

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

I/P ENGINE, INC.

Plaintiff,

v.

AOL, INC., *et al.*,

Defendants.

Civil Action No. 2:11-cv-512

**DEFENDANTS' PROFFER OF EVIDENCE RELATED TO LACHES**

Defendants Google Inc., AOL, Inc., IAC Search & Media, Inc., Target Corp., and Gannett Co., Inc. (collectively "Defendants") respectfully submit this proffer of evidence related to their laches defense in this litigation.

Attached hereto as Exhibit A is a true and correct copy of the deposition of Ken Lang, with highlighting indicating the portions of Mr. Lang's deposition testimony related to laches. As shown in Exhibit A, Mr. Lang could not remember whether his prior "NewsWeeder" system used content-based and collaborative filtering or whether NewsWeeder practiced the Asserted Patents. (Lang Dep. at 81:1-15, 201:9-202:1). He testified that he believed the WiseWire service used collaborative and content filtering, but he did not recall whether WiseWire was ever used with a search engine. (*Id.* at 87:24-89:4; 90:2-14). Mr. Lang did not remember whether WiseWire used a user query to perform content-based or collaborative-based filtering. (*Id.* at 90:19-91:3). Mr. Lang did not recall what "adaptive filtering" meant when he filed his patent applications in 1998. (*Id.* at 193:12-194:7). Mr. Lang also did not remember how WiseWire 3.0 differed from previous versions. (*Id.* at 160:10-19). He also could not remember whether he did a prior art search before filing his patent applications. (*Id.* at 152:22-153:7, 251:21-25). He did

not remember whether he provided information on “GroupLens,” a collaborative filtering system, to his patent attorneys. (*Id.* 92:24-93:10). He also testified that he no longer possessed his files or notebooks from his time at WiseWire and Lycos. (*Id.* at 119:21-120:11; 121:11-122:17). Prior to 2011, Mr. Lang had not read his patents since around 2001 and did not see the need to read them in connection with his deposition in this case. (*Id.* at 31:19-32:5). Mr. Lang did not recall whether he did any work in connection with Internet search while at Lycos other than Gigasearch. (*Id.* at 64:3-16). Mr. Lang testified that he did not recall whether or not he had ever developed any prototype system of the inventions of the patents-in-suit, and he did not recall anyone ever testing the inventions at issue in this case. (*Id.* at 64:23-65:15). Mr. Lang did not know whether Lycos ever used the patents-in-suit. (*Id.* at 66:2-5). Mr. Lang also did not recall what Mr. Kosak contributed to the patents-in-suit. (*Id.* at 85:2-10).

Attached hereto as Exhibit B is a true and correct copy of the deposition of Donald Kosak, with highlighting indicating the portions of Mr. Kosak’s testimony related to laches. As shown in Exhibit B, Mr. Kosak did not know what the first system was to combine content-based and collaborative filtering, or whether his inventions were the first to do so. (Kosak Dep. 73:3-12; 82:21-84:1). Mr. Kosak also could not recall his first invention that used content and collaborative filtering. (*Id.* 75:4-14, 214:11-215:21). He could not remember what involvement he had with the prosecution of the Asserted Patents. (*Id.* at 275:2-15). He also could not remember how some of his early prototypes allegedly practicing the Asserted Patents functioned. (*Id.* at 254:12-256:13; 258:14-260:9). He did not know whether the prototype had a content-based filtering system that did the combining of the content-based information and the collaborative-based information. (*Id.* at 258:14-260:9). Mr. Kosak testified that he had not looked at the contents of the ‘799 patent in quite some time and could not define collaborative filtering in the context of the patent. (*Id.* at 88:3-8). And he testified that he no longer possessed

his files from his time at WiseWire and Lycos. (*Id.* at 159:22-160:4, 164:11-18). Mr. Kosak knew about Google AdSense by 2005 because he used it at Lycos. (*Id.* at 16:6-11). Mr. Kosak could not recall whether he thought in 1998 that a system for scanning a network was different than a system for searching a network. (*Id.* at 66:7-15). He also could not remember which iteration of Empirical Media's software involved the technology in the patents-in-suit. (*Id.* 138:11-139:14).

Attached hereto as Exhibit C is a true and correct copy of the deposition of Mark Blais, the 30(b)(6) representative of Lycos, with highlighting indicating the portions of Mr. Blais' testimony related to laches. Mr. Blais could not say whether Lycos evaluated the intellectual property of WiseWire (Mssrs. Lang's and Kosak's company) when it acquired WiseWire. (Blais Dep. 13:13-14:3). Similarly, Mr. Blais could not say whether Terra Networks and Daum Communications evaluated Lycos's intellectual property (including the Asserted Patents) when they acquired Lycos in 2000 and 2004. (*Id.* at 30:10-31:21). He could not say how much revenue Lycos was earning from Google's products around the time of the hypothetical negotiation. (*Id.* at 32:6-23, 109:10-110:4, 111:13-18). He could not recall Lycos's corporate policies regarding patent enforcement and licensing around the time of the hypothetical negotiation. (*Id.* at 50:14-17, 51:9-13, 52:3-6, 52:16-20). And he could not recall numerous details about the license agreement between Lycos and Overture regarding U.S. Patent No. 6,269,361 ("the '361 Patent.") (*See id.* at 101:10-107:4).

Dated: October 30, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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