

EXHIBIT 3

**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.

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CASE NO. 6:09-cv-269-LED

Jury Trial Demanded

**PLAINTIFF’S RESPONSES
TO YAHOO’S FIFTH SET OF INTERROGATORIES (NOS. 9-20)**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Bedrock Computer Technologies LLC (“Bedrock”) provides the following objections and response to Defendant Yahoo Inc.’s (“Yahoo’s”) Fifth Set of Interrogatories to Plaintiff (Nos. 9-20).

PRELIMINARY STATEMENT

1. Bedrock incorporates by reference each and every general objection set forth below into each specific response. The failure to include any general objection in any specific response shall not be interpreted as a waiver of any general objection to that response.

2. By responding to Yahoo’s interrogatories, Bedrock does not waive any objection that may be applicable to: (a) the use, for any purpose, by Yahoo of any information or documents given in response to Yahoo’s interrogatories; or (b) the admissibility, relevance, or materiality of any of the information or documents to any issue in this case.

3. No incidental or implied admissions are intended by the responses herein. The fact that Bedrock has answered or objected to any interrogatory should not be taken as an

admission that Bedrock accepts or admits the existence of any “fact” set forth or assumed by such interrogatory.

4. Bedrock’s responses to Yahoo’s interrogatories are made to the best of Bedrock’s present knowledge, information, and belief. Bedrock reserves the right to supplement and amend these responses should future investigation indicate that such supplementation or amendment is necessary. Bedrock reserves the right to make any use of, or introduce at any hearing or trial, information or documents that are responsive to Yahoo’s interrogatories, but discovered subsequent to Bedrock’s service of these responses, including, but not limited to, any information or documents obtained in discovery herein.

GENERAL OBJECTIONS

1. Bedrock objects to each interrogatory to the extent that it seeks information already in Yahoo’s possession, a matter of public record, or otherwise equally available to any Defendant.

2. Bedrock objects to each interrogatory to the extent that it seeks the identification of “all,” “every,” “any,” and “each” entity, person, or document that refers to a particular subject. Bedrock will comply with the Federal Rules and the Local Rules and will use reasonable diligence to identify responsive persons or documents.

3. Bedrock’s responses herein, and its disclosure of information pursuant to these responses, do not in any way constitute an adoption of Yahoo’s purported definitions of words and/or phrases contained in Yahoo’s interrogatories. Bedrock objects to these definitions to the extent that they: (a) are unclear, vague, overly broad, or unduly burdensome; (b) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; (c)

include assertions of purported fact that are inaccurate or at the very least disputed by the parties to this action; and/or (d) incorporate other purported definitions that suffer from such defects.

4. Bedrock objects to each and every interrogatory to the extent that it purports, through Yahoo's definitions, instructions to the extent that they are inconsistent with, or not authorized by, the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Texas, or the Court's Patent Rules and discovery orders.

5. Bedrock objects to the extent that the interrogatories call for information protected by the attorney-client privilege, the attorney work product doctrine or any other applicable doctrine, privilege or immunity. Any disclosure of privileged information is inadvertent and should be deemed to have no legal effect or consequence, and Bedrock does not waive any privilege upon such inadvertent disclosure.

6. Bedrock objects to each and every interrogatory to the extent that it seeks information that is cumulative or duplicative of information, disclosures, or discovery already provided by Bedrock.

7. Bedrock objects to the inclusion of "Bedrock's affiliates, parents, divisions, joint ventures, assigns, predecessors and successors in interest" and "former employees, counsel, agents, consultants, representatives, and any other person acting on behalf of the foregoing" in the definitions of "Bedrock," "you," "your," and "plaintiff" to the extent that the interrogatories using these definitions are requesting information that is not in the possession, custody, or control of Bedrock or seeking information that is protected by a doctrine, privilege, or immunity from discovery.

8. Bedrock objects to Yahoo's definitions of "reflect," "reflecting," "refers to," "relating to," "referring to," "identify," "identity," "identity," and "identity," on the grounds that

they are vague, ambiguous, overly broad, and as used in the interrogatories, make the interrogatories unduly burdensome.

9. Bedrock objects to the Definitions of “identify,” and related terms and “relates to,” and related terms to the extent that they purport to require Bedrock to take action or to provide information not required by, or which exceeds the scope of, the Federal Rules of Civil Procedure.

10. Bedrock objects to the extent that the interrogatories seek information of third parties with whom Bedrock may have entered into non-disclosure or confidentiality agreements or other agreements having privacy, confidentiality, or non-disclosure provisions, which prohibit the disclosure by Bedrock of the third party’s information.

