

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

I/P ENGINE, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 2:11-cv-00512-
	)	RAJ-FAS
v.	)	
	)	<b>AOL INC.'S ANSWER AND</b>
AOL, INC.,	)	<b>COUNTERCLAIMS TO I/P</b>
GOOGLE, INC.,	)	<b>ENGINE, INC.'S, COMPLAINT</b>
IAC SEARCH & MEDIA, INC.,	)	<b>FOR PATENT INFRINGEMENT</b>
GANNETT COMPANY, INC., and	)	
TARGET CORPORATION,	)	
	)	
Defendants.	)	
	)	

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Defendant AOL Inc. ("AOL") hereby answers and asserts affirmative defenses and counterclaims to the Complaint filed by Plaintiff I/P Engine, Inc., ("I/P Engine"), on September 15, 2011, as follows:

**NATURE OF ACTION**

1. Upon information and believe, AOL admits that I/P Engine seeks compensatory damages, past and future, amounting to no less than reasonable royalties. AOL denies that it infringes U.S. Patent No. 6,314,420 ("the '420 patent") or U.S. Patent No. 6,775,664 ("the '664 patent"). AOL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 of the Complaint, and therefore denies the same.

**JURISDICTION AND VENUE**

2. AOL admits that this action purports to arise under the patent laws of the United States, Title 35, United States Code 1 et seq.

3. AOL admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. AOL does not contest that this Court has personal jurisdiction over AOL for purposes of this matter. AOL admits that it has transacted business in this district. AOL denies that it has committed any acts of infringement in this District. AOL is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph regarding other defendants, and therefore denies them. AOL denies any remaining allegations contained in paragraph 4.

5. AOL does not contest venue in this Court with respect to AOL. AOL admits that it has transacted business in this District. AOL denies that it has committed any acts of infringement in this District. AOL is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph regarding other defendants, and therefore denies them. AOL denies any remaining allegations contained in paragraph 5.

### **PARTIES**

6. AOL admits that I/P Engine purports to be a corporation organized under the laws of the Commonwealth of Virginia, with its corporate headquarters and principal place of business in New York, New York.

7. AOL admits that it is a corporation organized under the laws of the State of Delaware, with its corporate headquarters and principal place of business at 770 Broadway, New York, New York 10003. AOL admits that it has a place of business at 22000 AOL Way, Dulles, Virginia 20166. AOL admits that it generates revenue from advertising. AOL is without sufficient information to understand how the Complaint uses the term “search advertising,” and therefore denies the allegations pertaining to AOL’s alleged use of search advertising. AOL denies that its technology infringes the asserted patents. AOL denies any remaining allegations contained in paragraph 7.

8. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and therefore denies the same.

9. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and therefore denies the same.

10. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and therefore denies the same.

11. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and therefore denies the same.

### **FACTUAL BACKGROUND**

#### **Allegations Regarding the Named Inventors' Involvement in Early Search Companies**

12. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and therefore denies the same.

13. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and therefore denies the same.

14. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and therefore denies the same.

15. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and therefore denies the same.

16. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and therefore denies the same.

17. AOL admits that the amount of content (e.g., web pages) available on the Internet has grown since the mid-to-late 1990s. AOL also admits that users accessed Internet web pages by visiting portal sites, some of which presented content categorized directories through which the users could select links to available web pages. AOL lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 17 of the complaint, and therefore denies the same.

18. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, and therefore denies the same.

19. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint, and therefore denies the same.

20. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and therefore denies the same.

21. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph that do not pertain to AOL, and therefore denies the same. AOL is also without sufficient knowledge or information to understand how the Complaint uses the term “content catalog” and therefore denies the allegations contained in paragraph 21 pertaining to AOL on that basis.

22. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint, and therefore denies the same.

23. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and therefore denies the same.

24. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint, and therefore denies the same.

25. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint, and therefore denies the same.

### **Allegations Regarding the Search Engine Industry**

26. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint, and therefore denies the same.

27. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint, and therefore denies the same.

28. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint, and therefore denies the same.

29. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint, and therefore denies the same.

30. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint, and therefore denies the same.

### **Allegations Regarding the '420 and '664 Patents**

31. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint, and therefore denies the same.

32. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint, and therefore denies the same.

33. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint, and therefore denies the same.

34. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint, and therefore denies the same.

35. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint, and therefore denies the same.

36. AOL admits that the '420 patent contains the language quoted in paragraph 36 of the complaint. AOL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 36 of the Complaint, and therefore denies the same.

37. AOL denies the allegations contained in paragraph 37 of the Complaint pertaining to AOL. AOL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 37 of the Complaint, and therefore denies the same.

38. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint, and therefore denies the same.

**Allegations Regarding the Development of the Search Engine Industry**

39. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint, and therefore denies the same.

40. AOL admits that it has generated revenue from advertising. AOL is without sufficient information or knowledge to form a belief as to how the Complaint uses the term “search advertising” and therefore denies any remaining allegations contained in paragraph 40 on that basis.

41. To the extent any of the allegations contained in paragraph 41 of the Complaint pertain to AOL, AOL denies the same. AOL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 41 of the Complaint, and therefore denies the same.

**Google’s Alleged Use of the Patented Technology**

42. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint, and therefore denies the same.

43. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint, and therefore denies the same.

44. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint, and therefore denies the same.

45. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint, and therefore denies the same.

46. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint, and therefore denies the same.

47. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint, and therefore denies the same.

#### **Google's Alleged Knowledge of the Patented Technology**

48. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint, and therefore denies the same.

49. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint, and therefore denies the same.

50. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint, and therefore denies the same.

51. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint, and therefore denies the same.

52. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint, and therefore denies the same.



53. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint, and therefore denies the same.

**AOL's Alleged Use of the Patented Technology**

54. Denied.

55. AOL admits that Advertising.com Sponsored Listings uses certain technology acquired from Quigo Technologies, Inc. AOL denies that Advertising.com Sponsored Listings is a search advertising system. AOL denies any remaining allegations of paragraph 55 of the Complaint.

56. Denied.

57. AOL admits that it uses Google's AdWords and AdSense. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint with respect to the operation of AdWords and AdSense, and therefore denies the same. AOL denies any remaining allegations of paragraph 57 of the Complaint.

58. AOL admits that it uses AdWords and AdSense with AOL branding. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint with respect to the operation of AdWords and AdSense, and therefore denies the same. AOL denies any remaining allegations of paragraph 58 of the Complaint.

59. Denied.

60. AOL admits that it has generated revenue from its use of Advertising.com Sponsored Listings, AdSense, and AdWords. AOL denies any remaining allegations of paragraph 60 of the Complaint.

### **AOL's Alleged Knowledge of the Patented Technology**

61. AOL admits that U.S. Patent No. 7,165,119 (“the ’119 patent”) lists the ’420 patent on its face. AOL denies any remaining allegations of paragraph 61 of the Complaint.

62. AOL admits that it owns the ’119 patent. AOL admits that the ’119 patent is entitled “Search Enhancement System and Method Having Rankings, Explicitly Specified by the User, Based Upon Applicability and validity of Search parameters in Regard to a Subject Matter.” AOL admits that the ’119 patent lists the ’420 patent on its face. AOL denies any remaining allegations of paragraph 62 of the Complaint.

63. AOL admits that the ’119 patent is entitled “Search Enhancement System and Method Having Rankings, Explicitly Specified by the User, Based Upon Applicability and validity of Search parameters in Regard to a Subject Matter,” and that it lists Edmund J. Fish of Dulles, Virginia as the inventor.

64. AOL admits that during prosecution of the patent application that issued as the ’119 patent, the patent applicant listed the ’420 patent in an Information Disclosure Statement submitted to the U.S. Patent & Trademark Office. AOL denies any remaining allegations of paragraph 64 of the Complaint.

65. AOL admits that the specification of the ’119 patent includes a reference to the ’420 patent. AOL denies any remaining allegations of paragraph 65 of the Complaint.

### **IAC's Alleged Use of the Patented Technology**

66. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint, and therefore denies the same.

67. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint, and therefore denies the same.

68. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint, and therefore denies the same.

69. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint, and therefore denies the same.

70. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint, and therefore denies the same.

71. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint, and therefore denies the same.

**Others that Allegedly Use the Patented Technology**

72. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint, and therefore denies the same.

73. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the Complaint, and therefore denies the same.

74. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the Complaint, and therefore denies the same.

75. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the Complaint, and therefore denies the same.

76. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Complaint, and therefore denies the same.

77. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Complaint, and therefore denies the same.

### **FIRST CLAIM FOR RELIEF**

78. AOL incorporates by reference the information contained in paragraphs 1 through 77 above.

79. On information and belief, AOL admits that on November 6, 2001, United States Patent No. 6,314,420 (“the ’420 patent”) issued and is entitled “Collaborative/Adaptive Search Engine.” AOL admits that the ’420 patent lists Andrew K. Lang and Donald M. Kosak as inventors. AOL admits that Exhibit A to the Complaint is purportedly a copy of the ’420 patent. AOL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 79 of the Complaint, and therefore denies the same.

80. Denied.

81. Denied.

82. Denied.

83. AOL admits that the specification of the ’119 patent includes a reference to the ’420 patent. AOL denies that it had actual or constructive knowledge of any allegation that any AOL product or service infringed the ’420 patent prior to the date of the Complaint in this action. AOL denies any remaining allegations contained in paragraph 83 of the Complaint.

84. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Complaint, and therefore denies the same.

85. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the Complaint, and therefore denies the same.

86. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Complaint, and therefore denies the same.

87. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the Complaint, and therefore denies the same.

88. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the Complaint, and therefore denies the same.

89. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint, and therefore denies the same.

90. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the Complaint, and therefore denies the same.

91. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint, and therefore denies the same.

92. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the Complaint, and therefore denies the same.

93. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the Complaint, and therefore denies the same.

94. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the Complaint, and therefore denies the same.

95. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the Complaint, and therefore denies the same.

96. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Complaint, and therefore denies the same.

97. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the Complaint, and therefore denies the same.

98. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the Complaint, and therefore denies the same.

99. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the Complaint, and therefore denies the same.

100. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the Complaint, and therefore denies the same.

101. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101 of the Complaint, and therefore denies the same.

102. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Complaint, and therefore denies the same.

103. AOL denies any allegations contained in paragraph 103 of the Complaint pertaining to AOL. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint pertaining to other defendants, and therefore denies the same.

104. AOL denies that I/P Engine is entitled to any relief from AOL, including the relief requested in paragraph 104 of the Complaint. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint pertaining to other defendants, and therefore denies the same.

105. AOL denies that I/P Engine is entitled to any relief from AOL, including the award of attorneys' fees requested in paragraph 105 of the Complaint. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint pertaining to other defendants, and therefore denies the same.

### **SECOND CLAIM FOR RELIEF**

106. AOL incorporates by reference the information contained in paragraphs 1 through 105 above.

107. On information and belief, AOL admits that on August 10, 2004, United States Patent No. 6,775,664 ("the '664 patent") issued and is entitled "Information Filter System and Method for Integrated Content-Based and Collaborative/Adaptive Feedback Queries." AOL admits that the '664 patent lists Andrew K. Lang and Donald M. Kosak as inventors. AOL admits that Exhibit B to the Complaint purports to be a copy of the '664 patent. AOL is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 107 of the Complaint, and therefore denies the same.

108. Denied.

109. Denied.

110. Denied.

111. AOL admits that the Complaint in this action alleges that AOL infringes the '664 patent. AOL denies that it was put on notice of the '664 patent or any allegation that AOL infringes or has infringed the '664 patent prior to the filing of the Complaint in this action. AOL denies the remainder of the allegations contained in paragraph 111 of the Complaint.

112. AOL admits that the Complaint in this action alleges that AOL infringes the '664 patent. AOL denies any remaining allegations contained in paragraph 112 of the Complaint.

113. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113 of the Complaint, and therefore denies the same.

114. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114 of the Complaint, and therefore denies the same.

115. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115 of the Complaint, and therefore denies the same.

116. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116 of the Complaint, and therefore denies the same.

117. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117 of the Complaint, and therefore denies the same.



118. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118 of the Complaint, and therefore denies the same.

119. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 of the Complaint, and therefore denies the same.

120. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 120 of the Complaint, and therefore denies the same.

121. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 of the Complaint, and therefore denies the same.

122. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122 of the Complaint, and therefore denies the same.

123. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123 of the Complaint, and therefore denies the same.

124. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124 of the Complaint, and therefore denies the same.

125. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 of the Complaint, and therefore denies the same.

126. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 126 of the Complaint, and therefore denies the same.

127. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 127 of the Complaint, and therefore denies the same.

128. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 128 of the Complaint, and therefore denies the same.

129. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 129 of the Complaint, and therefore denies the same.

130. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 130 of the Complaint, and therefore denies the same.

131. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131 of the Complaint, and therefore denies the same.

132. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132 of the Complaint, and therefore denies the same.

133. AOL denies the allegations contained in paragraph 133 pertaining to AOL. AOL denies that I/P Engine is entitled to any relief, including the relief requested in paragraph 133 of the Complaint. AOL denies the remainder of the allegations contained in paragraph 133 of the Complaint.

134. AOL denies that I/P Engine is entitled to any relief from AOL, including the relief requested in paragraph 134 of the Complaint. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 134 of the Complaint pertaining to other defendants, and therefore denies the same.

135. AOL denies that I/P Engine is entitled to any relief from AOL, including the award of attorneys' fees requested in paragraph 135 of the Complaint. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 135 of the Complaint pertaining to other defendants, and therefore denies the same.

### **JURY DEMAND**

136. This paragraph sets forth I/P Engine's request for a jury trial, to which no response is required.

### **PRAYER FOR RELIEF**

AOL denies that I/P Engine is entitled to any relief, including the relief requested in the Complaint.

### **AFFIRMATIVE DEFENSES**

Without conceding that any of the following necessarily must be pleaded as an affirmative defense, or that any of the following is not already at issue by virtue of the foregoing denials, and without prejudice to AOL's right to plead additional defenses as discovery into the facts of the matter warrant, AOL hereby asserts the following defenses. By pleading these defenses, AOL does not agree to undertake any burden of proof beyond that required by law.

### **Noninfringement**

1. AOL has not infringed and does not infringe, either directly, contributorily, or by inducement, any claim of the '420 or '664 patents, either literally or under the doctrine of equivalents.

### **Invalidity**

2. One or more claims of the '420 patent are invalid for failing to comply with the provisions of the Patent Laws of the United States, including without limitation 35 U.S.C. §§ 101, 102, 103 and/or 112.

3. One or more claims of the '664 patent are invalid for failing to comply with the provisions of the Patent Laws of the United States, including without limitation 35 U.S.C. §§ 101, 102, 103 and/or 112.

### **Laches**

4. On information and belief, I/P Engine and/or its predecessors-in-interest to the asserted patents knew or should have known of one or more accused AOL products for at least six years before instituting this lawsuit.

5. On information and belief, I/P Engine and/or its predecessors-in-interest to the asserted patents delayed filing the instant suit against AOL for an unreasonable and inexcusable length of time after it knew or reasonably should have known of its infringement claims against AOL.

6. I/P Engine's delay in filing the instant suit has caused AOL material prejudice of an economic and/or evidentiary nature.

7. AOL's conduct with respect to I/P Engine has not been culpable, and a finding of laches applied to I/P Engine's patent infringement claims would not be inequitable.

8. On information and belief, I/P Engine's claims are barred, in whole or in part, by the doctrine of laches.

### **Limitation on Damages and Recovery**

9. Plaintiff's ability to recover damages is limited by the provisions of 35 U.S.C. §§ 286-287.

### **COUNTERCLAIMS**

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant/Counter-Plaintiff AOL asserts the following counterclaims against Plaintiff/Counter-Defendant I/P Engine:

### **THE PARTIES**

1. AOL Inc. ("AOL") is a corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business at 770 Broadway, New York, NY 10003.

2. On information and belief, I/P Engine, Inc. ("I/P Engine") is a corporation duly organized under the laws of the state of Virginia, with its principal place of business in New York, New York.

### **JURISDICTION AND VENUE**

3. AOL's counterclaims for declaratory judgment arise under the patent laws of the United States, more particularly under Title 35, United States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 et seq. and 28 U.S.C. §§ 1331, 1338, 1367, and 2201-02.

