

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

**MOTION AND MEMORANDUM IN SUPPORT OF EXPEDITING THE
BRIEFING ON DEFENDANTS' RENEWED MOTION TO COMPEL
DEPOSITION OF DR. BECKER AND FOR ENLARGEMENT OF TIME TO
OPPOSE PLAINTIFF'S MOTION FOR POST-JUDGMENT ROYALTIES**

Defendants Google Inc., Target Corporation, IAC Search & Media, Inc., Gannett Co., Inc., and AOL Inc. (collectively, "Defendants"), by counsel, move this Court to expedite the briefing on Defendants' Renewed Motion to Compel Deposition of Dr. Becker and for Enlargement of Time to Oppose Plaintiff's Motion for Post-Judgment Royalties (D.N. 923), and in support thereof, state as follows:

1. Defendants' Opposition to Plaintiff's Motion for an Award of Post-Judgment Royalties currently must be filed by April 18, 2013. Prior to filing their Opposition to Plaintiff's Motion for an Award of Post-Judgment Royalties, Defendants are entitled to depose Plaintiff's damages expert, Dr. Becker. Defendants' Renewed Motion to Compel Deposition of Dr. Becker and for Enlargement of Time to Oppose Plaintiff's Motion for Post-Judgment Royalties requests that Plaintiff be compelled to make Dr. Becker available for deposition, and, at minimum, that the deadline for Defendants' opposition to Plaintiff's Motion for an Award of Post-Judgment

Royalties be postponed until at least seven days after Plaintiff makes Dr. Becker available for deposition, or May 2, 2013, whichever date is later. In the alternative, Defendants request a minimum two week extension of the deadline for Defendants' opposition to Plaintiff's Motion for an Award of Post-Judgment Royalties, until May 2, 2013.

2. Defendants asked for dates for Dr. Becker's deposition on April 8, 2013, and during a meet and confer conference on April 9, 2013, Defendants reiterated their need to depose Dr. Becker and the resultant need for an extension for Defendants' Opposition to Plaintiff's Motion for Post-Judgment Royalties. Defendants suggested to Plaintiff a two-week extension for the briefing while the parties discussed additional discovery, and, further, to allow sufficient time for Defendants to prepare a response. Plaintiff expressed a willingness to work with Defendants in good faith in relation to their requests, and Plaintiff in no way suggested it would take a no-extensions-whatsoever position. Defendants followed up with Plaintiff on these issues again on April 12, 2013. Still, Plaintiff waited until midday on April 15, 2013 to inform Defendants that it would not agree to any extension for Defendants' Opposition to Plaintiff's Motion for Post-Judgment Royalties, despite having agreed to at least a two week extension for this brief earlier that day. Plaintiff also waited until April 15, 2013 to inform Defendants that it would refuse to provide Dr. Becker for deposition under any circumstances.

3. As a result, Defendants request that the Court issue an order expediting the briefing schedule for the briefing on Defendants' Renewed Motion to Compel Deposition of Dr. Becker and for Enlargement of Time to Oppose Plaintiff's Motion for Post-Judgment Royalties . Defendants request that the Proposed Order attached as **Exhibit A** be entered expediting that briefing as follows:

- Plaintiff shall respond to Defendants' Renewed Motion to Compel Deposition of Dr. Becker and for Enlargement of Time to Oppose Plaintiff's Motion for Post-Judgment Royalties at or before 8 a.m. on April 17, 2013;
- Defendants forego filing a Reply brief in support of their motion.

4. Any prejudice to Plaintiff as a result of the expediting of briefing is a result of Plaintiff's own last-minute reversal in position, and thus does not justify denying Defendants' Motion to Expedite.

5. Pursuant to Local Rule 37(E), counsel have attempted in good faith to resolve the foregoing dispute.

WHEREFORE, Defendants request that this Court expedite the briefing of Defendants' Renewed Motion to Compel Deposition of Dr. Becker and for Enlargement of Time to Oppose Plaintiff's Motion for Post-Judgment Royalties (D.N. 923) to require the parties to fully brief the motion by April 17, 2013, at 8 a.m. EST.

DATED: April 16, 2013

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2013, 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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