

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

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

**MEMORANDUM IN SUPPORT OF I/P ENGINE, INC.’S
MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff I/P Engine, Inc. (“I/P Engine”), by counsel, for its Memorandum in Support of its Motion for Leave to File Notice of Supplemental Authority, states as follows:

Good cause exists for this Court to grant I/P Engine leave to file the Notice of Supplemental Authority. The Notice identifies new authority that is related to this Court’s determination of I/P Engine’s Motion for An Award of Post-Judgment Royalties (D.I. 822).

On December 18, 2012, I/P Engine moved for an award of post-judgment royalties requesting enhanced ongoing royalties for Defendants’ continued, willful, post-verdict use of the adjudged infringing system. In opposition to that motion, Defendants contended that any ongoing royalty should not be enhanced—despite the adverse jury verdict against them—because of an interim communication issued during U.S. Patent & Trademark Office (“PTO”) reexamination proceedings that Defendants initiated. On July 24, 2013, the PTO rejected Defendants’ invalidity positions, and *confirmed the patentability of all reexamined claims*. In

fact, the PTO found the claims valid for exactly the same reasons I/P Engine's expert, Dr. Jamie Carbonell, testified they were valid. Thus, the Notice of Intent confirming validity of all of the asserted claims (even under a lower burden of proof) demonstrates that—post adverse jury verdict—Defendants could not have formed a good faith belief that the '420 patent was invalid. The PTO's confirmation further supports the enhancement of the post-judgment royalties I/P Engine requested in its motion.

For the foregoing reasons, I/P Engine respectfully requests that this Court grant it leave to file *Plaintiff I/P Engine, Inc.'s Notice of Supplemental Authority*.

Dated: July 31, 2013

By: /s/ Jeffrey K. Sherwood
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

Jeffrey K. Sherwood (Virginia Bar No. 19222)
Frank C. Cimino, Jr.
Kenneth W. Brothers
Charles J. Monterio, Jr.
Jonathan Falkler
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Dawn Rudenko Albert
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, NY 10019
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

Counsel for Plaintiff I/P Engine, Inc.

CERTIFICATE OF SERVICE

I certify that on this 31st day of July 2013 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to the following:

Stephen Edward Noona
Kaufman & Canoles, P.C.
150 W Main St, Suite 2100
Norfolk, VA 23510 senoona@kaufcan.com

David Bilsker
David Perlson
Quinn Emanuel Urquhart & Sullivan LLP
50 California Street, 22nd Floor San Francisco, CA 94111
davidbilsker@quinnemanuel.com
davidperlson@quinnemanuel.com

Robert L. Burns
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP Two
Freedom Square
11955 Freedom Drive Reston, VA 20190
robert.burns@finnegan.com

Cortney S. Alexander
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
3500 SunTrust Plaza
303 Peachtree Street, NE Atlanta, GA 94111
cortney.alexander@finnegan.com

/s/ Jeffrey K. Sherwood