

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.,		)	<b>REDACTED VERSION</b>
		)	
	Defendants.	)	
<hr/>		)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF I/P ENGINE, INC.’S  
SECOND MOTION FOR DISCOVERY SANCTIONS  
REGARDING UNTIMELY DISCOVERY RESPONSES**

**I. INTRODUCTION**

Defendants waited until the last days of fact discovery to disclose three critical categories of damages-related evidence that were all requested at the very beginning of this case: (1) Defendants’ revenues relating to the Accused Systems; (2) testing that had any impact on Defendants revenues; and (3) non-infringing alternatives. For each category of evidence, Defendants previously had served interrogatory responses and documents upon which Plaintiff and its damages expert relied to take depositions, analyze Defendants’ revenues, and set forth its damages claim. Three business days before the close of fact discovery, which closed on September 4, 2012, 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 they 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' prior-produced documents, interrogatory responses, and Rule 30(b)(6) testimony, instead of this new, previously concealed evidence.

There is no excuse for Defendants' last-minute disclosures. I/P Engine requested this evidence in its November 7, 2011 interrogatories and document requests, as well as by later interrogatories and a Rule 30(b)(6) deposition noticed on April 2, 2012. Defendants cannot reasonably argue that they were either unaware or did not understand the significance of these materials. This damages-related information has always been relevant to the claims and defenses in this case. The materiality of this evidence is highlighted by the fact that Defendants heavily rely on these untimely produced materials in their expert reports and pretrial disclosures.

The late production of this evidence has created substantial prejudice. The production by Defendants of this evidence only three business days before the end of fact discovery, and after I/P Engine had served its expert damages report, makes it impossible for I/P Engine to verify, refute or even depose Defendants' fact witnesses regarding any of this new information. There is no way for I/P Engine to cure this harm and preserve the pretrial schedule and trial date. Delay only would reward Defendants; I/P Engine is not seeking and would object to any delay. Preclusion of this information is the appropriate remedy. Preclusion is consistent with this Court's comments during the hearing on September 18, 2012 about such last minute discovery tactics, and has been endorsed by the Federal Circuit. *Woods v. DeAngelo Marine Exhaust, Inc.*, No. 2010-1478, 2012 WL 3683536 (Fed. Cir. Aug. 28, 2012) (sustaining as a discovery remedy the preclusion of evidence disclosed during the last days of fact discovery). As this Court observed during the September 18 hearing, the key fact in *Woods* was that the plaintiff had no opportunity to cure the prejudice, because the disclosures came at the end of fact discovery. This

motion is on all fours with the *Woods* decision, and the result there – preclusion of the evidence – dictates the same result here.

## **II. LEGAL STANDARD AND RELIEF SOUGHT**

### **A. Legal Standard**

The Federal Rules of Civil Procedure require parties to timely provide responses to discovery requests. Fed. R. Civ. P. 26, 33 and 34. Federal Rule of Civil Procedure 26(e)(1) requires timely supplementation of responses to interrogatories and requests for production if the previous response is incomplete or incorrect. If a party fails to provide the information required by Rule 26(e), the party is not allowed to use that information a trial unless the failure was substantially justified or is harmless. Fed. R. Civ. P. 37(c)(1) (“the party is not allowed to use that information . . . to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or harmless.”). The Federal Circuit recently has emphasized that these rules “prohibit[] parties who are aware of a deficient response from holding back material items and disclosing them at the last moment.” *Woods v. DeAngelo Marine Exhaust, Inc.*, No. 2010-1478, 2012 WL 3683536, at \*7 (Fed. Cir. Aug. 28, 2012).

In the Fourth Circuit, five factors guide whether a failure to timely supplement was “substantially justified or harmless:”

- (1) the surprise to the party against whom the evidence would be offered;
- (2) the ability of that party to cure the surprise;
- (3) the extent to which allowing the evidence would disrupt the trial;
- (4) the importance of the evidence; and
- (5) the nondisclosing party’s explanation for its failure to disclose the evidence.

*Southern States Rack And Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 597 (4th Cir. 2003) (characterizing these factors as preventing “surprise and prejudice”).

