**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

Bedrock Computer Technologies LLC,	Case No. 6:09-CV-269-LED
Plaintiff,	
v.	
Softlayer Technologies, Inc., et al.	JURY TRIAL DEMANDED
Defendants.	

**DEFENDANT MYSPACE INC.'S SURREPLY IN OPPOSITION TO
BEDROCK'S MOTION TO COMPEL DOCUMENT PRODUCTION**

I. BEDROCK'S MOTION TO COMPEL SHOULD BE DENIED

Contrary to Bedrock's assertions in its reply, it is Bedrock who is turning the discovery process on its head.

First, Bedrock claims it was forced to file its motion compel because, according to Bedrock, MySpace refused to produce any additional documents in response to Bedrock's requests. That is flatly untrue. As is clear from the letter written by MySpace's counsel to Bedrock's counsel on August 12, 2010, MySpace agreed to produce documents responsive to Bedrock's "denial of service" document requests. *See, e.g.*, Exhibit E to MySpace's Opposition, at 7, regarding requests no. 18-33.[1] In subsequent meet and confer discussions, MySpace's counsel reiterated that MySpace would continue to search for relevant documents and would produce them if any exist. Bedrock insisted upon going forward with its motion to compel without regard to these assurances.

Similarly, MySpace has not refused to produce any document responsive to Bedrock's damages-related requested. MySpace specifically indicated in its counsel's August 17, 2010 letter to Bedrock that it would produce additional financial documents related to its Linux servers, which MySpace has now produced. *See* Exhibit C to MySpace's Opposition, at 1.

Finally, Bedrock has an odd interpretation of the scope of discovery under the Federal Rules. According to Bedrock, parties must simply produce everything requested in discovery, without regard to its relevance to the matters in dispute, and should just argue later about whether the information produced is admissible. This is not the procedure contemplated by the rules.

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[1] Bedrock has failed to identify a single document request upon which it claims to base its motion. As a result, MySpace has had to guess which document requests are at issue.

Contrary to Bedrock's claims, there are limits on the discovery parties can demand, and fishing expeditions are not permitted under the rules. In fact, it is Bedrock's burden to justify the relevance of the discovery they seek. Rule 26(b), entitled "Discovery Scope and Limits," provides that "[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense." The necessity of relevance is not, as Bedrock suggests, some unusual interpretation of the rules—it is the explicit requirement set forth. And the party seeking discovery "must establish the threshold burden of relevancy under the rules." *Gauthier v. Union Pac. R.R. Co.*, No. 1:07-CV-12, 2008 U.S. Dist. LEXIS 47199, at *7-8 (E.D. Tex. Jun. 18, 2008). Bedrock has not even attempted to justify the relevance of its overbroad discovery requests.

Bedrock is not entitled to obtain discovery of some of the most sensitive information maintained by MySpace, unless Bedrock can establish that the discovery it seeks is relevant to its claims or defenses. Bedrock has not even bothered to attempt such an explanation in its moving papers or in its reply. The reason why is obvious—it has no explanation to offer. Bedrock is just fishing for some way to overinflate its damages case with irrelevant revenue data that it is entirely unable to tie to its infringement claims in this matter. Without a showing of a proper nexus between its damages theory and the small portion of Linux code accused, Bedrock is not entitled to the wide-ranging financial discovery it seeks, and its motion should be denied. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1327-28 (Fed. Cir. 2009); *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 869 (Fed. Cir. 2010); *see also Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) ("discovery may be denied where, in the court's judgment, the inquiry lies in a speculative area").

II. CONCLUSION

For the foregoing reasons and as set forth in its Opposition, MySpace respectfully

requests that the Court deny Bedrock's motion to compel.

Dated: September 24, 2010   Respectfully submitted,

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