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5 *Attorneys for Plaintiff*
Twin Peaks Software Inc.

6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 TWIN PEAKS SOFTWARE INC., a California
corporation,

Case No.:

9
10 Plaintiff,

**ORIGINAL COMPLAINT
FOR PATENT INFRINGEMENT**

11 vs.

12
13 IBM CORPORATION, a New York
corporation;

DEMAND FOR JURY TRIAL

14
15 Defendant.

16
17 **ORIGINAL COMPLAINT**

18 Plaintiff Twin Peaks Software Inc. (“Plaintiff” or “Twin Peaks”) files this Original
19 Complaint for patent infringement against Defendant IBM Corporation (“IBM” or “Defendant”)
20 alleging as follows:

21 **THE PARTIES**

22 1. Plaintiff Twin Peaks is a corporation organized under the laws of the State of
23 California having its principal place of business at 46560 Fremont Blvd, Suite 103, Fremont, CA
24 94538. Twin Peaks develops and markets software products for managing data on computer
25 networks.

26 2. Defendant IBM, on information and belief, is a corporation organized under the
27 laws of the State of New York, having its principal place of business at 1 New Orchard Road,
28 Armonk, New York, 10504. IBM is doing business in California, and in this District.

1 **JURISDICTION & VENUE**

2 3. This is an action for infringement of a United States patent. Accordingly, this
3 action arises under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.*, and
4 jurisdiction is properly based on 35 U.S.C. § 271 and 28 U.S.C. § 1338(a).

5 4. Venue is proper in this district under 28 U.S.C. §§ 1391(b-c) and 1400(b). Upon
6 information and belief, Defendant transacts or has transacted business in this judicial district, or
7 committed and/or induced acts of patent infringement in this district.

8 **INTRADISTRICT ASSIGNMENT**

9 5. This action is an intellectual property action subject to district-wide assignment.

10 **FACTUAL BACKGROUND**

11 6. On August 26, 2008, the United States Patent and Trademark Office duly and
12 lawfully issued United States Patent Number 7,418,439 (“the ’439 patent” or “Patent-in-Suit”)
13 entitled “Mirror File System” to inventor John P. Wong. Mr. Wong is the founder, Chairman, and
14 Chief Technology Officer of Twin Peaks. A true and correct copy of the ’439 patent is attached
15 hereto as Exhibit A.

16 7. Twin Peaks is the owner and assignee of all right, title, and interest in and to the
17 ’439 patent, including the right to assert all causes of action arising under said patent and the right
18 to any remedies for infringement of it.

19 8. The ’439 patent is directed to systems and methods for the storage of files on a
20 network with improved reliability, availability and serviceability. Generally, this is accomplished
21 by establishing a virtual file system that mirrors and links directories and files on multiple file
22 systems.

23 9. Pursuant to 35 U.S.C. § 282, the Patent-in-Suit are presumed valid.

24 10. On information and belief, Defendant IBM develops markets and distributes
25 infringing products including its IBM Scale Out Network Attached Storage (SONAS), IBM
26 Storwize V7000, IBM GPFS, IBM pCache, IBM Active Cloud Engine, IBM Active File
27 Management, IBM Automated File Management. These products use a technology called Panache
28 during its development and Active File Management (AFM) in its commercialization. IBM

1 contributed and continues to contribute to acts of infringement by causing and encouraging others
2 including its customers to use the aforementioned products. These products are sold directly to
3 customers and used by them pursuant to IBM's user manuals guides, and support articles. The
4 customers in ordinary use of the aforementioned products will necessarily directly infringe one or
5 more claims of the Patent-in-Suit.

6 11. IBM continues to provide and sell goods and services including products designed
7 for use in practicing one or more claims of the Patent-in-Suit, where the goods and services
8 constitute a material part of the invention and are not staple articles of commerce, and which have
9 no use other than infringing one or more claims of the Patent-in-Suit.