The party facing sanctions has the burden of showing that its actions were substantially justified or harmless. *Id.* at 596. Untimely supplementations may be struck regardless of

whether the supplementing party acted in bad faith. *Id.* (“neither of these requirements suggests that the nondisclosing party must act in bad faith or otherwise culpably”).

**B. Relief Sought**

I/P Engine is respectfully seeking to preclude Defendants from using in any form the below identified material for any purpose in this litigation, as well as to have such information, and any reliance thereon, stricken from their expert reports and testimony:

1. Google’s First Supplemental and Second Supplemental Responses to I/P Engine’s Interrogatory No. 15, served by Google on August 29, and September 13, respectively, which is directed to Google’s revenues for its U.S. based properties. I/P Engine also seeks to have stricken any reliance by Defendants’ damages expert, Dr. Keith Ugone, on these Supplemental Interrogatory Responses or the data included in these responses;
2. Emails and the information provided therein produced as Bates Nos. G-IPE-0888897, G-IPE-0888898-99, G-IPE-0888900 and G-IPE-888901-02. I/P Engine also seeks to preclude and have stricken any reliance by Defendants’ damages expert, Dr. Ugone, on these emails or the data provided therein; and
3. Google’s Supplemental Response to I/P Engine’s Interrogatory No. 9, served by Google on August 30, which is directed to Google’s non-infringing alternatives contentions. I/P Engine also seeks to preclude and have stricken any reliance by Google’s experts, Dr. Ugone and Dr. Ungar, on these responses and the information provided therein.

With respect to Google’s supplemental responses to I/P Engine’s Interrogatory No. 15, Google should be held to its original Rule 33(d) response served on July 19. Google should not be able to skirt its discovery obligations in its July 19 response and then supplement that response for self-serving reasons later claiming that the supplemental response is the proper revenue data.

With respect to the untimely produced emails, they should be excluded because I/P Engine has been seeking Google’s internal testing related to the accused systems since its first discovery requests, served November 7, 2011. Google waited until it was beneficial to its own case before producing the relevant information.

With respect to Google's response to I/P Engine's Interrogatory No. 9, again for its own self-serving reasons, Google waited until August 29 – days before fact discovery closed – to disclose for the first time multiple alleged non-infringing alternative systems. Google supplemental response should be precluded and Defendants' experts should be prevented from relying upon or otherwise using the information.

### **III. DISCUSSION**

Prior to August 29, 2012, Defendants served interrogatory responses, produced documents, and produced a Rule 30(b)(6) witness, regarding the U.S. revenues of the Accused Systems. [REDACTED]

[REDACTED] But, on the same day that Defendants served their responsive damages report, they served new discovery responses that repudiated their prior disclosures. [REDACTED]

[REDACTED]

Defendants also apparently intend to rely upon that previously undisclosed evidence to attack I/P Engine's damages expert, claiming that he relied on the wrong revenue data, ignored undisclosed initial testing data, and failed to consider Defendants' brand-new contentions about non-infringing alternatives. I/P Engine had no opportunity to evaluate and seek discovery relating to this material prior to the close of discovery.

I/P Engine served both its First Set of Requests for Production and First Set of Interrogatories on November 7, 2011. As set forth below, these requests sought the production of all of the materials at issue in this motion. I/P Engine further sought testimony relating to the existence of any of these materials through 30(b)(6) depositions, which it noticed on April 2, 2012. Those depositions took place in June 2012. Following those depositions, I/P Engine

served additional interrogatory requests on June 14, 2012 relating to Defendants' revenues, testing of the accused products and any contentions relating to non-infringing alternatives. Defendants substantively responded to all of I/P Engine's discovery, and I/P Engine relied on those responses to conduct its damages analysis. I/P Engine served its damages expert report on July 25, 2012.

**A. Google's Untimely Production of Its U.S. Revenue For its Accused Advertising Systems Should Be Stricken**

**1. November 7, 2011 Document Request No. 44**

On November 7, 2011, I/P Engine served its First Set of Document Requests on Defendants. Several requests sought documents relating to Defendants' revenues relating to the accused products. For example, Document Request No. 44, sought:

For each Google system identified in response to Plaintiff's Interrogatory No. 2, documents sufficient to show periodic (e.g., quarterly or yearly) costs, revenues, profits, and losses for each identified system.

