

# EXHIBIT K

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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TECSEC, INCORPORATED, :  
 :  
                    Plaintiff, :  
 :  
                    -vs- :           Case No. 1:10-cv-115  
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 :  
ADOBE INC., et al., :  
 :  
                    Defendants. :  
 :  
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Volume 1 - A.M.

JURY TRIAL PROCEEDINGS

December 10, 2018

Before: Liam O'Grady, USDC Judge

And a Jury

1 opening, and it should be precluded.

2 THE COURT: All right. Thank you.

3 All right. Mr. Oakes?

4 MR. OAKES: Your Honor, it is a corporate record of  
5 TecSec. Mr. Wack will establish that under rule 806. It is  
6 evidence of secondary considerations. It's also relevant to  
7 the corporate history and their experience, and Mr. Wack will  
8 tie the CKM technology to the patent mentioned in his  
9 testimony.

10 THE COURT: All right. It will be allowed.

11 All right. Ms. Cohen?

12 MS. COHEN: Your Honor, we also object to slide  
13 No. 23. This excerpt is a letter that TecSec sent to a  
14 standard setting organization describing TecSec's purported  
15 license, a patent licensing policy. The fundamental problem  
16 with this slide, the letter shows a mere offer to license. The  
17 evidence shows that this offer to license was never accepted by  
18 anyone.

19 Your Honor probably will recall that Adobe moved to  
20 exclude offers to license -- the parties' license agreements  
21 because the experts admitted that the licenses that were  
22 actually entered into weren't comparable. In this case, this  
23 isn't even a license that was executed. This is an offer to  
24 license. It was never accepted by anyone, and therefore, it's  
25 by definition less probative of the reasonable royalty rate

1 than the executed licenses.

2 I'll direct Your Honor to a Federal Circuit case,  
3 it's *Whitserve v. Computer Packages*, 694 F.3d 10, at 29 to 30,  
4 Federal Circuit 2012 case. I do have copies of the case for  
5 Your Honor.

6 May I approach?

7 THE COURT: Yeah.

8 Joe? Thanks.

9 MS. COHEN: In that case, the court said that  
10 unaccepted offers to license are of limited evidentiary value  
11 at pages 29 to 30, and it may only have value in certain  
12 situations.

13 As I said, Your Honor, in this situation, it's even  
14 less probative than the excluded licenses that have actually  
15 been executed. There's no evidence that TecSec ever  
16 implemented the policies, no evidence that -- the witnesses  
17 will say that they never received a 1 percent rate for any of  
18 their unaccepted offers to license.

19 It was made by -- to a standard setting organization  
20 that was indisputedly in a different context than the licensing  
21 considerations that would be part of the hypothetical  
22 negotiation in this case. The offer was made in 1998. That's  
23 three years before the hypothetical negotiation date of  
24 April 2001. It was made to the American Bankers Association,  
25 which is, like I said, a standard setting organization who's

1 not a party to the hypothetical negotiation.

2 At bottom, we think it shouldn't be allowed because  
3 it's inadmissible -- as an inadmissible offer to license and  
4 it's -- the purported licensing policy has no basis in fact.

5 THE COURT: All right. Thank you, Ms. Cohen.

6 Mr. Oakes?

7 MR. OAKES: Your Honor, Mr. Wack will authenticate  
8 this offer. He will use it as evidence to establish the  
9 company's ongoing belief in their licensing policy. It's been  
10 the corporate policy for many years. The damages experts both  
11 relied upon it as part of the *Georgia-Pacific* factor as the  
12 established or expected royalty rates of the, of the parties.

13 It is only one factor, and I heard Ms. Cohen say  
14 repeatedly it's less probative. It's not irrelevant. It is  
15 certainly evidence of TecSec's expectations in terms of  
16 licensing these patents, and it does specifically relate to the  
17 DCOM, these -- the four patents at issue here.

18 THE COURT: Well, that's not obvious from this quote.  
19 Is it in the body of the document itself?

20 MR. OAKES: It is.

21 THE COURT: Okay. All right. It'll be permitted.

22 All right.

23 MS. COHEN: Your Honor, there are just two  
24 housekeeping items we wanted to raise with the Court. One is  
25 with respect to the preliminary instructions. The parties have