

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.)		
_____)		

DECLARATION OF CHARLES J. MONTERIO, JR.
IN SUPPORT OF I/P ENGINE INC.’S REPLY IN SUPPORT OF ITS BILL OF COSTS

I, Charles J. Monterio, Jr., declare as follows:

1. I am an attorney with the law firm of Dickstein Shapiro LLP, 1825 Eye Street N.W., Washington, DC 20006 and am counsel for Plaintiff I/P Engine, Inc. (“I/P Engine”) in the above-captioned litigation.
2. This declaration is made pursuant to 28 U.S.C. § 1920 and submitted in support of Plaintiff I/P Engine’s Reply In Support of Its Bill of Costs. I have personal knowledge of the facts stated herein and, if called as a witness, could testify competently hereto. Each item of cost for which recovery is sought was necessarily and actually incurred in this litigation. Many of the costs sought in I/P Engine’s Bill of Costs were derived from contemporaneous accounting records and invoices maintained by Dickstein Shapiro LLP or I/P Engine itself.

I. FEES OF THE CLERK AND MARSHALL

3. I/P Engine incurred an initial fee for the filing of its Complaint of \$350.00.

4. I/P Engine also paid \$825.00 in fees for the Pro Hac Vice Applications of its attorneys: Brett Hamilton, Charles Monterio, Jr., Frank Cimino, Jr., Kenneth Brothers, Deanna Allen, Jonathan Falkler, Leslie Jacobs, Dawn Rudenko, Krista Carter, Katie Scott and James Ryerson.

5. I/P Engine seeks a total of \$1,175.00 for Fees of the Clerk.

II. FEES FOR SERVICE OF SUMMONS AND SUBPOENAS

6. I/P Engine incurred fees for service of deposition subpoenas via private process servers in the amount of \$568.75.

7. I/P Engine seeks no Fees for Service of Summons and Subpoenas.

III. FEES FOR PRINTED OR ELECTRONICALLY RECORDED TRANSCRIPTS NECESSARILY OBTAINED FOR USE IN THE CASE

A. Transcripts for Depositions of Fact and Expert Witnesses

8. I/P Engine seeks recovery of \$60,684.89 in video-taped depositions necessarily obtained for use in this litigation. As a first matter with regard to necessity, I/P Engine notes that nearly all of the witnesses for whom it took depositions appeared at trial either live or via portions of their video-taped depositions. Further, all but one of the witnesses (John Diorio) were listed on the Defendants' Pretrial Disclosures, dated September 19, 2012, under the designations "will be present at trial," or "may be present at trial," either one of which required I/P Engine to be prepared to address their testimony at trial. Moreover, the majority of these deponents appeared in at least one of Defendants' Initial Disclosures where they were identified as individuals "likely to have discoverable information" pursuant to Fed. R. Civ. P.

26(a)(1)(A)(i). Consequently, each of these depositions were necessary to the preparation of I/P Engine's case at the time they were taken.

B. Depositions of Defendants' and I/P Engine's Fact Witnesses

9. I/P Engine took the following 16 30(b)(1) or 30(b)(6) depositions of Defendants' witnesses, the costs of which it seeks to have taxed as costs: James Maccoun, Celia Denery, Jonathan Alferness, Marie Bamford, Stephen Kurtz, James Christopherson, Sanjay Datta, Ruben Ortega, Jonathan Diorio, Derek Leslie-Cook, Robert Hickernell, Jr., Gary Holt, Gary Culliss, Bartholomew Furrow, Nicholas Fox, and Mark Blais.

10. I/P Engine also seeks reimbursement for the depositions of two of its own witnesses, Andrew D. Perlman and Alexander Berger for which it incurred costs.

11. All of these depositions were utilized extensively by I/P Engine in discovery, motions for summary judgment and/or in preparation for trial. I/P Engine seeks the costs for the court reporter, the original, and one copy of each deposition with exhibits, and reasonable delivery fees. I/P Engine has adjusted the billable costs to remove charges for Realtime, Rough ASCII copies, and LEF/SBF files.

C. Depositions of Inventor Witnesses

12. Defendants took the depositions of two inventor witnesses, Andrew K. Lang and Donald Kosak. I/P Engine seeks reimbursement for the copy of those depositions for which it incurred costs. These depositions were utilized extensively by I/P Engine in discovery, motions for summary judgment and/or in preparation for trial.

