January 12, 2011

The Honorable John D. Love
William M. Steger Federal Building and United Stated Courthouse
211 W. Ferguson, Room 210
Tyler, Texas 75702

Re: *Bedrock Computer Technologies, LLC v. Softlayer Technologies, Inc.*, 6:09-CV-
        00269

Dear Judge Love:

        Defendants respectfully submit this letter to preserve their right to file a motion
for summary judgment or summary adjudication of issues directed to damages, after
Defendants receive Plaintiff's expert report on damages.[1] Defendants anticipate that
Plaintiff Bedrock Computer Technologies, LLC will attempt to recover damages based
on theories that rely on the revenues generated by Defendants' respective business
operations and/or will claim that the entire market value rule applies. Should Plaintiff
pursue such damages theories, or present other damages theories for which summary
judgment would be appropriate, Defendants respectfully submit that a motion for
summary judgment or summary adjudication would lie for at least the reasons discussed
briefly below.[2]

        As a matter of law, the entire market rule is inapplicable in this case and evidence
of Defendants' revenues is inadmissible and unavailable as a basis for the determination
of damages. It is fundamental that the "entire market value rule allows a patentee to
assess damages based on the entire market value of the accused product only where the
patented feature creates the "basis for customer demand" or "substantially create[s] the
value of the component parts." *Uniloc USA v. Microsoft*, Case No. 03-CV-0440, p. 48
(Fed. Cir., Jan. 4, 2011 citing *Lucent Technologies, Inc. v. Gateway, Inc.*, 580 F.3d 1301,
1336 (Fed. Cir. 2009); *see also TVM Mfg. Co., Inc. v. Dura Corp.*, 789 F.2d 895, 900-01
(Fed. Cir. 1986), *cert denied*, 479 U.S. 892 (1982). Here, there is no evidence that the
patented feature is a basis for customer demand. The methods of "garbage collection" for
a data base system described in the '120 Patent are completely unrelated to customer
demand for Defendants' business activities. Indeed, the accused product is a minuscule
portion of the Linux operating system used by Defendants on some of their computers.

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[1] "Defendants" refers to all defendants in the litigation, each of which joins in this letter brief.

[2] Defendants may also challenge Plaintiff's damages theories through a *Daubert* motion and/or a motion in
limine. By this letter, Defendants do not intend to foreclose the possibility of such motions, but instead
intend only to preserve their right to also challenge Plaintiff's damages theories by a motion for summary
judgment or summary adjudication, if such motion is deemed appropriate after Plaintiff submits its expert
report and Plaintiff's damages theories are better framed. Defendants also reserve the right to seek
summary adjudication of other factually unsupported damages theories that Plaintiff might advance in its
expert report, such as the equally baseless notion that the patented feature prevents performance
degradation of Defendants' computer systems.

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The computer operating systems, and the miniscule portions Plaintiff accuses form no part of consumer demand for Defendants' businesses, as a matter of law.

The absence of any customer demand based on the patented features is not overcome by claims Plaintiff is anticipated to make that the accused code performs some function to prevent Denial of Service ("DOS"). First, the evidence will establish that the code performs no such function. Second, even if the code did perform such a function, that does not form any basis in fact or law for damages to be based on Defendants' revenues. Multiple, inexpensive, alternative means to protect against DOS are available, and no evidence would support payment of royalties for the patented feature based on Defendants' revenues.

For at least these reasons, Defendants' respectfully reserve their right and seek permission to file, at an appropriate time after Plaintiff's expert reports are submitted, a motion for summary judgment or summary adjudication of issues directed to damages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CN/ECF system per Local Rule CV-5(a)(3) this 12th day of January 2011.

/s/ Louis A. Karasik
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