsive briefs opposing a party's motion for summary judgment on September 25, 2012.~~
- ~~3) The parties shall serve and file any reply briefs in support of a party's motion for summary judgment on October 2, 2012.~~

IV. IX. SETTLEMENT CONFERENCES

A settlement conference may be requested at any time in this litigation. The Court may refer the parties to consult with a United States Magistrate Judge regarding settlement.

~~X. TRIAL~~

~~A. Magistrate Judge~~

~~The parties do not agree to proceed to trial before a Magistrate Judge.~~

~~B. Jury Trial~~

~~A jury trial has been demanded.~~

~~C. Trial date and Trial Time~~

~~The parties agreed that this litigation will be set for trial by jury to commence on October 16, 2012, and the final pretrial conference to be held on October 5, 2012, or as soon thereafter as practicable for the Court. Assuming that all parties remain in this litigation and that all patents-in-suit are still at issue, the parties estimate that trial by jury of all claims, defenses and counterclaims will take 10 days. In advance of trial, the parties involved shall prepare in accordance with the following schedule:~~

- ~~1) The parties shall exchange pretrial disclosures including deposition designations, witness lists, exhibit lists and fact stipulations on September 14, 2012.~~
- ~~2) The parties shall exchange objections to a party's pretrial disclosures including objections to deposition designations, objections to witness lists, objections to exhibit lists, objections to fact stipulations, and counter designations on September 19, 2012.~~
- ~~3) The parties shall exchange objections to counter designations on September 24, 2012.~~
- ~~4) The parties shall meet and confer regarding pretrial disclosures, the marking of exhibits and the preparation of stipulations on September 28, 2012.~~
- ~~5) The parties shall file a final pretrial order on October 3, 2012.~~
- ~~6) Plaintiff will serve proposed Jury Instructions and Verdict Sheet on September 28, 2012.~~
- ~~7) Defendants will serve responses or objections to the proposed Jury Instructions and Verdict Sheet on October 2, 2012.~~
- ~~8) The parties will file and serve Proposed Voir Dire and Jury Instructions on October 9, 2012.~~

This stipulation may be submitted to the Court by any party.

Dated: February ____, 2012

By: _____
Jeffrey K. Sherwood (Virginia Bar No. 19222)
Frank C. Cimino, Jr.
Kenneth W. Brothers
DeAnna Allen
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

By: _____
Donald C. Schultz (Virginia Bar No. _____)
W. Ryan Snow
CRENSHAW, WARE & MARTIN PLC
150 West Main Street
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735

Counsel for Plaintiff I/P Engine, Inc.

Dated: February ____, 2012

By: _____
David Bilsker
QUINN EMANUEL URQUHART &
SULLIVAN LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

By: _____
Stephen E. Noona (Virginia Bar No. 25367)
KAUFMAN & CANOLES, P.C.
150 West Main Street
Post Office Box 3037
Norfolk, VA 23514
Telephone: (757) 624.3000
Facsimile: (757) 624.3169

Counsel for Defendants AOL, Inc., Google, Inc., IAC
Search & Media, Inc., Gannett Company, Inc. and
Target Corporation

By: _____
Robert L. Burns
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Two Freedom Square
11955 Freedom Drive
Reston, VA 20190
Telephone: (571) 203-2700
Facsimile: (202) 408-4400

By: _____
Cortney S. Alexander
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
3500 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, GA 94111
Telephone: (404) 653-6400
Facsimile: (415) 653-6444

Counsel for Defendant AOL, Inc.