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5 *Attorneys for Plaintiff Blackbird Tech LLC*

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
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12 BLACKBIRD TECH LLC d/b/a  
13 BLACKBIRD TECHNOLOGIES,

14 Plaintiff,

15 vs.

16 INCAPSULA, INC.,

17 Defendant.  
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Case No.: \_\_\_\_\_

COMPLAINT FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”)  
2 hereby alleges for its Complaint for Patent Infringement against Defendant Incapsula, Inc.  
3 (“Incapsula”) on personal knowledge as to its own activities and on information and belief as to  
4 all other matters, as follows:

5 THE PARTIES

6 1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its  
7 principal place of business located at 200 Baker Avenue, Suite 203, Concord, MA 01742.

8 2. On information and belief, Incapsula is a Delaware corporation with its principal  
9 place of business at 3400 Bridge Parkway, Redwood Shores, CA 94065. Incapsula may be  
10 served via its registered agent, Incorporating Services, Ltd., 7801 Folsom Boulevard, Suite 202,  
11 Sacramento, CA 95826.

12 JURISDICTION AND VENUE

13 3. This is an action for patent infringement arising under the provisions of the Patent  
14 Laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

15 4. This Court has subject matter jurisdiction over Blackbird Technologies’ claims  
16 per 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

17 5. This Court has personal jurisdiction over Incapsula at least because Incapsula is  
18 subject to general jurisdiction in California, as Incapsula’s principal place of business is located  
19 within this District. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014).

20 6. Venue is proper in this District at least because Incapsula has a regular and  
21 established place of business in this District (*see* Paragraph 2) and, according to the reasoning of  
22 the court in *Blackbird Tech LLC v. Cloudflare, Inc.*, C.A. No. 17-283-MSG, 2017 WL 4543783,  
23 at \*4 (D. Del. Oct. 11, 2017), has committed acts of alleged infringement in this District. 28  
24 U.S.C. § 1400(b).

25 U.S. PATENT NO. 6,453,335

26 7. U.S. Patent No. 6,453,335 (the “335 patent” or “patent-in-suit”) entitled,  
27 “Providing an Internet Third Party Data Channel,” was duly and legally issued by the U.S. Patent  
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1 and Trademark Office on September 17, 2002. Blackbird Technologies is the owner by  
2 assignment of all right, title, and interest in and to the '335 patent, including all right to recover  
3 for any and all infringement thereof. The '335 patent is valid and enforceable. A true and  
4 correct copy of the '335 patent is attached as Exhibit A.

5 8. The inventions claimed in the '335 patent represent an improvement to the  
6 technologies that make the internet work. At the time of invention, internet communications  
7 protocols, such as the hypertext transfer protocol (HTTP), allowed for the exchange of data, such  
8 as documents encoded in the hypertext markup language (HTML), over the internet. These  
9 protocols generally permitted only two parties to the communication: the client and the server.  
10 As a result, third party participation in existing client-server communications was problematic.

11 9. The inventions claimed in the '335 patent constitute novel and non-obvious ways  
12 of providing an internet third party data channel. The claimed inventions address shortcomings  
13 of existing internet communications protocols, and extend those protocols to communications  
14 involving three parties. This is done in a technical manner by introducing a distinct processing  
15 device located physically and logically between the client and server. The processing device  
16 monitors client-server data communications having predetermined properties, such as HTTP  
17 status codes, and upon the detection of such communications, accesses a distinct data source to  
18 obtain third party data, modifies or replaces the original data communication in response to the  
19 third party data, and then provides the resulting data communication to the intended recipient.  
20 Furthermore, to better utilize networking and computing resources, in certain claimed inventions,  
21 data is only transmitted on the third party data channel when the data transmission rate of the  
22 server to the client is below a predetermined threshold.

