

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

_____)	
I/P ENGINE, INC.,)	
)	
<i>Plaintiff,</i>)	
v.)	No. 2:11-cv-512
)	
AOL, INC., <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	

**OPPOSITION TO
DEFENDANTS’ MOTION TO SEAL TRIAL EXHIBITS
AND CLOSE THE TRIAL PROCEEDINGS**

Suffolk Technologies, LLC (“Suffolk”), an interested party, opposes Defendants’ motion to seal trial exhibits and trial transcripts, and to close certain portions of the upcoming trial. (Doc. 346.) In support of its contentions, Suffolk states as follows:

1. Defendants have filed a motion to seal as yet unidentified trial exhibits and to close as yet unspecified portions of the trial. (Doc. 346.)
2. Suffolk opposes that motion, and seeks notice of and an opportunity to be heard at any sealing hearings.
3. Suffolk also seeks access to the trial exhibits when offered and admitted, seeks to be present at trial, and seeks un-redacted copies of the trial transcripts.
4. Suffolk also seeks access to the summary judgment exhibits that have been sealed by an agreed order. (Doc. 469.)
5. Defendants’ motion analyzes the sealing and closure issues under the wrong standard—that is, the common law standard. (*See* Doc. 347 at 2-4.) The standard that applies to summary judgment and trial materials is the “more rigorous” First Amendment standard, which

requires that Defendants show a “compelling governmental interest” to justify sealing of judicial records and closure of trial proceedings, proposes narrowly tailored relief, and demonstrates that no less drastic remedy is available. No such showing has been made.

6. As a member of “the public,” Suffolk has standing to oppose this sealing request. *See In re Knight Pub. Co.*, 743 F.2d 231 (4th Cir. 1984). Suffolk’s standing to seek access is underscored by its interest in the particular categories of information that Defendants’ now seek to have sealed. Suffolk has filed a patent infringement action against AOL Inc. and Google Inc. involving the same accused instrumentalities. *Suffolk Tech. LLC v. AOL Inc. and Google Inc.*, No. 1:12cv625 (TSE/IDD) (E.D. Va. filed June 7, 2012) (“*Suffolk Action*”). In the *Suffolk Action*, the parties are litigating, *inter alia*, the manner in which the accused instrumentalities work and the damages that may be awarded to Suffolk for AOL Inc. and Google Inc.’s alleged infringement. Accordingly, Suffolk has a legitimate interest in the categories of information that Defendants seek to seal in this action.

7. Suffolk is willing to obtain access subject to an appropriate protective order limiting use and disclosure, and any other appropriate terms imposed by the Court.

8. A brief in support is filed herewith explaining the grounds and reasons for this opposition with particularity.

WHEREFORE, Suffolk respectfully requests that Defendants’ motion to seal and for closure be denied. Suffolk respectfully submits that it should be permitted to have access to sealed judicial records, to attend closed sessions of the trial, and to obtain un-redacted trial transcripts in this action, on terms and conditions set by the Court.

A proposed order is submitted herewith.

REQUEST FOR HEARING

Suffolk respectfully requests that a hearing be held on Defendants' sealing and closure motion and Suffolk's opposition thereto, and that Suffolk be given the opportunity to be heard.

Dated: October 4, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2012, I filed the foregoing pleading or paper through the Court's CM/ECF system which sent a notice of electronic filing to the following:

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