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

1. **Versata Software, Inc., f/k/a** **Trilogy Software, Inc.; and** 2. **Versata Development Group, Inc.,** **f/k/a Trilogy Development Group,** **Inc.**	§ § § § § § § § §	
Plaintiffs,	§ §	
v.	§ §	**CIVIL ACTION NO. 2:06-CV-358**
1. **Sun Microsystems, Inc.,**	§ § §	**JURY TRIAL DEMANDED**
Defendant.	§ §	

PLAINTIFFS' SECOND AMENDED COMPLAINT

Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc. and Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc. (collectively "Trilogy") file this Second Amended Complaint against Defendant Sun Microsystems, Inc. ("Sun"), and state as follows:

PARTIES

1. Plaintiff Versata Software, Inc., f/k/a Trilogy Software, Inc., is a corporation existing under the laws of Delaware with its principal place of business at 6011 W. Courtyard, Austin, Texas, 78730.

2. Plaintiff Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc., is a corporation existing under the laws of Delaware with its principal place of business at 6011 W. Courtyard, Austin, Texas, 78730.

3. On information and belief, Sun is a corporation existing under the laws of Delaware with its principal place of business at 4150 Network Circle, Santa Clara, CA 95054. Sun has appeared and answered in this lawsuit.

JURISDICTION AND VENUE

4.   This action includes claims for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 271, and state law claims for breach of contract, trade secret misappropriation, tortious interference with existing contract, and unfair competition.

5.   This Court has subject matter jurisdiction over Trilogy's patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Trilogy's state law claims pursuant to 28 U.S.C. § 1367(a) because they are so related to Trilogy's patent infringement claims that they form part of the same case or controversy under Article III of the United States Constitution.

6.   Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

BACKGROUND

7.   Trilogy, an Austin-based company, is a leading provider of industry-specific enterprise software for the world's largest companies. Trilogy's solutions, which are well established in the automotive, communications, computer, and insurance industries, enable leading companies to develop, market, and sell products more quickly and profitably.

A.   Trilogy's Patented Product Configuration Technology

8.   One of Trilogy's primary product lines is its product configuration software. This technology, as the name implies, enables a consumer to select different options on a product such as a computer or a car. Trilogy's product configuration technology ensures that only the proper options are presented to the consumer so that the final product is one that could be built and sold.

9.   Trilogy's three patents-in-suit (the "Trilogy Patents") relate to Trilogy's product configuration technology.

10.   The first Trilogy Patent is United States Patent No. 5,515,524 ("the '524 patent"), entitled "Method and Apparatus for Configuring Systems." The United States Patent and Trademark Office ("USPTO") duly and legally issued the '524 patent on May 7, 1996. Trilogy holds all right, title, and interest in and to the '524 patent (a true and correct copy of which is attached as Exhibit A).

11.   The second Trilogy Patent is United States Patent No. 5,708,798 ("the '798 patent"), entitled "Method and Apparatus for Configuring Systems." The USPTO duly and legally issued the '798 patent on January 13, 1998. Trilogy holds all right, title, and interest in and to the '798 patent (a true and correct copy of which is attached hereto as Exhibit B).

12.   The third Trilogy Patent is United States Patent No. 6,002,854 ("the '854 patent"), entitled "Method and Apparatus for Configuring Systems." The USPTO duly and legally issued the '854 patent on December 14, 1999. Trilogy holds all right, title, and interest in and to the '854 patent (a true and correct copy of which is attached hereto as Exhibit C).

B.   Trilogy's License Agreement With Sun

13.   On or about November 30, 1998, Trilogy and Sun executed a Software License Agreement ("License Agreement") and a Professional Services Agreement ("Services Agreement"). Pursuant to the License Agreement, Trilogy granted Sun a non-exclusive right and license to use its product configuration computer software in accordance with certain specified terms and conditions. Pursuant to the Services Agreement, Trilogy agreed to provide professional services related to its licensed products to Sun.

