

January 28, 2011

The Honorable John D. Love
William M. Steger Federal Building and United States 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 reply letter in support of their letter seeking to preserve their right to file a motion for summary judgment or summary adjudication of issues directed to damages, after the parties engage in expert discovery.

Plaintiff Bedrock Computer Technologies, LLC's ("Bedrock") response complains that consideration of a summary judgment motion on damages is premature until Bedrock's expert theories have been articulated. But Bedrock has now submitted its expert report on damages, and the issues that may be susceptible to summary adjudication are revealed. Among other things, Bedrock's damages expert impermissibly refers in his analysis to Defendants' revenues, even though there is admittedly no evidence that consumer demand for Defendants' business activities is based on the claimed invention and the claimed royalty is not calculated based on Defendants' revenues. *See Uniloc USA, Inc. v. Microsoft Corp.*, Nos. 2010-1035, 2010-1055, 2011 WL 9738 at *24-25 (Fed. Cir. Jan. 4, 2011) (noting that the disclosure of Defendant's high revenues "cannot help but skew the damages horizon for the jury, regardless of the contribution of the patented component to this revenue"). The expert also relies on a purported "performance degradation" resulting from removal of the claimed invention from Defendants' computer systems, despite the absence of any competent evidence to support such a theory. These are but two examples of the legally flawed analysis that permeates Bedrock's expert damages report which Defendants submit can be adjudicated summarily.

Defendants' opening letter brief sought to reserve Defendants' right to file a summary judgment motion should Bedrock attempt to recover damages based on impermissible or unsupported theories. After completion of the expert depositions, where the infirmities of the expert analysis will be further fleshed out, Defendants will advise the Court of summary judgment issues that may be presented for decision. Defendants may also challenge Bedrock's damages theories through a *Daubert* motion and/or a motion in limine and do not intend to foreclose the possibility of such motions by virtue of this letter.

Defendants respectfully reserve their right and will seek permission to file, at an appropriate time, a motion for summary judgment or summary adjudication of issues directed to damages.

Respectfully submitted,

/s/ Claude M. Stern

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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 28th day of January 2011.

/s/ Louis A. Karasik
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