

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' REPLY 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 file this brief reply in order to address several misrepresentations to the Court made in Plaintiff's Opposition brief. Plaintiff states that during the meet and confer Defendants "did not pursue their request to depose Dr. Becker," but instead were "preoccupied" with their proposal regarding discovery related to Google's imminent change to Google's system. (D.N. 927, 1-2.) This is flatly untrue. During the April 9 call, Defendants reiterated their position that Plaintiff should make Dr. Becker available for deposition to give Defendants the opportunity to question Dr. Becker about his new theories and then respond to Plaintiff's motion for post-judgment royalties. (Declaration of Margaret Kammerud ("Kammerud Dec."), ¶ 2.) Defendants further noted that a deposition may further be appropriate should Dr. Becker consider Google's offered discovery on its new system in his new opinion. (*Id.*)

Plaintiff's opposition states that "Defendants made no proposal" during the meet and confer regarding postponement of briefing. (D.N. 927, 2.) This is also flatly untrue. Specifically, during the conference, Defendants' counsel suggested that the parties

consider an interim extension while negotiating a final agreement on any discovery concerning the Motion for an Award of Post-Judgment Royalties. (*Id.*) In particular, Defendants suggested a two week extension on Defendants' Opposition to Plaintiff's Motion for an Award of Post-Judgment Royalties, and a comparable extension for Plaintiff's Reply in Support of its Motion for Post-Judgment Royalties. (*Id.*) Defendants' counsel agreed that they also would send Plaintiff's counsel a proposal for a further extension in order to accommodate additional discovery, which they did on April 12, 2013. (*See* D.N. 925, Perlson Declaration, Ex. 2.)

Further, Plaintiff states that after receiving Defendant's proposal on April 12, "I/P Engine immediately asked for clarification regarding the proposal." (D.N. 927, 2.) Yet, Plaintiff omits that three minutes later, Defendants' counsel responded, offering to speak by telephone to clarify any confusion. (*See* D.N. 925, Perlson Declaration, Ex. 2.) It was Plaintiff that did not respond to this inquiry.

Instead, only after Defendants followed up the morning of April 15 by email, Plaintiff engaged Defendants on the issue. But Plaintiff's assertion that "I/P Engine did not respond to, much less accept, Defendants' request during" the parties' telephone conference on April 15 (D.N. 927, 2) is once again flatly untrue. Plaintiff did agree to this extension. (D.N. 925, Perlson Declaration, ¶ 4.) Plaintiff then reneged this agreement a few hours later by email. (*See* D.N. 925, Perlson Declaration, Ex. 2.)

It is telling that, unlike Defendants, Plaintiff did not back up its statements with a declaration from either of Plaintiff's counsel on these calls to support its representations of the parties' meet and confer in its brief.

DATED: April 17, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 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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