14.   Trilogy establishes and memorializes a confidential relationship with each of its customers and Sun was no exception. Section 1.2 of the License Agreement and Section 4.1 of the Services Agreement each defined "Confidential Information" as:

Any and all information disclosed by a party hereunder ("Discloser") to the other ("Recipient") in a written or other tangible form and which is clearly marked as being confidential or proprietary. Information disclosed orally shall also constitute "Confidential Information" if it is (a) designated as confidential or proprietary by the Discloser at the time of disclosure, and (b) summarized and identified as being Confidential Information in a writing which is received by Recipient within thirty (30) days after disclosure.

Section 9.2 of the License Agreement and Sections 4.2 and 4.5 of the Services Agreement

provided in part that:

Recipient shall neither disclose Discloser's Confidential Information to any third party, nor use the same for any purpose other than as set forth in this Agreement. In the case of Sun, it may use Confidential Information of Trilogy only to support its use of the Licensed Product(s) as expressly authorized by this Agreement. Recipient shall use the same degree of reasonable care as it uses to protect its own confidential information, but no less than reasonable care, to prevent the unauthorized use, dissemination or publication of the Confidential Information. Recipient shall not, in whole or in part, copy or reproduce the Confidential Information except as necessary for the purposes expressly set forth in this Agreement.

*   *   *

Notwithstanding the definition of "Confidential Information," . . . (iii) "Confidential Information" of Trilogy includes (A) all information or materials generated by Sun that contains or reflects Confidential Information of Trilogy, (B) the Software Tools; and (C) any source code of Trilogy (including source code for the Computer Industry Model (CIM)).

15.   Additionally, Amendment No. 1 to the License Agreement provided that:

Trilogy's highly confidential and proprietary Computer Industry Model ("CIM") is a compilation of configuration modeling language code ("CML") and data that models generic product logic (including hardware and software configuration logic) and generic product data for certain data processing products. The CIM includes object code and source code forms. The CIM and nonpublic information relating thereto is Trilogy Confidential Information. CML modeling techniques and nonpublic information related to CML are also Trilogy Confidential Information.

In two addendums to the Services Agreement, the parties also agreed that Trilogy's Confidential

Information would include Trilogy's Source Safe database and Trilogy's Silk Framework

Development Kit.

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16.   After the parties entered into the License Agreement and Services Agreement (collectively, "Agreements"), Trilogy deployed its product configuration software at Sun. During the course of that deployment and Trilogy's subsequent business dealings with Sun, Sun was gained access to and acquired valuable technical and commercial trade secrets and confidential and proprietary information belonging to Trilogy.

17.   Pursuant to the Agreements, Trilogy employees and contractors trained Sun employees to use Trilogy's product configuration software. The Sun employees trained on Trilogy's configuration software included, but were not necessarily limited to, Ateet Goel, Rupa Krishnan, Andrew Magyar, Ranju Rajan, and Manav Sharma. These Sun employees gained access to and acquired valuable Trilogy trade secrets and confidential and proprietary information as part of the training process.

18.   The following is a representative list of four categories of Trilogy business and technical trade secrets and confidential and proprietary information that Sun accessed pursuant to the Agreements and that could provide an advantage to a Trilogy competitor in the configuration software business: (1) Trilogy's model development process; (2) Trilogy's configuration modeling language ("CML"); (3) Trilogy's Computer Industry Model ("CIM"); and (4) Trilogy's proprietary techniques used for the efficient and optimal representation of product relationships commonly experienced in product configuration and sale. These business and technical trade secrets and confidential and proprietary information are not disclosed in Trilogy's patents-in-suit.

19.   Trilogy has invested years of experience, effort, time, research, and money in the development of these trade secrets and this confidential and proprietary information.

20.   Trilogy took and takes precautions to protect its technical and commercial confidential, proprietary, and trade secret information, including the confidential, proprietary,

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and trade secret information at issue here. These precautions include, but are not limited to, controlling access to Trilogy's facilities by badges worn by authorized employees and restricting access to such facilities by non-Trilogy employees; designating confidential, private, or proprietary documents with appropriate labels and markings; requiring new employees to sign proprietary information agreements; generally reminding employees during exit interviews of their ongoing confidentiality obligations to Trilogy; circulating confidential and trade secret information outside of Trilogy only on a need-to-know basis and subject to confidentiality agreements; and limiting access to company computers. Trilogy does believe, however, that those it does business with will act in good faith in their business dealings with Trilogy and that those it does business with will honor the confidentiality of the relationships they establish.

