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10 Attorneys for Plaintiff,
11 TWIN PEAKS SOFTWARE INC.

12
13 UNITED STATES DISTRICT COURT
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15 NORTHERN DISTRICT OF CALIFORNIA
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17 SAN JOSE DIVISION
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19 TWIN PEAKS SOFTWARE INC.,
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21 Plaintiff,
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23 v.
24
25 RED HAT, INC. and GLUSTER, INC.,
26
27 Defendants.
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Case No. 5:12-cv-00911-RMW

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff, Twin Peaks Software Inc., for its First Amended Complaint against Red Hat, Inc. and
2 Gluster, Inc. hereby alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff Twin Peaks Software Inc. (“Twin Peaks”) is a California corporation having its
5 principal place of business at 46732 Fremont Blvd., Fremont, California 94538. Twin Peaks develops and
6 markets software products for managing data on computer networks.

7 2. On information and belief, Defendant Red Hat, Inc. (“Red Hat”) is a corporation duly
8 organized and existing under the laws of the State of Delaware, having its principal place of business at
9 1801 Varsity Drive, Raleigh, North Carolina 27606.

10 3. On information and belief, Defendant Gluster, Inc. (“Gluster”) is a corporation duly
11 organized and existing under the laws of the State of California, having its principal place of business at
12 640 W. California Ave., Suite 200, Sunnyvale, California, 94086.

13 4. On or about October 4, 2011, Red Hat publicly announced that it was entering into an
14 agreement to acquire full ownership of Gluster.

15 5. On information and belief, Gluster currently operates as a fully-owned subsidiary of Red
16 Hat.

17 **JURISDICTION AND VENUE**

18 6. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 *et*
19 *seq.* This Court has jurisdiction over Plaintiff’s federal law claims under 28 U.S.C. §§1331 and 1338(a).

20 7. This Court has specific and/or general personal jurisdiction over Defendants Red Hat and
21 Gluster (collectively, “Defendants”) because they have committed acts giving rise to this action within
22 this judicial district and/or have established minimum contacts within California and within this judicial
23 district such that the exercise of jurisdiction over Defendants would not offend traditional notions of fair
24 play and substantial justice.

25 8. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because
26 Defendants have committed acts within this judicial district giving rise to this action, and continue to
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1 conduct business in this district, and/or have committed acts of patent infringement within this District
2 giving rise to this action.

3 **BACKGROUND AND INFRINGEMENT OF U.S. PATENT 7,418,439**

4 9. Twin Peaks re-alleges and incorporates by reference the allegations set forth in the
5 preceding paragraphs as if fully set forth herein.

6 10. On August 26, 2008, the United States Patent and Trademark Office duly and lawfully
7 issued United States Patent Number 7,418,439 (“the ‘439 patent”) entitled “Mirror File System” to the
8 inventor John P. Wong. Mr. Wong is the founder, Chairman, and Chief Technology Officer of Twin
9 Peaks. A true and correct copy of the ‘439 patent is attached hereto as Exhibit A.

10 11. Twin Peaks is the owner and assignee of all right, title, and interest in and to the ‘439
11 patent, including the right to assert all causes of action arising under said patent and the right to any
12 remedies for infringement of it.

13 12. On information and belief, Defendants have infringed and continue to infringe one or
14 more claims of the ‘439 patent in the State of California, in this judicial district, and elsewhere in the
15 United States by, among other things, making, using, importing, offering to sell, and/or selling in the
16 United States software products for managing data on computer networks, including but not limited to
17 GlusterFS and other products that incorporate GlusterFS technology such as Red Hat Storage Software
18 Appliance and Red Hat Virtual Storage Appliance (“the accused software products”).

19 13. On information and belief, Defendants indirectly infringe one or more claims of the ‘439
20 patent by inducing their customers’ infringement using such software products. On information and
21 belief, Defendants have had knowledge of the ‘439 patent since at least February 23, 2012, the filing
22 date of this action. Despite this knowledge of the ‘439 patent, Defendants have continued to engage in
23 activities to encourage and assist their customers who use the accused software products to directly
24 infringe one or more claims of the ‘439 patent. For example, through their websites at
25 <http://www.redhat.com> and <http://www.gluster.org>, Defendants advertise and provide instructions on
26 how to use the feature in the accused software products of managing data through replicated volumes.

1 Such advertisements and instructions are provided in, for example, technical documentation made
2 available by Defendants through their websites, including but not limited to Administration Guides and
3 User Guides for the accused software products. On information and belief, by using features in the
4 accused software products such as this feature of managing data through replicated volumes,
5 Defendants' customers have directly infringed and continue to directly infringe one or more claims of
6 the '439 patent. On information and belief, Defendants knew or should have known their activities in
7 encouraging and instructing customers in the use of the accused software products, including but not
8 limited to the activities set forth above, would induce their customers' direct infringement of the '439
9 patent.

10 14. On information and belief, Defendants will continue to infringe the '439 patent unless
11 enjoined by this Court.

12 15. Defendants' acts of infringement have damaged Twin Peaks in an amount to be proven at
13 trial, but in no event less than a reasonable royalty. Defendants' infringement of Twin Peaks' rights
14 under the '439 patent will continue to damage Twin Peaks causing irreparable harm, for which there is
15 no adequate remedy at law, unless enjoined by this Court.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Twin Peaks prays for relief as follows:

- 18 a. For judgment that Defendants have infringed and continue to infringe the claims of
19 the '439 patent;
- 20 b. For a preliminary and/or permanent injunction against Defendants and their
21 respective officers, directors, agents, servants, affiliates, employees, divisions,
22 branches, subsidiaries, parents, and all others acting in active concert therewith from
23 infringement of the '439 patent;
- 24 c. For an accounting of all damages caused by Defendants' acts of infringement;
- 25 d. For a judgment and order requiring each Defendant to pay Twin Peaks' damages,
26 costs, expenses, and pre- and post-judgment interest for its infringement of the '439
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1 patent as provided under 35 U.S.C. §284;

2 e. For a judgment and order finding this to be an exceptional case, and awarding Twin
3 Peaks attorney fees under 35 U.S.C. §285; and

4 f. For such relief at law and in equity as the Court may deem just and proper.

5 **DEMAND FOR A JURY TRIAL**

6 Twin Peaks demands a trial by jury of all issues triable by a jury.

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8 Dated: July 16, 2012

Respectfully submitted,

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10 By: /s/ Christopher D. Banys

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