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10 *Attorneys for Plaintiff Software Research, Inc.*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 SOFTWARE RESEARCH, INC.,
15 Plaintiff,
16 v.
17 DEVELOPER EXPRESS INC., and DOES 1
18 through 10,
19 Defendants.

CASE NO. 16-CV-00465

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff Software Research, Inc. (“SRI”), for its complaint against Defendants Developer
2 Express, Inc. (“DevExpress”) and Does 1 through 10 (collectively, “Defendants”), upon information
3 and belief, states and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is a civil action for infringement of United States Patent No. 7,757,175 (the “175
6 Patent”); United States Patent No. 8,327,271 (the “271 Patent”); United States Patent No. 8,392,890
7 (the “890 Patent”); United States Patent No. 8,495,585 (the “585 Patent”); United States Patent No.
8 8,650,493 (the “493 Patent”), and United States Patent No. 8,984,491 (the “491 Patent”)
9 (collectively, the “Patents In Suit”), arising under the patent laws of the United States, 35 U.S.C. § 1
10 *et seq.*

11 2. As set forth in more detail below, Defendants have been willfully infringing the
12 Patents In Suit and continue to do so through the present date.

13 **THE PARTIES**

14 3. SRI is a corporation organized and existing under the laws of the State of California
15 with its principal place of business in this District.

16 4. Upon information and belief, Defendant DevExpress is a Nevada corporation with its
17 principal place of business at 505 North Brand Boulevard, 16th Floor, Glendale, California 91203.

18 5. Upon information and belief, Defendants Does 1 through 10 are directors, officers,
19 employees, representatives, and/or agents of Defendant DevExpress who participated and/or are
20 currently participating in the use, development, sale, offer for sale, import, offer for import, and/or
21 other commercialization of DevExpress offerings that infringe one or more of the Patents in Suit.
22 The true identities of Does 1 through 10 are unknown to SRI, who will amend its complaint to state
23 such names when they become known to SRI through discovery and/or continued investigation.

24 **JURISDICTION AND VENUE**

25 6. This Court has federal question subject matter jurisdiction over SRI’s patent
26 infringement claims under 28 U.S.C. §§ 1331 and 1338(a).

27 7. This Court has personal jurisdiction over Defendants because (a) they have committed
28 the acts of patent infringement, including but not limited to the sale of products embodying SRI’s

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1 patented invention to distributors and end-users, and/or the other unlawful acts complained of herein
2 in this State and this District, and/or (b) they have directed their acts of infringement and/or the other
3 unlawful acts complained of herein at this State and this District.

4 8. This Court has personal jurisdiction over Defendants for the additional reason that
5 they have engaged in systematic and continuous contacts with this State and this District by, *inter*
6 *alia*, maintaining its principal place of business in this State, regularly conducting and soliciting
7 business in this State and this District, and deriving substantial revenue from products and/or services
8 provided to persons in this State and this District.

9 9. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of
10 the acts complained of herein occurred in this District, Defendants transact business in this District,
11 and/or the property that is the subject of this action is situated in this District.

12 10. Venue is proper in this District under 28 U.S.C. §§ 1391(c)-(d) and 1400(b) because
13 (i) SRI maintains its principal place of business in this District, and (ii) this is a District in which
14 Defendants are subject to the Court's personal jurisdiction with respect to this action, and/or the
15 District in this State where Defendants have the most significant contacts.

16 **COUNT I – INFRINGEMENT OF THE ‘175 PATENT**

17 11. SRI re-alleges and incorporates the allegations of the preceding paragraphs of this
18 Complaint as if fully set forth herein.

19 12. SRI is the assignee and owner of all right, title, and interest in and to the ‘175 Patent,
20 which was issued on July 13, 2010. A true and correct copy of the ‘175 Patent is attached hereto as
21 Exhibit A.

22 13. The ‘175 Patent addresses an invention for testing websites. This disclosed innovation
23 tests many facets of the website's experience and operation, including by providing novel approaches
24 to creating, storing, and executing test scripts using website elements as opposed to the previously
25 disclosed use of recording test scripts based upon user actions only.