C.   Sun's W5C Configurator

21.   In 2002, Sun issued a Request for Proposal ("RFP") soliciting a new vendor to provide its product configuration software. Although Trilogy submitted a proposal to Sun in response to the RFP, Sun did not select Trilogy as its configuration software vendor going forward. Rather, during the summer of 2002, Sun selected Oracle Corporation ("Oracle") as its new vendor for product configuration software.

22.   Upon information and belief, after selecting Oracle as its new vendor for product configuration software, Sun began to develop its own internal configuration solution. In August 2002, Sun transitioned nearly all of the Sun employees assigned to work with the Trilogy Configurator in use at Sun (including, but not necessarily limited to Ateet Goel, Rupa Krishnan, Andrew Magyar, Ranju Rajan, Manav Sharma, and Shyam Lakshman) to its internal "W5C Configurator" development project. These Sun employees and others created Sun's W5C Configurator by developing functional companions for the simple configuration solution supplied to Sun by Oracle. Sun continued its use of Trilogy's product configuration software

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during its development project, but eventually phased out Trilogy's Configurator when the W5C

Configurator was completed in May 2005.

23.   Upon information and belief, Sun developed its W5C Configurator with trade

secrets and confidential and proprietary information belonging to Trilogy. Sun gained access to

these trade secrets and confidential and proprietary information pursuant to the Agreements,

which prohibits such use. Sun also gained access to Trilogy's trade secrets and confidential and

proprietary information via two former Trilogy employees, Shyam Lakshman and Jean Murray, a

former Trilogy contractor, Evan Kempner, and the Sun employees who were trained on Trilogy's

software under the Agreements. Sun induced some or all of these individuals to improperly

disclose Trilogy's trade secrets and confidential and proprietary information for use in the

development of Sun's W5C Configurator.

D.   Sun Hires Shyam Lakshman

24.   Shyam S. Lakshman ("Lakshman") formerly worked for pcOrder.com, a Trilogy

subsidiary. While at pcOrder.com, Lakshman was a key modeler using Trilogy's proprietary and

trade secret configuration technology.

25.   On or about September 11, 1995, Lakshman signed a Proprietary Information

Agreement (a true and correct copy of which is attached as Exhibit D) under which he agreed not

to use in any unauthorized manner or to disclose confidential, proprietary, or trade secret

information of Trilogy to any third party at any time during or after his employment by Trilogy.

As Lakshman acknowledged in his Proprietary Information Agreement:

> I understand that my work as an employee of Trilogy will involve access to and
> creation of confidential (including trade secrets) and proprietary information
> (collectively, "Proprietary Information"). I agree to keep all Proprietary
> Information in trust for the benefit of Trilogy. I will never use any Proprietary
> Information, except as required by my duties to Trilogy. I understand that this
> prohibition on use or disclosure prevents me from discussing Proprietary
> Information, even in general terms, with persons outside Trilogy.

"Proprietary Information" means information, ideas, and materials of or about Trilogy or its affiliates, employees, customers, or others with whom Trilogy conducts business. Proprietary Information that is not generally known to the software industry or the public is confidential, and I agree to exercise diligence at all times to maintain the confidentiality of all confidential Proprietary Information and not disclose confidential Proprietary Information. I understand that my obligation to keep Proprietary Information strictly confidential shall survive the termination of my employment and/or this agreement.

Proprietary Information includes, without limitation, information, ideas or materials of a technical nature such as research and development results, software design and specifications, source and object code, training and training materials, invention disclosures, patent applications, and other materials and concepts relating to Trilogy's products and processes. Proprietary Information also includes information, ideas, or materials of a business nature such as non-public financial information; information relating to profits, costs, marketing, strategy, purchasing, sales, customers, suppliers, contract terms, employees, and salaries, product development plans; business and financial plans and forecasts, and marketing and sales plans and forecasts.

