

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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		)	
I/P ENGINE, INC.,		)	
	Plaintiff,	)	
	v.	)	Civil Action No. 2:11-cv-512
		)	
AOL, INC. et al.,		)	
	Defendants.	)	
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**MEMORANDUM IN SUPPORT OF I/P ENGINE, INC.’S  
MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff I/P Engine, Inc. (“I/P Engine”), by counsel, for its Memorandum in Support of its Motion for Leave to File Notice of Supplemental Authority, states as follows:

Good cause exists for this Court to grant I/P Engine leave to file the Notice of Supplemental Authority. The Notice identifies new authority that is related to this Court’s determination of I/P Engine’s Motion for An Award of Post-Judgment Royalties (D.I. 822).

On December 18, 2012, I/P Engine moved for an award of post-judgment royalties requesting enhanced ongoing royalties for Defendants’ continued, willful, post-verdict use of the adjudged infringing system. In opposition to that motion, Defendants contended that any ongoing royalty should not be enhanced—despite the adverse jury verdict against them—because of an interim communication issued during U.S. Patent & Trademark Office (“PTO”) reexamination proceedings that Defendants initiated. On July 24, 2013, the PTO rejected Defendants’ invalidity positions, and *confirmed the patentability of all reexamined claims*. In

fact, the PTO found the claims valid for exactly the same reasons I/P Engine's expert, Dr. Jamie Carbonell, testified they were valid. Thus, the Notice of Intent confirming validity of all of the asserted claims (even under a lower burden of proof) demonstrates that—post adverse jury verdict—Defendants could not have formed a good faith belief that the '420 patent was invalid. The PTO's confirmation further supports the enhancement of the post-judgment royalties I/P Engine requested in its motion.

For the foregoing reasons, I/P Engine respectfully requests that this Court grant it leave to file *Plaintiff I/P Engine, Inc.'s Notice of Supplemental Authority*.

Dated: July 31, 2013

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**CERTIFICATE OF SERVICE**

I certify that on this 31st day of July 2013 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to the following:

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/s/ Jeffrey K. Sherwood