11. Bedrock objects to providing responses to each interrogatory where the requested information may be derived or ascertained from documents that have been or are being produced.

12. Bedrock objects to each and every interrogatory to the extent that it seeks information that is properly the subject of expert testimony in advance of the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Texas, the Court’s Patent Rules and discovery orders, or the parties’ discovery stipulations.

13. Bedrock objects to the extent the interrogatories seek information that is not relevant to any claim or defense in this case, is not reasonably calculated to lead to the discovery of admissible evidence, or is otherwise not discoverable under Fed. R. Civ. P. 26(a).

14. Bedrock notifies the Defendants that it will object to interrogatories containing multiple subparts that together exceed the total number of interrogatories that the Defendants are allowed to propound pursuant to an order of the Court or the Federal Rules of Civil Procedure.

For purposes of this objection, Bedrock will count interrogatory subparts as part of one interrogatory for the purpose of numerically limiting interrogatories to the extent that such subparts are logically or factually subsumed within and necessarily related to the primary question. To the extent any subsequent question can stand alone or is independent of the first question, such subsequent question is a discrete interrogatory. Accordingly, Bedrock will count discrete or separate questions as separate interrogatories, notwithstanding they are joined by a conjunctive word and may be related. Bedrock will endeavor, however, to treat genuine subparts as subparts and will not count such genuine subparts as separate interrogatories. For purposes of this objection, a subpart inquiring on the same topic as the interrogatory therefore will not itself qualify as a separately counted interrogatory, but when the interrogatory subpart introduces a new topic that is in a distinct field of inquiry, the subpart then assumes separate interrogatory status for the purpose of counting. *See Orion IP, LLC v. Staples, Inc., et al.*, No. 2:04-CV-297, at *1 (E.D. Tex July 7, 2005) (Dkt. No. 171).

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 9:

Describe each and every formal or informal valuation of the '120 patent or the application that led to the '120 patent, whether the valuation was made by Bedrock or its principals, or by third parties, and identify each person with knowledge thereof and each document referring or relating thereto. This description should include the specific quantitative or qualitative value for the '120 patent or the application that led to the '120 patent.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-

client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order.

Subject to the foregoing general and specific objections, Bedrock responds as follows. No one has performed a valuation of the '120 patent. Intellectual Ventures made an offer to buy the '120 patent for \$105,000, but this is not a valuation of the patent for at least the reasons that: (i) Bedrock did not even submit a counteroffer; and (ii) Bedrock has licensed the patent (as opposed to a wholesale sale of the patent) for amounts much more than \$105,000. To that, Bedrock incorporates these licenses by reference (BTEX0122319, BTEX0748753, BTEX0749060, and BTEX0748753) and its response to Yahoo's Interrogatory No. 13. Bedrock further incorporates the expert report of Roy Weinstein.

INTERROGATORY NO. 10:

Describe in detail any and all communications and/or agreements (whether written or oral) between you and Hewlett-Packard relating to the '120 Patent, including the total value received by you or any of your members as a result of you decision not to bring claims against Hewlett-Packard relating to the 120 Patent as long as Mikhail Lotvin is an employee of Hewlett-Packard, including the value of all compensation, benefits and other payments or entitlements paid or owing to Mikhail Lotvin, and identify each person with knowledge thereof and each document referring or relating thereto.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order.

Subject to the foregoing general and specific objections, Bedrock responds that Mikhail Lotvin works at Hewlett-Packard, and so common sense dictates that Bedrock will not sue Hewlett-Packard. This does not mean that Bedrock has given Hewlett-Packard a covenant not to sue. In fact, Hewlett-Packard does not have any license or covenant not to sue related to the '120 patent:

My understanding of Google's relevance theory is that HP has a license to, or covenant not to sue on the patent, consideration for which was compensation to Mr. Lotvin. Unfortunately, HP has no such license or covenant. As HP has stated, it has no documents that in any way relate to or reflect such an agreement or understanding, and no witness with any knowledge of such an agreement or understanding. Again, to be clear, HP is not refusing to provide discovery on Google's license/covenant/understanding theory. I have searched for responsive documents and witnesses. There are none.

See 12/16/10 email from P. Roeder (in-house counsel at Hewlett-Packard) to T. Briggs (lawyer for Google).

