

EXHIBIT R

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

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| I/P ENGINE, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | CIVIL ACTION |
| v. |) | |
| |) | NO. 2:11cv512 |
| AOL INC., et al., |) | |
| |) | |
| Defendants. |) | |

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia
September 18, 2012
Hearing on Motions

Before: THE HONORABLE F. BRADFORD STILLMAN
United States Magistrate Judge

1 taking of depositions. You've heard me on this, or at least
2 some of your colleagues have heard me on this, and I was a bit
3 intemperate on it in a telephone conference, where you were
4 arguing about the taking of depositions and how many hours
5 would be allocated to the taking of depositions of experts.
6 And I came to find out at that time -- this is last week,
7 now -- that you were taking depositions outside the deadlines
8 established in the Rule 16(b) order, and I explained to you
9 what the order says quite clearly, and that is, you shall not
10 violate the deadline unless you get an agreed order and the
11 court is persuaded to enter it.

12 Now, you did submit an order to that effect, it was
13 agreed, and I entered it, giving you the opportunity to take
14 some depositions out of time. But now here you are talking
15 about other depositions being taken out of time, and no one
16 has approved them.

17 MR. SHERWOOD: No, they are not other depositions,
18 Your Honor. I'm sorry if I --

19 THE COURT: You said that you are taking the
20 depositions of Culliss and Ortega, didn't you?

21 MR. SHERWOOD: Right, but I think that is part of
22 the agreed order that the court has seen. What I'm talking
23 about is the sequencing of these things.

24 THE COURT: All right. What else have you got,
25 because, frankly, I understand your argument. I'm afraid I

1 don't agree with it, and I need to rule. I appreciate the
2 argument and the good intentions of the argument, but this
3 prior art was disclosed 60 days before the discovery cutoff
4 date for fact discovery, which distinguishes it in the court's
5 mind from what the court understands the ruling is in *Woodrow*
6 *Woods and Marine Systems*.

7 The court notes that the defendant had 60 days
8 within -- I'm sorry -- the plaintiff had 60 days within which
9 to respond to deal with these disclosures, which appear to be
10 timely under Rule 26(e), which is the only standard the court
11 has available to apply in these circumstances, and the court
12 believes that since no action was taken within that 60 days,
13 and we are here today, that the prejudice that is being argued
14 is insubstantial. I have to say that if this were truly a
15 problem, I would have expected the motion within a week of the
16 disclosure of this prior art.

17 The defendant Google's position seems to be that
18 they developed a further understanding of the plaintiff's
19 position and felt obliged to supplement with this prior art.
20 What they knew and what they understood were two different
21 things, and I believe that Google here developed an
22 understanding with respect to the necessity of disclosing the
23 prior art, they did so in a timely manner under Rule 26(e),
24 that the case that was cited from the Federal Circuit is
25 distinguishable because of the significant amount of time that

1 was available, and that any argument as to prejudice has been
2 undercut because discovery has been taken with respect to the
3 prior art, and there was no immediate reaction to deal with
4 the late disclosure.

5 We are well past the 60-day deadline for -- the
6 60-day period within which this prior art was disclosed.
7 Accordingly, the motion for sanctions is denied.

8 Now, I'll be happy to hear from Google with respect
9 to the documents issues.

10 MR. PERLSON: Your Honor, I'm happy to report that
11 we have resolved at least one of the issues from the motion to
12 compel.

13 THE COURT: Which one is that?

14 MR. PERLSON: That is the issue of the Lang
15 documents.

16 THE COURT: The Lang documents?

17 MR. PERLSON: Yes.

18 THE COURT: Let me see which one of those -- okay.
19 That's the complete set of responsive documents from Andrew K.
20 Lang.

21 MR. PERLSON: Yes.

22 THE COURT: One of the two claimed inventors of the
23 patents-in-suit.

24 MR. PERLSON: Yes.

25 THE COURT: And you agreed to do what?