

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

SOFTWARE TREE, LLC,

*Plaintiff,*

v.

RED HAT, INC.,

*Defendant.*

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No. 6:09-cv-00097-LED

JURY DEMANDED

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**PLAINTIFF’S SECOND AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT AND JURY DEMAND**

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Plaintiff Software Tree, LLC. (“Plaintiff” or “Software Tree”), files this Second Amended Complaint and Jury Demand against Defendant Red Hat (“Defendant” or “Red Hat”) and alleges as follows:

**I. THE PARTIES**

1. Plaintiff Software Tree is a limited liability corporation organized under the laws of the State of California and having its principal place of business at 2953 Bunker Hill Lane, Suite 400, Santa Clara, CA 95054.

2. Upon information and belief, Defendant Red Hat is a Delaware corporation having a principal place of business at 1801 Varsity Drive, Raleigh, North Carolina 27606. Red Hat has already answered and appeared herein.

**II. JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. The Court’s jurisdiction over this action is proper under the above statutes,

including 35 U.S.C. § 271 *et seq.* and 28 U.S.C. §§ 1331 and 1338(a).

4. Personal jurisdiction exists generally over the Defendant Red Hat because it has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within the Eastern District of Texas.

5. Upon investigation and information, the products at issue are made, used, sold, offered for sale, sold and/or distributed in the State of Texas and in the Eastern District of Texas by Red Hat and/or its predecessor JBoss through publicly available portals including, but not limited to, [www.redhat.com](http://www.redhat.com), [www.hibernate.com](http://www.hibernate.com), [www.sourceforge.com](http://www.sourceforge.com).

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d), as well as 28 U.S.C. § 1400(b).

### **III. PATENT INFRINGEMENT**

7. Plaintiff Software Tree repeats and realleges the allegations in paragraphs 1-6 as though fully set forth herein.

8. Plaintiff Software Tree is the owner of all rights, title, and interest in and under United States Patent No. 6,163,776: System and Method for Exchanging Data and Commands Between an Object Oriented System and Relational System ("the '776 Patent"), which duly and legally issued on December 19, 2000. A true and correct copy of the '776 Patent is attached hereto as Exhibit A.

9. The '776 Patent was subject to a re-examination by the United States Patent Office which confirmed the patentability of all claims, with Claims 36-38 and 40-41 being unchanged, claims 43-46 corresponding to originally issued claims 5, 6, 9, and 10 re-written in independent form, and all other claims as amended being confirmed. During this re-examination Claims 47-75 were added and these claims were also indicated to be patentable. The re-

examination concluded on April 8, 2008. A true and correct copy of the re-examination certificate is attached as Exhibit B.

10. The '776 Patent is valid and enforceable.

11. Plaintiff Software Tree has complied with the requirements of 35 U.S.C. § 287.

12. Upon information and belief, Defendant Red Hat and its predecessor in interest, JBoss, Inc. (collectively, "Red Hat"), have been and are infringing the '776 Patent by making, using, selling, offering for sale, distributing and/or importing in or into the United States, without authority, products that fall within the scope of the claims of the '776 Patent, including but not limited to the following software products: all versions of Hibernate, and all other Red Hat products that include Hibernate, including, but not limited to, JBoss Enterprise Application Platform, JBoss Developer Studio, JBoss Enterprise Middleware System, JBoss Red Hat Application Stack, JBoss Seam, JBoss Enterprise Portal Platform, JBoss Enterprise BRMS, JBoss Enterprise SOA Platform.

13. By making, using, selling, offering for sale, distributing and/or importing in or into the United States, without authority, products that fall within the scope of the claims of the '776 Patent, Defendant Red Hat has also induced infringement of the '776 Patent under 35 U.S.C. § 271(b). The infringing products have no substantial non-infringing uses. Defendant Red Hat provides extensive documentation and resources that induce users to use the Accused Products on manners that directly infringe the '776 Patent (*see, e.g.,* Hibernate.org - Documentation Overview, <https://www.hibernate.org/5.html>).