INTERROGATORY NO. 11:

If you contend Yahoo! has willfully infringed the '120 Patent, describe in detail all of the grounds for each such contention, including describing in detail all bases you have for asserting that Yahoo! has acted with objective recklessness, identifying all communications, whether written or oral, in which any person notified Yahoo! of the existence of or possible infringement of any claims of the '120 Patent, identify each person who provided and received each instance of such notice, and identify each person with knowledge thereof and each document referring or relating thereto.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order.

Subject to the foregoing specific and general objections, Bedrock responds that, Yahoo has been aware of the patent-in-suit at least since the filing of this lawsuit. This, coupled with Yahoo's objectively trivial non-infringement theories and objectively trivial invalidity theories, amounts to willful infringement. The triviality of Yahoo's non-infringement and invalidity theories is evidenced by, e.g., Yahoo's attempts to read in preferred embodiments into the claims

during *Markman*, and Yahoo's attempts to bias third party fact witnesses for asserted, alleged prior art.

INTERROGATORY NO. 12:

Are there any acceptable noninfringing alternatives to the claimed subject matter of the '120 patent, including alternatives offered by others, such as FreeBSD, Open Solaris, Oracle, Sun, Unix, or Microsoft? If so, please identify each such alternative and explain why it is both acceptable and noninfringing of the '120 patent, and identify each person with knowledge thereof and each document referring or relating thereto. If not, please explain why any possible alternatives are either not acceptable or noninfringing of the '120 patent, and identify each person with knowledge thereof and each document referring or relating thereto.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order.

Subject to the foregoing general and specific objections, Bedrock is not aware of any acceptable, noninfringing alternatives.

INTERROGATORY NO. 13:

Describe the facts and circumstances surrounding all efforts or discussions by Bedrock or its principals to license or sell any interest in the '120 patent or Bedrock's business, and all efforts or discussions to invest in the '120 patent or Bedrock's business, including those efforts and discussions that resulted in an agreement (*e.g.*, settlement agreements with CME and Paypal) and those that did not (*e.g.*, Intellectual Ventures and/or Acacia). The description should include an identification of the parties involved in the proposed or actual agreements (collectively, "agreements"), the dates of any such agreements, the technology underlying the agreements, the method by which fees were calculated (*e.g.*, fees derived from revenues or fees derived from per server royalties), and any other terms contained within the agreements, including but not limited to monetary terms, witnesses with knowledge of such efforts or discussions, and all documents relating to such efforts or discussions.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order.

Subject to the foregoing general and specific objections, Bedrock responds as follows:

CME license

- For patent in suit and only patent in suit
- Linux servers versions 2.4.22 *et seq.*
- Arms-length negotiations
- Negotiated on a total number of accused Linux servers
- In settlement of litigation
- \$750,000
- CME warranted to 3,000 total accused Linux servers
- Bedrock negotiations were led by Dr. Garrod, and included one in-person meeting with CME's in-house counsel
- Bedrock incorporates the CME settlement license by reference (BTEX0122319)

PayPal license

- For patent in suit and only patent in suit
- Linux server versions 2.4.22 *et seq.*
- Arms-length negotiations
- Negotiated on a total number of accused Linux servers
- In settlement of litigation
- \$550,000
- PayPal warranted to no more than 3,000 total accused Linux servers
- Negotiations were primarily between Dr. Garrod and PayPal's in-house counsel, and included several in-person meetings and multiple phone calls
- Bedrock incorporates the PayPal settlement license by reference (BTEX0748753)

SunGard license

- For patent in suit and only patent in suit
- Linux server versions 2.4.22 *et seq.*
- Arms-length negotiations
- Negotiated on a total number of accused Linux servers
- In settlement of litigation
- \$500,000
- SunGard represented in negotiations that it had approximately 1,750 total accused Linux servers
- Negotiations were primarily between Chris Bunt and SunGard's litigation counsel
- Bedrock incorporates the SunGard settlement license by reference (BTEX0749060)

Nationwide license

- For patent in suit and only patent in suit
- Linux server versions 2.4.22 *et seq.*
- Arms-length negotiations
- Negotiated on a total number of accused Linux servers
- In settlement of litigation

- \$500,000
- Nationwide represented in negotiations that it had approximately 1,550 total accused Linux servers
- Negotiations were primarily between Chris Bunt and Nationwide's litigation counsel
- Bedrock incorporates the Nationwide settlement license by reference (BTEX0748753)

INTERROGATORY NO. 14:

Describe in detail the basis for your assertion in response to Yahoo!'s Third Set of Interrogatories (No. 7) that "The Defendants, and their customers, rely upon infringing versions of Linux to provide the fast, reliable, and always-on services," and identify each person with knowledge thereof and each document referring or relating thereto.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order. Bedrock also objects to this Interrogatory as argumentative in its question.

