

**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.)	
)	

**PLAINTIFF I/P ENGINE, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE
TO FILE ITS NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants oppose I/P Engine's motion for leave, arguing that *VirnetX Inc. v. Cisco Systems, Inc.*, No. 6:10-cv-417, D.I. 732 (E.D. Tex. Feb. 26, 2013) is not relevant because I/P Engine did not present evidence of a royalty base.

In this and the *VirnetX* case, the defendants argue that the plaintiff failed to present a proper royalty base under the entire market value rule. (Op. at 23-24; D.I. 844 at 14-17.) In both cases, the defendants failed to present a credible alternative royalty base. (Op. at 25.) Indeed, Defendants did not present *any* alternative royalty base. (See D.I. 871 at 26, 28.) And like the *VirnetX* case, Defendants' attack on the sufficiency of I/P Engine's royalty base is undermined by their failure to identify a credible alternative. (Op. at 25; D.I. 871 at 26, 28.) The *VirnetX* court identified this failure when it found that VirnetX did not invoke the entire market value rule in its damages theory. (Op. at 25.)

Defendants do not identify any differences between the apportioned royalty base in *VirnetX*, which was found to be sufficient, and the apportioned royalty base in this case. The

VirnetX decision is therefore relevant to whether I/P Engine's apportioned royalty base is legally sufficient. *VirnetX* further supports I/P Engine's Opposition to Defendants' JMOL on Damages (D.I. 871 at 22-28), which shows that I/P Engine's apportioned royalty base is legally sufficient.

Respectfully submitted,

Dated: March 18, 2013

By: /s/ Jeffrey K. Sherwood
Donald C. Schultz (Virginia Bar No. 30531)
W. Ryan Snow (Virginia Bar No. 47423)
CRENSHAW, WARE & MARTIN PLC
150 West Main Street
Norfolk, VA 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735

Jeffrey K. Sherwood (Virginia Bar No. 19222)
Frank C. Cimino, Jr.
Kenneth W. Brothers
Charles J. Monterio, Jr.
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Dawn Rudenko Albert
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

Counsel for Plaintiff I/P Engine, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2013, the foregoing, 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