26.   During the course of his employment by pcOrder.com, Lakshman acquired confidential, trade secret, and highly proprietary information concerning all aspects of Trilogy's product configuration software.

27.   Lakshman resigned from his position at Trilogy's subsidiary pcOrder.com on February 11, 1997.

28.   Sun hired Lakshman after his departure from Trilogy. After Sun licensed Trilogy's product configuration software in November 1998, Lakshman became the technical deployment lead for Trilogy's Configurator at Sun.

29.   Upon information and belief, in or around August 2002, after working with Trilogy's Configurator in use at Sun for more than three years, Lakshman transitioned from his position as technical deployment lead for Trilogy's Configurator in use at Sun to technical architecture lead for Sun's W5C Configurator project.

30.   Upon information and belief, while working on Sun's W5C Configurator project, Lakshman utilized and disclosed confidential, proprietary, and trade secret information regarding Trilogy's configuration software that he acquired while employed by Trilogy's subsidiary pcOrder.com and while working with Trilogy's Configurator in use at Sun.

E.   Sun Hires Jean Murray

31.   Jean Murray ("Murray") is a former Trilogy employee. While employed by Trilogy, Murray acted as the program manager for the deployment of Trilogy's configuration software at Sun.

32.   On or about July 6, 1999, Murray signed a Proprietary Information Agreement (a true and correct copy of which is attached as Exhibit E) under which she agreed not to use in any unauthorized manner or to disclose confidential, proprietary, or trade secret information of Trilogy to any third party at any time during or after her employment by Trilogy. As Murray acknowledged in her Proprietary Information Agreement:

> I understand that my work as an employee of Trilogy will involve access to and creation of confidential (including trade secrets) and proprietary information (collectively, "Proprietary Information"). I agree to keep all Proprietary Information in trust for the benefit of Trilogy. I will never use any Proprietary Information, except as required by my duties to Trilogy. I understand that this prohibition on use or disclosure prevents me from discussing Proprietary Information, even in general terms, with persons outside Trilogy.

> "Proprietary Information" means information, ideas, and materials of or about Trilogy or its affiliates, employees, customers, or others with whom Trilogy conducts business. Proprietary Information that is not generally known to the software industry or the public is confidential, and I agree to exercise diligence at all times to maintain the confidentiality of all confidential Proprietary Information and not disclose confidential Proprietary Information. I understand that my obligation to keep Proprietary Information strictly confidential shall survive the termination of my employment and/or this agreement.

> Proprietary Information includes, without limitation, information, ideas or materials of a technical nature such as research and development results, software design and specifications, source and object code, training and training materials, invention disclosures, patent applications, and other materials and concepts

relating to Trilogy's products and processes.   Proprietary Information also includes information, ideas, or materials of a business nature such as non-public financial information; information relating to profits, costs, marketing, strategy, purchasing, sales, customers, suppliers, contract terms, employees, and salaries, product development plans; business and financial plans and forecasts, and marketing and sales plans and forecasts.

33.   During the course of her employment with Trilogy, Murray acquired confidential, trade secret, and highly proprietary information concerning all aspects of Trilogy's configuration software.

34.   On or about December 3, 2003, Sun approached Trilogy to query whether Trilogy would object if Sun hired Murray. According to Sun, Murray would continue to work with Trilogy's Configurator in her new position at Sun, performing essentially the same role that she had been assigned while working for Trilogy. Based on Sun's representation regarding Murray's expected job function at Sun, Trilogy indicated that it would not object to Sun hiring Murray, provided that Murray abided by her ongoing confidentiality obligations to Trilogy in her new job.

35.   Upon Murray's departure from Trilogy, Murray and Trilogy executed a contract entitled "Employment Separation Agreement and Voluntary Release," which incorporated by reference Murray's Proprietary Information Agreement (a true and correct copy of which is attached as Exhibit F). Murray's separation from Trilogy was effective as of March 31, 2004.

36.   Upon information and belief, Murray did not continue to work primarily with Trilogy's Configurator in use at Sun after becoming a Sun employee. Rather, Murray became the program manager for Sun's W5C Configurator project.

