

# EXHIBIT F

## Joshua Sohn

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**From:** Joshua Sohn  
**Sent:** Wednesday, February 08, 2012 9:45 PM  
**To:** 'brothersk@dicksteinshapiro.com'  
**Cc:** 'zz-IPEngine'; QE-IP Engine; 'senoona@kaufcan.com'; 'Burns, Robert'  
**Subject:** I/P Engine v. Google et al.

Ken,

We write to follow up regarding Plaintiff's response to Google's Interrogatory Nos. 1 and 9. Interrogatory No. 1 seeks information on the Asserted Patents' conception and reduction-to-practice, including the conception date(s), reduction-to-practice date(s), and the names of all individuals involved in conception and reduction-to-practice. Interrogatory No. 9 seeks the patents' priority date(s).

To date, Plaintiff has not provided a substantive response to Interrogatory No. 1. Rather, Plaintiff's response to this Interrogatory consists solely of a statement that Plaintiff would produce documents under Rule 33(d). In a follow-up letter of January 10, 2012, your colleague Charles Monterio wrote: "With respect to Google's Interrogatory No. 1, I/P Engine will supplement its response with Bates range numbers, etc. once it has had a chance to review Lycos's document production." But as we have indicated, Plaintiff must provide a narrative response, including definite date(s) that Plaintiff asserts for conception and reduction-to-practice as well as the names of all individuals involved in conception and reduction-to-practice. Plaintiff cannot merely produce or identify documents under Rule 33(d) (which Plaintiff has not done either), regardless of whether such documents come from Lycos's files or Plaintiff's own files. See, e.g., *Fresenius Med. Care Holding Inc. v. Baxter Intern., Inc.*, 224 F.R.D. 644, 650 (N.D. Cal. 2004) (ordering patent-owner to respond to a conception and reduction-to-practice interrogatory "without reference to Rule 33(d)," while crediting the opposing party's argument that "Rule 33(d) procedures are not available to Baxter . . . because Baxter has access to the inventors and can interview them at will."); *Boston Sci. Corp. v. Micrus Corp.*, No. 04-4072, 2007 WL 174475, \*1 (N.D. Cal. Jan. 22, 2007) (rejecting plaintiff's attempt to "point[] to documents and testimony of inventors" in response to an interrogatory seeking patent conception dates.)

As to Interrogatory No. 9, Plaintiff has responded that "Each of the asserted claims of the patents-in-suit are entitled to a priority date at least as early as the effective date of the '420 patent, i.e., December 3, 1998 . . ." (emphasis added). Mr. Monterio's January 10 letter stated that Plaintiff would supplement its response to Interrogatory No. 9 "when it deems it is appropriate to do so based on whether I/P Engine plans to use any date earlier than the identified date of December 3, 1998." Thus, Plaintiff's current position that the priority date is some date on or before December 3, 1998, but Plaintiff has neither confirmed a December 3, 1998 priority date nor provided any definite priority date earlier than December 3, 1998. Again, Plaintiff must provide a definite priority date, rather than stating that the priority date is "at least as early as" December 3, 1998. 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 . . . 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.")

Given the passage of time and the lack of supplementation, it appears we remain at an impasse and will proceed accordingly. If that is not the case, please confirm tomorrow (Thursday) that Plaintiff will provide a narrative response to Interrogatory No. 1 that includes definite dates of conception and reduction-to-practice as well as the names of all persons involved in conception and reduction-to-practice. Also, please confirm tomorrow that Plaintiff will provide definite priority dates.

Sincerely,

Josh