26 14. SRI has the exclusive right to make, use, sell, and/or offer to sell any product
27 embodying the ‘175 Patent throughout the United States, and to import any product embodying the
28 ‘175 Patent into the United States.

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1 15. SRI has commercially exploited the ‘175 Patent by making, marketing, selling, and
2 using products covered by the ‘175 Patent, including its popular eValid™ software products.

3 16. At all relevant times, SRI provided public notice of the ‘175 Patent by properly
4 marking its products under 35 U.S.C. § 287(a).

5 17. Defendants have been, and are currently, directly infringing at least claim 17 of the
6 ‘175 Patent in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by
7 making, using, selling, and/or offering for sale certain website testing software, including without
8 limitation TestCafe (“Defendants’ Infringing Products”).

9 18. Defendants will, on information and belief, continue to infringe the ‘175 Patent unless
10 enjoined.

11 19. Defendants actively encourage their customers and distributors to use, sell, and/or
12 offer for sale Defendants’ Infringing Products.

13 20. Upon information and belief, Defendants have encouraged this infringement with
14 knowledge of the ‘175 Patent and with a specific intent to cause their customers and distributors to
15 infringe.

16 21. Defendants’ acts constitute active inducement of patent infringement in violation of 35
17 U.S.C. § 271(b).

18 22. Defendants will, on information and belief, continue to induce infringement of the
19 ‘175 Patent unless enjoined.

20 23. Defendants’ direct infringement, as well as their actions inducing others to infringe,
21 has irreparably harmed SRI.

22 24. Defendants will, on information and belief, continue to irreparably harm SRI unless
23 enjoined.

24 25. Defendants have been aware of the ‘175 Patent since at least as early as the filing of
25 the instant Complaint.

26 26. Upon information and belief, Defendants’ infringement of the ‘175 Patent is and has
27 been willful and deliberate.

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1 27. Defendants' deliberate infringement, undertaken without any reasonable justification
2 and despite an objectively high likelihood that its actions constituted infringement of a valid patent,
3 makes this an exceptional case, entitling SRI to treble damages and attorney fees under 35 U.S.C.
4 §§ 284 and 285.

5 **COUNT II – INFRINGEMENT OF THE ‘271 PATENT**

6 28. SRI re-alleges and incorporates the allegations of the preceding paragraphs of this
7 Complaint as if fully set forth herein.

8 29. SRI is the assignee and owner of all right, title, and interest in and to the ‘271 Patent,
9 which was issued on December 4, 2012. A true and correct copy of the ‘271 Patent is attached hereto
10 as Exhibit B.

11 30. The ‘271 Patent addresses an invention for testing websites. This disclosed innovation
12 tests many facets of the website's experience and operation, including by providing novel approaches
13 to creating, storing, and executing test scripts using website elements as opposed to the previously
14 disclosed use of recording test scripts based upon user actions only.

15 31. SRI has the exclusive right to make, use, sell, and/or offer to sell any product
16 embodying the ‘271 Patent throughout the United States, and to import any product embodying the
17 ‘271 Patent into the United States.

18 32. SRI has commercially exploited the ‘271 Patent by making, marketing, selling, and
19 using products covered by the ‘271 Patent, including its popular eValid™ software products.

20 33. At all relevant times, SRI provided public notice of the ‘271 Patent by properly
21 marking its products under 35 U.S.C. § 287(a).

22 34. Defendants have been, and are currently, directly infringing at least claim 1 of the
23 ‘271 Patent in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by
24 making, using, selling and/or offering for sale Defendants' Infringing Products.

25 35. Defendants will, on information and belief, continue to infringe the ‘271 Patent unless
26 enjoined.

27 36. Defendants actively encourage their customers and distributors to use, sell, and/or
28 offer for sale Defendants' infringing website testing software.

