

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

Bedrock Computer Technologies LLC,

Plaintiff,

v.

Softlayer Technologies, Inc., et al.,  
Defendants.

Case No. 6:09-CV-269-LED

JURY TRIAL DEMANDED

**DEFENDANT AOL'S MOTION FOR LEAVE TO EXCEED PAGE LIMITATIONS TO  
FILE ITS MOTION FOR SUMMARY JUDGMENT OF NONINFRINGEMENT OF U.S.  
PATENT NO. 5,893,120 FOR LACK OF PERFORMANCE**

AOL Inc. ("AOL") respectfully files this Motion to Exceed Page Limitations regarding its Motion for Summary Judgment of Noninfringement. Contingent upon the Court granting AOL's Motion for Leave to File A Motion for Summary Judgment of Noninfringement, AOL moves the Court for leave to exceed the 60 page limit prescribed by Local Rule CV-7(a)(3)(A) in its Motion for Summary Judgment of Noninfringement. Bedrock opposes this motion.

The deadline for filing motions for summary judgment was February 8, 2011. On February 9, 2011, after the deadline for filing summary judgment motions, Bedrock made a number of admissions that gave rise to AOL's seeking leave to file its case-dispositive Motion for Summary Judgment of Noninfringement of U.S. Patent No. 5,893,120 for lack of performance. Those admissions are outlined in AOL's Motion for Leave and Motion for Summary Judgment.

Before obtaining those admissions, Defendants collectively filed three motions for summary judgment, totaling 56 pages.<sup>1</sup> When Defendants filed these motions, AOL was unaware of the admissions that form the basis for AOL's current motion. AOL requires additional pages in order to address this newly obtained evidence regarding AOL's noninfringement of U.S. Patent No. 5,893,120 ("the '120 Patent").

The issues raised in the three previous motions for summary judgment are applicable to all of the Defendants collectively. The first was filed on September 10, 2010. The latter two were filed on February 8, 2011 – a day before AOL had the opportunity to depose Bedrock's expert and obtain the admissions that give rise to the motion. As AOL could not have anticipated these admissions, it could not have foreseen the need for additional pages. Furthermore, as the previous motions for summary judgment were filed by Defendants collectively, an AOL-specific motion may have been prejudicial to the remaining six defendants. Due to the number of defendants in this litigation, and the unexpected number of issues that have arisen during the course of this case, AOL requests leave to exceed the 60 page limitation by filing a 19 page motion for summary judgment of noninfringement of U.S. Patent No. 5,893,120 for lack of performance. With this Motion, AOL seeks to significantly streamline the number of issues at trial.

Furthermore, AOL will not oppose any motion by Bedrock to exceed 60 pages to file its opposition to AOL's motion for summary judgment of noninfringement of U.S. Patent No. 5,893,120 if necessary after Bedrock opposes Defendants' other motions for summary judgment.

For the foregoing reasons, the Court should grant AOL's Motion for Leave to Exceed Page Limitations in its Motion for Summary Judgment.

---

<sup>1</sup> The Defendants collectively filed motions for summary judgment of indefiniteness, noninfringement, and invalidity.

Respectfully submitted, this the 22nd day of February 2011.

/s/ Deron Dacus

Deron R. Dacus  
Texas Bar No. 00790553  
[derond@rameyflock.com](mailto:derond@rameyflock.com)  
Ramey & Flock, P.C.  
100 E. Ferguson, Suite 500  
Tyler, Texas 75702  
Telephone: (903) 597-3301  
Facsimile: (903) 597-2413

Frank G. Smith  
[frank.smith@alston.com](mailto:frank.smith@alston.com)  
ALSTON & BIRD LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309  
Telephone: (404) 881-7240  
Facsimile: (404) 256-8184

Alan L. Whitehurst  
[alan.whitehurst@alston.com](mailto:alan.whitehurst@alston.com)  
Marissa R. Ducca  
[marissa.ducca@alston.com](mailto:marissa.ducca@alston.com)  
ALSTON & BIRD LLP  
The Atlantic Building  
950 F Street, N.W.  
Washington, DC 20004  
Telephone: (202) 756-3300  
Facsimile: (202) 756-3333

Michael J. Newton (SBN 24003844)  
[mike.newton@alston.com](mailto:mike.newton@alston.com)  
ALSTON & BIRD LLP  
Chase Tower  
2200 Ross Avenue, Suite 3601  
Dallas, TX 75201  
Telephone: (214) 922-3423  
Facsimile: (214) 922-3839

Louis A. Karasik (*pro hac vice*)  
[lou.karasik@alston.com](mailto:lou.karasik@alston.com)

Rachel Capoccia  
rachel.capoccia@alston.com  
ALSTON & BIRD LLP  
333 South Hope Street  
16th Floor  
Los Angeles, CA 90071  
Telephone: (213) 576-1148  
Facsimile: (213) 576-1100

*Attorneys for Defendant AOL Inc.*

**CERTIFICATE OF CONFERENCE**

Counsel for AOL conferred via electronic mail and on the telephone with counsel for Bedrock concerning this Motion to Exceed Page Limitations. Bedrock opposes this Motion.

/s/ Alan L. Whitehurst

**CERTIFICATE OF SERVICE**

This is to 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 CM/ECF system per Local Rule CV-5(a)(3) on this 22nd day of February, 2011. Any other counsel of record will be served by first class mail.

/s/ Alan L. Whitehurst