EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BEDROCK COMPUTER TECHNOLOGIES LLC,	)))	CASE NO. 6:09–CV–00269
Plaintiff,	)))	Hon. John D. Love
v.	)))	
SOFTLAYER TECHNOLOGIES, INC., et al.,	)))	**JURY TRIAL DEMANDED**
Defendants.	))))	

DEFENDANTS' PROPOSED JURY INSTRUCTION ON WILLFULNESS

WILLFULNESS[1]

In this case, Bedrock argues that the Defendants willfully infringed the asserted claims of Bedrock's '120 Patent.

The issue of willfulness relates to the amount of damages Bedrock is entitled to recover in this lawsuit from any Defendant found to infringe. If you decide that any Defendant willfully infringed the claims of Bedrock's patent, then it is my job to decide whether or not to award increased damages to Bedrock.

To prove willful infringement, Bedrock must persuade you by clear and convincing evidence that since [to be filled in], one or more Defendants acted with objectively reckless disregard of the claims of Bedrock's patent. This means that Bedrock has the burden of proving that it is highly probable that each Defendant willfully infringed the '120 patent. This is a significantly higher burden of proof than for infringement, which was proof by a preponderance of the evidence.

To show "reckless disregard," Bedrock must satisfy a two-part test: the first concerns the Defendants' conduct, the second concerns the Defendants' state of mind. When considering the Defendants' conduct, you must decide whether Bedrock has proven it is highly probable that Defendants' conduct was objectively reckless; that is, that the Defendants proceeded with the allegedly infringing conduct with knowledge of the patent, and in the face of an unjustifiably high likelihood that it was infringing the patent and that the patent was valid. Because that is an objective issue, the state of mind of the Defendants is not relevant to it. Legitimate or credible

---

[1] Adapted from the National Jury Instruction Project Model Patent Jury Instructions § 4.1 (June 17, 2009), as modified by the Federal Circuit Bar Association Model Patent Jury Instructions and *Mirror Worlds, LLC v. Apple Inc.*, Case 6:08-cv-00088-LED (E.D. Tex.).

defenses, even if the Defendants lost on those defenses at trial, demonstrate a lack of recklessness.

Only if you conclude that Bedrock has proven that one or more Defendant's conduct was objectively reckless, do you need to consider the second part of the test. For each Defendant found to be objectively reckless, you must determine whether Bedrock proved it is highly probable that the unjustifiably high likelihood of infringement was known or so obvious that it should have been known to the Defendant. In deciding whether Bedrock satisfied the state-of-mind part of the test, you should consider all facts surrounding the alleged infringement including, but not limited to, the following:

1. whether the Defendant acted in a manner consistent with the standards of commerce for its industry;

2. whether the Defendant intentionally copied, without a reasonable basis, a product of Bedrock covered by one or more claims of the patent;

3. whether or not the Defendant made a good-faith effort to avoid infringing the patent, for example, whether the Defendant tried to "design around" the patent by designing a product that the Defendant believed did not infringe those claims; and

4. whether or not the Defendant had a reasonable basis to believe that it did not infringe or had a reasonable defense, such as the patent was not valid.