

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**DEVINE LICENSING LLC,**

Plaintiff,

v.

**TMAX SOFT, INC.,**

Defendant.

C.A. No.

TRIAL BY JURY DEMANDED

**COMPLAINT FOR INFRINGEMENT OF PATENT**

COMES NOW, Devine Licensing LLC (“Devine” or “Plaintiff”), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin defendant Tmax Soft, Inc. (hereinafter “Defendant”), from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Devine, from U.S. Patent No. 6,339,769 (the “‘769 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. § 271, and to recover damages, attorney’s fees, and costs.

**THE PARTIES**

2. Plaintiff Devine is a Texas entity with its principal place of business at 2108 Dallas Pkwy., Suite 214-1018, Plano, Texas 75093-4362.

3. Upon information and belief, Defendant is a corporation organized under the laws of Delaware, having a principal place of business at 230 W. Monroe St., Suite 1950, Chicago, Illinois 60606. Upon information and belief, Defendant may be served with process at Capitol Services, Inc., 1675 S. State Street, Suite B, Dover, Delaware 19901.

**JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 et seq.

5. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction, including residing in Delaware, as well as because of the injury to Devine, and the cause of action Devine has risen, as alleged herein.

6. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Delaware Long Arm Statute, *Del. Code. Ann. Tit. 3, § 3104*, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware and in this judicial district.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Defendant resides in this District.

**FACTUAL ALLEGATIONS**

8. On January 15, 2002, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '769 patent, entitled "Query optimization by transparently altering properties of relational tables using materialized views" after a full and fair examination. (Exhibit A).

9. Devine is presently the owner of the patent, having received all right, title and interest in and to the '769 patent from the previous assignee of record. Devine possesses all rights of recovery under the '769 patent, including the exclusive right to recover for past infringement.

10. The '769 patent contains six independent claims and sixty-six dependent claims. Defendant commercializes, inter alia, methods that perform all the steps recited in at least one claim of the '769 patent.

11. The invention claimed in the '769 patent comprises a method optimizing database queries using a materialized view for a table referenced in the query, wherein the materialized view has different properties than the referenced table.

12. The method allows a user to optimize a query in a computer system by transparently altering properties of relational tables using materialized views.

13. The technology embodied by the '769 patent improved techniques for the replication of materialized views in a massively parallel processing (MPP) environment.

### **DEFENDANT'S PRODUCTS**

14. Defendant offers products, such as the "Tibero 6" (the "Accused Instrumentality"), that practices a method of optimizing a query (e.g., by means of a query optimizer) in a computer system, the query being performed by the computer system to retrieve data from a database stored on the computer system, as recited in the preamble of claim 1 of the '769 patent and as shown on Defendant's website<sup>1</sup>.

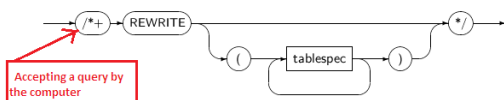
15. As recited in the first step of claim 1, the Accused Instrumentality practices accepting the query into the computer system by allowing a user to submit a query.

#### 2.8.7. Materialized Views

##### REWRITE

Instructs the query optimizer to rewrite a query using a materialized view in the query block without comparing costs. The optimizer compares the result of rewriting the query block with the REWRITE hint with the result of rewriting all blocks and selects the better option. When a list of materialized views is specified, a query rewrite is only attempted on the materialized views in the list.

- Syntax  
*rewrite\_hint*



<sup>1</sup> <https://www.tmaxsoft.com/products/tibero/>, last visited April 12, 2019.

16. As recited in the second step of claim 1, the Accused Instrumentality practices determining whether there exist one or more materialized views for one or more tables referenced in the query, wherein the materialized view has different partitioning or replication properties than the tables referenced in the query. For example, the Accused Instrumentality uses materialized views when rewriting queries, which can be partitioned or its other properties can be changed independently and differently vis a vis the actual table referenced by a query.

Materialized View	CREATE MATERIALIZED VIEW	Allows creating a MATERIALIZED VIEW in the user's own schema.
	CREATE ANY MATERIALIZED VIEW	Allows creating a MATERIALIZED VIEW in any schema.
	ALTER MATERIALIZED VIEW	Allows changing a MATERIALIZED VIEW in any schema.
	DROP MATERIALIZED VIEW	Allows deleting a MATERIALIZED VIEW in any schema.

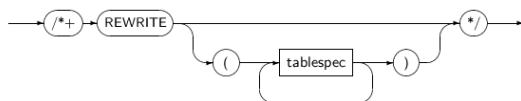
17. As recited in the third step of claim 1, the Accused Instrumentality practices analyzing whether at least a portion of the query can be evaluated using one or more of the materialized views in a local fashion, so that no data movement is required for the evaluation. For example, the Accused Instrumentality uses a query optimizer to rewrite a query using materialized views.

**2.8.7. Materialized Views**

**REWRITE**

Instructs the query optimizer to rewrite a query using a materialized view in the query block without comparing costs. The optimizer compares the result of rewriting the query block with the REWRITE hint with the result of rewriting all blocks and selects the better option. When a list of materialized views is specified, a query rewrite is only attempted on the materialized views in the list.

