# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA NORFOLK DIVISION

I/P ENGINE, INC.,		)	
Plain v.	ntiff,	) ) )	Civ. Action No. 2:11-cv-512
AOL, INC. et al.,		)	
Defe	endants.	) ) )	

MOTION TO SEAL EXHIBITS 15, 16, 17, 18 AND 21 OF I/P ENGINE'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL DEFENDANT GOOGLE, INC.'S CUSTODIAL DOCUMENT PRODUCTION

**EXHIBIT 16 FILED UNDER SEAL** 

### **DICKSTEINSHAPIROLD**

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March 18, 2012

### Via E-mail

Emily C. O'Brien, Esq. Quinn Emanuel Urquhart & Sullivan, LLP 50 California Street, 22nd Floor San Francisco, CA 94111

Re: I/P Engine's Proposed Search terms, Requested Technical Videos, and Requested Prior AdWords Litigation Documents

Dear Emily:

I/P Engine writes in response to your March 16, 2012 letters regarding I/P Engine's proposed search terms, requested technical videos, and requested prior AdWords litigation documents.

With respect to I/P Engine's video request, Google's technical production identifies or refers to at least 250 technical videos. I/P Engine requested production of less than a third of those videos. Google, however, appears to be refusing to produce more than 90% of those videos. I/P Engine believes its narrowed request is more than reasonable and directed to specific aspects of Google's AdWords system. To the extent that the titles are not descriptive enough for Google, that is not I/P Engine's problem – Google named the videos. I/P Engine reiterates its request that Google produce all 69 of the videos that I/P Engine has identified.

I/P Engine identified the videos for production based on the technical documents that reference the videos, as well as the titles of the videos. For example, in addition to the list of 23 videos that Google is willing to produce, videos such as \$\frac{1}{2} \rightarrow \frac{1}{2} \rightarrow

Engine's pending document requests. These videos appear to be relevant to the issues framed by the pleadings in this litigation related to infringement and/or damages and thus are relevant and reasonably calculated to lead to the discovery of admissible evidence. Therefore, I/P Engine maintains its request that Google produces the full list of requested videos.

#### **Confidential Outside Counsel Only**

### **DICKSTEINSHAPIROLLP**

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We request confirmation prior to or during tomorrow's meet and confer that Google will produce all 69 requested videos. If Google refuses and fails to provide a firm date by which all 69 videos will be produced, or cannot provide an adequate showing why the requested videos under no circumstances may lead to admissible evidence, then the parties will be at an impasse and I/P Engine will proceed to file a Motion to Compel.

I/P Engine has similar comments regarding its request for additional litigation documents. I/P Engine has reviewed the dockets of the each of the referenced cases. Google has conceded that all of those cases are relevant to this litigation. I/P Engine has in good faith narrowed its request to documents under seal related to the issues of infringement and/or damages. Google's refusal to provide the requested documents does not appear to be in good faith. For example, with respect to the one document Google agrees to produce from the *PA Advisors* litigation, Google appears to agree to produce a Sealed Response to Motion for Summary Judgment of Non-Infringement but not the Sealed Motion for Summary Judgment of Non-Infringement itself, which was filed by Google. We request confirmation prior to or during tomorrow's meet and confer that Google will produce all requested litigation documents. If Google refuses and fails to provide a firm date by which all documents will be produced, or cannot provide an adequate showing why the requested documents under no circumstances may lead to admissible evidence, then the parties will be at an impasse and I/P Engine will proceed to file a Motion to Compel.

Finally, Google's continuous negotiations with respect to search terms for Google's custodial search and the resulting delay in producing responsive documents is becoming a significant problem in the litigation. In response to Google's proposed modified terms, I/P Engine believes Google's proposed terms are too narrow and alternatively proposes modifying the terms as follows:

- ("LPQ" or "Landing Page Quality") w/10 "score"
- •
- ("Relevance" or "Relevance Score") w/20 ("inventory" or "Ads Coverage")

In regards to "conversion rate," I/P Engine believes this term is relevant to the damages issues of this litigation. Thus, I/P Engine requests that this term is searched. If Google is agreeable to I/P Engine's terms, I/P Engine will confirm that it agrees to withdraw the terms I/P Engine reserves its rights to all of its proposed terms in the event that the parties cannot reach agreement. Please add this issue to tomorrow's meet and confer agenda.

Once the parties have agreement on these remaining terms, Google should promptly conduct its custodial collection. We remind you that third party Hudson Bay agreed to Google's proposal of approximately twice the number of search terms (a total of 47) in regards to a third party subpoena than the number of terms that Google has agreed to search in response to I/P Engine's discovery requests.

## **DICKSTEINSHAPIROLLP**

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I/P Engine acknowledges that Google is investigating the technical issues related to its technical documents with missing images. Please continue to keep us updated on your status including when we can expect to receive replacement documents for the impacted documents.

Best regards,

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CJM/

cc: Stephen E. Noona

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