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1 37. Upon information and belief, Defendants have encouraged this infringement with
2 knowledge of the '271 Patent and with a specific intent to cause its customers and distributors to
3 infringe the same.

4 38. Defendants' acts constitute active inducement of patent infringement in violation of 35
5 U.S.C. § 271(b).

6 39. Defendants will, on information and belief, continue to induce infringement of the
7 '271 Patent unless enjoined.

8 40. Defendants' direct infringement and their actions inducing others to infringe have
9 irreparably harmed SRI.

10 41. Defendants will, on information and belief, continue to irreparably harm SRI unless
11 enjoined.

12 42. Defendants have been aware of the '271 Patent since at least as early as the filing of
13 the instant Complaint.

14 43. Upon information and belief, Defendants' infringement of the '271 Patent is and has
15 been willful and deliberate.

16 44. Defendants' deliberate infringement, undertaken without any reasonable justification
17 and despite an objectively high likelihood that its actions constituted infringement of a valid patent,
18 makes this an exceptional case, entitling SRI to treble damages and attorney fees under 35 U.S.C.
19 §§ 284 and 285.

20 **COUNT III – INFRINGEMENT OF THE '890 PATENT**

21 45. SRI re-alleges and incorporates the allegations of the preceding paragraphs of this
22 Complaint as if fully set forth herein.

23 46. SRI is the assignee and owner of all right, title, and interest in and to the '890 Patent,
24 which was issued on March 5, 2013. A true and correct copy of the '890 Patent is attached hereto as
25 Exhibit C.

26 47. The '890 Patent addresses an invention for testing websites. The disclosed innovation
27 tests many facets of the website's experience and operation, including by providing novel approaches
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1 to creating, storing, and executing test scripts capable of accurately testing Asynchronous Javascript
2 and XML (AJAX) web page elements.

3 48. SRI has the exclusive right to make, use, sell, and/or offer to sell any product
4 embodying the '890 Patent throughout the United States, and to import any product embodying the
5 '890 Patent into the United States.

6 49. SRI has commercially exploited the '890 Patent by making, marketing, selling, and
7 using products covered by the '890 Patent, including its popular eValid™ software products.

8 50. At all relevant times, SRI provided public notice of the '890 Patent by properly
9 marking its products under 35 U.S.C. § 287(a).

10 51. Defendants have been, and are currently, directly infringing at least claim 6 of the
11 '890 Patent in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by
12 making, using, selling and/or offering for sale Defendants' Infringing Products.

13 52. Defendants will, on information and belief, continue to infringe the '890 Patent unless
14 enjoined.

15 53. Defendants actively encourage their customers and distributors to use, sell, and/or
16 offer for sale Defendants' infringing website testing software.

17 54. Upon information and belief, Defendants have encouraged this infringement with
18 knowledge of the '890 Patent and with a specific intent to cause their customers and distributors to
19 infringe the same.

20 55. Defendants' acts constitute active inducement of patent infringement in violation of 35
21 U.S.C. § 271(b).

22 56. Defendants will, on information and belief, continue to induce infringement of the
23 '890 Patent unless enjoined.

24 57. Defendants' direct infringement and their actions inducing others to infringe have
25 irreparably harmed SRI.

26 58. Defendants will, on information and belief, continue to irreparably harm SRI unless
27 enjoined.

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1 59. Defendants have been aware of the ‘890 Patent since at least as early as the filing of
2 the instant Complaint.

3 60. Upon information and belief, Defendants’ infringement of the ‘890 Patent is and has
4 been willful and deliberate.

5 61. Defendants’ deliberate infringement, undertaken without any reasonable justification
6 and despite an objectively high likelihood that its actions constituted infringement of a valid patent,
7 makes this an exceptional case, entitling SRI to treble damages and attorney fees under 35 U.S.C.
8 §§ 284 and 285.

9 **COUNT IV – INFRINGEMENT OF THE ‘585 PATENT**

10 62. SRI re-alleges and incorporates the allegations of the preceding paragraphs of this
11 Complaint as if fully set forth herein.

