

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

I/P ENGINE, INC.,)
v. Plaintiff,)
AOL, INC. et al.,)
Defendants.)

)

Civ. Action No. 2:11-cv-512

**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,

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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:

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