

# EXHIBIT B

**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.,		)	
	Defendant.	)	

**[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. On November 4, 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.

**I. DISCLOSURE SCHEDULE**

**A. Initial Disclosures**

The parties served their Rule 26(a)(1)(A) disclosures on November 18, 2011.

**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 shall serve Invalidity and Unenforceability Contentions on or before January 18, 2012, which must 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.

**II. AMENDMENTS TO THE PLEADINGS**

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

**III. PROTECTIVE ORDER**

The parties shall submit a stipulated Protective Order to this Court on or before [TBD], or should they fail to agree by the date, they shall file any motions for entry of a Protective Order.

The parties mutually agree that until the Court enters a 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 [TBD], 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 [TBD].~~

**Deleted:** Discovery opens upon the execution of this stipulation.

**B. Fact Witness Depositions**

~~Rule 30(b)(6) depositions. Plaintiff shall primarily seek factual deposition discovery of defendant pursuant to Rule (b)(6), which shall count as a single fact deposition, regardless of~~

number of notices, topics, or witnesses. The duration of the Rule 30(b)(6) deposition of Google shall not exceed 15 hours, and the duration of the Rule 30(b)(6) deposition of AOL shall not exceed 12 hours. All other Rule 30(b)(6) depositions shall not exceed seven hours.

Individual Rule 30(b)(1) fact depositions. Plaintiff may depose current officers, directors, agents and employees of each defendant as shown below.

<u>Party</u>	<u>Number of witnesses</u>	<u>Cumulative total of Rule 30(b)(1) depositions</u>
<u>Google</u>	<u>7</u>	<u>30 hours</u>
<u>AOL</u>	<u>5</u>	<u>25 hours</u>
<u>IAC</u>	<u>4</u>	<u>20 hours</u>
<u>Gannett</u>	<u>3</u>	<u>15 hours</u>
<u>Target</u>	<u>3</u>	<u>15 hours</u>

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No single witness will sit for more than 7 hours of Rule 30(b)(1) deposition unless separately agreed upon by the parties. The parties shall cooperate in the scheduling of the depositions. Parties shall in good-faith attempt to avoid duplicative questioning; provided that each Defendant's counsel may make a reasonable, non-duplicative examination on topics particular to his or her client, and may ask reasonable, non-duplicative follow-up questions based on the questioning of any other Defendant's counsel.

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 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.

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**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 [TBD].

**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 [TBD].

**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 [TBD]. The parties shall exchange rebuttal expert disclosures on [TBD]. The parties shall exchange reply expert disclosures on [TBD]. 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). Depositions of experts shall not count against the hour limitations for fact witnesses.

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**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 6.F of the Protective Order.

Exclusion of emails to be discussed. Each party shall endeavor in good faith to provide their initial privilege log by no later than January 30, 2012. Each party's log shall timely be supplemented within 30 days after each document production made after January 2, 2012.

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**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.

PRETRIAL  
AND MARKMAN HEARINGS

**F. Claim Construction Procedures**

The parties shall submit a Joint Motion for Expedited Markman Hearing on or before [TBD]. The parties agreed that a Markman hearing, if necessary, shall be held on [TBD], 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 January [TBD]
- 2) The parties shall exchange proposed constructions for the exchanged claim terms on [TBD]. 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 [TBD] 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 [TBD].
- 5) Plaintiff will serve and file a jointly prepared Prehearing Statement on Claim Construction on [TBD] 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.

**G. 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 [TBD].
- 2) The parties shall serve and file any responsive briefs opposing a party's Daubert Motion or Motion in Limine on [TBD].
- 3) The parties shall serve and file any reply briefs in support of a party's Daubert Motion or Motion in Limine on [TBD].
- 4) The parties will advise the Court of any agreements regarding Motions in Limine on [TBD].

**H. Dispositive Motions**

Dispositive Motions shall be filed by [TBD] and set for hearing on the earliest available motions day thereafter. A motion for summary judgment may be made in accordance with the schedule 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 [TBD].
- 2) The parties shall serve and file any responsive briefs opposing a party's motion for summary judgment on [TBD].
- 3) The parties shall serve and file any reply briefs in support of a party's motion for summary judgment on [TBD].

**VIII. 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.

**IX. 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 [TBD], or within 4-8 weeks of the final pretrial conference to be held on [TBD], 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 [TBD].
- 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 [TBD].
- 3) The parties shall exchange objections to counter designations on [TBD].
- 4) The parties shall meet and confer regarding pretrial disclosures, the marking of exhibits and the preparation of stipulations on [TBD].
- 5) The parties shall file a final pretrial order on [TBD].
- 6) Plaintiff will serve proposed July Instructions and Verdict Sheet on [TBD].
- 7) Defendants will serve responses or objections to the proposed July Instructions and Verdict Sheet on [TBD].
- 8) The parties will file and serve Proposed Voir Dire and July Instructions on [TBD].

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

Dated: November \_\_\_\_, 2011

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