12 63. SRI is the assignee and owner of all right, title, and interest in and to the ‘585 Patent,
13 which was issued on July 23, 2013. A true and correct copy of the ‘585 Patent is attached hereto as
14 Exhibit D.

15 64. The ‘585 Patent addresses an invention for testing websites. The disclosed innovation
16 tests many facets of the website’s experience and operation, including by providing novel approaches
17 to creating, storing, and executing test scripts capable of accurately testing Asynchronous Javascript
18 and XML (AJAX) web page elements.

19 65. SRI has the exclusive right to make, use, sell, and/or offer to sell any product
20 embodying the ‘585 Patent throughout the United States, and to import any product embodying the
21 ‘585 Patent into the United States.

22 66. SRI has commercially exploited the ‘585 Patent by making, marketing, selling, and
23 using products covered by the ‘585 Patent, including its popular eValid™ software products.

24 67. At all relevant times, SRI provided public notice of the ‘585 Patent by properly
25 marking its products under 35 U.S.C. § 287(a).

26 68. Defendants have been, and are currently, directly infringing at least claim 1 of the
27 ‘585 Patent in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by
28 making, using, selling and/or offering for sale Defendants’ Infringing Products.

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1 69. Defendants will, on information and belief, continue to infringe the ‘585 Patent unless
2 enjoined.

3 70. Defendants actively encourage their customers and distributors to use, sell, and/or
4 offer for sale Defendants’ infringing website testing software.

5 71. Upon information and belief, Defendants have encouraged this infringement with
6 knowledge of the ‘585 Patent and with a specific intent to cause their customers and distributors to
7 infringe the same.

8 72. Defendants’ acts constitute active inducement of patent infringement in violation of 35
9 U.S.C. § 271(b).

10 73. Defendants will, on information and belief, continue to induce infringement of the
11 ‘585 Patent unless enjoined.

12 74. Defendants’ direct infringement and their actions inducing others to infringe have
13 irreparably harmed SRI.

14 75. Defendants will, on information and belief, continue to irreparably harm SRI unless
15 enjoined.

16 76. Defendants have been aware of the ‘585 Patent since at least as early as the filing of
17 the instant Complaint.

18 77. Upon information and belief, Defendant’s infringement of the ‘585 Patent is and has
19 been willful and deliberate.

20 78. Defendants’ deliberate infringement, undertaken without any reasonable justification
21 and despite an objectively high likelihood that its actions constituted infringement of a valid patent,
22 makes this an exceptional case, entitling SRI to treble damages and attorney fees under 35 U.S.C.
23 §§ 284 and 285.

24 **COUNT V – INFRINGEMENT OF THE ‘493 PATENT**

25 79. SRI re-alleges and incorporates the allegations of the preceding paragraphs of this
26 Complaint as if fully set forth herein.

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1 80. SRI is the assignee and owner of all right, title, and interest in and to the ‘493 Patent,
2 which was issued on February 11, 2014. A true and correct copy of the ‘493 Patent is attached hereto
3 as Exhibit E.

4 81. The ‘493 Patent addresses an invention for testing websites. The disclosed innovation
5 tests many facets of the website’s experience and operation, including by providing novel approaches
6 to creating, storing, and executing test scripts using website elements as opposed to the previously
7 disclosed use of recording test scripts based upon user actions only.

8 82. SRI has the exclusive right to make, use, sell, and/or offer to sell any product
9 embodying the ‘493 Patent throughout the United States, and to import any product embodying the
10 ‘493 Patent into the United States.

11 83. SRI has commercially exploited the ‘493 Patent by making, marketing, selling, and
12 using products covered by the ‘493 Patent, including its popular eValid™ software products.

13 84. At all relevant times, SRI provided public notice of the ‘493 Patent by properly
14 marking its products under 35 U.S.C. § 287(a).

