

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.)	
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**PLAINTIFF I/P ENGINE’S MOTION AND MEMORANDUM IN SUPPORT OF ITS
MOTION TO SHORTEN DEFENDANTS’ TIME TO RESPOND TO
(1) PLAINTIFF I/P ENGINE INC.’S SECOND MOTION FOR DISCOVERY
SANCTIONS REGARDING UNTIMELY DISCOVERY RESPONSES AND
(2) PLAINTIFF I/P ENGINE INC.’S THIRD MOTION FOR DISCOVERY SANCTIONS
REGARDING UNTIMELY DISCOVERY RESPONSES**

Plaintiff I/P Engine, Inc. (“I/P Engine”) moves and offers this memorandum in support of its motion to shorten Defendants’ time to respond to (1) Plaintiff I/P Engine Inc.’s Second Motion for Discovery Sanctions Regarding Untimely Discovery Responses and (2) Plaintiff I/P Engine Inc.’s Third Motion for Discovery Sanctions Regarding Untimely Discovery Responses.

With respect to Plaintiff I/P Engine Inc.’s Second Motion for Discovery Sanctions Regarding Untimely Discovery Responses, three business days before the close of fact discovery and five weeks after the service of I/P Engine’s damages expert report, Defendants completely changed several interrogatory responses and produced new evidence that it previously had concealed. Simultaneous with these last-minute disclosures, Defendants served an expert damages report that criticized I/P Engine’s damages expert for relying on Defendants’ documents, interrogatory responses, and Rule 30(b)(6) testimony, instead of the previously

concealed evidence. These discovery responses have created substantial prejudice for I/P Engine.

With respect to Plaintiff I/P Engine Inc.'s Third Motion for Discovery Sanctions Regarding Untimely Discovery Responses, on September 14, 10 days after the close of fact discovery, Google produced more than 250 pages of source code along with supplemental interrogatory responses asserting that their new production proves the accused systems did not infringe the patents-in-suit prior to 2010. The new production and interrogatory responses came after the close of fact discovery, after the close of expert discovery, and after service of all expert reports. Google's untimely production of these pages of source code along with their supplemental interrogatory responses reflects a disregard for discovery procedures in this judicial district and, again, creates tremendous prejudice for I/P Engine.

As trial is now less than a month away, I/P Engine is left without sufficient time and opportunity to verify, refute or even depose Defendants' fact witnesses regarding any of these new theories or evidence. There is no way for I/P Engine to cure this harm and preserve the pretrial schedule and trial date. Delay would only reward Google; I/P Engine is not seeking and would object to any delay. Preclusion of this untimely production is the appropriate remedy. I/P Engine's Second and Third Motions for Discovery Sanctions request such relief from this Court, however, given that trial is set for October 16, 2012, time is of the essence.

Local Rule 7(F)(1) provides that a party has eleven (11) days to respond to a motion (which is increased by three (3) days by service by electronic means), "unless otherwise directed by the Court." Good cause exists for this Court to direct a shorter time.

In an effort to expedite the briefing process, I/P Engine respectfully requests this Court require Defendants to respond to I/P Engine's Second and Third Motions for Discovery

Sanctions on or before September 25, 2012. Further, I/P Engine will waive its right to reply to Defendants' responses and requests an oral hearing before this Court on both motions to be heard on September 27 or September 28, 2012, or at another time convenient for this Court. In the alternative, I/P Engine respectfully requests this Court require the parties to brief these motions in accordance with the schedule proposed in the Agreed Order filed by the parties on September 20, 2012 (Defendants shall file any responsive brief on or before September 27, 2012. I/P Engine shall file any reply brief on or before October 1, 2012).

Dated: September 21, 2012

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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 correspondence and telephonic meet-and-confers.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2012, the foregoing **PLAINTIFF I/P ENGINE'S MOTION AND MEMORANDUM IN SUPPORT OF ITS MOTION TO SHORTEN DEFENDANTS' TIME TO RESPOND TO (1) PLAINTIFF I/P ENGINE INC.'S SECOND MOTION FOR DISCOVERY SANCTIONS REGARDING UNTIMELY DISCOVERY RESPONSES AND (2) PLAINTIFF I/P ENGINE INC.'S THIRD MOTION FOR DISCOVERY SANCTIONS REGARDING UNTIMELY DISCOVERY RESPONSES**, was served via the Court's CM/ECF system and via Hand Delivery, on the following:

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