

# **EXHIBIT D**

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February 13, 2012

Charles Monterio Jr.  
Dickstein Shapiro LLP  
1825 Eye Street NW  
Washington, DC 20006

Re: I/P Engine, Inc. v. AOL, Inc. et al.

Dear Charles:

I am writing in regards to your January 24, 2012 and February 9, 2012 letters and the parties' ongoing discussion of document custodians and search terms.

First, your letter states that the "parties have preliminarily agreed for Google to conduct custodial searches for" nine Google custodians. As has become all too commonplace in this matter, you have mischaracterized our correspondence. As stated in our January 23, 2012 letter, Google will agree to produce documents from the nine identified Google custodians only if I/P Engine agrees, consistent with the parties' earlier proposals, that it must petition the Court, upon a showing of distinct need, in order to seek custodial production from additional Google custodians. Google's willingness to produce documents from nine custodians represents a significant concession, as Google had originally proposed in the draft ESI plan that each side limit its request to five custodians, while I/P Engine had proposed ten Google custodians. Please confirm that you agree to this proposal.

Second, the parties have agreed on the search terms listed on pages 1 and 2 of your January 24, 2012 letter. However, we disagree with your assertion that these "search terms primarily related to Google's knowledge of the patents-in-suit or Plaintiff." The terms are not so narrow. Indeed, almost half of the terms are carefully targeted to identify documents concerning technology like

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that disclosed in the patents-in-suit. Assuming we are able to reach final agreement on the custodian list, we will move forward with running these search terms against the custodial data, reviewing the results, and producing responsive, non-privileged documents.

Third, we have run test searches on the terms below. Assuming the test searches accurately reflect the hit percentages for all custodians, we will use these terms as well. We reserve our rights as to these terms in the event that they later result in burdensome numbers of hits for any custodian:

“Quality Score”  
“cost per click”  
“Ads Quality”  
 (“SmartASS” and “DumbASS”)  
 (“SmartASS” and “pCTR”)  
 (“AdWords” and “User Feedback”)  
 (“click-through” or “clickthrough” or CTR” or “click through”) and (“Adwords”))

We have not been able to yet run test searches on the term (“Relevance score” or (“Relevance” and (“Inventory” or “Ads Coverage”))), but will run custodial searches for this term unless it results in the retrieval of excessive numbers of documents.

Fourth, the term “CPC” retrieves too high a percentage of hits when run through custodial documents. It would be unduly burdensome for Google to use this search term as currently drafted. We recommend narrowing this term in order to better focus it on the issues in this case and prevent retrieval and production of irrelevant documents. Please provide a more limited version of this term for consideration and testing.

Fifth, Plaintiff has provided no justification for the following search terms, and Google does not believe that they are relevant to this case even if certain of the terms may appear somewhere in the hundreds of thousands of pages of technical documents Google has produced. It is inappropriate to waste Google’s resources seeking documents containing terms that I/P Engine has not linked in any manner to the issues in this litigation.

((“LPQ” or “Landing Page Quality”) and score)  
 (“QBB” w/5 “pCTR”)  
 (“Keyword spam score”)  
 “MEU”  
 “MBU”  
 (“Disabling” and “Ads”)  
 “Ad Shard”  
 “Empirical Media”  
 “Virtuous Circle”  
 (“Relevance” and “holy grail”)  
 “Conversion rate”

“revenue per search”

To the extent that you believe any of these terms are relevant to the issues in this case, please explain. Otherwise, we do not intend to include these terms in the search term list.

Our tests also confirmed that the common word “depth” retrieves an excessively large number of documents. Further, I/P Engine has not provided any explanation why documents containing the broad term “depth” would have any link to the relevant issues in this case. The word “coverage” is likewise overly broad and unrelated to this litigation. To the extent that Google collected documents containing such broad, irrelevant terms, reviewing such unfocused search results would be a waste of time and resources.

Finally, please explain what you mean in stating that “I/P Engine’s proposed search terms should not be interpreted as binding and/or exclusive, and are preliminary based upon an incomplete review of Google’s document production.” There is significant time and cost involved in collecting, searching and reviewing custodial documents for production, and as we have repeatedly informed you Google does not intend to conduct custodial document production piecemeal.

As always, we remain willing to meet and confer to resolve any discovery issues, and hope that you similarly remain willing to work together on these issues in a timely and efficient manner.

Very truly yours,



Margaret P. Kammerud