

Exhibit 3

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

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO EXCLUDE
THE TESTIMONY OF STEPHEN L. BECKER**

3. The Overture Licensees Were Not Situated Comparably to Google

Dr. Becker has conceded that the licensees in the agreements he relied on – Marchex, Inc., [REDACTED], and Interchange Corp. – were all in radically different negotiating positions against Overture than Google would have been in a hypothetical negotiation with Lycos. Yet, Dr. Becker did not account for these differences when he relied on the Overture agreements. For example, Dr. Becker concedes [REDACTED], Interchange, and Marchex were "much smaller compan[ies]" than Google. (O'Brien Dec., Ex. 2, 85:5-21.) Dr. Becker testified that Google's size would have made it "a more attractive licensee to Lycos than Marchex represented to Overture" and that this "would have given it an edge in the negotiation." (*Id.*, 94:2-6; *see also id.*, 94:14-17 (Google would also have been a more attractive licensee than [REDACTED].) Dr. Becker further agreed that [REDACTED], Interchange, and Marchex were enjoying much slower growth than Google. (*Id.*, 95:3-11.) Indeed, Google was a global technology leader in the search business, unlike [REDACTED], Interchange, or Marchex. (*Id.*, 118:15-119:1.) Becker's failure to account for these differences in negotiating position further renders his opinion unreliable.

B. Dr. Becker Selectively Ignores Every Real-World Transaction Involving the Patents in Suit

Rights in the asserted patents have been traded in arms length transactions several times. These historic, real-world transactions provide compelling evidence of the value that Google and Lycos would have placed on a license to the patents in suit. *See Georgia-Pacific*, 318 F. Supp. at 1120. Indeed, the Federal Circuit has found it "particularly troubling" when a plaintiff's damages expert eschews actual licenses to the patents in suit and instead relies on "extremely high rates" in unrelated licenses. *ResQNet*, 594 F.3d at 870. Here, there are [REDACTED] agreements that provide objective indications that Dr. Becker's [REDACTED] opinion vastly overstates the value of I/P Engine's patents. [REDACTED]