D. Depositions of Defendants' Expert Witnesses

13. I/P Engine took the depositions of two expert witnesses, Lyle Ungar, Ph.D. and Keith Ugone, Ph.D. Both of these depositions were utilized extensively by I/P Engine in

discovery, motions for summary judgment and/or in preparation for trial. I/P Engine seeks the costs for the court reporter, the original, and one copy of each deposition with exhibits, and reasonable delivery fees. I/P Engine has adjusted the billable costs to remove charges for Realtime, Rough ASCII copies, and LEF/SBF files.

E. Court Hearing Transcripts

14. I/P Engine seeks recovery of \$252.00 in fees to the court reporter for certain hearing transcripts. These transcripts were utilized by I/P Engine in discovery motions, motions for summary judgment and/or in preparation for trial. Accordingly, the hearing transcripts were necessary.

F. Trial Transcripts

15. I/P Engine seeks recovery of \$4,922.75 in fees to the court reporter for the trial transcript. A 15-day jury trial was conducted for this litigation beginning on October 16, 2012 and ending November 6, 2012. I/P Engine's counsel ordered daily copies of the trial transcripts, which were utilized for several purposes including to: (a) assist I/P Engine in the ongoing preparation and presentation of its case; (b) provide a record of the Court's rulings on evidentiary and other matters; (c) provide a record of the testimony of each witness; and (d) enable I/P Engine to prepare to respond to motions for judgment as a matter of law submitted to the Court during trial. Accordingly, the daily transcript was necessary.

G. Total Transcript Costs

16. With respect to depositions, court hearings and trials, I/P Engine seeks a total of \$65,859.64 for Fees for Printed or Electronically Recorded Transcripts Necessarily Obtained for Use in the Case.

IV. FEES FOR WITNESSES

17. I/P Engine incurred fees for attendance at trial, subsistence fees for attendance at trial, travel fees for witnesses at trial, witness fees for attendance at depositions, subsistence fees for attendance at depositions and travel fees for attendance at depositions in the amount of \$28,179.33. A further breakdown of these fees are reflected on page 2 of Form AO 133 which is being filed concurrently herewith as Monterio Dec., Exhibit 1.

18. I/P Engine requested a break-down of trial related expenses from its expert, Dr. Steven Becker. Because Dr. Becker was unable to locate one travel receipt for the amount of \$520.60, I/P Engine reduced this amount to \$1,956.78. The reduction is reflected in the amount indicated in paragraph 17. Attached as Monterio Dec., Exhibit 2.

19. I/P Engine seeks a total of \$28,179.33 for Fees for Witnesses.

V. FEES FOR EXEMPLIFICATION AND THE COSTS FOR MAKING COPIES OF ANY MATERIALS WHERE THE COPIES ARE NECESSARILY OBTAINED FOR USE IN THE CASE

A. Trial Exhibits

20. I/P Engine seeks recovery of \$12,999.35 in exemplification fees for copies of trial exhibits necessarily obtained for use in this case. I/P Engine has made adjustments to the fee totals to reduce billable charges to three sets of exhibits where appropriate. Based upon its meet and confer with Defendants' counsel attempting to arrive at a stipulation regarding costs, I/P Engine agreed to withdraw its costs associated with the preparation of its trial exhibits by Digital Evidence Group, totaling \$68,496.61.

B. Additional Documents

21. I/P Engine seeks further exemplification costs of \$5,211.93 for additional documents necessarily obtained for use in this case from outside parties where copies were needed for document production and/or case analysis.

C. Total Exemplification and Copying Costs

22. With respect to trial exhibits and additional documents, I/P Engine seeks a total of \$18,211.28 for Fees for Exemplification and the Costs for Making Copies of Any Materials Where the Copies are Necessarily Obtained for Use in the Case.

VI. TOTAL COSTS

23. The total amount of costs claimed by I/P Engine under Fed. R. Civ. P. 54(d) and 28 U.S.C. §§ 1821 and 1920 is \$113,425.25. I/P Engine respectfully submits that this amount, while substantially less than the total costs actually incurred by I/P Engine during the course of litigating its claims of patent infringement against Defendants, represents the costs taxable against Defendants under controlling law. I, or persons under my supervision, have reviewed the costs requested by I/P Engine for accuracy, and state that they are true and accurate to the best of my knowledge and belief.

24. Accordingly, I/P Engine respectfully requests that this Court award it \$113,425.25 as its costs of suit.

Dated: January 25, 2013

By: /s/ Charles J. Monterio, Jr.
Charles J. Monterio Jr.
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Counsel for Plaintiff I/P Engine, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2013, the foregoing **DECLARATION OF CHARLES J. MONTERIO, JR. IN SUPPORT OF I/P ENGINE INC.'S REPLY IN SUPPORT OF ITS BILL OF COSTS**, was served via the Court's CM/ECF system, on 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
