

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

I/P ENGINE, INC.

Plaintiff,

v.

AOL, INC., *et al.*,

Defendants.

Civil Action No. 2:11-cv-512

**DECLARATION OF EMILY O'BRIEN IN SUPPORT OF GOOGLE INC.'S
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL GOOGLE'S CUSTODIAL
DOCUMENT PRODUCTION**

I, Emily O'Brien, declare as follows:

1. I am an attorney in the law firm of Quinn Emanuel Urquhart & Sullivan, LLP and am counsel for Defendant Google Inc. in the above-captioned case. I provide this declaration upon personal knowledge and, if called upon as a witness, would testify competently as to the matters recited herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of the stipulation entered into between the parties on November 4, 2011.

3. On December 7, 2011, Google produced 217,614 pages of technical documents related to Search, AdWords, and AdSense for Search. These documents included technical specifications, design requirements and other technical documentation. On December 16,

Google produced additional documents related to prior art. Google produced data about Google's revenue from AdWords and AdSense for Search and license agreements related to these products in late January and early February. From January to April, Google has produced and is continuing to produce other documents in response to Plaintiff's requests, including but not limited to documents related to previous Google litigations and documents related to the reexamination of one of the patents-at-issue. Google's production is on going. Thus far, Google has already produced over 220,000 pages of documents in this litigation.

4. Attached hereto as **Exhibit B** is a true and correct copy of an email from Kenneth Brothers to David Perlson dated December 16, 2011.

5. Attached hereto as **Exhibit C** is a true and correct copy of two emails from David Perlson dated December 16 and December 20, 2011.

6. Attached hereto as **Exhibit D** is a true and correct copy of a letter from Margaret Kammerud to Charles Monterio dated February 13, 2012.

7. Attached hereto as **Exhibit E** is a true and correct copy of an email from Margaret Kammerud to Kenneth Brothers dated December 7, 2011. Attachments to the original email are not included in Exhibit E.

8. Attached hereto as **Exhibit F** is a true and correct copy of an email from Charles Monterio dated December 23, 2011, along with its attachment.

9. Attached hereto as **Exhibit G** is a true and correct copy of a letter from Margaret Kammerud to Charles Monterio dated January 13, 2012.

10. Attached hereto as **Exhibit H** is a true and correct copy of a letter from Jen Ghaussy to Charles Monterio dated March 28, 2012.

11. Attached hereto as **Exhibit I** is a true and correct copy of a letter from Margaret Kammerud to Charles Monterio dated January 9, 2012.

12. Attached hereto as **Exhibit J** is a true and correct copy of a letter from Charles Monterio to Margaret Kammerud dated January 10, 2012.

13. Attached hereto as **Exhibit K** is a true and correct copy of a letter from David Perlson to Kenneth Brothers dated January 23, 2012.

14. Attached hereto as **Exhibit L** is a true and correct copy of a letter from Charles Monterio to David Perlson dated January 24, 2012.

15. As part of its negotiations with Plaintiff regarding search terms, Google ran test searches on the collected documents of two custodians to determine which terms resulted in a reasonable number of hits.

16. Attached hereto as **Exhibit M** is a true and correct copy of a letter from Margaret Kammerud to Charles Monterio dated March 1, 2012.

17. Attached hereto as **Exhibit N** is a true and correct copy of a letter from Margaret Kammerud to Kenneth Brothers dated March 2, 2012.

18. Attached hereto as **Exhibit O** is a true and correct copy of a letter from Charles Monterio to David Perlson dated March 9, 2012.

19. Attached hereto as **Exhibit P** is a true and correct copy of a letter from Emily O'Brien to Charles Monterio dated March 16, 2012.

20. Attached hereto as **Exhibit Q** is a true and correct copy of a letter from Charles Monterio to Emily O'Brien dated March 18, 2012.

21. Attached hereto as **Exhibit R** is a true and correct copy of a letter from Jen Ghaussy to Charles Monterio dated March 26, 2012.

22. Attached hereto as **Exhibit S** is a true and correct copy of a letter from Charles Monterio to Jen Ghaussy dated March 27, 2012.

23. Attached hereto as **Exhibit T** is a true and correct copy of a letter from Jen Ghaussy to Charles Monterio dated April 6, 2012.

24. Attached hereto as **Exhibit U** is a true and correct copy of a letter from Jen Ghaussy to Charles Monterio dated April 10, 2012.

25. On April 9, 2012, the parties met and conferred via telephone. During that meet and confer, Google indicated that preliminary search results for the final search term list across all nine custodians pulled approximately 250,000 documents, excluding the overbroad and burdensome “Ads Quality” term. When Plaintiff referred to these hits as “relevant documents,” Google disputed the characterization and stated that the documents would need to be reviewed for responsiveness and privilege. In response to Plaintiff’s prior request, Google estimated a final production date of June 15, with rolling production and prioritization of custodians according to Plaintiff’s request. Plaintiff informed Google that it intended to move to compel production of custodial documents. Plaintiff repeatedly insisted that it needed production of all custodial documents by April 30, without any explanation of why or how this demand was possible to meet. Google pointed out that it had agreed to produce custodial documents on a rolling basis, and had offered to produce documents from the three employees listed in Google’s initial disclosures first. Plaintiff stated that it intended to move forward with a motion to compel.

26. In an effort for further compromise, Google suggested and the parties discussed the possibility of providing Plaintiff with a series of “tiered dates” for production, given that Google had committed to rolling the production by custodian. Google stated that it did not know by what date it could begin to produce custodial documents, as Plaintiff had not previously asked

for that information. However, Google agreed to look into that issue and get back to Plaintiff as soon as possible.

27. Attached hereto as **Exhibit V** is a true and correct copy of an email from Charles Monterio dated April 9, 2012.

28. Attached hereto as **Exhibit W** is a true and correct copy of a letter from Charles Monterio to Jen Ghaussy dated April 11, 2012. Google received this letter via email approximately three hours before it received electronic notice that Plaintiff had filed its motion to compel.

29. Attached hereto as **Exhibit X** is a true and correct copy of a letter from Jen Ghaussy to Charles Monterio dated April 3, 2012.

30. Attached hereto as **Exhibit Y** is a true and correct copy of a letter from Charles Monterio to Jen Ghaussy dated April 5, 2012.

31. The parties' draft ESI agreement includes the following provision regarding deduplication:

DEDUPLICATION A party is only required to produce a single copy of a responsive document and a party may de-duplicate responsive ESI across Custodians. A party may also de-duplicate "near-duplicate" email threads as follows: In an email thread, only the final-in-time document need be produced, assuming that all previous emails in the thread are contained within the final message. Where a prior email contains an attachment, that email and attachment shall not be removed as a "near-duplicate." In an email thread, the parent/child relationship between communications shall be preserved and the attachments shall follow the email thread.

32. Google has 115,000 custodial documents that need to be reviewed for privilege and responsiveness.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: April 20, 2012



Emily O'Brien

DATED: April 20, 2012

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2012, 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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