14. Red Hat's website provides user forums and mailing lists to facilitate discussion of issues related to infringing use of the Accused Products (*See* Hibernate.org – Community Overview, <https://www.hibernate.org/20.html>). Red Hat also offers professional support

subscription, consulting services, training courses, and Hibernate Certification to induce infringing use of the Accused Products (*See* Hibernate.org – Commercial Support and Training for Hibernate, <https://www.hibernate.org/148.html>). Additionally, Red Hat has established and maintains a Hibernate “Wiki” site to assist users of the Accused Products (*See* Hibernate.org – Wiki Overview, <https://www.hibernate.org/37.html>).

15. Similarly, Defendant Red Hat induces infringement of the ‘776 Patent because Defendant Red Hat makes, sells, distributes, or offers for sale products for use in the manner suggested by Defendant Red Hat, where it is foreseeable that such use would cause a user to directly infringe one or more claims of the ‘776 Patent. The Accused Products necessarily infringe the ‘776 Patent when used for their intended purpose by each party that downloads an Accused Product, including but not limited to Red Hat’s customers, and there is no substantial non-infringing use.

16. Defendant Red Hat sold or distributed products with knowledge of the ‘776 Patent, with the intent that the products be used in a manner that would infringe the ‘776 Patent, and with knowledge that each of its products are actually used in a manner that infringes the ‘776 Patent.

17. For example, Red Hat partnered with former co-defendants Dell and HP on the Accused Products with the understanding and intent that such products would be sold and/or distributed to customers or recipients who would use the Accused Products in an infringing manner.

18. By making, using, selling, offering for sale, distributing and/or importing in or into the United States, without authority, products that fall within the scope of the claims of the ‘776 Patent, Defendant Red Hat has also contributed to the infringement of the ‘776 Patent under

35 U.S.C. § 271(b). The infringing products have no substantial non-infringing uses. Defendant Red Hat contributed to others' infringement of the asserted claims of the '776 Patent, as Defendant Red Hat makes, sells, distributes, or offers for sale the Accused Products, knowing such products to be especially made or especially adapted for use in an infringement of asserted claims of the '776 patent, and not a staple article suitable for substantial noninfringing use. The Accused Products necessarily infringe the '776 Patent when used for their intended purpose by each of Red Hat's customers and other third parties. The Accused Products are not capable of any substantial non-infringing use.

19. Upon information and belief, Defendant Red Hat knew or had reason to know of users' infringement of the asserted claims of the '776 Patent. For example, Red Hat makes the infringing object code and its corresponding source code available on various websites where the Accused Products may be downloaded (*See, e.g.*, <https://www.hibernate.org/6.html>). Red Hat further sets up user forums and mailing lists to facilitate and monitor discussion of issues related to infringing use of the Accused Products (*See* Hibernate.org – Community Overview, <https://www.hibernate.org/20.html>). Red Hat also offers professional support subscriptions, consulting services, training courses, and Hibernate Certification to assist users with their infringing use of the Accused Products (*See* Hibernate.org – Commercial Support and Training for Hibernate, <https://www.hibernate.org/148.html>).

20. Defendant Red Hat sold or distributed products with knowledge of the '776 Patent, with the intent that the products be used in a manner that would infringe the '776 Patent, and with knowledge that each of the Accused Products are actually used in a manner that infringes the '776 Patent.

21. Defendant Red Hat had and continues to have actual knowledge of the '776 Patent and actual knowledge of infringement by Red Hat's accused instrumentalities, but has nonetheless engaged in the infringing conduct. Upon information and belief, prior to the filing of the instant suit, the JDX product, when used with required hardware, embodied one or more claims of the '776 Patent, and was publicly marketed with accompanying materials containing the '776 Patent number, including the JDX Datasheet; these were in the public domain, thereby putting Defendants on notice of the '776 Patent. Despite Red Hat's notice of the '776 Patent, Red Hat acted in an objectively reckless manner by nevertheless continuing to sell and/or distribute product(s) that embody the claims of the '776 Patent notwithstanding the objectively high likelihood that its actions constituted infringement. Furthermore, Red Hat was placed on notice of the '776 Patent at least as of the time of the filing of the Original Complaint or First Amended Complaint, and potentially earlier.

