

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

**ACHATES REFERENCE PUBLISHING,
INC.,**

Plaintiff,

vs.

BMC Software Inc., Borland Software Corporation, Citrix Systems, Inc., The MathWorks, Inc., Dassault Systèmes SolidWorks Corp., MindJet, LLC, McAfee Corporation, Bentley Systems Inc., and Intuit Inc.

Defendants.

Civil Action No. 2:09cv355 (TJW)

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Achates Reference Publishing, Inc. ("Achates"), by and through its attorneys, as and for its complaint against defendants BMC Software Inc., Borland Software Corporation, Citrix Systems, Inc., The MathWorks, Inc., Dassault Systèmes SolidWorks Corp., MindJet LLC, McAfee Corporation, Bentley Systems Inc., and Intuit Inc., alleges:

PARTIES

1. Plaintiff Achates is a Texas corporation, having an address at 3301 W. Marshall Ave., Ste 102, Longview, TX 75604.

2. Defendant BMC Software Inc. ("BMC") is a Texas corporation, having an address at 2101 CityWest Blvd., Houston, Texas 77042. On information and belief, BMC is qualified to do business in the State of Texas, Filing No. 7718406, and has appointed CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201 USA, as its agent for service of process.

3. Defendant Borland Software Corporation (“Borland”) is a Delaware corporation, having an address at 8310 Capital of Texas Highway North, Building Two, Suites 300 & 100, Austin, Texas, 78731. On information and belief, Borland is qualified to do business in the State of Texas, Filing No 8213106, and has appointed CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201 USA, as its agent for service of process.

4. Defendant Citrix Systems, Inc. (“Citrix”) is a Delaware corporation having an address at 851 West Cypress Creek Road, Fort Lauderdale, FL 33309. On information and belief, Citrix is qualified to do business in the State of Texas, Filing No. 12585606, and has appointed Corporation Service Company d/b/a CSC, 701 Brazos Street, Suite 1050, Austin, Texas 78701, as its agent for service of process.

5. Defendant The MathWorks, Inc. (“Mathworks”) is a Delaware corporation, having an address at 3 Apple Hill Drive Natick, MA 01760-2098. On information and belief, MathWorks is qualified to do business in the State of Texas, Filing No. 800169431, and has appointed CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201 USA, as its agent for service of process.

6. Defendant Dassault Systèmes SolidWorks Corp. (“Solidworks”) is a Delaware corporation, having an address at 300 Baker Avenue Concord, MA 01742. On information and belief, Solidworks is qualified to do business in the State of Texas, Filing No. 11580106, and has appointed CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201 USA, as its agent for service of process.

7. Defendant MindJet LLC. (“MindJet”) is a California corporation, having an address at 1160 Battery St., San Francisco, CA, 94111. On information and belief, MindJet is

qualified to do business in the State of Texas, Filing No. 800450183 , and has appointed R. Scott Thompson 8824 Smokey Dr., Plano, TX 75025 as its agent for service of process.

8. Defendant McAfee Corporation (“McAfee”) is a Delaware corporation, having an address at 5000 Headquarters Dr., Plano, TX 75024. On information and belief, McAfee is qualified to do business in the State of Texas, Filing No 10383206, and has appointed CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201 USA, as its agent for service of process.

9. Defendant Bentley Systems Inc. (“Bentley”) is a Delaware corporation, having an address at 685 Stockton Drive, Exton, PA 19341. On information and belief, Bentley is qualified to do business in the State of Texas, Filing No. 10503306, and has appointed CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201 USA, as its agent for service of process.

10. Defendant Intuit Inc. (“Intuit”) is a Delaware corporation, having an address at 2632 Marine Way Mountain View, CA 94043. On information and belief, Intuit is qualified to do business in the State of Texas, Filing No. 9523606, and has The Prentice-Hall Corporation, 701 Brazos Street, Suite 1050, Austin, Texas 78701, as its agent for service of process.

JURISDICTION AND VENUE

11. This is an action for patent infringement arising under patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. This Court has personal jurisdiction over the defendants because they all, either directly or through intermediates such as distributors, retailers, and others, regularly and systematically conduct and transact business within the State of Texas. Defendants’ business conduct and transactions include, but are not limited to, shipping, distributing, selling, and

offering for sale material or products to companies, individuals, and other entities located in the State of Texas.

13. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b), (c).

PATENT INFRINGEMENT

14. On November 9, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,982,889 (“the ‘889 patent”) entitled “Method and Apparatus for Distributing Information Products,” with Jason Paul DeMont as sole inventor. A true and correct copy of the ‘889 patent is attached as Exhibit A.

15. On January 9, 2001, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,173,403 (“the ‘403 patent”) entitled “Method and Apparatus for Distributing Information Products,” with Jason Paul DeMont as sole inventor. The ‘403 patent is a continuation-in-part of the ‘889 patent. A true and correct copy of the ‘403 patent is attached as Exhibit B.

16. Achates is the owner by assignment of all right, title, and interest in and to the ‘889 patent and the ‘403 patent, with full and exclusive right to bring suit to enforce these patents.

