

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

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March 28, 2012

Charles Monterio  
MonterioC@dicksteinshapiro.com

Re: I/P Engine, Inc. v. AOL, Inc. et al.

**Confidential – Outside Counsel Only**

Dear Charles:

I write in response to your March 27 letter.

Your demand that Google produce all categories of documents by April 9 is unreasonable. With regard to custodial documents, the parties have been engaged in ongoing negotiations regarding a list of search terms. Plaintiff agreed to the final terms in your letter yesterday—the very same letter in which you arbitrarily set the April 9 deadline and threatened to move to compel if Google did not agree. This is improper and unacceptable. Now that the parties have agreed to a final list of search terms, Google is running the search terms against the nine custodians' documents, and reviewing the results of those terms. We are endeavoring to determine the total number of documents to be reviewed so that we can provide an estimated date for completion of review and production. We will provide this estimated date as soon as possible.

Your claim that you have been delaying scheduling depositions of Google pending completion of its production is ridiculous. Google has already produced over 200,000 pages of documents in this case, including technical documents, financial information, and license agreements related to AdWords. In addition, we made clear to you on our March 13 call that to minimize delay, I/P Engine should provide us with a list of desired 30(b)(6) topics so that Google can identify the appropriate witnesses, which may take some time. Two weeks later, I/P Engine has not done so;

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any resulting delay is I/P Engine's fault, not Google's.

Plaintiff's demands are especially unreasonable given your own lack of fulsome production in this case. For example, although the parties clarified in mid-February that there was no agreement not to produce emails, I/P Engine has not produced any emails since that time. This is despite the fact that I/P Engine is a much smaller company than Google, with far fewer documents to search, and document production therefore imposes much less of a burden on Plaintiff. Additionally, despite Hudson Bay's agreement to the list of search terms proposed by Google, we have not seen any production of email from Hudson Bay. Nor have either I/P Engine or Hudson Bay provided any estimated date for production of email in this case. Despite Plaintiff's incomplete production to date, Google has managed to initiate the process of scheduling inventor depositions.

With regard to your specific requests for estimated production dates other than custodial documents, Google responds as follows:

First, in response to your query, all license agreements related to AdWords have been produced.

Second, you demand production by April 9 of "other damages-related documents." We do not know what you mean by this phrase. As you know, Google in addition to producing license agreements has already produced financial information. And Google is in the process of searching, reviewing and producing custodial information as outlined above. And Google has produced, and is continuing to produce, damages-related documents from prior litigations as outlined in your letter of February 9 and my letters of March 16 and March 23. To the extent Plaintiff is referring to other documents not included in these categories, please explain and point to the specific Requests for Production at issue.

Third, in response to my letter of March 26, you demand production of all additional documents from the prior litigations and the 69 Google Technical Videos by April 9. As to the documents from prior litigations, we are agreed to review the documents at issue and produce the documents related to damages and infringement issues in this case. As to the videos, we also agreed to review the videos and to produce the ones that are arguably responsive to your requests for production, even though we disagree with your broad assertions of relevance. To the extent any dispute remains after this review, we agreed to meet and confer to discuss. As discussed during our meet and confer last week, review of the many videos Plaintiff has demanded is quite time-consuming and burdensome. Furthermore, many of the prior litigation documents are so old that they are no longer stored on-site. Additionally, we may need to resolve confidentiality issues for the prior litigation documents, as we did with those documents that have already been produced. We are currently diligently working on the review, and will provide you with an estimated date of production as soon as we are able to do so.

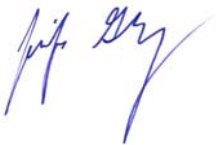
Additionally, in your letter you also suggested that the parties are at an impasse regarding *Overture*-related documents. To the contrary: we made clear in our February 3, 2012 letter that we would produce materials from certain litigations if it would fully resolve the issue. Our list

did not include the litigation with *Overture*. Indeed, as we informed you in that letter, there are no Google deposition transcripts or Google expert reports from that litigation. On February 9, you agreed to Google's production of documents from those litigations that Google had agreed to produce from, and also requested that Google produce certain other documents from these same litigations. You have since requested additional documents from these agreed-upon litigations, including in your letters of March 15 and March 27. The parties are not at an impasse; we have agreed to production of documents from a set of prior litigations that does not include *Overture*.

Finally, as we have before, we will continue to roll productions to Plaintiff when they are available, so that you do not have to wait until the end of Google's review in order to receive documents or things.

As always, we remain willing to meet and confer to resolve any discovery issues, and hope that you similarly remain willing to work together on these issues in a timely and efficient manner. To be clear, we strongly disagree with any assertion by Plaintiff that the parties are at an impasse on this issue or that Plaintiff's meet and confer obligations have been completed.

Sincerely,



Jen Ghaussy

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