37.   Upon information and belief, while working on Sun's W5C Configurator project, Murray utilized and disclosed confidential, proprietary, and trade secret information regarding Trilogy's configuration software that she acquired while employed by Trilogy.

F.   **Sun Hires Evan Kempner**

38.   Trilogy hired Evan Kempner ("Kempner") as a contractor in April 2000. At the time of his employment by Trilogy, Kempner was an employee of Onward, Inc. ("Onward"). Kempner's job duties as a Trilogy contractor included modeling computer products to be deployed at Sun, maintaining those models, and training Sun employees on Trilogy's configuration software.

39.   On or about April 24, 2000, Kempner signed a "Nondisclosure Agreement For Consultants" (a true and correct copy of which is attached as Exhibit G), pursuant to which he agreed not to use in any unauthorized manner or to disclose confidential, proprietary, or trade secret information of Trilogy to any third party at any time during or after the termination of his business relationship with Trilogy. As Kempner acknowledged in the Nondisclosure Agreement For Consultants:

> **WHEREAS**, Trilogy in the course of its dealings with Consultant may furnish to Consultant "Confidential Information" as defined in Paragraph 1 and does not wish to convey any interest of copyright therein to Consultant, or make such Confidential Information public or common knowledge to be disclosed to any third party, or permit any use thereof except to engage in such discussions; and

> **NOW, THEREFORE,** in consideration of the business discussions, disclosure of Confidential Information and any future business relationship between the parties, it is hereby agreed as follows:

> 1. **CONFIDENTIAL INFORMATION:** For purposes of this Agreement, the term "Confidential Information" includes but is not limited to the following:

> Any information, business plan, concept, idea, know-how, process, technique, program, design, formula, algorithm or work-in-progress, any engineering, manufacturing, marketing, technical, financial, data, or sales information, pricing or business information, or any information regarding suppliers, customers, employees, investors, or business operations, and any other information or materials, whether written, or graphic, or any other form or that is disclosed orally, or electronically, whether tangible or intangible and in whatever form or medium provided, or otherwise which is learned or disclosed in the course of discussions, studies, or other work undertaken between the parties.

Without limiting the generality of the foregoing, Confidential Information shall include all information and materials disclosed orally or in any other form, regarding Trilogy's software products or software product development, including, but not limited to, the configuration techniques, data classification techniques, user interface, applications programming interfaces, data modeling and management techniques, data structures, and other information of or relating to Trilogy's software products or derived from testing or other use thereof. Confidential Information shall not include any information included under Paragraph 7.

2. **JOINT UNDERTAKING**. Consultant agrees that Consultant will not at any time disclose, give or transmit in any manner or form or for any purpose, the Confidential Information received from Trilogy to any person, party, firm or corporation entity, or use such Confidential Information for its own benefit or the benefit of anyone else, or for any purpose other than to engage in discussions regarding possible business relationship involving both Consultant and Trilogy. Without limitation of the generality of the foregoing, Consultant may not use, refer to, or otherwise benefit from the Confidential Information of Trilogy in connection with Consultant's market research, competitive analysis, development, planning, marketing or other business activities.

Consultant shall take all reasonable measures to preserve the confidentiality and avoid the disclosure of Trilogy's Confidential Information, including, but not limited to, those steps taken with respect to Consultant's own confidential information or like importance. Consultant shall not disassemble, decompile or otherwise reverse engineer any software product of Trilogy's and, to the extent any such activity may be permitted, the results thereof shall be deemed Confidential Information subject to the requirements of this Agreement.

40.   Kempner's work on behalf of Trilogy was also performed subject to the August 10, 1997 Confidentiality Agreement between Onward and Trilogy, the confidentiality obligations set forth in Section 6 of the August 11, 1997 Computer Consulting Services Agreement between Onward and Trilogy, together with Addendum #1 and Addendum #2 to that agreement, and the confidentiality obligations set forth in Section 4 of the November 6, 2000 Consultant Agreement between Onward and Trilogy.

