

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

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

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

**I. INTRODUCTION**

Defendants’ Opposition misrepresents the facts. First, Defendants repeatedly say that there is “no legitimate basis to depart from the parties’ agreement” (*see, e.g.*, Opposition at 2 and 5), which is not true. Second, Defendants say that I/P Engine has not identified “a single witness not in the Defendants’ initial disclosures that it supposedly needs to depose to justify abandoning the parties’ agreement.” Opposition at 2; *see also id.* at 6 (“Critically, Plaintiff has failed to identify even a single witness that it needs to depose who is not covered by the parties’ agreement.”). This is equally untrue; and the reason that this motion is now before the Court.

Indeed, in Defendants’ own words, “[o]n May 11, 2012, Plaintiff sought a deposition of a Google witness who was not identified in the parties’ initial disclosures.” *Id.* at 4. Specifically, over two months ago (and before I/P Engine took a single deposition), I/P Engine noticed Mr. Cook for deposition. The notice was a direct result of I/P Engine’s review of the documents produced by Google by the May 30 deadline, which was imposed by the Court on May 2, 2012.

The only justification given by Defendants in refusing to provide Mr. Cook is the “February agreement.” As their Opposition reflects, Defendants continue to assert that I/P Engine should be limited to deposing *only* those persons specifically identified in their respective Initial Disclosures; an arrangement that is unfair.

As set forth in its moving papers and further below, it is because of I/P Engine’s review of the produced documents and testimony of Defendants’ own witnesses that I/P Engine needs to depose persons other than those expressly identified by Defendants.

## **II. ARGUMENT**

### **A. Information Uncovered During Discovery Provides the Need to Depose Persons Not Expressly Identified by Defendants in their Initial Disclosures**

Since February, I/P Engine has learned a great deal about Defendants and their accused systems. As this Court may recall, Defendants failed to produce most of the documents in this case until they were ordered to do so by the end of May. As soon as I/P Engine was aware of the need to depose individuals beyond those identified in Defendants’ Initial Disclosures (in May), I/P Engine notified Defendants and attempted to resolve the issue. Since then, I/P Engine has reviewed and analyzed the documents produced in May, and deposed Defendants in June so that it could prepare for the expert reports due in July.

The information culled from the production and initial depositions has established that many persons who were not identified by Defendants in their Initial Disclosures appear to have highly relevant, necessary information. Despite this fact, Defendants have flatly refused to provide any witnesses who they themselves have not identified in their disclosures without order of the Court. Ex. 1 (“To the extent that Plaintiff does not wish to abide by the terms of the agreement or our proposed compromise, the Federal Rules of Civil Procedure apply, and Plaintiff is limited to 10 depositions before it must seek leave of court.”). The only justification

that Defendants have given for this refusal is the “February agreement.” As indicated in I/P Engine’s moving brief, Defendants provide no other justification for saying that it is okay for I/P Engine to depose 14 people who they have unilaterally decided I/P Engine may depose and not allowing I/P Engine to depose up to 12 people who it has determined it needs to depose.

**B. I/P Engine has Identified Several Witnesses Who it May Become Necessary to Depose**

Fact discovery does not end until September 4, 2012. And I/P Engine’s review of Defendants’ documents (many of which having been produced over the past several weeks) remains ongoing. Nevertheless, based on I/P Engine’s current review of Defendants’ produced documents (most of which were produced in May and later) and the 30(b)(6) depositions of Defendants taken thus far (all of which were taken in June), I/P Engine has identified certain individuals who appear to have more relevant knowledge of the issues in this case than those individuals identified in Defendants’ Initial Disclosures (which were served in February).

For example, Google’s Initial Disclosures do not identify Daniel Wright, Derek Cook, or **any** marketing person responsible for Google AdWords and/or AdSense for Search – each individuals who I/P Engine plans to, or may, depose in this case based upon discovery thus far. As another example, Target identified Mr. David Peterson in its Initial Disclosures, but Target’s 30(b)(6) witness, Mr. Christopherson, identified Mr. Patrick Johnston as the most relevant person at Target regarding its use of Google’s AdSense for Search. Therefore, the individuals identified in Defendants’ February Initial Disclosures are not the “best indicator” of who should be deposed in this case given the current discovery.

**III. CONCLUSION**

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 who Defendants identify and without having to seek leave of Court to do so. For the foregoing reasons, I/P Engine respectfully requests this Court for leave to take: 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: July 9, 2012

By: /s/ Jeffrey K. Sherwood  
Donald C. Schultz (Virginia Bar No. 30531)  
W. Ryan Snow (Virginia Bar No. 47423)  
CRENSHAW, WARE & MARTIN PLC  
150 West Main Street  
Norfolk, VA 23510  
Telephone: (757) 623-3000  
Facsimile: (757) 623-5735

Jeffrey K. Sherwood (Virginia Bar No. 19222)  
Frank C. Cimino, Jr.  
Kenneth W. Brothers  
Dawn Rudenko Albert  
Charles J. Monterio, Jr.  
DICKSTEIN SHAPIRO LLP  
1825 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 420-2200  
Facsimile: (202) 420-2201

Counsel for Plaintiff I/P Engine, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of July, 2012, the foregoing **REPLY 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:

Stephen Edward Noona  
Kaufman & Canoles, P.C.  
150 W Main St  
Suite 2100  
Norfolk, VA 23510  
[senoona@kaufcan.com](mailto:senoona@kaufcan.com)

David Bilsker  
David Perlson  
Quinn Emanuel Urquhart & Sullivan LLP  
50 California Street, 22nd Floor  
San Francisco, CA 94111  
[davidbilsker@quinnemanuel.com](mailto:davidbilsker@quinnemanuel.com)  
[davidperlson@quinnemanuel.com](mailto:davidperlson@quinnemanuel.com)

Robert L. Burns  
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP  
Two Freedom Square  
11955 Freedom Drive  
Reston, VA 20190  
[robert.burns@finnegan.com](mailto:robert.burns@finnegan.com)

Cortney S. Alexander  
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP  
3500 SunTrust Plaza  
303 Peachtree Street, NE  
Atlanta, GA 94111  
[cortney.alexander@finnegan.com](mailto:cortney.alexander@finnegan.com)

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