Subject to the foregoing general and specific objections, Bedrock responds that Yahoo, together with its consolidated subsidiaries, attracts hundreds of millions of users every month. To those users, Yahoo provides online properties and services. To advertisers, Yahoo provides a range of marketing services designed to reach and connect with users of its website properties. Yahoo believes that its marketing services enable advertisers to deliver highly relevant marketing

messages to their target audiences. Yahoo generates revenues by providing marketing services to advertisers across a majority of Yahoo properties and its affiliate sites. *See, e.g.,* Yahoo's 2010 10-k. Yahoo cannot generate this revenue if its website properties are offline. *See, e.g.,* 30(b)(6) Depo. Tr. of Yahoo (Sam Wolff and David Barrow). Indeed, users of Yahoo's most popular services like mail, instant messaging, and finance demand uninterrupted availability. Denial of service attacks directly challenge Yahoo's ability to generate revenue from these and other online services. Further, the Federal Circuit has made it clear that, even if the entire market value rule is not appropriate, "the base used in a running royalty calculation can *always* be the value of the entire commercial embodiment so long as the rate is within an acceptable range (as determined by the evidence)." *Lucent Technologies, Inc. v. Gateway Inc.*, 580 F.3d 1301 at 1338-39 (Fed. Cir. 2009)(emphasis added). Bedrock also incorporates the expert report of Roy Weinstein.

INTERROGATORY NO. 15:

Describe in detail your understanding of the meaning of (a) "denial of service attack" as that term is used in your response to Yahoo!'s Third Set of Interrogatories (Nos. 5 and 6), Yahoo!'s Fourth Set of Interrogatories (No. 8) and also used in your supplemental response to Google, Inc.'s First Set of Interrogatories (No. 6), and (b) your understanding of the meaning of "performance degradation" as that term is used in your supplemental response to Google Inc.'s First Set of Interrogatories (No. 6), and to the extent different, your understanding of the meaning of "significant system degradation" as that term is used in your response to Yahoo!'s Fourth Set of Interrogatories (No. 8); and identify each person with knowledge thereof and each document referring or relating thereto.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order. Bedrock also objects to this Interrogatory as multiparted.

Subject to the foregoing general and specific objections, Bedrock responds that Bedrock has the no different meaning for the terms "denial of service" and "performance degradation" apart from how these terms are known in the art. A "denial of service" would include an algorithmic complexity attack as well as an attack based on the junoz.101f.c code, as discussed in Bedrock's other responses to Yahoo's interrogatories.

INTERROGATORY NO. 16:

For each *Georgia Pacific* factor and for any contention by Bedrock that the entire market value rule applies to this case against Yahoo! as mentioned in response to Yahoo!'s Third Set of Interrogatories (No. 7), identify each person with knowledge thereof and each document referring or relating thereto, and how each such person or document supports the factor or the contention. Your response should describe with specificity, but not be limited to, why the allegedly infringing components are the basis for customer demand for each Yahoo! Accused Instrumentality (including the parts beyond the claimed invention), whether and how the individual infringing and non-infringing components are sold together so that they constitute a

functional unit, whether there are any non-infringing alternatives, and why the individual infringing and non-infringing components are analogous to a single functioning unit.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order. Bedrock also objects to this Interrogatory as multiparted in seeking information related to "each *Georgia Pacific* factor."

Subject to the foregoing general and specific objections, Bedrock responds that the Linux community, including Alexy Kuznetsov and David Miller, incorporated the infringing code into the Linux kernel because of the juno-z.101f.c code. Yahoo generates revenues by providing marketing services to advertisers across a majority of Yahoo properties, which run on top of infringing versions of Linux and its affiliate sites, which also run on top of infringing versions of Linux. *See, e.g.,* Yahoo's 2010 10-k. Yahoo cannot generate this revenue if its website properties are offline. *See, e.g.,* 30(b)(6) Depo. Tr. of Yahoo (Sam Wolff and David Barrow). But for Yahoo's infringement of the patent in suit, denial of service attacks would directly challenge a Yahoo's ability to generate this revenue. Further, the Federal Circuit has made it clear that, even if the entire market value rule is not appropriate, "the base used in a running royalty calculation can *always* be the value of the entire commercial embodiment so long as the

rate is within an acceptable range (as determined by the evidence).” *Lucent Technologies, Inc. v. Gateway Inc.*, 580 F.3d 1301 at 1338-39 (Fed. Cir. 2009)(emphasis added). In a hypothetical negotiation, Yahoo would realize that a denial of service attack would jeopardize its entire revenues during the denial of service attack and would negotiate with Bedrock accordingly. Bedrock further incorporates by reference the expert report of Roy Weinstein.

