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Attorneys for Plaintiff
8 **BACKWEB TECHNOLOGIES, LTD.**
9

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 BACKWEB TECHNOLOGIES, LTD.,

14 Plaintiff,

15 v.

16 MICROSOFT CORPORATION;
17 IANYWHERE SOLUTIONS, INC.;
18 SYBASE, INC.; and SYMANTEC
CORPORATION

19 Defendants.
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Case No. CV 09-1224 CW

**SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

1 Plaintiff BackWeb Technologies, LTD. (“BackWeb” or “Plaintiff”) hereby files its
2 complaint against Defendant Microsoft Corporation (“Microsoft”), iAnywhere Solutions,
3 Inc. and Sybase, Inc. (collectively “Sybase Defendants”), Symantec Corporation
4 (“Symantec”) (collectively “Defendants”) for patent infringement. For its complaint,
5 Plaintiff alleges, on personal knowledge as to its own acts and on information and belief as to
6 all other matters, as follows:

7
8 **PARTIES**

9 1. BackWeb is a corporation organized under the laws of the State of Israel, and
10 has its principal place of business in Rosh Ha’ayin, Israel. BackWeb’s wholly owned
11 subsidiary, BackWeb Technologies, Inc. maintains its principal office in San Jose, California.
12 BackWeb is and at all pertinent times was the assignee and owner of the patents at issue in
13 this case.

14 2. Defendant Microsoft, on information and belief, is a corporation organized
15 under the laws of the State of Washington. Microsoft is doing business in Washington, and
16 has its principal place of business in Redmond, Washington.

17 3. Defendant iAnywhere Solutions, Inc. on information and belief, is a
18 corporation organized under the laws of the State of Delaware. It is a majority-owned
19 subsidiary of Sybase, Inc., and certain employees of Sybase, Inc. iAnywhere Solutions, Inc.
20 is doing business in California, and has its principal place of business in Dublin, California.
21 Sybase, Inc., on information and belief, is a corporation organized under the laws of the State
22 of Delaware. Sybase is doing business in California, and has its principal place of business in
23 Dublin, California.

24 4. Defendant Symantec is a corporation organized under the laws of the State of
25 Delaware. Symantec is doing business in California and has its principal place of business in
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1 Cupertino, California. Symantec designs, develops, offers for sale and sells software
2 products that are covered by the claims of the patents in suit as alleged below nationwide,
3 including this judicial district.

4 **JURISDICTION AND VENUE**

5 5. This complaint asserts a cause of action for patent infringement under the
6 Patent Act, 35 U.S.C. § 271. This Court has subject matter jurisdiction over this matter by
7 virtue of 28 U.S.C. § 1338(a). Venue is proper in this Court by virtue of 28 U.S.C. § 1391(b)
8 and (c) and 28 U.S.C. § 1400(b), in that Defendants may be found in this district, have
9 committed acts of infringement in this district, and a substantial part of the events or
10 omissions giving rise to the claim occurred and a substantial part of property that is the
11 subject of the action is situated in this district.

12 6. This Court has personal jurisdiction over Defendants because they have places
13 of business in, and provide infringing products and services in, the Northern District of
14 California.
15

16 **INTRADISTRICT ASSIGNMENT**

17 7. Pursuant to Civil LR 3-2(c), this case should be subject to district-wide
18 assignment because it is an Intellectual Property Action.
19

