

EXHIBIT D

Joshua Sohn

From: David Perlson
Sent: Tuesday, December 20, 2011 10:31 AM
To: David Perlson; Brothers, Kenneth; Margaret P. Kammerud
Cc: QE-IP Engine; senoona@kaufcan.com; zz-IPEngine
Subject: RE: I/P Engine v. AOL et. al.

Ken, I have not heard back from you on below. We would prefer not to wait until Thursday afternoon to discuss. Is Plaintiff available today? Please provide courtesy of response.

Also, a few additional points.

Meg's letter was not limited to the priority date issue as you seem to suggest.

As to that issue, however, numerous courts have rejected the proposition, espoused in your email, that a patent plaintiff need not provide conception and reduction-to-practice dates until the defendant identifies its alleged prior art. These courts correctly reasoned that a plaintiff who refuses to provide conception and reduction-to-practice dates frustrates the defendant's ability to locate prior art in the first place. See, e.g., *In re Papst Licensing GMBH & Co. KG Litig.*, 252 F.R.D. 7, 17 (D.D.C. 2008) ("Papst's response that conception happened at an unknown time period between January and October 1996 is clearly overbroad and cannot be sustained . . . Papst's failure to respond directly and candidly has sent its opponents down a rabbit hole, trying to ascertain prior art."); *Invacare Corp. v. Sunrise Med. Holdings, Inc.*, No. 04-1439, 2005 WL 1750271, *3-4 (N.D. Ohio Jan. 21, 2005) ("Defendant claims that in order to ascertain the relevant prior art, plaintiff must provide the exact dates of conception and reduction to practice . . . Upon review of the parties' arguments and the relevant law, the Court finds that plaintiff must provide a more definite response to defendant's interrogatory. Plaintiff's responses are essentially non-responses in that they entirely leave open the critical time period, i.e., the earliest date on which the invention was conceived and reduced to practice.") See also *Lamoureux v. Genesis Pharms., Inc.*, 226 F.R.D. 154, 157-60 (D. Conn. 2004) (ordering plaintiff to provide conception and reduction-to-practice dates, despite plaintiff's argument that defendant had not "identified any alleged prior art it is relying upon"). There can be no basis for Plaintiff's refusal to provide complete responses on this issue.

From: David Perlson
Sent: Monday, December 19, 2011 3:00 PM
To: Brothers, Kenneth; Margaret P. Kammerud
Cc: QE-IP Engine; senoona@kaufcan.com; zz-IPEngine
Subject: RE: I/P Engine v. AOL et. al.

Ken, that does not make sense. I followed up [after](#) the call asking for a response to our letter so I don't understand how you could have thought that. In any event, is Plaintiff really not available until Thursday to discuss this?

From: Brothers, Kenneth [mailto:BrothersK@dicksteinshapiro.com]
Sent: Monday, December 19, 2011 2:57 PM
To: David Perlson; Margaret P. Kammerud
Cc: QE-IP Engine; senoona@kaufcan.com; zz-IPEngine
Subject: RE: I/P Engine v. AOL et. al.

David:

I am disregarding your pejorative characterizations, which which I do not agree. When you did not raise the issues in Meg's letter during our meet and confer on Friday, Dec. 16, despite my specific inquiry of whether you wanted to discuss any other issues, I had understood that you were not pursuing the matter at that time. Frankly, I assumed that defendants had elected to not pursue the priority date issue until and unless defendants set forth their invalidity analysis and demonstrated the relevance of an earlier priority date. Once defendants make a prima facie showing that a priority date earlier than the date identified in plaintiff's interrogatory response is relevant, plaintiff will review and supplement as appropriate. If you want to meet and confer, I am available on Thursday, Dec. 22, between 2 pm and 5 pm ET.

Ken

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Dickstein Shapiro LLP

www.dicksteinshapiro.com

From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Monday, December 19, 2011 4:25 PM
To: David Perlson; Margaret P. Kammerud; Brothers, Kenneth; zz-IPEngine
Cc: QE-IP Engine; 'senoona@kaufcan.com'
Subject: RE: I/P Engine v. AOL et. al.

Ken when is Plaintiff available to meet and confer on this.

From: David Perlson
Sent: Friday, December 16, 2011 5:45 PM
To: Margaret P. Kammerud; Brothers, Kenneth; zz-IPEngine
Cc: QE-IP Engine; senoona@kaufcan.com
Subject: RE: I/P Engine v. AOL et. al.

Ken, on Tuesday Meg sent the attached letter detailing insufficiencies in Plaintiff's responses to Google's first set of interrogatories. The letter requested a response no later than Thursday, but Plaintiff has failed to respond.

Your bluster today regarding Google's interrogatory responses rings especially hollow when you do not respond to the issues we raise, including Plaintiff's failure to provide a straight answer on Plaintiff's claimed priority date. We expect a response no later than Monday morning.

From: Margaret P. Kammerud
Sent: Tuesday, December 13, 2011 3:24 PM
To: Brothers, Kenneth; zz-IPEngine
Cc: QE-IP Engine; senoona@kaufcan.com
Subject: I/P Engine v. AOL et. al.

Counsel:

Please see the attached correspondence.

Regards,
Meg

Margaret P. Kammerud
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