Ex. 1.

**2. April 2, 2012 30(b)(6) Deposition Notice**

On April 2, 2012, I/P Engine served a 30(b)(6) notice on Defendants seeking a witness to provide testimony regarding the "[a]ctual, budgeted and projected sales/revenues (gross and net), profits and loss, incremental and marginal profits, and direct and overhead/allocated costs" of the accused systems. That deposition took place on June 12, 2012.

On June 11, 2012, 8:09 PM, the night before Google's 30(b)(6) deposition, Google produced seven revenue-related documents that purported to show Google's revenues of the accused products for 2009 through 2012. At the June 12 deposition, Google's 30(b)(6) designee, Mr. Datta, was questioned about these seven documents. He testified that he was not certain about some of the revenue figures in those documents, and whether they were U.S. or

worldwide. He further testified that it would not be difficult for him to determine and generate the U.S. revenue for Google's accused systems over the relevant time period. Ex. 2. Because of the witness's lack of preparation, and Google's delay in identifying the relevant documents, I/P Engine's Rule 30(b)(6) deposition was incomplete.

**3. June 14, 2012 Interrogatory No. 15**

On June 14, 2012 (two days after Mr. Datta's deposition), and in lieu of insisting that Google present a properly prepared Rule 30(b)(6) witness who would recite numbers, I/P Engine agreed to accept an interrogatory response setting forth Google's revenues and costs associated with the Accused Products. I/P Engine thus served Interrogatory No. 15 seeking:

[f]or Google U.S. Based Properties, from January 1, 2002 to the present . . . a chart identifying (in U.S. dollars) actual gross and net profits and losses and Google's costs on a monthly or quarterly basis, associated with the Accused Products.

Ex. 3. Defendants were fully aware that I/P Engine's expert damages report was due in a matter of days, and that I/P Engine would be relying upon that response. On July 19, 2012, Google responded to Interrogatory No. 15 by relying on Fed. R. Civ. P. 33(d) and *identified the same seven documents that it had produced the day before the June 12, 2012 30(b)(6) deposition.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**4. Defendants' Untimely August 29, 2012 Production of Evidence**

On August 29, 2012, concurrent with the service of Defendants' damages report, Google supplemented its response to Interrogatory No. 15. Google abandoned its prior Rule 33(d) identification of the seven documents, which it had repeatedly cited up to that time. Instead,

Google identified completely different revenue information in chart form that had never before been produced; Google now claims that this is the proper U.S. revenue data for the accused systems. Google since has supplemented its response to Interrogatory No. 15 on one more occasion: on September 13, *after the close of fact discovery* and the day before the deposition of Defendants' damages expert, Dr. Ugone.<sup>1</sup>

None of these supplementations and productions were timely, justified, or harmless. The first supplementation of Interrogatory 15, and related production, occurred *only three business days before the end of fact discovery*; five weeks after I/P Engine served its damages expert report; six weeks after its initial response to Interrogatory 15; ten weeks after I/P Engine served Interrogatory 15; eleven weeks after Mr. Datta's 30(b)(6) deposition and Google's Rule 33(d) response pointing to the seven documents, and ten months after I/P Engine first requested production of Defendants' revenues for the Accused Products.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 4.

Defendants have provided no explanation as to why they did not produce their new revenue data until the day their expert report was due, only three business days before the close of fact discovery. I/P Engine immediately objected to Defendants' untimely disclosures, and during meet and confers, asked Defendants' counsel to explain the delay. Defendants have offered no explanation, other than fact discovery had not yet ended when it served its initial

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<sup>1</sup> When asked at his deposition when he had received the new U.S. revenue information, Dr. Ugone testified that Google's counsel read the sales information to him before he submitted his report. Ex. 5 at 227 (I believe "[w]e just have the interrogatory, and I believe we may have received a -- verbally the numbers before this was officially issued.").



supplementation on August 29, 2012. Of course, they have not asserted this for the last two supplementations. Defendants do not dispute that this information existed, was relevant to the damages issues in this case, and had been expressly requested by I/P Engine on multiple occasions.