INTERROGATORY NO. 17:

Explain how Bedrock’s response to Yahoo!’s Fourth Set of Interrogatories (No. 8) concerns Bedrock’s contentions in this case against Yahoo!, including Bedrock’s statements about the fifteen year old boy mentioned in the response, and identify each person with knowledge thereof and each document referring or relating thereto.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court’s Docket Control Order. Bedrock also objects to this Interrogatory to the extent that it does not seeks facts but is instead argumentative in nature.

Subject to the foregoing general and specific objections, Bedrock responds that its response to Yahoo’s Interrogatory No. 8 is self evident and needs no explanation. That Yahoo

was bested by a 15 year old boy demonstrates that anyone can use publicly available attack code, such as junoz.101f.c, to mount a denial of service attack against large corporations.

INTERROGATORY NO. 18:

For each claim of the '120 Patent, state all facts that form the basis of Bedrock's contentions that Yahoo! directly infringes or induces or contributes to the infringement of others, including identifying each person or entity Bedrock believes to be a direct infringer, what actions by such direct infringers Bedrock believes to constitute infringement, and what actions undertaken by Yahoo! Bedrock believes induce or contribute to the infringing actions of such direct infringers, and identify each person with knowledge thereof and each document referring or relating thereto, including any testing performed which relates to, refutes or allegedly supports such contentions.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order. Bedrock further objects to this Interrogatory as multiparted in seeking information for both direct and indirect infringement.

Subject to the foregoing general and specific objections, Bedrock incorporates the infringement contentions attached to these interrogatories, as well as Yahoo's responses to

Bedrock's Interrogatories Nos. 1 and 2, and the 30(b)(6) testimony of Yahoo (Quentin Barnes) which demonstrate that Yahoo uses and makes the Accused Instrumentality. Bedrock also incorporates the expert report of Dr. Mark Jones.

INTERROGATORY NO. 19:

Describe in detail any evidence of non-obviousness on which you will rely to support the validity of the asserted claims of the '120 Patent, including, but not limited to, any secondary evidence of non-obviousness such as commercial success, including an identification of each entity that has used the products or methods described by the asserted claims and the location and date of such use, long felt need, failure by others, or unexpected results that you contend are relevant to the asserted claims, including identification of all evidence you contend objectively demonstrates non-obviousness, and the identify each person with knowledge thereof and each document referring or relating thereto.

RESPONSE:

Bedrock responds that the patent is objectively evidenced by the USPTO's issuance of the '120 patent. The non-obviousness of the '120 patent is also objectively evidenced by the fact that no one before Dr. Nemes invented the ideas claimed in the '120 patent despite the fact that some of the individual elements of the claims, by themselves, were known to the hypothetical person of ordinary skill in the art. *See, e.g.* Depo Tr. of Ed Miller. The non-obviousness of the '120 patent is also evidenced by the Defendants' apparent belief that they must pay alleged prior art fact witnesses in order to secure favorable testimony. *See, e.g.,* Depo Tr. of C. Van Wyk, D. McDonald, and G. Ostermann. The non-obviousness of the '120 patent is also evidenced by the fact that Dr. Nemes, who is well above the level of ordinary skill in the art, did not conceive of the '120 patent until over seven years after his work on the LIDB project. The non-obviousness of the '120 patent is evidenced by the fact that the Linux community did not think to implement