17. In violation of 35 U.S.C. § 271, defendants have infringed the ‘889 patent and the ‘403 patent by making, using, selling, and offering for sale software that uses the product activation technology described and claimed in the ‘889 and ‘403 patents, without authority of Achates.

18. In violation of 35 U.S.C. § 271, defendants have induced and contributed to infringement of the ‘889 patent and the ‘403 patent.

19. Without limitation, Defendant BMC directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: MainView including but not limited to InTune. Such products infringe the '889 patent and the '403 patent by without limitation employing BMC Software Product Authorization.

20. Without limitation, Defendant Borland directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing their customers to use, at least the following products: VisiBroker, Tempo and Together. Such products infringe the '889 patent and the '403 patent by without limitation employing Activation technology.

21. Without limitation, Defendant Citrix directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: Citrix Access Suite and products that use the Citrix Activation System utilities. Such products infringe the '889 patent and the '403 patent by without limitation employing the Citrix Activation System.

22. Without limitation, Defendant Mathworks directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: MATLAB and Simulink product families. Such products infringe the '889 patent and the '403 patent by without limitation employing Activation technology.

23. Without limitation, Defendant Solidworks directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: SolidWorks and SolidWorks

Simulation software. Such products infringe the '889 patent and the '403 patent by without limitation employing Activation technology.

24. Without limitation, Defendant Mindjet directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: MindManager. Such products infringe the '889 patent and the '403 patent by without limitation employing MANDATORY ACTIVATION technology.

25. Without limitation, Defendant McAfee directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: pre-loaded software requiring activation, VirusScan USB, and McAfee Wireless Home Network Security Suite. Such products infringe the '889 patent and the '403 patent by without limitation employing Forced Registration and/or Activation technology.

26. Without limitation, Defendant Bentley directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: MicroStation, and InRoads Suite. Such products infringe the '889 patent and the '403 patent by without limitation employing Bentley Product Licensing technology.

27. Without limitation, Defendant Intuit directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: Quicken and QuickBooks suite of products. Such products infringe the '889 patent and the '403 patent by without limitation employing forced Registration and/or Activation technology.

28. Achates distributed software marked with the '889 patent and the '403 patent numbers. Additionally, Achates has previously brought an action in this Court to enforce the '889 and '403 patents. Upon information and belief, defendants were aware of the '889 patent and the '403 patent and their infringement has been, and continues to be, willful.

29. Achates has been harmed by defendants' infringement. Such harm will continue unless the defendants are enjoined by this Court from further infringement.

DEMAND FOR RELIEF

WHEREFORE, plaintiff Achates requests entry of a judgment against the defendants, granting relief as follows:

- A. Determining each defendant to be liable to Achates for patent infringement of the '889 patent and the '403 patent;
- B. Awarding Achates damages adequate to compensate for the infringement;
- C. Determining each defendant was willful in the infringement of the '889 patent and the '403 patent;
- D. Increasing the damages up to three times, under authority of 35 U.S.C. §284, second paragraph;
- E. Permanently enjoining each defendant, its officers, agents, servants, employees, and attorneys, and those persons acting in concert or participation with each defendant, from further infringement of the '889 patent and the '403 patent;
- F. Determining that this is an exceptional case and awarding Achates its reasonable attorney fees.
- G. Granting such other and further relief as the Court may find just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, plaintiff Achates hereby demands a trial by jury for all issues in this case.

Dated: January 14, 2010.

Respectfully submitted,

/s/ Robert Christopher Bunt

Robert Christopher Bunt
State Bar No. 00787165
Charles Ainsworth
State Bar No. 00783521
PARKER, BUNT & AINSWORTH, P.C.
100 E. Ferguson, Suite 1114
Tyler, TX 75702
Telephone: 903/531-3535
Facsimile: 903/533-9687
E-mail: rbunt@pbatyler.com
E-mail: charley@pbatyler.com

S. Calvin Capshaw
State Bar No. 03783900
Email: ccapshaw@capshawlaw.com
Elizabeth L. DeRieux
State Bar No. 05770585
Email: ederieux@capshawlaw.com
D. Jeffrey Rambin
State Bar No. 00791478
Email: jrambin@capshawlaw.com
Capshaw DeRieux, LLP
1127 Judson Road, Suite 220
PO Box 3999 (75601)
Longview, Texas 75606
Telephone: 903/236-9800
Facsimile: 903/236-8787

*Attorneys for Plaintiff
Achates Reference Publishing, Inc.*

Of Counsel:

Vincent E. McGearry
New Jersey State Bar No. 041681991
GIBBONS P.C.

One Riverfront Plaza
Newark, NJ
Phone: (973) 596-4837
Facsimile: (973) 639-6477
Email: vmcgeary@gibbonslaw.com

Michael Cukor
New York State Bar No. 3935889
GIBBONS P.C.
One Pennsylvania Plaza, 37th Floor
New York, New York 10119-3701
(212) 613-2013 (telephone)
(212) 554-9658 (facsimile)
Email: mcukor@gibbonslaw.com

CERTIFICATE OF SERVICE

I hereby certify that the following counsel of record, who are deemed to have consented to electronic service are being served this 14th day of January, 2010, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Robert Christopher Bunt
ROBERT CHRISTOPHER BUNT