23 COUNT I – INFRINGEMENT OF THE '335 PATENT

24 10. Blackbird Technologies reasserts and incorporates by reference the preceding  
25 paragraphs of this Complaint as if fully set forth herein.  
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11. Incapsula infringes one or more claims of the '335 patent, including at least claims 8 and 24, by importing, making, using, selling, and/or offering to sell certain web content systems and services as part of its content delivery network ("CDN"), as explained below.

12. Incapsula's CDN performs a method, and also includes an apparatus, "for providing an internet third party data channel, said third party data channel being established within an existing data channel between an internet server and an internet client, said third party data channel connecting a data source distinct from said internet server to said internet client," as claimed.

13. The Incapsula CDN comprises a network including multiple data centers, including multiple data centers in the US. Incapsula sometimes refers to these data centers as "points of presence," "POPs," and "edge servers." Data centers in the Incapsula CDN include at least computer servers and other network devices. According to Incapsula, the systems in these data centers store copies of web content originally stored on content providers' computer servers and requested by users via the web. Incapsula sometimes refers to content providers' computer servers as "origin servers," and to the storage means within its CDN data centers as "caches." In networking terms, Incapsula data centers are located between user systems and origin servers, and are distinct from both user systems and origin servers. (*See* Exhibit B).

14. User requests for web content from an origin server are routed to a data center within the Incapsula CDN. In general terms, if the requested content is present in the Incapsula cache (*e.g.*, because a user has previously requested such content), Incapsula provides the user with the cached copy of the requested content, stored at the data center, without contacting the origin server. In this way, the workload of the origin server is reduced, which content providers generally find beneficial. If, however, the requested content is not present in the Incapsula cache (*e.g.*, because no user has previously requested such content, which may be the case when the content is updated or new), the Incapsula CDN requests the content from the appropriate origin server and then passes the content along to the user system. (*See* Exhibit B).

1           15. The Incapsula CDN includes “a processing device distinct from said internet  
2 server for monitoring said existing data channel for a data communication having a  
3 predetermined property, said data communication having an intended recipient of one of said  
4 internet server and said internet client,” as claimed.

5           16. The Incapsula data centers include processing devices for monitoring data  
6 communications between user systems and origin servers. For example, systems in Incapsula  
7 data centers monitor data communications from origin servers to user systems having  
8 predetermined properties such as HTTP status codes, some of which indicate the occurrence of  
9 an error relating to the origin server. (*See Exhibit C*).

10           17. The processing devices within the Incapsula data centers are “adapted, upon  
11 detection of said data communication, to access said data source to obtain third party data, to  
12 execute a step selected from the group consisting of the step of modifying said data  
13 communication in response to said third party data and the step of replacing said data  
14 communication in response to said third party data to obtain a resultant data, and to send said  
15 resultant data communication to said intended recipient,” as claimed.

16           18. When the processing devices within the Incapsula data centers detect certain error  
17 codes, the processing devices can access the cache to retrieve an error webpage customized for  
18 the error code in question. Instead of merely passing the error code onto the user system, the  
19 Incapsula data centers provide the custom error page appropriate for the error code in question.  
20 (*See Exhibit C*).

21           19. In the Incapsula CDN, “data is only transmitted on said third party data channel  
22 when the data transmission rate of said server to said client is below a predetermined threshold,”  
23 as claimed.

24           20. According to Incapsula, custom error pages can be provided for error codes  
25 indicating the occurrence of an error involving the origin server concerning the data transmission  
26 rate of the origin server and/or further upstream servers. (*See Exhibits C & D*).



1 E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the  
2 maximum rate permitted by law on its damages; and

3 F. Granting Blackbird Technologies such further relief as this Court deems just and  
4 proper under the circumstances.

5 DEMAND FOR JURY TRIAL

6 Blackbird Technologies demands a trial by jury on all claims and issues so triable.

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8 Dated this 1st day of December, 2017

WALKER STEVENS CANNOM YANG LLP

9 /s/ Bethany M. Stevens

10 Bethany M. Stevens

11 *Attorneys for Plaintiff Blackbird Tech LLC*  
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