41.   In his role as a Trilogy contractor, Kempner acquired confidential, trade secret, and highly proprietary information concerning all aspects of Trilogy's configuration software.

42.   On or about August 26, 2002, Sun approached Trilogy and queried whether Trilogy would object if Sun hired Kempner. Sun indicated that, in his new position at Sun,

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Kempner would continue to model computer products to be deployed at Sun and replace Lakshman as the technical deployment lead for Trilogy's Configurator in use at Sun.

43.   In a September 9, 2002 letter to Sun's Sze Fen Tan, Trilogy indicated that it would not object if Sun hired Kempner, as long as Kempner abided by his ongoing confidentiality obligations to Trilogy. In that letter, Trilogy reminded Sun that Kempner "had access to very significant Trilogy Confidential Information" and reiterated its expectation "that Sun will take all necessary steps to ensure that Mr. Kempner and any other individuals who have had access to Trilogy Confidential Information will not use or disclose the information in any manner not expressly permitted." Trilogy also stated that Kempner "should be informed that he may not provide Sun with Trilogy Confidential Information that he accessed during his previous engagements in connection with Trilogy products and/or services." On or about September 26, 2002, Sun assured Trilogy in writing that it would take appropriate steps to ensure compliance with Sun's contractual confidentiality obligations to Trilogy upon hiring Kempner.

44.   Also in September 2002, Trilogy reminded Kempner in writing of his continuing obligations to Trilogy pursuant to his Nondisclosure Agreement for Consultants.

45.   Upon information and belief, in the fall of 2003, Kempner began simultaneously working as both technical deployment lead for Trilogy's Configurator in use at Sun and as technical deployment lead for Sun's W5C Configurator project.

46.   Upon information and belief, while working on Sun's W5C Configurator project, Kempner utilized and disclosed confidential, proprietary, and trade secret information regarding Trilogy's product configuration software that he acquired while employed by Trilogy and while working with the Trilogy Configurator at Sun.

COUNT I: INFRINGEMENT OF THE '524 PATENT

47.   The preceding factual statements are incorporated herein by reference.

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48.   Upon information and belief, Sun makes, uses, licenses, sells, offers for sale, or imports in the State of Texas, in this judicial district, and elsewhere within the United States configuration software and related services.

49.   Sun has been and is now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement, of the '524 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing products including Sun's W5C Configurator software and related services covered by one or more claims of the '524 patent, all to the injury of Trilogy.

50.   Trilogy has marked its products that embody or may be used to practice the inventions claimed in the '524 patent and has given written notice to Sun of its infringement in accordance with 35 U.S.C. § 287.

51.   Sun had and has actual notice of the '524 patent, and Sun has infringed and is infringing the '524 patent with knowledge of Trilogy's patent rights, without a reasonable basis for believing that Sun's conduct is lawful. Defendant Sun's acts of infringement have been willful, deliberate, and in reckless disregard of Trilogy's patent rights, and will continue unless permanently enjoined by this Court.

52.   Trilogy has been damaged by Sun's infringement of the '524 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Sun is permanently enjoined from infringing the '524 patent.

COUNT II: INFRINGEMENT OF THE '798 PATENT

53.   The preceding factual statements are incorporated herein by reference.

54.   Upon information and belief, Sun makes, uses, licenses, sells, offers for sale, or imports in the State of Texas, in this judicial district, and elsewhere within the United States configuration software and related services.

55.   Sun has been and is now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement, of the '798 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing products including Sun's W5C Configurator software and related services covered by one or more claims of the '798 patent, all to the injury of Trilogy.

56.   Trilogy has marked its products that embody or may be used to practice the inventions claimed in the '798 patent and has given written notice to Sun of its infringement in accordance with 35 U.S.C. § 287.

57.   Sun had and has actual notice of the '798 patent, and Sun has infringed and is infringing the '798 patent with knowledge of Trilogy's patent rights, without a reasonable basis for believing that Sun's conduct is lawful. Defendant Sun's acts of infringement have been willful, deliberate, and in reckless disregard of Trilogy's patent rights, and will continue unless permanently enjoined by this Court.

