

**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
MOTION TO EXCLUDE OPINIONS AND TESTIMONY OF KEITH R. UGONE**

Plaintiff I/P Engine, Inc. (“I/P Engine”) moves to preclude certain unsupported expert testimony proffered by Defendants’ damages expert, Keith Ugone, Ph.D. Dr. Stephen L. Becker, I/P Engine’s damages expert, prepared a detailed analysis with extensive computations to conclude a reasonable royalty for Defendants’ infringement. In response, Dr. Ugone provided his opinion on what he thought was the appropriate measure of damages without doing a single piece of math. Instead of using established methodologies, he used what he called a “proxy” for doing the real thing. Dr. Ugone selected a number of lump-sum license agreements, most of which he conceded were not comparable to the patents-in-suit, and declared that the damages in this case should be in the same range as those non-comparable agreements.

Dr. Ugone’s opinions fail under Daubert for two reasons. First, his “proxy” methodology is not an appropriate analytical methodology. I/P Engine can find no case law supporting such a methodology in a patent case. Second, Dr. Ugone – who has no technical expertise whatsoever, and who is not offered as a technical expert witness on issues of liability – extensively opines on

the technical operation of the accused systems, with no citation to any factual support.

Defendants apparently intend to elicit such technical testimony from Dr. Ugone, even though he clearly has no expertise in that area and has testified that he is not proffering a technical opinion in this case.

As explained in the attached Memorandum in Support hereof, Dr. Ugone's damages report and related opinions fail to satisfy the admissibility requirements of Federal Rule of Evidence 702 or the Supreme Court's directive in *Daubert*, and should be excluded from any trial of this matter.

Dated: September 21, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2012, the foregoing **PLAINTIFF I/P ENGINE, INC.'S MOTION TO EXCLUDE OPINIONS AND TESTIMONY OF KEITH R. UGONE**, was served via the Court's CM/ECF system, on the following:

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