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Emily O'Brien

From: Emily O'Brien
Sent: Tuesday, July 24, 2012 4:15 PM
To: Monterio, Charles
Cc: QE-IP Engine; zz-IP Engine; Stephen E. Noona
Subject: RE: I/P Engine v. AOL et. al.: Depositions

Charles,

We do not agree with your position regarding Hudson Bay but write to confirm our position and seek to resolve the pending issue in good faith. As you know, we prepared for and planned to take one deposition of Mr. Berger on behalf of I/P Engine, Innovate/Protect and Hudson Bay. By email this morning, the day before the deposition, you refused and insisted that Mr. Berger be deposed separately on behalf of Hudson Bay. As noted, we believe this is not only inefficient but highly wasteful of time and resources. Without knowing what the differences will be in Mr. Berger's testimony, what Mr. Berger will say in response to questions, and how long it will take for Mr. Berger to be deposed separately on behalf of Hudson Bay, we cannot know whether we will be able to finish the deposition of Hudson Bay tomorrow. Nonetheless, we will endeavor to complete this deposition tomorrow. We reserve all rights in the event we are not able to do so. Your attempt to make Defendants take multiple depositions is not sensible for any of us, and serves only to needlessly increase the costs for all parties in this case.

With regard to Topic No. 17, we disagree with your articulated objections regarding Innovate/Protect. As previously stated, we expect Mr. Berger to be fully prepared to testify, and will hold open the deposition and reserve all rights if he is not.

With regard to Topic Nos. 21 and 25, while Defendants do not agree with the articulated objections, we will proceed with tomorrow's deposition. While we would hope to avoid any such difficulties, we will assess your witness' preparedness and whether you wrongly instruct him not to answer; should it be necessary, we will seek to involve Judge Stillman in resolving any flagrant abuse. In the event there are any outstanding issues, we will deal with them after the deposition.

With regard to Mr. Kosak's agreements, we are now in receipt of the Stock Subscription Agreement with Innovate/Protect. However, you still have not agreed to produce Mr. Kosak's agreement with Dickstein Shapiro. Please produce this consulting agreement today.

Finally, we request again that Plaintiff confirm that Mr. Lang's documents are being properly maintained and have been properly maintained throughout the pendency of this litigation. Your email does not provide a clear response to this inquiry. While we do not want to, we will take this issue to the Court if necessary.

Thank you,
Emily

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From: Monterio, Charles [mailto:MonterioC@dicksteinshapiro.com]
Sent: Tuesday, July 24, 2012 12:49 PM
To: Emily O'Brien
Cc: QE-IP Engine; zz-IPEngine; Stephen E. Noona
Subject: RE: I/P Engine v. AOL et. al.: Depositions

Emily,

We disagree with Defendants' position regarding the combination of depositions. Hudson Bay does not agree to sit for more than one deposition. It will agree to be deposed tomorrow, but will not agree to holding the deposition open. If Defendants do not believe that they will be able to complete the deposition tomorrow, it will have to be rescheduled. Please let us know immediately so that we can make the proper arrangements with Hudson Bay.

Regarding Hudson Bay and Innovate/Protect Topic No. 17, we disagree with Defendants' position. There is no indication via documents, deposition or otherwise that individual shareholders or investors would have any independent information not obtainable from Plaintiff, the inventors and the companies already noticed. The designated witness will not provide information relating to this highly confidential, irrelevant, proprietary information.

Regarding Topic Nos. 21 and 25, and Vringo Topic Nos. 8 and 12, your explanation is directly related to the patents-in-suit, the present litigation and any valuations of the patents-in-suit. The designee will be prepared to testify to these topics subject to the asserted objections.

Regarding Mr. Kosak and any consulting agreements, Defendants questioned Mr. Kosak at length regarding his consulting arrangement with Innovate/Protect and Dickstein Shapiro, including the terms of those agreements. We disagree that any such agreements are relevant or would go to Mr. Kosak's credibility, whom you acknowledge is an inventor of the asserted patents. Nevertheless, Mr. Kosak's agreement with Innovate/Protect will be produced.

Regarding counsel's rhetoric regarding discovery compliance, I/P Engine is complying with its discovery obligations as required by law and the rules.