58.   Trilogy has been damaged by Sun's infringement of the '798 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Sun is permanently enjoined from infringing the '798 patent.

COUNT III: INFRINGEMENT OF THE '854 PATENT

59.   The preceding factual statements are incorporated herein by reference.

60.   Upon information and belief, Sun makes, uses, licenses, sells, offers for sale, or imports in the State of Texas, in this judicial district, and elsewhere within the United States configuration software and related services.

61.   Sun has been and is now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement, of the '854 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing products including Sun's W5C Configurator software and related services covered by one or more claims of the '854 patent, all to the injury of Trilogy.

62.   Trilogy has marked its products that embody or may be used to practice the inventions claimed in the '854 patent and has given written notice to Sun of its infringement in accordance with 35 U.S.C. § 287.

63.   Sun had and has actual notice of the '854 patent, and Sun has infringed and is infringing the '854 patent with knowledge of Trilogy's patent rights, without a reasonable basis for believing that Sun's conduct is lawful. Defendant Sun's acts of infringement have been willful, deliberate, and in reckless disregard of Trilogy's patent rights, and will continue unless permanently enjoined by this Court.

64.   Trilogy has been damaged by Sun's infringement of the '854 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Sun is permanently enjoined from infringing the '854 patent.

COUNT IV: BREACH OF CONTRACT PURSUANT TO
TEXAS STATE LAW OR, ALTERNATIVELY, CALIFORNIA STATE LAW

65.   The preceding factual statements are incorporated herein by reference.

66.   Sun has breached Section 9.2(a) of the License Agreement by misusing or disclosing to others Trilogy's trade secrets and Confidential Information (as that term is defined in the License Agreement) without authorization by Trilogy.

67.   Sun has breached Section 4.2 of the Services Agreement by misusing or disclosing to others Trilogy's trade secrets and Confidential Information (as that term is defined in the Services Agreement) without authorization by Trilogy.

68.   As a direct and proximate result of Sun's breaches, Trilogy has been and will continue to be damaged in an amount to be determined at trial.

69.   Trilogy is entitled to its attorneys' fees and costs pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 *et seq.* or, alternatively, Cal. Civ. Code § 1717.

COUNT V: TORTIOUS INTERFERENCE WITH EXISTING CONTRACT PURSUANT TO TEXAS STATE LAW OR, ALTERNATIVELY, CALIFORNIA STATE LAW

70.   The preceding factual statements are incorporated herein by reference.

71.   Trilogy has existing contracts with Lakshman, Murray, Kempner, and Onward that require Lakshman, Murray, and Kempner to refrain from using in any unauthorized manner and to refrain from disclosing confidential, proprietary, or trade secret information of Trilogy to any third party at any time during or after the termination of their business relationships with Trilogy. At all relevant times, Sun had knowledge of these contracts.

72.   By its acts and omissions, Sun has induced Lakshman, Murray, and Kempner to breach their contractual confidentiality obligations to Trilogy.

73.   As a direct and proximate result of Sun's acts and omissions, Trilogy has been and will continue to be damaged in an amount to be determined at trial.

COUNT VI: TRADE SECRET MISAPPROPRIATION
PURSUANT TO TEXAS STATE LAW OR, ALTERNATIVELY,
CALIFORNIA'S UNIFORM TRADE SECRETS ACT, CAL. CIV. CODE § 3426 *et seq.*

74.   The preceding factual statements are incorporated herein by reference.

75.   Trilogy owns certain confidential and proprietary information related to its product configuration technology that rises to the level of trade secret protection under both Texas and California law.   This information includes, but is not necessarily limited to, the information listed in paragraph 18 above.   This trade secret information is of great value to Trilogy, is kept confidential from Trilogy's competitors and the market generally, and was disclosed to Sun only for the express purposes set forth in the Agreements.

76.   Sun misappropriated and continues to misappropriate the trade secrets and confidential information belonging to Trilogy, which it acquired as a result of a breach of its confidential relationship with Trilogy.   Sun has used and continues to use Trilogy's trade secrets and confidential information for Sun's own benefit and contrary to the interests of Trilogy.