**5. I/P Engine's Reliance on and Prejudice as a Result of Defendants' Untimely Discovery**

Because of the untimely supplementation of Defendants' response to Interrogatory No. 15, I/P Engine was not able to seek discovery or otherwise test or verify this new alleged U.S revenue data. And as stated above, I/P Engine's expert, Dr. Stephen Becker, arrived at his opinions as set forth in his July 25, 2012 damages report, relying, *inter alia*, on the seven documents that Defendants identified in Interrogatory No. 15 to calculate the royalty base — something that Defendants' expert criticizes him for doing.

**6. Statement of Relief Sought**

I/P Engine seeks to have stricken Defendants' First Supplemental and Second Supplemental Responses to I/P Engine's Interrogatory No. 15, served by Defendants on August 29 and September 13, respectively. I/P Engine also seeks to preclude Defendants' damages expert, Dr. Ugone, from relying on these responses and the data therein for any reason.

**B. Google's Untimely Production Of Emails Relating To How The Implementation Of Quality Score Impacted Revenue**

**1. November 7, 2011 I/P Engine Document Requests**

I/P Engine's November 7, 2011 Document Requests also included multiple requests seeking information as to any of Google's internal testing related to the accused systems, including testing that showed any impact on Google's revenues. Document Request No. 21 sought:

All documents that refer to or relate to Google's decision to develop and commercially introduce a paid search advertising system (e.g., systems including, but not limited to, cost per click advertising systems and cost per impression advertising systems) including, but not limited to, documents that refer to or relate to internal testing or analysis identifying the advantages or disadvantages of developing and commercially introducing a paid search advertising system.

Document Request No. 36 further requested:

Documents sufficient to show Google's revenue, related expenses and resulting profits prior to and after it incorporated a Relevance Score into its paid search advertising system including, but not limited to, documents that refer to or relate to any increases in revenue after incorporating a Relevance Score into a paid search advertising system.

Ex. 1.

## **2. April 2, 2012 30(b)(6) Deposition Notice**

This topic was also included in I/P Engine's April 2, 2012 30(b)(6) deposition notice.

Topic 4 expressly sought testimony regarding the "percentage of revenue increase that in-house testing (or other projections) performed by Google (or on Google's behalf) show is attributed to Quality Score."<sup>2</sup> Ex. 6. During an April 26, 2012 meet and confer, I/P Engine made clear that it was seeking testimony "regarding testing of the implementation of Quality Score." Ex. 7. The 30(b)(6) deposition took place on June 21.

During the 30(b)(6) deposition, I/P Engine asked whether Google did any testing to determine what impact Quality Score might have on revenue. Ex. 8. Google's 30(b)(6) designee, Mr. Alferness, did not testify about (or even mention) the and tests of experiments, including the "experiment" that Defendants' damages expert disclosed on August 29, and relies upon to rebut I/P Engine's apportionment of the royalty base. *Id.*

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<sup>2</sup> See Ex. 9. These emails reference a [REDACTED]

**3. Defendants' Untimely August 29, 2012 Production of Evidence**

On August 29, again concurrent with the service of Defendants' damages report, Google supplemented its document production with emails that its damages expert, Dr. Ugone, heavily relies upon in his report to attempt to contradict the opinions of I/P Engine's damages expert, Dr. Becker. In Dr. Ugone's Rebuttal report, he relies on these emails for the following facts:

[REDACTED]

[REDACTED]

[REDACTED]

*See Ex. 4.*

Significantly, when asked at his deposition about his interpretation of the emails and the statements in his report that he makes about them (the first and only opportunity that I/P Engine would have to do so), Dr. Ugone testified that he could not provide the correlations of how the words in the emails led him to his statements in his report. Ex. 5 at 199-202. He claimed that he

would “[n]eed to refresh [his] memory based on discussions with [his] staff if the word SmartAd experiments referenced what I believe is going on in this portion of my report.” *Id.* at 208. In other words, Dr. Ugone could neither shed light on, nor explain why the untimely produced emails were relevant to his opinions, or what occurred during the alleged experiments.

