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20 Defendants **BODOG ENTERTAINMENT**  
21 **GROUP S.A.**, and erroneously named  
22 Specially Appearing Defendants  
23 **BODOG.NET** and **BODOG.COM**

24 UNITED STATES DISTRICT COURT  
25 DISTRICT OF NEVADA

26 1ST TECHNOLOGY LLC,  
27 Plaintiff,  
28 vs.

29 RATIONAL ENTERPRISES LTDA.,  
30 RATIONAL POKER SCHOOL LIMITED,  
31 BODOG ENTERTAINMENT GROUP S.A.,  
32 BODOG.NET, BODOG.COM, AND  
33 FUTUREBET SYSTEMS LTD.,

34 Defendants.

Case No: 2:06-cv-1110-RLH-GWF

**DEFENDANT'S EVIDENTIARY  
OBJECTIONS TO PLAINTIFF'S EXHIBIT  
1, SCOTT LEWIS TABLE PURPORTING  
TO SHOW ROYALTIES**

**Date: October 11, 2007  
Time: 9:00 a.m.  
Courtroom: 6C**

1 Specially appearing defendants, Bodog Entertainment Group S.A. (Costa Rica), Bodog.net,  
2 and Bodog.com (“Defendants”) (who challenge jurisdiction), hereby submit the following  
3 objections to Exhibit 1, submitted in support of 1<sup>st</sup> Technology LLC’s Response to Motion to Set  
4 Aside Default Judgment.

5 Defendants preserve all previous objections with regards to the Declaration of Scott Thomas  
6 that were raised in Defendant’s Opposition to Plaintiff 1<sup>st</sup> Technology LLC’s “Emergency Motion  
7 for Permanent Injunction.” Additionally, Defendant objects to the admissibility of the Table  
8 purporting to establish an evidentiary basis for determining a reasonable royalty rate:

- 9
- 10 1. Plaintiff’s “TABLE 1, Bodog Damages” should be excluded because it does not satisfy the  
11 requirements imposed upon testifying experts under FRE 702 (“Testimony by Experts”)  
12 (codifying Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). FRE 702  
13 requires that one testifying to “specialized knowledge” must base their opinions on  
14 sufficient facts and data that is the product of reliable principles and methods. Federal  
15 courts have identified a “comprehensive list of evidentiary facts” as the source of reliable  
16 principles and methods necessary to the determination of reasonable royalty rates. Georgia-  
17 Pacific Corp. v. United States Plywood Corp., 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970).  
18 The basis of Scott Lewis’s table—that “one simply needs to multiply the royalty rates as set  
19 forth in the IGT/MGM Agreement by the number of user downloads”—lacks the  
20 sophistication required by federal law in determining reasonable royalty rates. Lewis’s table  
21 includes only one of the 15 factors required by courts as a basis for determining a reasonable  
22 royalty rate. Among the missing facts are whether Defendant used other patents  
23 “comparable to the patent in suit,” an explanation of Plaintiff’s “marketing program to  
24 maintain [its] patent monopoly,” a description of “the commercial relationship between  
25 licensor and licensee,” and the “commercial success” and “current popularity” of the patent.  
26 Id. The deficiencies in Mr Lewis’s principles and methods are fatal under both FRE 702  
27 and Georgia Pacific v. United States Plywood Corp.
- 28

1           2.       Additionally, Defendant objects to the “TABLE 1, Bodog Damages” that is contained in  
2           Exhibit 1. The table is the product of hearsay because it is based on out-of-court statements  
3           by Forbes Magazine and Alexa.com (FRE 801). Plaintiff is offering these statements to  
4           prove the truth of the matter asserted: the number of Bodog downloads and the percentage  
5           of these downloads that occurred in the United States, Bodog’s transaction revenue, after-  
6           tax profits, and estimated 2006 valuation. Thus, the table contained in Plaintiff’s Exhibit 1,  
7           Table 1, should be excluded under FRE 802.  
8

9 Dated: October 1, 2007

By:           /s/ Charles McCrea          

Charles McCrea

**LIONEL SAWYER & COLLINS**

Attorneys for Specially Appearing Defendants

**BODOG ENTERTAINMENT GROUP S.A.**, and  
erroneously named Specially Appearing Defendants

**BODOG.NET** and **BODOG.COM**