77.   As a direct and proximate result of Sun's acts and omissions, Trilogy has been and will continue to be damaged in an amount to be determined at trial.

COUNT VII: VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

78.   The preceding factual statements are incorporated herein by reference.

79.   California Business and Professions Code § 17200 *et seq.*, also known as the California Unfair Competition Law, prohibits acts of "unfair competition," including any unlawful or unfair business act or practice.

80.   Sun has violated and continues to violate § 17200 by engaging in unlawful business practices and acts.   Specifically, Sun has misappropriated and continues to misappropriate trade secrets and confidential information belonging to Trilogy in violation of California's Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*

81.   Sun has violated and continues to violate § 17200 by engaging in unfair business practices and acts. Specifically, Sun has misused or disclosed to others Trilogy's trade secrets and confidential information without authorization by Trilogy and induced Lakshman, Murray, and Kempner to breach their contractual confidentiality obligations to Trilogy. The gravity of the harm to Trilogy resulting from these unfair business practices and acts far outweighs the utility of Sun's conduct.

82.   Sun's unlawful and unfair business practices and acts occurred in and/or emanated from California.

83.   As a direct and proximate result of Sun's unlawful and unfair business practices and/or acts, Sun has been unjustly enriched and should be ordered to make restitution to Trilogy pursuant to California Business and Professions Code § 17203.

84.   The unlawful and unfair business practices and/or acts of Sun described herein present a continuing threat to Trilogy, in that Sun persists and continues to engage in these practices and/or acts, and will not cease doing so unless and until forced to do so by this Court. Sun's conduct is causing and will continue to cause irreparable injury to Trilogy unless enjoined or restrained pursuant to California Business and Professions Code § 17203.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc., and Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc., pray for the following relief against Defendant Sun Microsystems, Inc.:

A.   A judgment in favor of Trilogy that Sun has infringed, directly and indirectly by way of inducing infringement and/or contributing to the infringement, the Trilogy Patents-in-Suit;

B.   A permanent injunction, enjoining Sun and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of any of the Trilogy Patents-in-Suit;

C.   A judgment and order requiring Sun to pay Trilogy the damages to which Trilogy is entitled;

D.   A judgment and order finding Sun's infringement willful and awarding treble the amount of damages and losses sustained by Trilogy as a result of Sun's infringement under 35 U.S.C. § 284;

E.   A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Trilogy its reasonable attorneys' fees;

F.   A judgment and order requiring Sun to pay interest on the damages awarded to Trilogy;

G.   A judgment and order requiring Sun to pay the costs, attorneys' fees, and expert witness fees incurred by Trilogy in this action;

H.   A permanent injunction pursuant restraining and enjoining Sun and its agents, employees, servants, officers, and those persons in active concert with them, to whom Trilogy has shared or disclosed any of its confidential or proprietary information or trade secrets from (i) disclosing, revealing, selling, conveying, transferring, transmitting, reproducing by any means or in any form, hiding, moving or removing from their present locations, altering, destroying, disposing of, or using in any way, directly or indirectly, any of Trilogy's trade secrets or confidential or proprietary information; (ii) designing, manufacturing, reproducing, deploying, or otherwise using any products, software, or technology based in any way on Trilogy's trade secrets or confidential or proprietary information; (iii) interfering with any third-party's

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contractual confidentiality obligations to Trilogy; and (iv) all other wrongful conduct alleged in this Complaint;

I.   An order requiring Sun to make restitution of all revenues, earnings, compensation, and benefits obtained by means of any act or practice declared by this Court to be unlawful or to constitute unfair competition under California Business and Professions Code § 17200; and

J.   An award of such other and further relief in law or in equity to which Trilogy may be justly entitled.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of any and all issues triable of right before a jury.

DATED: January 15, 2008.

Respectfully submitted,

McKOOL SMITH P.C.

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<u>CERTIFICATE OF SERVICE</u>

I hereby certify that a true and correct copy of the above and foregoing document has been

served on the following counsel of record via the Court's ECF system on January 15, 2008:

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