20 **BACKGROUND**

21 **The BackWeb Patents**

22 8. Plaintiff owns a patent, U.S. Patent No. 5,913,040 (“’040 Patent”), issued on
23 June 15, 1999, to inventors Yuval Rakavy and Eli Barkat. A true and correct copy of the
24 ’040 Patent is attached as Exhibit “A” and is incorporated herein by reference. Plaintiff is
25 the legal and rightful owner of the ’040 Patent.
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1 9. The '040 Patent contains fourteen (14) patent claims covering unique and
2 novel methods and processes for transmitting digital information in background mode over a
3 communications link between a computer network and a local computer and throttling the
4 transfer speed to create minimal interference with other processes communicating over the
5 communications link. The digital information described in the patent could be in a variety of
6 forms, including, but not limited to, news, weather, stock quotes, sports scores, software
7 updates or trip reservation information.
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9 10. Plaintiff also owns two continuation patents, U.S. Patent No. 6,317,789 ("789
10 Patent") and U.S. Patent No. 6,539,429 ("429 Patent"), issued on November 13, 2001 and
11 March 25, 2003, respectively. A true and correct copy of the '789 Patent is attached as
12 Exhibit "B" and is incorporated herein by reference. Plaintiff is the legal and rightful owner
13 of the '789 Patent. A true and correct copy of the '429 Patent is attached as Exhibit "C" and
14 is incorporated herein by reference. Plaintiff is the legal and rightful owner of the '429
15 Patent. The two continuation patents contain twenty-eight (28) patent claims covering
16 unique and novel methods, processes and systems for transmitting digital information in
17 background mode over a communications link between a computer network and a local
18 computer with minimal interference with other processes communicating over the
19 communications link. Plaintiff's three patents in this patent family will be referred to herein
20 as its Transparent Update Patents.
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22 11. Plaintiff owns a patent, U.S. Patent No. 6,374,289 ("289 Patent"), issued on
23 April 16, 2002, to inventors Hubert Delaney, Adi Ruppim, Lior Hass, and Ofer Faigon. The
24 '289 Patent contains twenty-three (23) patent claims covering a unique and novel method for
25 distributing data packages across a hybrid peer-to-peer network, the network featuring a
26 server, a plurality of peer clients attached to the network, and lists of data packages
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1 identifying the location of the data package in at least one of the plurality of peer clients, for
2 transmission. A true and correct copy of the '289 Patent is attached as Exhibit "D" and is
3 incorporated herein by reference. Plaintiff is the legal and rightful owner of the '289 Patent.

4 **Microsoft's Infringing Goods and Services**

5 12. In 2001, Microsoft introduced a technology that it calls Background
6 Intelligent Transfer Service (BITS). BITS transfers files in the foreground or background,
7 throttles the transfers to preserve the responsiveness of other network applications, and
8 automatically resumes file transfers after network disconnects and machine restarts. In 2007,
9 Microsoft began the commercial distribution of version 3.0 of BITS, that adds the capability
10 of transferring files in a peer to peer networking fashion. Microsoft manufactures, uses and
11 sells products that infringe the three Transparent Update Patents. With the introduction of
12 BITS Ver. 3.0, Microsoft has also infringed BackWeb's '289 Patent.
13

14 **Sybase's Infringing Goods And Services**

15 13. The Sybase Defendants manufacture products that maintain software for
16 mobile device management, wireless email, mobile middleware platforms, database and
17 synchronization. These products include Sybase Unwired Platform, SQL Anywhere, Afaria
18 and iAnywhere Mobile Office. The Sybase Defendants manufacture, use and sell products
19 that infringe the three Transparent Update Patents.
20

21 **Symantec's Infringing Goods And Services**

22 14. Symantec manufactures products and services that provide for network
23 distribution of patches and updates using dynamic bandwidth throttling and checkpoint
24 restart allowing data packages to "drizzle" to LAN-based as well as remote and mobile users
25 regardless of connectivity limitations. These products and services including the Altiris
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1 Software Delivery Solution, and Altiris Client Management Suite. Symantec manufactures,
2 uses and sells products and services that infringe the three Transparent Update Patents.

3 **COUNT I**
4 **(Patent Infringement against all Defendants)**

5 15. Plaintiff incorporates by reference the allegations of paragraphs 1 through 14
6 above.

7 16. BackWeb is the owner of the '040, '789, and '429 patents.

8 17. Defendants have infringed and are still infringing the Transparent Update
9 Patents, by, without authority, consent, right or license, and in direct infringement of the
10 patents, making, using, offering for sale and/or selling digital information transfer products
11 using the methods, processes and apparatuses claimed in the patents in this country. This
12 conduct constitutes infringement under 35 U.S.C. § 271(a).
13

14 18. In addition, Defendants have infringed and are still infringing the Transparent
15 Update Patents in this country, through, *inter alia*, their active inducement of others to make,
16 use, and/or sell the systems, products and methods claimed in one or more claims of the
17 patents. This conduct constitutes infringement under 35 U.S.C. § 271(b).
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19 19. In addition, Defendants have infringed and are still infringing the Transparent
20 Update Patents in this country through, *inter alia*, providing and selling goods and services
21 including products designed for use in practicing one or more claims of the Transparent
22 Update Patents, where the goods and services constitute a material part of the invention and
23 are not staple articles of commerce, and which have no use other than infringing one or more
24 claims of the Transparent Update Patents. Defendants have committed these acts with
25 knowledge that the goods and services they provide are specially made for use in a manner
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1 that directly infringes the Transparent Update Patents. This conduct constitutes infringement
2 under 35 U.S.C. § 271(c).

3 20. Defendant Microsoft's infringing conduct is unlawful and willful. This
4 conduct makes this an exceptional case as provided in 35 U.S.C. § 285.

5 21. As a result of Defendants' infringement, Plaintiff has been damaged, and will
6 continue to be damaged, until they are enjoined from further acts of infringement.

