

**Exhibit 1****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

**SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR  
DISCOVERY SANCTIONS**

Defendants file this Supplemental Brief to provide the Court with notice of certain factual developments that occurred after briefing was completed on Plaintiff's Motion for Discovery Sanctions (Dkt. 200). These subsequent developments confirm the lack of prejudice to Plaintiff from Defendants' July 2 disclosure of the Bowman, Culliss, and Ryan references.

On August 14, Plaintiff served document subpoenas on Ruben Ortega (co-inventor of the Bowman reference) and Gary Culliss (inventor of the Culliss reference). (Sohn Decl., ¶ 2). Mssrs. Ortega and Culliss produced documents on August 22 and September 4, respectively. (*Id.*). On August 31, Plaintiff served deposition subpoenas to Mssrs. Culliss and Ortega for September 4 – the very next business day and the last day of fact discovery under the Court's Scheduling Order. (*Id.*, ¶ 3). Despite this late service, Defendants did not oppose Plaintiff taking these depositions after the fact discovery cutoff, as memorialized in the parties' Joint

Motion to Amend the Scheduling Order (Dkt. 243). Starting on September 3, Mr. Ortega's counsel offered several dates for Mr. Ortega's deposition, and on September 6, counsel suggested a preferred date of September 25. (Sohn Decl., ¶ 4). Meanwhile, Defendants offered to make Mr. Culliss available for deposition on September 27. (*Id.*). Plaintiff has not yet accepted the September 25 date for Mr. Ortega's deposition or the September 27 date for Mr. Culliss' deposition. (*Id.*)<sup>1</sup>

Further, on August 29, Plaintiff's expert (Dr. Jaime Carbonell) submitted his Rebuttal Expert Report Regarding Validity in this case. (*Id.*, ¶ 5). Dr. Carbonell's report addressed Bowman, Culliss, and Ryan at length, contending that none of these references invalidate the Asserted Patents. (*Id.*) At no point did Dr. Carbonell state that he was hindered or prejudiced in his ability to analyze these references for purposes of forming his validity opinions. (*Id.*) Dr. Carbonell is scheduled to be deposed on September 21. Likewise, Dr. Lyle Ungar (Defendants' invalidity and non-infringement expert) is scheduled to be deposed on September 22 and 23 for twelve total hours. (*Id.*, ¶ 6).<sup>2</sup>

Accordingly, Plaintiff has now taken (or is scheduled to take) all discovery into the Bowman, Culliss, and Ryan references it has requested.

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<sup>1</sup> Plaintiff has not sought to take any fact discovery relating to the Ryan reference.

<sup>2</sup> Notably, Plaintiff submitted a supplemental expert infringement report one week after Defendants' rebuttal non-infringement report and just 36 hours before the deposition of Plaintiff's infringement expert, Dr. Ophir Frieder. (Sohn Decl., ¶ 7). This report disclosed new theories and purported to address depositions occurring as early as 5 weeks earlier. (*Id.*) At Dr. Frieder's deposition, however, Plaintiff argued that Defendants suffered no prejudice from the late-disclosed supplemental report because "we gave you the report in time for you to present questions to Dr. Frieder. And, in fact, you did that, so I think the record will reflect that." (*Id.*).

DATED: September 14, 2012

/s/ Stephen E. Noona

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 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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