

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

I/P ENGINE, INC.,

Plaintiff,

v.

AOL, INC. et al.,

Defendants.

Civ. Action No. 2:11-cv-512

**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**

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### Via E-mail

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

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 [REDACTED] - 8/23/2011 - [REDACTED]

**Confidential Outside Counsel Only**

**DICKSTEIN SHAPIRO LLP**

Emily C. O'Brien, Esq.

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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 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"
- [REDACTED]
- ("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 [REDACTED]. 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.

**DICKSTEINSHAPIRO<sub>LLP</sub>**

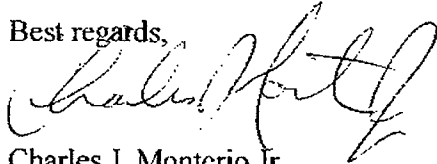
Emily C. O'Brien, Esq.

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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  
David Bilsker  
Kenneth W. Brothers  
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