10 12. IBM has known of the Twin Peaks' patent application that led to the Patent-in-Suit
11 at least since 2005. In that year, Twin Peaks submitted the application to IBM as part of its
12 external submissions process. Mr. Wong also presented his invention at industry trade shows,
13 including the 2005 NAS Industry Conference at which representatives of IBM were in attendance.
14 IBM has known of the Patent-in-Suit since 2008. In that year and again in 2010, Twin Peaks
15 contacted IBM to explore interest in developing products based on the invention. In each case,
16 Twin Peaks provided the patent number and other materials explaining the invention and possible
17 applications for it. On or around May 24, 2010 the Patent-in-Suit was cited by the examiner in the
18 prosecution of IBM patent, U.S. Patent No. 8,028,113, and on around May 12, 2011 in the
19 prosecution of IBM patent, U.S. Patent No. 8,392,477.

20 13. On information and belief, IBM's infringement has been conscious, intentional and
21 in willful disregard of the patent rights of Twin Peaks.

22 14. On information and belief, Defendant will continue to infringe the '439 patent
23 unless enjoined by this Court. Defendant's acts of infringement have damaged Twin Peaks in an
24 amount to be proven at trial, but in no event less than a reasonable royalty. Defendant's
25 infringement of Twin Peaks' rights under the '439 patent will continue to damage Twin Peaks
26 causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this
27 Court.

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COUNT I
(Patent Infringement)
(U.S. Patent No. 7,418,439)

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3 15. Plaintiff incorporates by reference the allegations of paragraphs 1 through 14 above.

4 16. Twin Peaks is the owner of the Patent-in-Suit.

5 17. Defendant has infringed and is still infringing the Patent-in-Suit, by, without
6 authority, consent, right or license, and in direct infringement of the patent, making, using,
7 offering for sale and/or selling the aforementioned products using the methods claimed in the
8 patent in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).

9 18. In addition, Defendant has infringed and is still infringing the Patent-in-Suit in this
10 country, through, inter alia, its active inducement of others to make, use, and/or sell the products
11 and methods claimed in one or more claims of the patent. This conduct constitutes infringement
12 under 35 U.S.C. § 271(b).

13 19. In addition, Defendant has infringed and is still infringing the Patent-in-Suit in this
14 country through, inter alia, providing and selling goods and services including the aforementioned
15 products designed for use in practicing one or more claims of the Patent-in-Suit, where the goods
16 and services constitute a material part of the invention and are not staple articles of commerce, and
17 which have no use other than infringing one or more claims of the Patent-in-Suit. Defendant has
18 committed these acts with knowledge that the goods and services it provides are specially made
19 for use in a manner that directly infringes the Patent-in-Suit. This conduct constitutes
20 infringement under 35 U.S.C. § 271(c).

21 20. Defendant's infringing conduct is unlawful and willful. Defendant's willful conduct
22 makes this an exceptional case as provided in 35 U.S.C. § 285.

23 21. As a result of Defendant's infringement, Plaintiff has been damaged, and will
24 continue to be damaged, until they are enjoined from further acts of infringement.

25 22. Defendant will continue to infringe the Patent-in-Suit unless enjoined by this Court.
26 Plaintiff faces real, substantial and irreparable damage and injury of a continuing nature from
27 Defendant's infringement for which Plaintiff has no adequate remedy at law.

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PRAYER FOR RELIEF

Wherefore, Plaintiff prays for entry of judgment:

A. declaring that Defendant has infringed one or more claims, specifically including claim 1, of each of the Patent-in-Suit;

B. that Defendant be permanently enjoined from further infringement, including contributory infringement and/or inducing infringement, of the Patent-in-Suit, or in the alternative awarding a royalty for post-judgment infringement;

C. that Defendant account for and pay to Plaintiff all damages caused by its infringement of the Patent-in-Suit, which by statute can be no less than a reasonable royalty;

D. that Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants infringement of the Patent-in-Suit;

E. that Defendant's infringement of the Patent-in-Suit be adjudged willful and that the damages to Plaintiff be increased by three times the amount found or assessed pursuant to 35 U.S.C. § 284;

F. that this be adjudged an exceptional case and that Plaintiff be awarded its attorney's fees in this action pursuant to 35 U.S.C. § 285;

G. that costs be awarded to Plaintiff; and

H. that Plaintiff be granted such other and further relief as the Court may deem just and proper under the current circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, by its undersigned attorneys, demands a trial by jury on all issues so triable.

Dated: August 29, 2014

Respectfully submitted,

By: /s/ Bruce J. Wecker
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