

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

L/P ENGINE, INC.,)	
)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NO.
)	2:11-CV-512
AOL, INC., et al,)	
)	
Defendants.)	

ORAL/VIDEO DEPOSITION OF
STEPHEN L. BECKER, Ph.D.
SEPTEMBER 8, 2012

CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY

ORAL DEPOSITION OF STEPHEN L. BECKER, Ph.D.,
produced as a witness at the instance of the Defendants,
was duly sworn, was taken in the above-styled and
numbered cause on the SEPTEMBER 8, 2012, from 8:24 a.m.
to 5:54 p.m., before Chris Carpenter, CSR, in and for
the State of Texas, reported by machine shorthand, at
the offices of ANDREWS & KURTH, 111 Congress Avenue,
Suite 1700, Austin, Texas 78701, pursuant to the Federal
Rules of Civil Procedure and the provisions stated on
the record or attached hereto.
Job No. CS416513

1 this document is consistent with that and is -- provides
2 some fairly detailed quantification of things that
3 appear in less quantified statements elsewhere in the
4 documents. And so, you know, this particular document
5 is one that we use for measurement of some particular
6 impact, but it's in no way inconsistent with the sort of
7 breadth of the evidence that's out there.

8 Q. In coming to your apportionment, you heavily
9 rely on some bar charts that are included in here,
10 correct?

11 A. Yes.

12 Q. Would you say this is the document that you
13 rely on most to come to that apportionment?

14 A. I think it's -- what I would characterize it as
15 this is a document that I choose to -- or that we use
16 for the specific quantification of the apportionment in
17 many of the quarters and years for which the
18 apportionment is done. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 Q. Do you see -- do you know who drafted this

1 document?

2 A. No.

3 Q. Have you done anything to verify its accuracy?

4 A. I have considered this document in the context
5 of all the other documents that I've seen, and as I told
6 you just a minute ago, it is consistent with that.

7 You know, it -- there's only so much that
8 I can do when, you know, Google is the one who is
9 holding the cards with respect to not having produced
10 the kind of data that obviously underlies these charts.

11 Q. Well, plaintiff's counsel could ask somebody at
12 a deposition about this document. Couldn't that be one
13 thing that could be done?

14 A. Well, I'll let -- you know, plaintiff's counsel
15 and you will obviously -- can discuss in a legal context
16 the -- what can and can't be done.

17 All I can tell you is, throughout this
18 case, in looking at the evidence, looking at the
19 documents that Google has produced, [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] Those are the sorts of things that I --
23 that through interrogatories have been continuously
24 asked for, and it's frankly remarkable, in my opinion,
25 that Google has not produced what I think any reasonable

1 person would assume is present -- has to be present in
2 their records. I haven't seen it. If they have
3 produced it, please inform plaintiff's counsel that you
4 have and I'll consider it. But it's just staggering to
5 me that -- that there would be so many documents talking
6 about testing and "look at this result and look at that
7 result," and there's not -- you know, we can stack up in
8 a pretty small stack the documents that have actually
9 been produced responsive to that request.

10 Q. Did you look at e-mails in relation for looking
11 for those tests?

12 A. I have looked at lots of e-mails. I have
13 looked at presentations, I've listened to speeches, I
14 have looked at internal memos, and I've looked at a
15 number of documents like either these Revenue Force
16 documents or -- you know, some of the charts in here,
17 this, the format of the chart and the information that's
18 in the chart, appears in other documents. So it's clear
19 to me that this is -- this is a kind of a reporting
20 format that Google uses.

21 And as I indicated, the results that are
22 reflected in this presentation are consistent with that
23 evidence that is sort of throughout the documents in --
24 some in quantified form and some in qualitative form.

25 Q. Have you reviewed any of the testimony of

1 Google witnesses regarding the reliability of testing
2 that's done on its products?

3 A. I recall generally. You know, you need to put
4 a specific transcript in front of me if you want to ask
5 me a specific question about that, but I'm generally
6 aware that, you know, the testing is -- that testing is
7 done and that testing results are tracked and that, you
8 know, they are that, they are tests. But that Google --
9 I've also seen documents that Google makes business
10 decisions on the basis of these tests.