4. On September 15, 2011, I/P Engine commenced a civil action for infringement of the '420 and '664 patents by filing a Complaint in this Court against AOL. AOL denies that it infringes either the '420 patent or the '664 patent and asserts the invalidity of the patents, as set forth above in AOL's Answer to the Complaint. As a consequence, there is an actual justiciable controversy between AOL and I/P Engine concerning whether AOL infringes any valid and enforceable claim of the '420 patent or the '664 patent.

5. This Court has personal jurisdiction over I/P Engine at least because I/P Engine, on information and belief, is organized under the laws of the state of Virginia and has submitted itself to the jurisdiction of this Court.

6. Venue in this judicial district is proper at least because I/P Engine has consented to this venue by asserting and filing claims of patent infringement against AOL in this judicial district. Venue is also proper in this District pursuant to at least 28 U.S.C. §§ 1391 and 1400.

**First Counterclaim for Declaratory Judgment of Noninfringement of the '420 Patent**

7. AOL incorporates by reference the allegations contained in paragraphs 1 through 6 of its Counterclaims.

8. AOL does not directly or indirectly infringe any claim of the '420 patent because AOL does not make, use, sell, offer to sell, or import any system, apparatus, or method claimed in the '420 patent and AOL does not induce or contribute to the direct infringement of the '420 patent by any party.

9. A judicial declaration that AOL does not directly or indirectly infringe the claims of the '420 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its rights and duties with respect to the '420 patent.

## **Second Counterclaim for Declaratory Judgment of Noninfringement of the '664 Patent**

10. AOL incorporates by reference the allegations contained in paragraphs 1 through 9 of its Counterclaims.

11. AOL does not directly or indirectly infringe any claim of the '664 patent because AOL does not make, use, sell, offer to sell, or import any system, apparatus, or method claimed in the '664 patent and AOL does not induce or contribute to the direct infringement of the '664 patent by any party.

12. A judicial declaration that AOL does not directly or indirectly infringe the claims of the '664 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its rights and duties with respect to the '664 patent.

### **Third Counterclaim for Declaratory Judgment that One or More Claims of the '420 Patent Are Invalid**

13. AOL incorporates by reference the allegations contained in paragraphs 1 through 18 of its Counterclaims, as if fully set forth herein.

14. One or more claims of the '420 patent are invalid for failing to comply with one or more of the statutory requirements for patentability set forth in 35 U.S.C. §§ 101 et seq.

15. A judicial declaration of the invalidity of one or more claims of the '420 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its rights and duties with respect to the '420 patent.

### **Fourth Counterclaim for Declaratory Judgment that One or More Claims of the '664 Patent Are Invalid**

16. AOL incorporates by reference the allegations contained in paragraphs 1 through 15 of its Counterclaims, as if fully set forth herein.

17. One or more claims of the '664 patent are invalid for failing to comply with one or more of the statutory requirements for patentability set forth in 35 U.S.C. §§ 101 et seq.

18. A judicial declaration of the invalidity of one or more claims of the '664 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its rights and duties with respect to the '664 patent.

**PRAYER FOR RELIEF**

WHEREFORE, AOL respectfully requests that the Court:

A. Enter a judgment in AOL's favor and against I/P Engine for a declaration that AOL does not directly or indirectly infringe any claim of the '420 patent or the '664 patent;

B. Enter a judgment in AOL's favor and against I/P Engine for a declaration that one or more claims of the '420 patent and the '664 patent are invalid;

C. Declare that I/P Engine, its officers, agents, servants, employees, attorneys, licensees or others acting for, on behalf of, or in concert with I/P Engine, be enjoined from asserting or threatening to assert any rights under the '420 and '664 patents against AOL, its customers, suppliers, licensees, agents, employees or others acting for, on behalf of, or in concert with AOL;

D. Declare that I/P Engine takes nothing by its Complaint;

E. Declare an award to AOL of its costs, expenses and interest incurred in this action;

F. Declare that this case is "exceptional" pursuant to 35 U.S.C. § 285, and award to AOL its attorneys' fees in this action; and

G. Award AOL any other further relief as this Court deems just and appropriate.

AOL reserves the right to supplement or amend this Answer and its Counterclaims, if necessary, after further investigation and as more information becomes known.



Dated: November 14, 2011

Respectfully submitted,

/s/ Stephen E. Noona

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2011, 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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