Charles

From: Emily O'Brien [mailto:emilyobrien@quinnemanuel.com]
Sent: Tuesday, July 24, 2012 2:57 PM
To: Monterio, Charles
Cc: QE-IP Engine; zz-IPEngine; Stephen E. Noona
Subject: RE: I/P Engine v. AOL et. al.: Depositions

Confidential Attorneys' Eyes Only

Charles,

We agreed to combine the depositions of I/P Engine, Innovate/Protect and Hudson Bay in order to make things easier for Plaintiff and these entities. We offered to take Mr. Berger's deposition in his personal capacity and as a corporate witness at the same time, and you declined. It appears based on your request below that you want us to ask Mr. Berger the same questions multiple times, which seems inefficient and unnecessary. Nonetheless, per your request, we will begin with the deposition of I/P Engine and Innovate/Protect at 9:00 a.m. We will then separately take the deposition of Hudson Bay later in the day and try to complete it tomorrow. However, in the event we are unable to complete the depositions in one day we will need to schedule time to complete the deposition of Hudson Bay at a later date.

We are checking schedules, and will get back to you on the proposed date for the Vringo deposition.

With regard to Topic Nos. 6, 9, 14, 15, 20 and 23, while Defendants do not agree with the articulated objections, given that the depositions are scheduled for tomorrow we will proceed. In the event there are any outstanding issues, we will deal with them after the depositions.

With regard to Topic No. 15, to the extent IPE has knowledge of any agreements between itself and any party related to any patents other than the "Lycos Patents" related to search advertising technology and/or collaborative/adaptive search engine technology it should be prepared to testify. If there are no such agreements, then Plaintiff should simply state that.

With regard to Topic No. 17, as you know IPE is a wholly owned subsidiary of Innovate/Protect. The owners, investors, and shareholders of Innovate/Protect are relevant to identify individuals who have knowledge regarding the patents-at-issue or this litigation. Given that Innovate/Protect has identified this case as its "flagship litigation" and the Lycos Patents as "foundational," it is highly likely that the owners, investors and shareholders of Innovate/Protect have reviewed, analyzed or at minimum discussed the patents at issue or this litigation. Thus the identity of those individuals are reasonably likely to lead to the discovery of admissible evidence. Similarly, Hudson Bay appears to be the primary investor in Innovate/Protect. Mr. Berger stated that Hudson Bay paid \$1.8 million for stock in Innovate/Protect, and loaned Innovate/Protect another \$3.2 million. Given Hudson Bay's substantial investment in Innovate/Protect, and thus IPE, questions related to its investors, shareholders, and ownership structure are likely to lead to the discovery of admissible evidence. We intend to ask questions at tomorrow's deposition of Hudson Bay and Innovate/Protect regarding the full scope of Topic No. 17, and expect Mr. Berger to answer them.

With regard to Topic Nos. 21 and 25, and similar Topic Nos. 8 and 12 to Vringo, Innovate/Protect's public statements regarding the merger suggest that it is driven by the patents-in-suit and this litigation. To the extent that Plaintiff intends to rely on the merger in support of its damages theory in this case—which has not yet been articulated by Plaintiff—or any other issue, Defendants are entitled to fully explore the merger, including all statements about it and the factors that motivated the entities to enter into the merger. Accordingly, we will ask questions regarding the entire scope of these topics and expect the witnesses to be able to answer them.

With regard to the agreements with Mr. Kosak, he is a named inventor of the patents at issue, a consultant for Innovate/Protect, and was listed as a person of knowledge in IPE's Initial Disclosures. The terms of his agreement with Innovate/Protect, IPE and/or IPE's attorneys, including the terms of his compensation, are therefore directly relevant to this litigation including such as for bias and Defendants are entitled to seek testimony from IPE and Innovate/Protect regarding these agreements. Moreover, at minimum, such agreements may be responsive to Request Nos. 9 and 16 of Defendants' Subpoena to Mr. Kosak and Request Nos. 61 and 62 of Defendants' Subpoena to Innovate/Protect. Please produce any such agreements in advance of tomorrow's deposition. This should not be an issue we need Court intervention for but if Plaintiff continues to refuse to produce these agreements we will move to compel.

Finally, in my letter of July 20, I asked you to please confirm that Mr. Lang's documents are being properly maintained and have been properly maintained throughout the pendency of this litigation. I have not received a response to this request, an issue that has been outstanding for some time and is related to documents relevant to tomorrow's

deposition. We need an answer or production of these documents today. Here too, this should not be an issue that needs Court intervention but we will seek it if necessary.