Defendants have provided no explanation as to why they did not produce this testing material until the day that its expert report was due and over nine months after I/P Engine initially requested this type of information. Again, there can be no dispute that this material was relevant to the issues in this case from the beginning; that Google possessed this material, and that it although it should have been produced in response to I/P Engine’s November 7, 2011 discovery requests, at a minimum, it should have been provided sufficiently before the fact discovery deadline to have allowed I/P Engine to investigate it.

#### **4. I/P Engine’s Reliance on Defendants’ Discovery Responses**

I/P Engine relied upon the absence of any such testing or experiment information in formulating its damages model. It relied upon the failure of Google’s Rule 30(b)(6) witness to testify regarding any such testing. Because Defendants produced these emails only three business days before the end of discovery, and months after the 30(b)(6) depositions, I/P Engine has no way taking discovery on their scope, accuracy or meaning from Google. Dr. Becker did not have the opportunity to consider or opine on these emails (or their alleged testing content) in his report. And as indicated above, although relying on them to rebut Dr. Becker’s opinions, Dr. Ugone was unable to provide any underlying information regarding these emails during his expert deposition.

#### **5. Statement of Relief Sought**

I/P Engine is respectfully seeking to preclude Defendants from relying on emails and the information provided therein, document Bates Nos. G-IPE-0888897, G-IPE-0888898-99, G-IPE-

0888900 and G-IPE-888901-02, in any form in this litigation. I/P Engine also seeks to preclude Dr. Ugone from relying on these emails or the information therein contained in support of his opinion, as well as to have any reference to these materials stricken from Dr. Ugone's damages report.

**C. Google And IAC's Untimely Supplementation of Their Interrogatory Responses Regarding Non-Infringing Alternatives**

**1. I/P Engine's November 2011 Discovery Requests Regarding Non-infringing Alternatives**

I/P Engine served its Interrogatory No. 9 on Google on November 7, 2011. Interrogatory No. 9 requested that Google:

Identify any system, and when it was developed, that Google intends to rely upon in this litigation as a non-infringing alternative to each Google system identified in response to Interrogatory No. 2 including, but not limited to, all facts, documents, communications and/or events which Google contends are pertinent thereto, and identify the persons having the most knowledge of such facts, documents, communications and/or events.

Ex. 10.<sup>3</sup> I/P Engine's November 7, 2011 Document Requests also expressly sought information as to Defendants' contentions relating to non-infringing alternatives. Document Request No. 72 sought: "Each document on which Google intends to rely upon in this litigation related to a non-infringing alternative."

Google and IAC responded that the interrogatories were premature "given the vague nature of I/P Engine's infringement contentions to date," but that they would produce responsive business records. Ex. 11. Google then supplemented its interrogatory response, directing I/P Engine to a list of Bates control numbers that spanned over 17 pages. Ex. 12. None of the

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<sup>3</sup> Interrogatory No. 8 to IAC corresponds to Interrogatory No. 9 to Google and uses the term "Relevance Score," but as discussed above, Defendants agreed to provide responsive information relating to "Quality Score" for such discovery requests.

documents identified in those 17 pages of citations identified the non-infringing alternatives now described in Google and IAC's supplemental response No. 9.

**2. Defendants' Untimely August 30, 2012 Service of New Interrogatory Responses relating to Non-Infringing Alternatives**

Concurrent with the service of Defendants' damages report and Defendants' non-infringement expert report, on August 29, 2012, Google and IAC supplemented their responses to I/P Engine's Interrogatory No. 9, for the first time articulating multiple alleged non-infringing alternative systems. Ex. 13. For example, [REDACTED]

[REDACTED]

[REDACTED] *Id.*

To support his opinions expressed in his report, Dr. Ugone (Defendants' damages expert) stated that he relied on conversations with Dr. Ungar (Defendants' non-infringement expert), and Mr. Alferness and Mr. Fox (both Google employees) to arrive at his opinions regarding non-infringing alternatives. Significantly, Google had previously designated Mr. Alferness for a number of 30(b)(6) topics; however, Google refused to designate him on the topic of non-infringing alternatives. Nevertheless, Google's damages expert, Dr. Ugone testified that he mainly relied on Dr. Ungar and Mr. Alferness for his opinions regarding Defendants' alleged non-infringing alternatives.<sup>4</sup> In his report, Dr. Ungar relies only on conversations with Mr. Alferness.