22. Furthermore, Red Hat knew of the '776 Patent at least as early as June 21, 2007, when it subpoenaed Mr. Damodar Periwal, in the case styled as *Firestar Software, Inc. v. Red Hat, Inc.*, et al., No. 2:06-cv-258 (E.D. Tex.), requesting "[a]ny document on or before September 25, 1998 concerning U.S. Patent No. 6,163,776." Red Hat's knowledge of the '776 Patent is further evidenced by Red Hat's Invalidity Contentions in that case. Software Tree alleges that Red Hat's infringement is therefore willful.

23. As a direct and proximate result of Red Hat's acts of patent infringement, Plaintiff Software Tree has been and continues to be injured and has sustained and will continue to sustain substantial damages in an amount to be determined by the trier of fact.

24. Plaintiff Software Tree's ongoing business has suffered significantly from the infringement of Defendant Red Hat, and has lost and will continue to lose profits as a result of the Defendant Red Hat's infringement.

25. Plaintiff Software Tree has no adequate remedy at law against these acts of patent infringement. For example, Red Hat intentionally utilizes one or more distribution networks to make Accused Products available to users, and, both through its own actions and by releasing infringing Accused Products to third parties with the specific intent that the third parties further distribute the Accused Products, allows and facilitates both the downloading of the Accused Products by anonymous persons or organizations and the corresponding infringement by users. Defendant Red Hat specifically encourages users to obtain the Accused Products without charge, and without disclosing their identities. Unless Defendant Red Hat are permanently enjoined from its unlawful and willful infringement of the '776 Patent, Plaintiff Software Tree will continue to suffer irreparable harm.

26. Plaintiff Software Tree has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and Plaintiff Software Tree is entitled to recover its reasonable and necessary fees and expenses.

#### **IV. PRAYER FOR RELIEF**

Plaintiff Software Tree respectfully requests that judgment be entered in its favor and against Defendant Red Hat and the Court grant the following relief to Plaintiff Software Tree:

- A. Declare that the '776 Patent is valid and enforceable;
- B. Declare that Defendant Red Hat has infringed the '776 Patent;
- C. Declare that Defendant Red Hat's infringement was willful;

- D. Award damages to Plaintiff Software Tree to which it is entitled for patent infringement;
- E. Award damages to Plaintiff Software Tree to which it is entitled for its lost profits;
- F. Enter a preliminary and thereafter a permanent injunction against Defendant Red Hat's direct infringement of the '776 Patent;
- G. Enter a preliminary and thereafter a permanent injunction against Defendant Red Hat's active inducement of infringement and/or contributory infringements of the '776 Patent by others;
- H. Award Plaintiff Software Tree its expenses, costs, and attorneys' fees pursuant to 35 U.S.C. § 285;
- I. Award Plaintiff Software Tree increased damages in an amount not less than three times the amount of damages found by the jury or assessed by this Court, for Defendant Red Hat's willful infringement pursuant to 35 U.S.C. § 284;
- J. Award interest on Plaintiff Software Tree's damages; and
- K. Award such other relief as the Court deems just and proper.

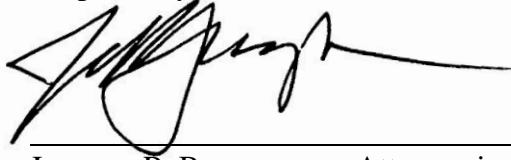
#### **V. JURY DEMAND**

In accordance with FED. R. CIV. P. 38 and 39, Plaintiff Software Tree asserts its rights under the Seventh Amendment of the United States Constitution and demands a trial by jury on all issues triable to a jury.



Dated: May 28, 2010

Respectfully submitted,



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**ATTORNEYS FOR PLAINTIFF  
SOFTWARE TREE, LLC**

**Certificate of Service**

I hereby certify that on this date I electronically filed **Plaintiff's Second Amended Complaint for Patent Infringement and Jury Demand** with the clerk of court for the United States District Court, Eastern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

May 28, 2010  
Date

/s/ Jeffrey R. Bragalone  
Jeffrey R. Bragalone