We will address the deposition of Mr. Maccoun in separate correspondence.

Thank you.

Emily O'Brien

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From: Monterio, Charles [<mailto:MonterioC@dicksteinshapiro.com>]

Sent: Tuesday, July 24, 2012 7:32 AM

To: Emily O'Brien

Cc: QE-IP Engine; zz-IP Engine

Subject: I/P Engine v. AOL et. al.: Depositions

Emily,

I write in response to your July 20 letter.

With respect to the depositions of I/P Engine, Innovate/Protect and Hudson Bay, as we discussed, Hudson Bay's deposition must be separate from I/P Engine's and Innovate/Protect's. Hudson Bay is a separate, unaffiliated, non-party to this matter. Although you reference precautions to account for confidential information in your July 20 letter, there are also privilege and procedural concerns we must take into account. To attempt to accommodate Defendants' concerns, I/P Engine and Innovate/Protect will agree to combine their respective depositions. But this accommodation may not be used against either party, nor is it an admission by Innovate Protect that it is somehow a party to this litigation. To address the privilege and procedural issues, please let us know which party Defendants intend to begin with at 9 AM (we can start the remaining immediately thereafter) so that we can coordinate the in-house counsel's schedules accordingly.

Regarding Vringo's deposition, a corporate designee is available on August 21. The designee is not available the week of July 30 through the end of the week of August 13. Please let us know if Defendants agree to the August 21 deposition. Please keep in mind that the designee will be out of the office on travel again August 22-26.

With respect to I/P Engine Topic Nos. 6, 9, 14, 15, 20 and 23, as I said earlier, the witness will be prepared to testify regarding I/P Engine's knowledge, if any, of the noticed topic.

Regarding I/P Engine Topic No. 15, Defendants' revised topic does not appear to be narrower, and indeed may even be broader than the original topic. In any event, I/P Engine's witness will be prepared to testify regarding I/P Engine's knowledge of any agreements concerning the patents-in-suit and its related patents.

Regarding I/P Engine Topic No. 25, beyond the information related to issues regarding the present litigation, the patents-in-suit or the valuation of the patents-in-suit, to which I/P Engine has already agreed to provide a witness, we do not see how any additional information is relevant to this litigation. Perhaps if you identify the information that Defendants are seeking and why it is relevant, we may be able to reconsider and confer with our client. We request the same information regarding Vringo Topic Nos. 8 and 12.

With respect to Hudson Bay and Innovate/Protect Topic No. 17, it would be helpful if Defendants could explain what they are seeking? Hudson Bay and Innovate/Protect are third parties to the present litigation, and thus their respective investors, shareholders and ownership structure are not relevant to this litigation; that information is highly proprietary and confidential. To the extent, Defendants can articulate why such information is relevant, we will discuss with our clients. Otherwise, the witness will be prepared to testify regarding the corporate knowledge of the noticed topic subject to the objections.

Regarding Topic No. 19, as I have previously explained, to the extent that Innovate/Protect and Hudson Bay are expected to testify as to the location of and storage of *I/P Engine's* documents Innovate/Protect and Hudson Bay have no independent knowledge. To the extent that this topic focuses on the location of and storage of Innovate/Protect and Hudson Bay documents related to I/P Engine, respectively, the witness will be prepared to testify regarding the respective corporate knowledge.

With respect to Vringo Topic No. 11, the witness will be prepared to testify regarding Vringo's knowledge, if any, of the noticed topic.

With respect to Mr. Maccoun, I/P Engine has requested the additional time to address the amended deposition notice topics, which the Court already said that it has the right to do, and to recover certain topics that Mr. Maccoun was not prepared sufficiently to testify about previously. I/P Engine is not requesting a deposition covering new topics. Is it Google's position that it is refusing to make Mr. Maccoun available to testify about the identified topics? If not, please provide a date for the requested deposition.

Finally, regarding Mr. Kosak's agreements, Mr. Kosak has already testified about what agreements exist including the details of those agreements. Based on his explanation, how are the identified agreements relevant to the issues of the present litigation? We do not believe the agreements are relevant given Mr. Kosak's testimony. Neither do we believe that any such agreement falls within any of Defendants' document requests. Please identify the request as well.

Charles

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