the '120 patent in version 2.4.21 as a solution to the algorithmic complexity attack; this also demonstrates long felt need and failure by others. In fact Scott Crosby, who identified the algorithmic complexity attack, did not think to implement on-the-fly garbage collection. Years after its invention by Dr. Nemes, the same concept was "reinvented" by two individuals (Drs. Xu and Singhal) of superior skill in the art, who believed it to be novel and valuable, as evidenced by an article they published in a peer-reviewed professional journal. See Xu et al., *Cost-Effective Flow Table Designs for High-Speed Routers: Architecture and Performance Evaluation*, IEEE Transactions on Computers, Volume 51, Issue 9, September 2002. Several years later, another group (including Dr. Xu) of researchers of superior skill in the art described Xu/Singhal's earlier "reinvention" of Dr. Nemes' on-the-fly garbage collection in a peer-reviewed journal as follows: "The major challenge in the software-based approach (5 Gbps throughput), which employs hash table data structure, comes from the need to purge the expired flows from the flow table. *Note that garbage collection with hash table data structure in real time is not a trivial task.* Our design employs a 'purging when convenient' strategy that 'absorbs' the overhead of garbage collection into that of probing and achieves a nice tradeoff between memory utilization and throughput." See Wang et al., *Subsidized RED: an active queue management mechanism for short-lived flows*, Computer Communications 28 (2005) 540–549, 543. The Defendants, each of whom infringe the patent in their extensive use of Linux, have enjoyed immense commercial success through their infringement. The asserted prior art also evidences failure by others and long felt need. The improved efficiency of systems which implement the '120 patent evidences unexpected results. The widespread use of infringing versions of Linux demonstrates industry acceptance. The fact that the Defendants are still attempting to discredit the '120 patent demonstrates skepticism. Daniel McDonald's testimony regarding his NRL code also

demonstrates skepticism. The licenses that Bedrock has secured also demonstrate industry recognition and acceptance of the importance and validity of the '120 patent. The following documents also evidence non-obviousness: BTEX0005599, BTEX0123265, BTEX0742397, BTEX0742408, BTEX0745111, and BTEX0747936.

INTERROGATORY NO. 20:

Identify all portions of the specification that you contend provide written description support and enablement as required by 35 U.S.C. § 112 for each limitation of each asserted claim of the '120 Patent.

RESPONSE:

Bedrock hereby incorporates its General Objections as if set forth verbatim. Bedrock further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other privilege or immunity. Bedrock further objects to this interrogatory as being vague, overly broad, and unduly burdensome to the extent that it seeks information that exceeds the permissible scope of discovery and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Bedrock further objects to this Interrogatory to the extent that it seeks to elicit information that will be fully disclosed in expert reports pursuant to the Court's Docket Control Order. Bedrock also objects to this interrogatory as multiparted in seeking information for every limitation of every claim.

Subject to the foregoing general and specific objections, Bedrock responds by incorporating Dkt. No. 251-1.

Date: January 12, 2011

Respectfully submitted,
McKOOL SMITH, P.C.

/s/ J. Austin Curry

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**ATTORNEYS FOR PLAINTIFF
BEDROCK COMPUTER
TECHNOLOGIES LLC**

CERTIFICATE OF SERVICE

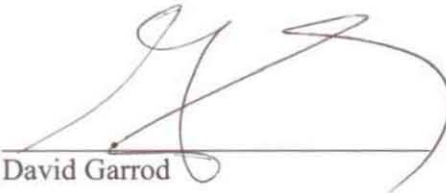
The undersigned certifies that the foregoing document was served on counsel of record on January 12, 2010 via electronic mail.

/s/ J. Austin Curry _____
J. Austin Curry

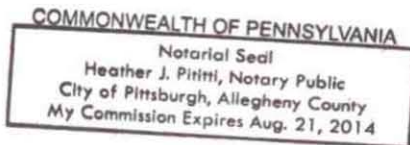
**VERIFICATION OF BEDROCK COMPUTER TECHNOLOGIES LLC.'S
OBJECTIONS AND RESPONSES TO YAHOO'S 5TH SET OF INTERROGATORIES**

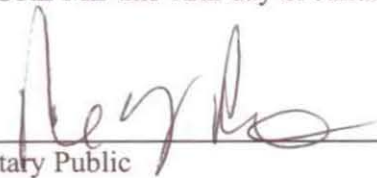
I, David Garrod, declare that I am President for Bedrock Computer Technologies, LLC., and that I am authorized to make this verification for and on its behalf. I have reviewed Bedrock Computer Technologies, LLC.'s Objections and Responses to Yahoo's Fifth Set of Interrogatories and know the contents thereof. While I do not have personal knowledge of all matters referred to therein, the information for responding to such Interrogatories of which I do not have personal knowledge was provided by attorneys and employees of Bedrock Computer Technologies, LLC and the responses are true and correct to the best of my knowledge and belief. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

1/12/2010
Dated


David Garrod

SWORN TO AND SUBSCRIBED BEFORE ME this 12th day of January, 2010




Notary Public

My Commission Expires: Aug 21 2014