

**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

**OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE  
TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants AOL Inc., Google Inc., IAC Search & Media, Inc., Gannett Co., Inc., and Target Corp. (collectively “Defendants”) respectfully request that the Court deny Plaintiff I/P Engine, Inc.’s (“I/P Engine”) Motion for Leave to File Notice of Supplemental Authority.

Although Defendants would not oppose the filing of supplemental authority that actually would be relevant to the Court’s determination of the issues, I/P Engine’s proffered “supplemental authority” is not relevant.

I/P Engine argues *VirnetX Inc. v. Cisco Systems, Inc.*, No. 6:10-cv-417, D.N. 732 (E.D. Tex. Feb. 26, 2013), is relevant because the court in that case rejected the defendant’s argument that the plaintiff failed to present sufficient evidence of a royalty base. I/P Engine states “[a]s in this case, the defendant in *VirnetX* ‘failed to advance a credible alternative’ at trial.” (D.N. 901, 2.) The court in *VirnetX*, however, did not deny the defendant’s motion merely because the defendant did not provide an alternative base as I/P Engine suggests. Indeed, the defendant in that case did provide some evidence in relation to a royalty base. Rather, the court found that the plaintiff presented sufficient evidence of a royalty base, and therefore the jury’s award was supported by the evidence. The court also found that what defendant presented for a base was

not “credible.” No. 6:10-cv-417, D.N. 732, 24-25. In doing so, however, the court did not eliminate the requirement that the plaintiff provide legally sufficient evidence of a royalty base or suggest that anything the defendant did in that case altered that burden.

Here, I/P Engine did not present evidence of a royalty base. Thus, whether Defendants introduced an alternative damages base is irrelevant, and *VirnetX* says nothing to the contrary. This is just another attempt by I/P Engine to shift its burden of proof on damages to Defendants. (See, e.g., D.N. 894, 5, 15-16 (discussing previous arguments by I/P Engine attempting to shift the burden of proof on damages).)

For the foregoing reasons, I/P Engine’s Motion should be denied.

DATED: March 11, 2013

/s/ Stephen E. Noona

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## **CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2013, 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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