

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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I/P ENGINE, INC.,)	
)	
	Plaintiff,)	
	v.)	Civ. Action No. 2:11-cv-512
)	
AOL, INC. et al.,)	
)	
	Defendants.)	
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**DECLARATION OF KENNETH W. BROTHERS IN SUPPORT OF I/P ENGINE INC.’S
REPLY REGARDING ITS MOTION FOR A NEW TRIAL ON THE DOLLAR
AMOUNT OF PAST DAMAGES**

I, Kenneth W. Brothers, declare as follows:

1. I am a partner 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. I have personal knowledge of the facts stated herein.

2. Attached hereto as Exhibit A is a true and correct copy of PDX-083, which was shown at trial.

3. Counsel for both I/P Engine and the Defendants exchanged demonstrative exhibits prior to closing arguments. Exhibit B, attached hereto, is a true and correct copy of one of the demonstratives provided by Defendants’ counsel. Defendants counsel indicated his intent to use Exhibit B at closing during the un-transcribed instruction conference.

4. Attached hereto as Exhibit C is a true and correct copy of PDX-077, which was shown at trial.

5. Defendants submitted a declaration from Mr. Nelson, which they rely on in their opposition brief, in which Mr. Nelson states, “As soon as Defendants’ counsel located [*Odetics*], we immediately presented it (by hand) to both the Court and Plaintiff’s counsel.” (D.I. 865, ¶ 4.) This statement is false. I am now aware that, during the recess following I/P Engine’s initial closing statement, Defendants’ counsel (Mr. Noona and Mr. Bilsker) provided a copy of the *Odetics* case to the Court. Neither Mr. Noona, Mr Bilsker, nor any other counsel for Defendants, disclosed that fact to me or any other attorney for I/P Engine. During that recess, the Court considered the case, and decided to change its laches ruling. After the Court announced its decision, I noted that I had not received a copy of the case (Trial Tr. at 2018:3-6) nor was I aware that Defendants had provided it to the Court. The Court inquired about why I was not provided a copy, and Mr. Nelson responded, “I didn’t have a copy of the case. I had a citation.” (Trial Tr. at 2018:7-10.) At that point Mr. Nelson’s co-counsel, Mr. Bilsker, stood up and handed me a copy of the *Odetics* case.

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

Dated: February 15, 2013

By: /s/ Kenneth W. Brothers
Kenneth W. Brothers
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Counsel for Plaintiff I/P Engine, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2013, the foregoing

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AMOUNT OF PAST DAMAGES, was served via the Court's CM/ECF system, on the following:

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/s/ Jeffrey K. Sherwood _____