- Syntax  
rewrite\_hint



18. As recited in the fourth step of claim 1, the Accused Instrumentality practices rewriting the query to use one or more materialized views rather than an original table or tables referenced in the query. For example, the Accused Instrumentality rewrites queries using materialized views in the same way as is uses an index.

## 6.2. Query Rewrite

The biggest advantage of a materialized view is the query rewrite function.

The query rewrite feature analyzes a given query and then generates a new query that uses the materialized view. If the materialized view is defined by a complicated join clause or is the result of aggregate functions, query rewrite can reduce response and processing time.

Because query rewrite is invoked by the query optimizer without user intervention, it can use the materialized view in the same way that is uses an index.

This function works with all SELECT statements except subqueries defined in INSERT, DELETE, UPDATE, and MERGE statements.

### Note

When viewing an execution plan generated by the EXPLAIN PLAN statement, the materialized view used by query rewrite is displayed as MV\_REWRITE.

19. As recited in the fifth step of claim 1, the Accused Instrumentality practices executing the rewritten query using one or more materialized views. For example, the Accused Instrumentality executes the rewritten query when it is the lowest cost alternative.

### 6.2.3. Cost-Based Optimization

Execution plans of the original query and the rewritten query are created using cost-based optimization. Between the two, the lowest cost alternative is selected.

Since the final selection in a query rewrite can vary depending on the cost, statistical information for both tables gets created one for the original query and the other for the materialized view.

20. The elements described in paragraphs 14-19 are covered by at least claim 1 of the '769 patent. Thus, Defendant's use of the Accused Product is enabled by the method described in the '769 patent.

## **COUNT I** **(DIRECT INFRINGEMENT OF THE '769 PATENT)**

21. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 20.

22. Defendant has, prior to launching the Accused Product in the United States, performed internal testing with said Accused Product.

23. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing the '769 patent.

24. Defendant has had knowledge of infringement of the '769 patent at least as of the service of the present complaint.

25. Defendant has directly infringed and continues to directly infringe at least claim 1 of the '769 patent by using, at least through internal testing, the Accused Instrumentality without

authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '769 patent, Plaintiff has been and continues to be damaged.

26. By engaging in the conduct described herein, Defendant has injured Devine and is thus liable for infringement of the '769 patent, pursuant to 35 U.S.C. § 271.

27. Defendant has committed these acts of infringement without license or authorization.

28. As a result of Defendant's infringement of the '769 patent, Devine has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

**COUNT II**  
**(INDIRECT INFRINGEMENT OF THE '769 PATENT)**

29. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 28.

30. In violation of 35 U.S.C. § 271, Defendant is now, and has been indirectly infringing the '769 patent.

31. Defendant has had knowledge of infringement of the '769 patent at least as of the service of the present complaint.

32. Defendant has indirectly infringed and continues to indirectly infringe at least claim 1 of the '769 patent by actively inducing its respective customers, users, and/or licensees to directly infringe by using the Accused product. Defendant engaged or will have engaged in such inducement having knowledge of the '769 patent. Furthermore, Defendant knew or should have known that its action would induce direct infringement by others and intended that its actions would induce direct infringement by others. For example, Defendant sells, offers to sell and

advertises the Accused Product through websites or digital distribution platforms that are available in Delaware, specifically intending that its customers use it. Furthermore, Defendant's customers' use of the Accused Product is facilitated by the invention described in the '769 patent. As a direct and proximate result of Defendant's indirect infringement by inducement of the '769 patent, Plaintiff has been and continues to be damaged.

33. By engaging in the conduct described herein, Defendant has injured Devine and is thus liable for infringement of the '769 patent, pursuant to 35 U.S.C. § 271.

34. Defendant has committed these acts of infringement without license or authorization.

35. As a result of Defendant's infringement of the '769 patent, Devine has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

**DEMAND FOR JURY TRIAL**

36. Devine demands a trial by jury of any and all causes of action.

**PRAYER FOR RELIEF**

WHEREFORE, Devine prays for the following relief:

- a. That Defendant be adjudged to have directly infringed the Patents-In-Suit either literally or under the doctrine of equivalents;
- b. An accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- c. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the Patent-In-Suit;

d. An award of damages pursuant to 35 U.S.C. § 284 sufficient to compensate Devine for the Defendant's past infringement, including compensatory damages;

e. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284; and

f. That Devine have such other and further relief as this Court may deem just and proper.

Dated: April 29, 2019

DEVLIN LAW FIRM LLC

/s/ Timothy Devlin

Timothy Devlin (No. 4241)  
1306 N. Broom Street, 1st Floor  
Wilmington, DE 19806  
Telephone: (302) 449-9010  
Facsimile: (302) 353-4251  
Email: tdevlin@devlinlawfirm.com

Eugenio J. Torres-Oyola  
USDC No. 215505  
Jean G. Vidal Font  
USDC No. 227811  
(*Pro Hac Vice* Applications Pending)  
FERRAIUOLI LLC  
221 Plaza, 5th Floor  
221 Ponce de León Avenue  
San Juan, PR 00917  
Telephone: (787) 766-7000  
Facsimile: (787) 766-7001  
Email: etorres@ferraiuoli.com  
Email: jvidal@ferraiuoli.com

**ATTORNEYS FOR PLAINTIFF  
DEVINE LICENSING LLC**