

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NEC CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-988-CJB
)	
TONE IT UP, INC.,)	
)	
Defendant.)	
)	

MEMORANDUM ORDER

Presently pending before the Court in this patent infringement action is Plaintiff NEC Corporation’s (“Plaintiff” or “NEC”) motion for pre- and post-judgment interest and to amend the judgment (the “Motion”). (D.I. 89) For the reasons set forth below, the Motion is GRANTED in the manner set out below.

1. On September 30, 2024, the Court entered default judgment (“the “Judgment”) against Defendant Tone It Up, Inc (“Defendant” or “TIU”). (D.I. 86) The Court’s Order granting Plaintiff’s motion for default judgment against Defendant concluded that Defendant infringed Plaintiff’s United States Patent Nos. 8,752,101 and 8,909,809 “in various ways, including via sales of Defendant’s accused products.” (D.I. 85 at ¶ 2) The Court awarded reasonable royalty damages at a “royalty rate of 3% for past and future damages[.]” (*Id.* at ¶ 3) The Court’s Judgment ordered that Plaintiff recover from Defendant a “reasonable royalty of \$835,827.03 for past damages, and an ongoing royalty at a rate of 3% for any continuing infringement[.]” (D.I. 86)

2. With the Motion, Plaintiff seeks pre-judgment interest and post-judgment interest

from the date of the Court’s Judgment. (D.I. 89 at 1) Plaintiff also requests that the Court amend the Judgment to reflect the award of pre- and post-judgment interest. (*Id.* at 4) Defendant has not filed a response to the Motion.

3. The Patent Act provides for an award of interest upon a finding of infringement. 35 U.S.C. § 284; *see also Kaufman v. Microsoft Corp.*, 34 F.4th 1360, 1373-74 (Fed. Cir. 2022) (“Congress intended that prejudgment interest should ordinarily be awarded where necessary to afford the plaintiff full compensation for the infringement.”) (internal quotation marks and citation omitted). Accordingly, an “award of pre-judgment interest is the rule, not the exception.” *Energy Transp. Grp., Inc. v. William Demant Holding A/S*, 697 F.3d 1342, 1358 (Fed. Cir. 2012) (internal quotation marks and citation omitted). In federal question cases such as this one, “the rate of prejudgment interest is committed to the discretion of the district court.” *Sun Ship, Inc. v. Matson Navigation Co.*, 785 F.2d 59, 63 (3d Cir. 1986). The “most common practice” in the District of Delaware is to calculate pre-judgment interest at the prime rate, and to compound pre-judgment interest on a quarterly basis. *ArcherDX, LLC v. Qiagen Scis., LLC*, C.A. No. 18-1019 (MN), 2022 WL 4597877, at *18 (D. Del. Sept. 30, 2022) (citing cases), *rev’d and remanded on other grounds*, *Lab’y Corp. of Am. Holdings v. Qiagen Scis., LLC*, — F.4th —, 2025 WL 2327197 (Fed. Cir. Aug. 13, 2025); *see also Galderma Lab’ys, L.P. v. Medinter US LLC*, Case No. 1:18-cv-01892-JDW-CJB, 2024 WL 456790, at *1 (D. Del. Feb. 5, 2024).

4. NEC requests that the Court follow these rules and common practices here, and award pre-judgment interest at the prime rate, compounded quarterly. (D.I. 89 at 2-3) Because that is the common practice of this Court, and in the absence of opposition from Defendant, the Court will amend the judgment to include pre-judgment interest compounded quarterly at the prime rate. NEC’s un rebutted calculations demonstrate that it is entitled to \$212,188.86 in pre-

judgment interest, and the Court will amend the judgment to reflect that amount. (*Id.* at 3 & ex. 1)

5. With respect to post-judgment interest, “[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court.” 28 U.S.C. § 1961(a). Post-judgment interest is “calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield . . . for the calendar week preceding[] the date of the judgment.” *Id.* For claims involving private litigants, post-judgment interest is computed daily and compounded annually. 28 U.S.C. § 1961(b). Further, post-judgment interest is calculated based on the damages awarded in the underlying Judgment, plus the amount of pre-judgment interest. *Sun Ship, Inc.*, 785 F.2d at 63. “[P]ost-judgment interest on the prejudgment interest award does not begin to accrue until the amended judgment quantifying the prejudgment interest is entered.” *ArcherDX, LLC*, 2022 WL 4597877, at *19; *see also Travelers Cas. & Sur. Co. v. Ins. Co. of N. Am.*, 609 F.3d 143, 175 (3d Cir. 2010) (“[P]ost-judgment interest on Travelers’ award of prejudgment interest did not begin to run until the December 5, 2007 order was entered quantifying the amount in prejudgment interest owed to Travelers.”).

6. NEC requests post-judgment interest at the rate of 3.908% (which is the weekly average 1-Year constant maturity Treasury yield for the week ending September 30, 2024). (D.I. 89 at 3 & ex. 2) For purposes of calculating post-judgment interest, NEC has used the total reasonable royalty award plus pre-judgment interest, which calculates to \$110.08 per day. (*Id.*) Defendant does not dispute that NEC is entitled to post-judgment interest or that the rate proposed by NEC is proper. Therefore, NEC shall be awarded post-judgment interest calculated using that rate and starting from the date that judgment was entered (*i.e.*, September 30, 2024). Post-judgment interest shall be awarded for the entire amount included in the judgment,

including pre-judgment interest. However, the Court again notes that post-judgment interest on the pre-judgment interest award does not begin to actually accrue until the amended judgment quantifying the pre-judgment interest is entered. *See Purewick Corp. v. Sage Prods., LLC*, 666 F. Supp. 3d 419, 452 (D. Del. 2023); *see also Wonderland Switzerland AG v. Evenflo Co., Inc.*, Case No. 20-00727-JPM, 2023 WL 5497918, at *3-4 (D. Del. July 24, 2023).

7. An amended Judgment reflecting the above shall issue separately.

Dated: September 5, 2025


Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE