

**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.)	
)	

**PLAINTIFF I/P ENGINE INC.’S NOTICE OF CALCULATION OF
PREJUDGMENT INTEREST**

As a prevailing plaintiff in a patent infringement action, I/P Engine, Inc. (“I/P Engine”) is presumptively entitled to prejudgment interest on the damages awarded. As the Supreme Court stated in *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 657 (1983), “prejudgment interest should ordinarily be awarded absent some justification for withholding such an award.” No justification exists for departing from the principle that prejudgment interest “is the rule, not the exception” and “serves to make the patent owner whole, for damages properly include the foregone use of money of which the patentee was wrongly deprived.” *Sensonic, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1574 (Fed. Cir. 1996); *see also Ecolab, Inc. v. FMC Corp.*, 569 F.3d 1335, 1353 (Fed. Cir. 2009) (“[w]hen a patentee asserts a patent claim that is held to be valid and infringed, prejudgment interest is generally awarded.”). Only with the award of prejudgment interest will I/P Engine be fully compensated for Defendants’ infringement of I/P Engine’s patents.

Consistent with this Court’s decision in the *ActiveVideo Networks, Inc. v. Verizon Comms., Inc.* 2011 WL 4899922, *6-7 (E.D.VA. 2011), I/P Engine requests that the Court award

prejudgment interest at the prime rate compounded quarterly from September 15, 2011 until the date judgment is entered. I/P Engine's calculation of prejudgment interest based upon the total compensatory damages award set forth in Verdict Form, III.C. is \$643,084. See Exhibit A, attached hereto, for I/P Engine's prejudgment-interest calculations.¹

Dated: November 7, 2012	<p><u>By: /s/ Jeffrey K. Sherwood</u></p> <p>Donald C. Schultz (Virginia Bar No. 30531) W. Ryan Snow (Virginia Bar No. 47423) CRENSHAW, WARE & MARTIN PLC 150 West Main Street Norfolk, VA 23510 Telephone: (757) 623-3000 Facsimile: (757) 623-5735</p> <p>Jeffrey K. Sherwood (Virginia Bar No. 19222) Frank C. Cimino, Jr. Kenneth W. Brothers Charles J. Monterio, Jr. DICKSTEIN SHAPIRO LLP 1825 Eye Street, NW Washington, DC 20006 Telephone: (202) 420-2200 Facsimile: (202) 420-2201</p> <p>Dawn Rudenko Albert DICKSTEIN SHAPIRO LLP 1633 Broadway New York, New York 10019</p> <p>Counsel for Plaintiff I/P Engine, Inc.</p>
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¹ This calculation does not include any supplemental damages based upon an accounting of Defendants' pre-verdict infringing revenues from October 1, 2012 that were not covered by the jury verdict. I/P Engine has requested but has not yet received that information from Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2012, the foregoing, , was served via

the Court's CM/ECF system on the following:

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/s/ Jeffrey K. Sherwood