

# EXHIBIT A

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## **VIA E-MAIL (dcawley@mckoolsmith.com)**

Douglas A. Cawley  
McKool Smith, P.C.  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201

Re: *Bedrock Computer Tech., LLC v. Softlayer Technologies, Inc. et al.*,  
Civil Action No. 6:09-cv-269, pending in the Eastern District of Texas

Dear Doug:

I am writing on behalf of AOL, MySpace, and Amazon.com regarding the insufficiency of Bedrock's Complaint. The Complaint is a generic template with nothing more than conclusory statements. It is impossible for the defendants to discern from the Complaint what Bedrock is actually accusing, much less the basis for Bedrock's indirect infringement claims.

As you know, FRCP 8 requires that the complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief. The factual allegations must be enough to raise a right of relief above speculation, assuming all of the allegations in the complaint are true. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). The right to relief must be "plausible on its face." *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 2009 U.S. LEXIS 3472, \*29. To demonstrate plausibility, a plaintiff must go beyond pleading facts that are "merely consistent with a defendant's liability" to pleading facts sufficient to permit the "reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Furthermore, the burden to show a plausible right to relief, and the requisite reasonable inference that a defendant is liable can only be met based on well-pled factual allegations, not on mere legal conclusions or unsupported factual assertions. *Twombly*, 550 U.S. at 555. A "plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Likewise, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S. Ct. 1937, 1949, 2009 U.S. LEXIS 3472 at \*29. Conclusions,

unsupported assertions, and labels must be ignored when evaluating the adequacy of the pleading. *Id.*

Bedrock's Complaint falls well short of this standard. The Complaint fails to identify: (i) any infringing products or services; (ii) who the direct infringer is for Bedrock's allegations of inducement and contributory infringement; and (iii) the requisite intent for Bedrock's indirect infringement claims.

Bedrock's Complaint refers generally to "the method and apparatus falling within one or more claims of the '120 Patent," "products and/or services that fall within one or more claims of the '120 Patent," and "the claimed method and apparatus of the '120 Patent." See ¶¶ 16, 17, and 19, respectively. These allegations contain no supporting facts to permit a reasonable inference that any defendants are actually liable for any alleged misconduct. The defendants cannot be expected to adequately defend against these speculative and unsubstantiated allegations.

Furthermore, the Complaint asserts that the defendants "contributorily infringed and/or induced others to infringe . . . ." See ¶¶ 17 and 20. However, Bedrock fails to identify any third party direct infringer, which is necessary for a party to be liable for inducement or contributory infringement. See *Met-Coil Systems Corp. v. Korner's Unlimited, Inc.*, 803 F.2d 684, 687 (Fed. Cir. 1986). Nor does the Complaint even contain any allegations of intent, which is necessary for inducement. *DSU Medical Corp. v. JMS Co.*, 471 F.3d 1293, 1296 (Fed. Cir. 2006). A properly pled complaint requires allegations of direct infringement when pleading indirect infringement. See *Odneo Nalco Co. v. EKA Chemicals, Inc.*, 2002 WL 1458853 (D. Del. 2002) (pleadings failed to allege direct infringement by another and therefore induced infringement was insufficiently pled).

Please let me know if you are available on Thursday, August 13<sup>th</sup> at 3PM ET/2PM CT to discuss Bedrock's Complaint.

Best regards,

A handwritten signature in black ink, appearing to read "Alan L. Whitehurst". The signature is fluid and cursive, with the first name being the most prominent.

Alan L. Whitehurst

ALW:kds