

EXHIBIT K

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

I/P ENGINE, INC.,

Plaintiff,

v.

AOL, INC., GOOGLE INC., IAC SEARCH &
MEDIA, INC., TARGET CORP., and
GANNETT CO., INC.

Defendants.

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C.A. No. 2:11-cv-512-RAJ

JURY TRIAL DEMANDED

**REPORT OF DEFENDANTS' EXPERT
LYLE H. UNGAR, PH.D., CONCERNING
NONINFRINGEMENT**

CONFIDENTIAL – OUTSIDE COUNSEL ONLY

[REDACTED]

XI. COMPARABLY LICENSED TECHNOLOGY, OTHER PATENTS

323. In this section, I review some of the patents licensed by Google for similarity with the claims and disclosures of the '420 and '664 Patent.

324. The patents and patent applications licensed by Google under the October 2008 license [REDACTED] have a clear connection with the '420 and '664 Patents as asserted against Google AdWords. [REDACTED]

[REDACTED] These patents and applications relate generally to the quality of search advertising. This is the same field of use as the '420 and '664 patents, as mistakenly asserted against Google AdWords.

325. Broadly speaking, [REDACTED] describe ways to optimize ad placement across web pages through tracking the performance of the ads. For example, [REDACTED] [REDACTED] describes a method and system to optimize advertisements placed on various [REDACTED]

_____ describes tracking the performance of various advertisements across multiple zones, where the performance indicators include the number of impressions delivered and the number of clickthroughs available for each ad at each zone. _____

_____ The claimed invention of the _____ then _____

_____ In short, the _____ describes running different ads for the same search query, tracking the performance of those ads for that query, and selecting the better-performing ads for use with future search results.

326. Dr. Frieder asserts that “Defendants’ systems infringe the asserted claims whenever they filter advertisements in response to a search query from a user using pCTR.” (Frieder Report, p. 25 (Noting that “pCTR is sometimes referred to as Quality Score.”).) Dr. Becker asserts that it is this use of pCTR/Quality Score in improving the quality of ads (i.e., relevance of ads) that increases Google’s revenues, by improving both end-user experience and making the AdWords system more attractive to advertisers. (*See generally* Becker Report, pp. 31-37.) As discussed above, the _____ discloses a method for determining the quality of ads, and selecting the better ads for use. The quality of the advertisements shown is improved through the use of the claimed invention of the _____, the end-users’ experience is improved, and both the advertisers and the search advertising system have improved revenues.

327. I further note that _____

_____—share a specification with and claim priority to the _____

_____ Similarly, _____ shares a specification with and claims priority to _____

_____ I accordingly conclude that the patents licensed under the October

2008 license [REDACTED] are comparable to the asserted patents, as interpreted by Plaintiff and its experts.

328. I conclude that U.S. Patent No. 6,269,361 (“the ‘361 patent”) is *not* comparable to the asserted patents. In paragraph 80 of his Infringement Report, Dr. Frieder asserts that the asserted patents and the ‘361 patent “generally relate to similar subject matter” because AdWords uses both of them to allegedly “rank and filter advertisements.” This is analogous to saying that a stethoscope is “similar subject matter” to an MRI because doctors use both of them to check for heart defects. In point of fact, the ‘361 patent has little to do with the alleged inventions of the asserted patents other than that they both involve queries. The ‘361 patent discloses an advertising system where rank position is determined through an auction by bid and only by bid, and where advertisers are charged their bid amount for each click on the ad. In comparison, the asserted patents barely mention advertisements⁵² and never mention bidding, auctions, prices, or charging advertisers on a per-click basis. Rather, the ‘420 patent filters informons on the basis of applicable content profile data and on the basis of a combination of collaborative feedback data and content profile data, while the ‘664 patent filters combined information for relevance to either the query or the user. In other words, the ‘361 patent discloses an entirely different means of filtering information than the traditional means disclosed in the asserted patents.

329. Moreover, as discussed above, under Dr. Frieder’s infringement assertions, the ‘420 and ‘664 patents relate to the quality of search advertising. Indeed, Dr. Becker asserts that the value of the claimed invention is the use of quality/relevance in search advertising. (*See generally* Becker Report, pp. 31-37.) But in the system disclosed by the ‘361 patent, ad rank is determined solely by bid amount, with no consideration of the quality of search results. Because

⁵² The sole citations are at 10:63-67, which does not describe the “search engine” embodiments of the claims, and at dependent claim 5 of the ‘664 Patent.