15 85. Defendants have been, and are currently, directly infringing at least claim 1 of the
16 ‘493 Patent in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by
17 making, using, selling and/or offering for sale Defendants’ Infringing Products.

18 86. Defendants will, on information and belief, continue to infringe the ‘493 Patent unless
19 enjoined.

20 87. Defendants actively encourage their customers and distributors to use, sell, and/or
21 offer for sale Defendants’ infringing website testing software.

22 88. Upon information and belief, Defendants have encouraged this infringement with
23 knowledge of the ‘493 Patent and with a specific intent to cause their customers and distributors to
24 infringe the same.

25 89. Defendants’ acts constitute active inducement of patent infringement in violation of 35
26 U.S.C. § 271(b).

27 90. Defendants will, on information and belief, continue to induce infringement of the
28 ‘493 Patent unless enjoined.

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1 91. Defendants' direct infringement and their actions inducing others to infringe have
2 irreparably harmed SRI.

3 92. Defendants will, on information and belief, continue to irreparably harm SRI unless
4 enjoined.

5 93. Defendants have been aware of the '493 Patent since at least as early as the filing of
6 the instant Complaint.

7 94. Upon information and belief, Defendants' infringement of the '493 Patent is and has
8 been willful and deliberate.

9 95. Defendants' deliberate infringement, undertaken without any reasonable justification
10 and despite an objectively high likelihood that its actions constituted infringement of a valid patent,
11 makes this an exceptional case, entitling SRI to treble damages and attorney fees under 35 U.S.C.
12 §§ 284 and 285.

13 **COUNT VI – INFRINGEMENT OF THE '491 PATENT**

14 96. SRI re-alleges and incorporates the allegations of the preceding paragraphs of this
15 Complaint as if fully set forth herein.

16 97. SRI is the assignee and owner of all right, title, and interest in and to the '491 Patent,
17 which was issued on March 17, 2015. A true and correct copy of the '491 Patent is attached hereto as
18 Exhibit F.

19 98. The '491 Patent addresses an invention for testing websites. The disclosed innovation
20 tests many facets of the website's experience and operation, including by providing novel approaches
21 to creating, storing, and executing test scripts using website elements as opposed to the previously
22 disclosed use of recording test scripts based upon user actions only.

23 99. SRI has the exclusive right to make, use, sell, and/or offer to sell any product
24 embodying the '491 Patent throughout the United States, and to import any product embodying the
25 '491 Patent into the United States.

26 100. SRI has commercially exploited the '491 Patent by making, marketing, selling, and
27 using products covered by the '491 Patent, including its popular eValid™ software products.
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1 101. At all relevant times, SRI provided public notice of the ‘491 Patent by properly
2 marking its products under 35 U.S.C. § 287(a).

3 102. Defendants have been, and are currently, directly infringing at least claim 3 of the
4 ‘491 Patent in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by
5 making, using, selling and/or offering for sale Defendants’ Infringing Products.

6 103. Defendants will, on information and belief, continue to infringe the ‘491 Patent unless
7 enjoined.

8 104. Defendants actively encourage their customers and distributors to use, sell, and/or
9 offer for sale Defendants’ infringing website testing software.

10 105. Upon information and belief, Defendants have encouraged this infringement with
11 knowledge of the ‘491 Patent and with a specific intent to cause their customers and distributors to
12 infringe the same.

13 106. Defendants’ acts constitute active inducement of patent infringement in violation of 35
14 U.S.C. § 271(b).

15 107. Defendants will, on information and belief, continue to induce infringement of the
16 ‘491 Patent unless enjoined.

17 108. Defendants’ direct infringement and their actions inducing others to infringe have
18 irreparably harmed SRI.

19 109. Defendants will, on information and belief, continue to irreparably harm SRI unless
20 enjoined.

21 110. Defendants have been aware of the ‘491 Patent since at least as early as the filing of
22 the instant Complaint.

23 111. Upon information and belief, Defendants’ infringement of the ‘491 Patent is and has
24 been willful and deliberate.

