

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

DECLARATION OF ANTONIO SISTOS

I, Antonio Sistos, declare as follows:

1. I am an attorney in the law firm of Quinn Emanuel Urquhart & Sullivan, LLP and am counsel for Defendants in the above-captioned case. I provide this declaration upon personal knowledge and, if called upon as a witness, would testify competently as to the matters recited herein.

2. I participated in the collection of documents from Google to produce in response to the Court's August 14, 2013 Order. After consultation with Google engineers, I identified locations containing documents that related to relevant changes to the accused system and collected these documents. I also personally reviewed Google technical documents to identify those that are relevant to the newly designed accused system.

3. I began with the site for the per-position auction project, and reviewed each document on that page to determine whether it was relevant. I also examined links on relevant documents to determine whether those were relevant as well. As it was understood that the documents would be reviewed more carefully later on, I generally erred on the side of inclusion. During the course of reviewing these documents later in the week, we located links to

additional documents that were also potentially relevant. We subsequently requested and obtained those additional documents from Google and produced them.

4. Google made the relevant source code for the new system available for inspection on Friday, August 23. This production included approximately 986 source code files and approximately 1,885,331 lines of code. Google produced “before” and “after” snapshots of the relevant auction code because this would allow I/P Engine to both review the “before” and “after” systems as a whole as well as identify where the relevant changes were made. Google engineers confirmed that this would make the source code easiest to review.

5. The email sent from Charles Monterio to David Perlson on August 26 at 3:59 p.m. EDT, on which I was cc’ed as a member of the “QE-IP Engine” mailing list, was the first email I/P Engine sent to that mailing list which suggested that it believed custodial emails were relevant to its request for an ongoing royalty.

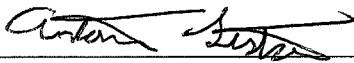
6. The parties discussed the issue of email production for the first time telephonically on August 27, a call on which I participated. Google informed I/P Engine that it had produced the relevant documents pursuant to the Court’s Order. I/P Engine insisted that Google also produce emails. Google did not agree that emails were relevant to the issue of whether the redesigned system infringed, an issue for which the source code itself is dispositive. However, Google asked I/P Engine to propose appropriate custodians and to suggest search terms to use in identifying responsive documents. The next day, having heard no response from I/P Engine, Google selected the appropriate custodians and formulated search terms on its own, then informed I/P Engine that it would produce custodial emails. I/P Engine did not raise any further objection or initiate any further communications with Google.

7. The simplest way to determine what was removed from or modified in the accused systems and how those changes were implemented in the code is to examine a redline comparing the previous version of the code to the current version. It is possible to generate a “diff”—the computer scientist’s equivalent of a document redline—that compares the previous version of the source code to the present version, thereby indicating all the changes that have been made. During the parties’ meet and confer, I explained to I/P Engine that such a diff could readily be made. I also offered to place the appropriate software on the source-code review computer upon I/P Engine’s request, and Google agreed to make the person most knowledgeable about the changes, Bartholomew Furrow, available for deposition.

8. Exhibit A is a true and correct copy is a true and correct copy of emails exchanged between Defendants’ counsel and Plaintiff’s counsel.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: September 4, 2013



Antonio Sistos

DATED: September 4, 2013

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 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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