

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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

**PLAINTIFF I/P ENGINE’S MOTION FOR LEAVE  
TO TAKE 30(B)(1) DEPOSITIONS OF DEFENDANTS**

Plaintiff I/P Engine, Inc. (“I/P Engine”) moves this Court for leave to take the following number of individual 30(b)(1) depositions from each Defendant:

- Three 30(b)(1) depositions each of Google and AOL employees; and
- Two 30(b)(1) depositions each of IAC, Target, and Gannett employees.

Because this case involves multiple defendants and a complex technology, the parties have been attempting to negotiate a reasonable number of depositions – in addition to the ten permitted under the Federal Rules – that I/P Engine would be permitted to take of the Defendants without seeking leave of Court. Although the parties have negotiated and agreed to many discovery issues, one of the remaining issues is the number of Rule 30(b)(1) depositions that I/P Engine should be permitted to take. For the reasons set forth in the accompanying

Memorandum of Law, I/P Engine asks this Court for leave to take the following number of individual 30(b)(1) depositions from each Defendant:

- Three 30(b)(1) depositions each of Google and AOL employees; and
- Two 30(b)(1) depositions each of IAC, Target, and Gannett employees.

Dated: June 25, 2012

By: /s/ Jeffrey K. Sherwood  
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Counsel for Plaintiff I/P Engine, Inc.

**CERTIFICATE OF GOOD FAITH**

In accordance with Local Rule 37(E), I certify that counsel conferred in good faith to resolve this dispute prior to the filing of the present Motion. Counsel's meet-and-confer efforts included multiple correspondence and telephonic meet-and-confers.

/s/ Charles J. Monterio, Jr.  
Charles J. Monterio, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June, 2012, the foregoing **PLAINTIFF I/P ENGINE'S MOTION FOR LEAVE TO TAKE 30(B)(1) DEPOSITIONS OF DEFENDANTS**, was served via the Court's CM/ECF system, on the following:

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/s/ Jeffrey K. Sherwood \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
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Plaintiff,	)	
v.	)	Civ. Action No. 2:11-cv-512
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AOL, INC. et al.,	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF I/P ENGINE’S MOTION FOR LEAVE  
TO TAKE 30(B)(1) DEPOSITIONS OF DEFENDANTS**

**I. INTRODUCTION AND SUMMARY**

Although the parties have negotiated and agreed to many discovery issues, one of the remaining sticking points is the number of Rule 30(b)(1) depositions that I/P Engine should be permitted to take of each Defendant without having to seek leave of Court. I/P Engine respectfully requests for leave to take the following number of individual 30(b)(1) depositions from each Defendant:

- Three 30(b)(1) depositions each of Google and AOL employees; and
- Two 30(b)(1) depositions each of IAC, Target, and Gannett employees.

Although Defendants have not provided any counter-proposal since the June 15 telephonic hearing before the Court, it appears that they want to either (1) restrict I/P Engine to taking the depositions of only those persons that Defendants specifically identify in their Initial Disclosures, or (2) restrict I/P Engine to taking only the ten depositions initially permitted under the Federal Rules of Civil Procedure. Because of the nature of this litigation, the discovery

already produced, and the number of persons identified by Defendants in their Initial Disclosures and during their 30(b)(6) depositions, I/P Engine's request is reasonable and necessary. If I/P Engine is foreclosed from being able to take the twelve additional depositions, it will be significantly prejudiced.

## **II. APPLICABLE LAW**

Fed. R. Civ. P. 26(b)(1) governs the scope of discovery, providing that “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense” or “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Rule 26(b) provides “very broad boundaries.” *Gutshall v. New Prime, Inc.* (W.D. Va. 2000). This is because, “[i]n practice, a party cannot pursue its claims or defenses without an adequate opportunity to obtain evidence through the broad discovery contemplated by the Federal Rules.” *Steward v. VCU Health System Authority*, 2011 WL 7281603 at \*8 (E.D. Va. Nov. 22, 2011). “The provisions of Fed. R Civ. P. 26 afford district courts broad discretion over discovery matters.” *Scott & Stringfellow, LLC v. AIG Commercial Equipment Finance, Inc.*, 2011 WL 1827900 at \*2 (E.D. Va. May 12, 2011) (citing *Crawford-El v. Britton*, 523 U.S. 574, 598-99 (1998)).

## **III. ARGUMENT**

I/P Engine's request to take twelve additional depositions over what is permitted under the Federal Rules is reasonable and necessary. As noted above, this case involves multiple defendants and very complex technology. Defendants have identified fourteen separate individuals in their respective Initial Disclosures who they may rely upon at trial. Defendants identified numerous other individuals during their 30(b)(6) depositions last week—significantly, many of whom were not identified in Defendants' Initial Disclosures. I/P Engine's request to have the ability to depose a total of twelve additional witnesses because of these facts (three

30(b)(1) depositions each of Google<sup>1</sup> and AOL employees; and two 30(b)(1) depositions each of IAC, Target, and Gannett employees) is therefore not only reasonable, but necessary for I/P Engine to be ensured sufficient discovery to prove its claims and defend against Defendants' positions.

Defendants have rejected each of I/P Engine's proposals without explanation. Indeed, Defendants have not proposed any compromise since its May 31 proposal. Instead, they have only refused I/P Engine's many proposals without explanation, and continuously repeat that I/P Engine should be limited to deposing *only* those persons specifically identified in their respective Initial Disclosures – referencing an agreement between the parties made in February. Notably, Defendants would agree to permitting I/P Engine to depose the *fourteen* persons that they have specifically identified, but will not agree to permit I/P Engine to depose up to *twelve* persons who it believes are necessary in this case. Contrary to the Court's cautions during the June 15 teleconference, Defendants maintain that such a proposal and arrangement is fair.

I/P Engine has identified, and is in the process of identifying, individuals who have more relevant knowledge of the issues in this case than the individuals identified in Defendants' Initial Disclosures. I/P Engine is simply seeking permission to take a reasonable number of 30(b)(1) depositions beyond the ten that are initially permitted under Rule 26, as it deems necessary through the discovery process, without being restricted to only those persons that Defendants identify and without having to seek leave of Court to do so. Plaintiffs are commonly permitted

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<sup>1</sup> For example, with respect to Google, I/P Engine would be permitted to take a total of five depositions of Google, without having to seek leave of this Court for additional depositions. These depositions would include: one Liability 30(b)(6) deposition and one Damages Rule 30(b)(6) deposition, which have already been taken, and three Rule 30(b)(1) depositions. Google is the main defendant in this litigation. All non-Google defendants (except AOL and Gannett, whom will likely testify similarly) have testified during their respective 30(b)(6) depositions that Google is the only entity with knowledge of the AdWords and AdSense for Search accused systems. I/P Engine's request for five depositions is not unreasonable.

to take depositions beyond the ten under Rule 26 in multiple defendant litigations and when the facts, as they do here, warrant.

#### **IV. CONCLUSION**

For the foregoing reasons, I/P Engine respectfully requests this Court for leave to take the following number of individual 30(b)(1) depositions from each Defendant:

- Three 30(b)(1) depositions each of Google and AOL employees; and
- Two 30(b)(1) depositions each of IAC, Target, and Gannett employees.

Dated: June 25, 2012

By: /s/ Jeffrey K. Sherwood  
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Counsel for Plaintiff I/P Engine, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June, 2012, the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF I/P ENGINE'S MOTION FOR LEAVE TO TAKE 30(B)(1) DEPOSITIONS OF DEFENDANTS**, was served via the Court's CM/ECF system, on the following:

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/s/ Jeffrey K. Sherwood \_\_\_\_\_