25 112. Defendants’ deliberate infringement, undertaken without any reasonable justification
26 and despite an objectively high likelihood that its actions constituted infringement of a valid patent,
27 makes this an exceptional case, entitling SRI to treble damages and attorney fees under 35 U.S.C.
28 §§ 284 and 285.

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DEMAND FOR JURY TRIAL

SRI hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, SRI respectfully requests that this Court:

- A. Find that United States Patent No. 7,757,175 is valid and enforceable against Defendants;
- B. Find that Defendants have infringed and are infringing United States Patent No. 7,757,175;
- C. Permanently enjoin Defendants, their officers, agents, servants, employees, and those persons acting in active concert or in participation therewith from infringing United States Patent No. 7,757,175;
- D. Award SRI damages sufficient to compensate it for Defendants' past and future infringement of United States Patent No. 7,757,175, together with costs and prejudgment interest;
- E. Find that United States Patent No. 8,327,271 is valid and enforceable against Defendants;
- F. Find that Defendants have infringed and are infringing United States Patent No. 8,327,271;
- G. Permanently enjoin Defendants, their officers, agents, servants, employees, and those persons acting in active concert or in participation therewith from infringing United States Patent No. 8,327,271;
- H. Award SRI damages sufficient to compensate it for Defendants' past and future infringement of United States Patent No. 8,327,271, together with costs and prejudgment interest;
- I. Find that United States Patent No. 8,392,890 is valid and enforceable against Defendants;
- J. Find that Defendants have infringed and are infringing United States Patent No. 8,392,890;

- 1 K. Permanently enjoin Defendants, their officers, agents, servants, employees, and those
2 persons acting in active concert or in participation therewith from infringing United
3 States Patent No. 8,392,890;
- 4 L. Award SRI damages sufficient to compensate it for Defendants' past and future
5 infringement of United States Patent No. 8,392,890, together with costs and
6 prejudgment interest;
- 7 M. Find that United States Patent No. 8,495,585 is valid and enforceable against
8 Defendants;
- 9 N. Find that Defendants have infringed and are infringing United States Patent No.
10 8,495,585;
- 11 O. Permanently enjoin Defendants, their officers, agents, servants, employees, and those
12 persons acting in active concert or in participation therewith from infringing United
13 States Patent No. 8,495,585;
- 14 P. Award SRI damages sufficient to compensate it for Defendants' past and future
15 infringement of United States Patent No. 8,495,585, together with costs and
16 prejudgment interest;
- 17 Q. Find that United States Patent No. 8,650,493 is valid and enforceable against
18 Defendants;
- 19 R. Find that Defendants have infringed and are infringing United States Patent No.
20 8,650,493;
- 21 S. Permanently enjoin Defendants, their officers, agents, servants, employees, and those
22 persons acting in active concert or in participation therewith from infringing United
23 States Patent No. 8,650,493;
- 24 T. Award SRI damages sufficient to compensate it for Defendants' past and future
25 infringement of United States Patent No. 8,650,493, together with costs and
26 prejudgment interest;
- 27 U. Find that United States Patent No. 8,984,491 is valid and enforceable against
28 Defendants;

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- V. Find that Defendants have infringed and are infringing United States Patent No. 8,984,491;
- W. Permanently enjoin Defendants, their officers, agents, servants, employees, and those persons acting in active concert or in participation therewith from infringing United States Patent No. 8,984,491;
- X. Award SRI damages sufficient to compensate it for Defendants’ past and future infringement of United States Patent No. 8,984,491, together with costs and prejudgment interest;
- Y. Award SRI treble damages under 35 U.S.C. § 284 as just and proper;
- Z. Award SRI its reasonable attorney fees under 35 U.S.C. § 285; and
- AA. Award SRI such other and/or additional relief as the Court deems just and proper.

Date: January 27, 2016

Respectfully submitted,

SINGER / BEA LLP

By:  _____

Benjamin L. Singer
Douglas S. Tilley
Attorneys for Plaintiff Software Research, Inc.