

# EXHIBIT B

# McKool Smith

A PROFESSIONAL CORPORATION • ATTORNEYS

300 Crescent Court  
Suite 1500  
Dallas, Texas 75201

Doug Cawley  
Direct Dial: (214) 978-4972  
dcawley@mckoolsmith.com

Telephone: (214) 978-4000  
Facsimile: (214) 978-4044

August 20, 2009

**VIA E-MAIL (alan.whitehurst@alston.com)**

Alan Whitehurst  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004

RE: *Bedrock Computer Tech's, LLC v. Softlayer Tech's, Inc. et al.*, Civil Action No. 6:09-cv-269 (E.D. Tex)

Dear Alan:

I write in response of your letter on August 12, 2009 regarding Bedrock's Complaint.

Our complaint fully comports with *Iqbal* and *Twombly*. Although *Iqbal* confirmed that *Twombly* applies to "all civil actions," the Federal Circuit found—even before *Iqbal*—that use of the forms in the Appendix to the Federal Rules, including Form 18, passed muster after *Twombly*. See *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1355-57 (Fed. Cir. 2007). That Form does not require detailed, claim-by-claim disclosure. Rather, Form 18 only requires that a patentee plead "facts sufficient to place the alleged infringer on notice as to what he must defend." *Id.* Bedrock's complaint tracks Form 18; thus, the complaint satisfies the Federal Rules and does not offend *Twombly* or *Iqbal*.

*Iqbal* and *Twombly* have not worked a sea change in patent litigation. Compliance with Form 18 is still sufficient to withstand a motion to dismiss. See *McZeal*, 501 F.3d at 1355-57. In light of the plain language of *Twombly*, this is unsurprising: only the dissent announces the majority holding as a "significant new rule". See 550 U.S. at 595-596.

Furthermore, the Federal Rules specifically hold that compliance with the forms is sufficient to withstand a motion to dismiss. See Rule 84. *Twombly* and *Iqbal* could not have amended that rule by judicial interpretation. See *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) (recognizing that the Federal Rules cannot be amended by judicial interpretation). In sum, because Bedrock's Complaint fully complies with Form 18, it would take Congressional action to render Bedrock's complaint insufficient.

It is our desire to save the Court from wading through avoidable issues such as these. As you know, the Court's local patent rules have specific milestones for the parties' respective

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discovery obligations, and as these milestones pass, your complaints regarding the sufficiency of Bedrock's Complain will become moot.

Sincerely,

/s/ Doug Cawley

Doug Cawley