

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

I/P ENGINE, INC.

Plaintiff,

v.

AOL INC., *et al.*,

Defendants.

Civil Action No. 2:11-cv-512

MEMORANDUM IN SUPPORT OF MOTION TO SEAL: (1) PORTIONS OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S DAUBERT MOTION, AND FOURTH MOTION *IN LIMINE*, TO EXCLUDE LYLE UNGAR'S NEW THEORY OF INVALIDITY AND OPINIONS REGARDING CLAIM CONSTRUCTION AND (2) EXHIBITS 10 AND 12 TO THE DECLARATION OF HOWARD CHEN IN SUPPORT OF DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S DAUBERT MOTION, AND FOURTH MOTION *IN LIMINE*, TO EXCLUDE LYLE UNGAR'S NEW THEORY OF INVALIDITY AND OPINIONS REGARDING CLAIM CONSTRUCTION

In support of their Motion to Seal pursuant to Local Rule 5, and the Protective Order [Dkt. No. 85] entered in this matter, Defendants Google Inc., Target Corporation, IAC Search & Media, Inc., Gannett Co., Inc. and AOL Inc. (collectively "Defendants") state the following:

1. Defendants have moved the court for leave to file under seal Portions of Defendants' Opposition to Plaintiff's Daubert Motion, and Fourth Motion *in Limine*, to Exclude Lyle Ungar's New Theory of Invalidity and Opinions Regarding Claim Construction ("Defendants' Opposition") and Exhibits 10 and 12 to the Declaration of Howard Chen in Support of Defendants' Memorandum in Opposition to Plaintiff's Daubert Motion, and Fourth Motion *in Limine*, to Exclude Lyle Ungar's New Theory of Invalidity and Opinions Regarding Claim Construction ("Exhibits 10 and 12 to Chen Declaration").

2. Portions of Defendants' Opposition and Exhibits 10 and 12 to Chen Declaration contain data that is confidential under the Protective Order entered in this matter on January 23, 2012 ("Protective Order").

3. There are three requirements for sealing court findings: (1) public notice with an opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings in support of a decision to seal and rejecting alternatives to sealing. *See, e.g., Flexible Benefits Council v. Feldman*, No. 1:08-CV-371, 2008 U.S. Dist. LEXIS 93039 (E.D. Va. Nov. 13, 2008) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). Defendants contend that Exhibits 10 and 12 to Chen Declaration contain data that is confidential under the Protective Order. Defendants specifically state as reasons for sealing the requested pleadings that:

(a) Portions of Defendants' Opposition contain confidential Google technical information that is not generally known, that has economic value, and would cause competitive harm if made public;

(b) Exhibit 10 to the Chen Declaration contains confidential Google technical information that is not generally known, that has economic value, and would cause competitive harm if made public; and

(c) Exhibit 12 to the Chen Declaration contains confidential Google technical information that is not generally known, that has economic value and would cause competitive harm if made public;

Defendants have made all reasonable efforts to limit their redactions in compliance with the law of this Circuit.

4. *In camera* copies of Portions of Defendants' Opposition and Exhibits 10 and 12 to the Chen Declaration contains confidential Google have been forwarded to the Court. In light of Defendants' concerns and the Protective Order, there appears to be no alternative that appropriately serves Defendants' expressed confidentiality concerns.

5. For the sake of consistency with practices governing the case as a whole, Exhibits 10 and 12 to the Chen Declaration contains confidential Google should remain sealed and be treated in accordance with the terms and conditions of the Protective Order.

Accordingly, and in satisfaction of the requirements of Local Rule 5, Defendants respectfully ask the Court to seal Exhibits 10 and 12 to the Chen Declaration contains confidential Google.

DATED: October 1, 2012

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2012, 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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