I/P Engine deposed Mr. Alferness on June 21, 2012 about eighteen 30(b)(6) topics. Google refused, however, to designate Mr. Alferness or any other witness on non-infringing alternatives, claiming that it was more appropriately asked in a contention interrogatory. Ex. 15.

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<sup>4</sup> At Mr. Fox's deposition on September 12, 2012, he testified that he could not "remember all the details of what [he] said [to Dr. Ugone] but we discussed some ideas about noninfringing alternatives." Ex. 14.

Ironically, I/P Engine served such an interrogatory on Defendants on November 7, 2011. Ex. 10. Because Google refused to permit Mr. Alferness or any other corporate designee testify regarding non-infringing alternatives, and expressly endorsed its prior interrogatory response in which it failed to disclose any non-infringing alternatives, I/P Engine relied on Google's response to Interrogatory No. 9 (or lack of any identification of non-infringing alternatives) in not seeking further discovery on the issue.

During meet and confers on this matter, Defendants have provided no explanation as to why they did not supplement their response to Interrogatory No. 9 until the close of fact discovery, or why they failed to designate Mr. Alferness to testify regarding this topic, while simultaneously having Mr. Alferness speak with Google's damages and infringement experts on this exact same subject. Because Defendants supplemented their response to Interrogatory No. 9 only three business days before the end of discovery, and months after the fact depositions of Google's engineers and 30(b)(6) witnesses, I/P Engine has no way of taking discovery on the efficacy of Google's brand new non-infringing alternatives. Dr. Becker did not have the opportunity to consider or opine on these new contentions in his report.

### **3. I/P Engine's Reliance on Defendants' Discovery Responses**

Because of Defendants' untimely supplementation of their response to Interrogatory No. 9, I/P Engine was not able to seek discovery on Defendants' new (now-heavily-relied-upon) alleged non-infringing alternatives. And Dr. Becker once again prepared his opinions without being able to consider and respond or to seek input from I/P Engine's technical experts on Defendants' alleged non-infringing alternatives prior to serving his report.

### **4. Statement of Relief Sought**

I/P Engine respectfully seeks to preclude Defendants from relying on Google and IAC's supplemental responses to Interrogatory No. 9, in any form in this litigation. I/P Engine also

seeks to preclude Defendants' experts, Dr. Ugone and Dr. Ungar from relying upon or otherwise using Google and IAC's Supplemental Response to Interrogatory No. 9 and the information provided therein.

**IV. Defendants' Untimely Supplementations Of Interrogatory Responses And Productions Of Documents Were Neither Harmless Nor Substantially Justified.**

Google has provided no "substantial justification" for why it waited until three business days before the end of fact discovery to produce the material at issue here. There is no argument that may be made that Defendants did not have notice; there is no argument that the U.S. revenues, testing data and non-infringing alternatives relating to the accused products somehow became relevant so late in this litigation. These types of materials are nearly *always* relevant in patent infringement litigations, and to the extent that they exist (and were asked for multiple times in multiple forms) should have been produced long ago. Any question regarding the materiality of this evidence is belied by Defendants' experts reliance on them in their rebuttal reports.

The harm is self-evident. I/P Engine was not able to seek discovery on this material evidence; took many fact depositions relying on Defendants previous discovery responses; and had its experts rely on those responses and fact depositions in formulating their expert opinions. Given the late stage of this litigation, I/P Engine would not be able to seek proper discovery on this new material evidence without seriously disrupting the pretrial schedule in this case.



**V. CONCLUSION**

For the reasons discussed above, pursuant to Federal Rule of Civil Procedure 37(c)(1), Defendants should be precluded from relying in the aforementioned untimely discovery responses to support their positions in this case.

Dated: September 20, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of September, 2012, the foregoing

**MEMORANDUM IN SUPPORT OF PLAINTIFF I/P ENGINE, INC.'S SECOND  
MOTION FOR DISCOVERY SANCTIONS REGARDING UNTIMELY DISCOVERY**

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