

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

I/P ENGINE, INC.,)	
)	
)	
Plaintiff,)	
v.)	Civ. Action No. 2:11-cv-512
)	
AOL, INC. et al.,)	
)	
Defendants.)	
)	

**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 21 FILED UNDER SEAL

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April 10, 2012

Charles Monterio
MonterioC@dicksteinshapiro.com

CONFIDENTIAL: OUTSIDE COUNSEL ONLY

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

Dear Charles:

I write to confirm our April 9 meet and confer and the discovery issues addressed on that call.

ESI Agreement

We discussed the current draft of the ESI Agreement. You stated that the only language still in dispute was Google's proposed ESI agreement language excluding emails that were neither sent nor received. We explained that, contrary to your belief, including these emails would create an unreasonable burden for review. You stated that Plaintiff was interested in receiving only intentionally saved draft emails, rather than

Accordingly, we again ask that Plaintiff agree to Google's proposed language, as set out in my letter of April 6, 2012.

Search Terms

We also discussed Google's proposal that Plaintiff withdraw the term "Ads Quality" from the

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search term list, because the term is overly broad and resulted in an unreasonable number of hits when run across the full collection. You proposed that the term be modified to the following:

[REDACTED]

Google agrees to your proposed modification.

We also explained that Google's vendor has had difficulty running the terms that include the patent numbers, as outlined in my letter of April 6. They informed us yesterday that they should be able to update us today on this issue.

Dates of Production

As discussed during our meet and confer, excluding any documents related to the "unsent emails" issue and the overbroad "Ads Quality" search term, Google provided an estimated completion date for custodial production by June 15, 2012. We explained that this date was an estimate rather than a firm deadline, as it assumes that no substantial issues arise during the review. We further noted that Plaintiff's proposed date of April 30, 2012 for the completion of its custodial document production was also an estimated date, rather than a firm date. Google indicated, as previously discussed in our meet and confers and correspondence, that it would prioritize the production of documents from those custodians listed in its initial disclosures. Google has further committed to rolling custodial productions to Plaintiff, rather than producing all documents at the end of the review.

You objected to the June 15 date, and stated that you would move to compel immediately. You stated that you would move to compel production of documents, which we had agreed to produce as you acknowledged. You stated that you would move in the alternative to compel production by a date certain, such as April 30, 2012. We explained that the search across the full custodial collection (excluding the "Ads Quality" term and the unsent emails) resulted in [REDACTED]

[REDACTED] We explained that Google was committing significant resources to this process, and was working to complete the review as quickly as feasible. We asked how you would suggest that Google review, process, and produce this many documents in a shorter time frame. You had no proposal.

You asked why Google had not begun reviewing and producing emails sooner, before the search term list was finalized. However, we have made it clear throughout the course of this litigation that Google was only willing to process and review custodial documents one time. Any other process would have been inefficient; for example, de-duplication across the entire custodial collection would have been more difficult. In addition, your position that you expected otherwise is disingenuous given the fact that, as recently as our March 1 meet and confer, you were apparently under the impression that the parties had agreed not to produce emails. Obviously the majority of these custodial documents are email families.