

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

I/P ENGINE, INC.,)	
)	
Plaintiff,)	
v.)	Civ. Action No. 2:11-cv-512
)	
AOL, INC. et al.,)	
)	
Defendants.)	
)	

**MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR
REVIEW OF JUDGE LEONARD’S RULING ON PLAINTIFF I/P ENGINE, INC.’S
THIRD MOTION FOR DISCOVERY SANCTIONS REGARDING
UNTIMELY DISCOVERY RESPONSES**

Pursuant to 28 U.S.C. § 636 (b)(1)(A) and Fed. R. Civ. P. 72(a), plaintiff I/P Engine, Inc. (“I/P Engine”) moves the Court to reconsider Judge Leonard’s October 9, 2012 denial of I/P Engine’s Third Motion for Discovery Sanctions. The motion is located at D.I. 282, the memorandum in support of the motion is located at D.I. 368, Defendants’ response at D.I. 617, and I/P Engine’s reply at D.I. 669.¹

Judge Leonard’s Order (D.I. 697) provides no details of his reasoning for denying the motion. Based on his comments at the hearing, however, it appears Judge Leonard was treating I/P Engine’s motion to strike untimely discovery responses as a motion to compel, because he asked questions about the parties’ meet and confer before the original September 4 responses were served by Defendants. I/P Engine’s motion does not relate to the sufficiency of the September 4 interrogatory responses. Instead, I/P Engine’s motion sought to strike Defendants’

¹ The unsealed versions of the last three documents are located at D.I. 283, 521, and 651, respectively.

supplemental responses served on September 14, after fact and expert discovery had closed, and after Defendants had deposed I/P Engine's expert on infringement. The violation of the Court's scheduling order is clear. *See, e.g.*, D.I. 90 (scheduling order). *Sohail v. Singh*, 2010 U.S. Dist. Lexis 103214 at *10-11 (E.D. Va. 2010) ("Courts routinely and appropriately exclude evidence that is untimely and in violation of a scheduling order.")

Judge Leonard's ruling not only failed to consider Defendants' violation of the Scheduling Order, but he disregarded the fact that Defendants' supplemental production and interrogatory responses are self-serving. They do not adequately respond to I/P Engine's interrogatories or document requests. They serve only to ambush I/P Engine with information that was not made available to it during the discovery period. For example, I/P Engine's interrogatories sought identification of all attribute templates used for certain functions. Google's supplemental responses do not do so. Instead, Google identifies only four attribute templates and indicates that its list of four attribute templates is not complete. D.I. 372 (Google's Supplemental Responses to Interrogatories 21 and 22).

Because Judge Leonard failed to consider the issues above, his Order is clearly in error and should be reviewed. The Court should grant I/P Engine's Third Motion for Discovery Sanctions by excluding the untimely September 14, 2012 supplemental interrogatory responses and related document production.

Dated: October 10, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2012, the foregoing, MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR REVIEW OF JUDGE LEONARD'S RULING ON PLAINTIFF I/P ENGINE, INC.'S THIRD MOTION FOR DISCOVERY SANCTIONS REGARDING UNTIMELY DISCOVERY RESPONSES, was served via the Court's CM/ECF system on the following:

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