11 Q. And what about the documents regarding the
12 reliability of such tests or testimony? Do you recall
13 testimony regarding that many of the tests that Google
14 does are not, in fact, reliable?

15 MS. ALBERT: Objection.

16 A. You know, as general a sense, I've seen --

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

25 Q. Do you see on the first page of this document,

1 it says "Draft"?

2 A. Yes.

3 Q. Do you see that it says "Draft" throughout?

4 A. Yes.

5 Q. Do you typically rely on drafts?

6 A. Where I have the final version available to me,
7 I would prefer to use something that doesn't have marked
8 "draft" marked on it, but I -- you know, where that's
9 the only thing that's been produced and it is consistent
10 with other evidence, I don't have a problem using it if
11 I think that the evidence that it's providing is not --
12 you know, that's not the thing that was -- that was the
13 draft -- the draft aspect of it.

14 Q. Do you -- did you ask for a complete copy of
15 it?

16 A. I certainly asked for the native version of
17 this and I asked counsel to search the production
18 records for any documents at all like this document.

19 Q. Do you -- did you ask counsel to request the
20 final version of this document from Google?

21 A. I didn't specifically ask that, that way. I
22 think it would have been covered with a general request
23 to get Google to do what it's supposed to do, which is
24 produce any relevant documents related to this area of
25 the case.

1 Q. It's -- do you think it's Google's obligation
2 to go throughout all its files and produce anything that
3 might be -- that you might think is relevant, sir?

4 MS. ALBERT: Objection.

5 A. I think it's Google's responsibility to respond
6 to the interrogatories and document requests that were
7 propounded on it.

8 Q. (By Mr. Perlson) Do you know what the agreement
9 was that was made between the parties in this case in
10 relation to what should or shouldn't be produced, sir?

11 MS. ALBERT: Objection.

12 A. No. But I could tell you that if -- let's just
13 assume, for example, that a final version of this
14 exists. If this document is relevant, then the
15 financial version is relevant, and I think it should
16 have been produced.

17 Q. (By Mr. Perlson) And because it wasn't
18 produced, that means that you can rely on the draft; is
19 that right?

20 A. I think I can rely on what Google produced, and
21 if it's in possession of information that is different
22 from this, or if there's any document that is a version
23 of this that is more complete, more accurate, whatever,
24 I think it had an obligation to produce it.

25 Q. So you don't have any -- you don't know whether

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
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[Redacted]

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

7 Q. The -- so the chart that's on -- and just for
8 the record, the chart that is on 47 of your report is on
9 the bottom left of Page 37 of Exhibit 3; is that right?

10 A. No. The chart that is on Page 47 of my
11 report --

12 Are you with me?

13 Q. Yeah.

14 A. -- Page 47 of my report appears in the lower
15 left-hand corner of Slide 37 from Exhibit 3. Okay? So
16 Page 47 of my report, the chart that sits above
17 Paragraph 175.

18 Q. Correct. Right.

19 A. If you look at Page 37 of Exhibit 3, Bates
20 Number ending in 355, the lower left-hand corner, that's
21 what's replicated above Paragraph 175 of the report.

22 Q. Okay. That's what I thought I said, but okay.

23 A. Okay, well, it's cleared up now. I don't think
24 that's what you said but, you know...

25 Q. Now --

1 A. But just to be clear, I just want -- because
2 since the record seemed a little muddled there. The
3 measurement that I was talking about, where we measured
4 to get the dollar impact, was not measuring the chart
5 that is replicated above Paragraph 175, nor the lower
6 left-hand corner of Page 37 of Exhibit 3.

7 Q. So which one was it based off of?

8 A. It's the two charts that I measured. And what
9 we measured from was the actual native Powerpoint, not
10 the -- I didn't stick it into my report and then go
11 measure it in the report. Okay, the two things that I
12 measured from were the lower left-hand corner and the
13 upper left-hand corner of Slide 38 of Exhibit 3, because
14 those two charts are in dollars. The prior chart on
15 Page 37 is in percentage change year-over-year, and not
16 nearly as useful.

17 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 MS. ALBERT: Objection.