UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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

DECLARATION OF KEITH R. UGONE, PH.D. IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR AN AWARD OF PREJUDGMENT INTEREST, POST-JUDGMENT INTEREST, AND SUPPLEMENTAL DAMAGES

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I, Keith R. Ugone, Ph.D., declare as follows:

1.   I submitted an expert report and provided oral testimony at trial in this matter on behalf of Defendants Google Inc., AOL, Inc., IAC Search & Media, Inc., Gannett Co., Inc. and Target Corp. ("Defendants"). I described my qualifications in both my trial testimony and expert report. I have personal knowledge of the facts set forth in this Declaration. If called upon to testify, I could and would certify competently to these facts.

2.   I have been asked to provide certain calculations in support of Defendants' Opposition To Plaintiff's Motion For An Award Of Prejudgment Interest, Post-Judgment Interest, and Supplemental Damages. I also have been asked to review the Declaration of Stephen L. Becker, Ph.D. in Support of Plaintiff's Motion for an Award of Prejudgment Interest, Post-Judgment Interest, and Supplemental Damages and Exhibit A to his Declaration. (D.N. 794.)

Pre-judgment Interest

3.   I have been asked to calculate the prejudgment interest to be added to the jury's damages award in this matter, assuming that prejudgment interest will be awarded. The assumption that prejudgment interest will be awarded is necessary to do the calculation, but I understand that Defendants do not agree that prejudgment interest should be awarded in this matter and that my calculation should not be interpreted as an admission or evidence to the contrary. I was asked to calculate the prejudgment interest using both the prime interest rate and the Treasury bill interest rate, as reported by the Federal Reserve.

4.   On November 6, 2012, the jury awarded Plaintiff damages of $30,496,155. (D.N. 789, Verdict Form.)

5.   The methodology that I employed in deriving my prejudgment interest calculation

is as follows.

(a) I determined the average prime and one-year treasury bill interest rates, as reported by the Federal Reserve, that prevailed during each quarter of the period from September 15, 2011 to November 6, 2012.

(b) I allocated the jury's royalty damages award to the quarters between September 15, 2011 and September 30, 2012 using the number of days in each quarter relative to the number of days in the entire time period.[1]

(c) I assumed that these quarterly royalty amounts would have been paid at the end of each quarter, which would be in line with the likely arrangement of royalty reporting and payment in a real-world business situation.

Using this methodology, I calculated the prejudgment interest that would be due on the damages awarded by the jury from September 15, 2011 to November 6, 2012 to be $27,329 using the T-Bill rate compounded annually and $499,197 using the Prime rate compounded annually. The results of my calculations are presented in the below table; the details of my calculation are provided in **Exhibit 1**.

Prejudgment Interest Calculation (Interest Compounded Annually)		
	Using The T-bill Rate	**Using The Prime Rate**
Google	$14,159	$258,633
AOL	$7,118	$130,020
Gannett	$4	$71
IAC	$5,959	$108,855
Target	$89	$1,618
Total	**$27,329**	**$499,197**

6.   In addition, I determined that (even if the Prime rate is used) Dr. Becker's prejudgment interest calculations appear to overstate the amount of prejudgment interest due. It

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[1] It appears that Dr. Becker followed this methodology in performing his calculation of pre-judgment interest.

should be noted that Dr. Becker did not provide the details in his Declaration as to his assumption regarding the timing of royalty payments. However, Dr. Becker appeared to use a "midpoint" formula .[2] Use of a midpoint formula is based upon the assumption that the Defendants would make daily royalty payments to Plaintiff and that interest would be calculated from the middle of each quarter to simplify the calculations (hence, the term "midpoint" formula). However, use of a midpoint formula is unrealistic in this case. Companies generally make royalty payments at a set time after the end of each quarter. The payments made after the end of the quarter may occur, for example, 30 or 45 days after the end of each period. Thus, in my opinion, Dr. Becker's prejudgment interest calculations overstate the amount due, even accepting his use of the Prime rate. In contrast and for the purposes of my calculations, although it is likely that royalty payments would be made 30 days or 45 days after the end of each quarter, for conservatism, I have assumed that royalty payments would be made immediately upon the end of each quarter.

Supplemental Damages

7.   I have been asked to evaluate Dr. Becker's calculation of supplemental damages, for the period from October 1, 2012 until the date of judgment. (D.N. 794, ¶ 5.) I have determined that Dr. Becker's proposed calculation of damages is mathematically inconsistent with the jury's verdict.

8.   In response to an interrogatory, the jury found that the appropriate form of damages was a running royalty and set the royalty rate at 3.5%. (D.N. 789, 11.) The jury

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[2] Making the assumption that royalty payments would have been made in the middle of each quarterly period allowed me to calculate a claimed prejudgment interest figure closest to the figure provided by Dr. Becker.

awarded total damages of $30,496,155, attributed as follows: Google - $15,800,000, AOL-$7,943,000, IAC - $6,650,000, Target - $98,833, and Gannett - $4,322. (*Id.*) Plaintiff asserts that 20.9% of the revenues for the accused products is the appropriate royalty base to which the 3.5% royalty should be applied, (D.N.793, 11), but the amounts the jury awarded do not equate to a royalty base apportioned at 20.9% of revenue. I was informed that the only information Plaintiff provided the jury for the relevant damages period was a demonstrative slide (i.e., a "bar chart") that Dr. Becker discussed in relation to a damages period barred by laches, (Agudo Dec. ¶ 2 & Exh. B (PDX-441)), and that in closing argument, Plaintiff used the slide to display a royalty amount in the recoverable period that was derived from its 20.9% apportionment of revenue multiplied by its 3.5% royalty. I have reviewed PDX-441. Based upon the "bars" presented from third quarter 2011 through third quarter 2012, the height of each bar appears to reach between approximately $25 million and $29 million (as determined from a rough comparison to the scale on the left hand side of the chart). The jury awarded total damages from Google of $15,800,000. (D.N. 789, 11.) This award was based upon a 3.5% running royalty rate. (*Id.*) Using the information from the slide covering the allowable damages period and accounting for the 3.5% royalty rate yields an apparent apportionment value of approximately 2.8%. Specifically, the 2.8% estimated apportionment percentage is derived as follows. (The details of my estimations are provided in **Exhibit 2.**)

(a) The demonstrative exhibit that Plaintiff displayed for the allowable damages period (i.e., damages period beginning September 15, 2011) showed a claimed damages amount of approximately $118 million. (Trial Tr. 2005:13-2008:24; Agudo Dec. ¶ 2 & Exh. B (PDX-441).)

(b) The jury's award of $15,800,000 is approximately 13.4% of the total royalties Plaintiff demanded against Google for the allowable damages period (i.e., $15.8 million divided by $118 million).

(c) Given the relative magnitude of the jury damages award and Plaintiff's claimed damages, the royalty base apportionment percentage based upon the jury verdict is 2.8% (i.e., 13.4% multiplied by the 20.9% apportionment percentage demanded by Plaintiff).

I declare under penalty of perjury that the foregoing is true and correct.

Keith R. Ugone, Ph.D.
November 29, 2012

DATED: November 29, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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