7 22. Defendants will continue to infringe the Transparent Update Patents unless
8 enjoined by this Court. Plaintiff faces real, substantial and irreparable damage and injury of
9 a continuing nature from Defendant's infringement for which Plaintiff has no adequate
10 remedy at law.
11

12 **COUNT II**
13 **(Patent Infringement against Defendant Microsoft only)**

14 23. Plaintiff incorporates by reference the allegations of paragraphs 1 through 22
15 above.

16 24. BackWeb is the owner of the '289 Patent.

17 25. Microsoft has infringed and is still infringing the '289 Patent, by, without
18 authority, consent, right or license, and in direct infringement of the patents, making, using,
19 offering for sale and/or selling digital information transfer products using the methods,
20 processes and apparatuses claimed in the patent in this country. This conduct constitutes
21 infringement under 35 U.S.C. § 271(a).
22

23 26. In addition, Microsoft has infringed and is still infringing the '289 Patent in
24 this country, through, *inter alia*, its active inducement of others to make, use, and/or sell the
25 systems, products and methods claimed in one or more claims of the patent. This conduct
26 constitutes infringement under 35 U.S.C. § 271(b).
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1 27. In addition, Microsoft has infringed and are still infringing the '289 Patent in
2 this country through, *inter alia*, providing and selling goods and services including products
3 designed for use in practicing one or more claims of the '289 Patent, where the goods and
4 services constitute a material part of the invention and are not staple articles of commerce,
5 and which have no use other than infringing one or more claims of the '289 Patent.
6 Microsoft has committed these acts with knowledge that the goods and services it provides
7 are specially made for use in a manner that directly infringes the '289 Patent. This conduct
8 constitutes infringement under 35 U.S.C. § 271(c).
9

10 28. Microsoft's infringing conduct is unlawful and willful. Defendant Microsoft's
11 willful conduct makes this an exceptional case as provided in 35 U.S.C. § 285.

12 29. As a result of Microsoft's infringement, Plaintiff has been damaged, and will
13 continue to be damaged, until they are enjoined from further acts of infringement.

14 30. Microsoft will continue to infringe the '289 Patent unless enjoined by this
15 Court. Plaintiff faces real, substantial and irreparable damage and injury of a continuing
16 nature from Defendants Microsoft's infringement for which Plaintiff has no adequate remedy
17 at law.
18

19 WHEREFORE, Plaintiff prays:

20 (a) That this Court find Defendants have committed acts of patent
21 infringement under the Patent Act, 35 U.S.C. § 271;
22

23 (b) That this Court enter judgment that:

24 (i) The Transparent Update Patents are valid and enforceable;

25 (ii) Defendants have infringed the Transparent Update Patents; and

26 (iii) Defendant Microsoft's infringement of the Transparent Update

27 Patents has been willful.
28

1 (iv) The '289 Patent is valid and enforceable;

2 (v) Defendant Microsoft has infringed the '289 Patent; and

3 (vi) Defendant Microsoft's infringement of the '289 Patent has been
4 willful.

5 (c) That this Court issue a preliminary and final injunction enjoining
6 Defendants, their officers, agents, servants, employees and attorneys, and any other
7 person in active concert or participation with them, from continuing the acts herein
8 complained of, and more particularly, that Defendants and such other persons be
9 permanently enjoined and restrained from further infringing the Transparent Update
10 Patents;

12 (d) That this Court issue a preliminary and final injunction enjoining
13 Defendants, their officers, agents, servants, employees and attorneys, and any other
14 person in active concert or participation with them, from continuing the acts herein
15 complained of, and more particularly, that Defendants and such other persons be
16 permanently enjoined and restrained from further infringing the '289 Patent;

18 (e) That this Court award Plaintiff the damages to which it is entitled due to
19 Defendants' patent infringement, with both pre-judgment and post-judgment interest;

20 (f) That Defendants Microsoft's and Symantec's infringement of the
21 BackWeb Patents be adjudged willful and that the damages to Plaintiff be increased by
22 three times the amount found or assessed pursuant to 35 U.S.C. § 284;

24 (g) That this be adjudged an exceptional case and that Plaintiff be awarded its
25 attorney's fees in this action pursuant to 35 U.S.C. § 285;

26 (h) That this Court award Plaintiff its costs and disbursements in this civil
27 action, including reasonable attorney's fees; and
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1 (i) That this Court grant Plaintiff such other and further relief, in law or in
2 equity, both general and special, to which it may be entitled.

3
4 Dated: July 22, 2009

Respectfully submitted,

5
6 /s/ George F. Bishop
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DEMAND FOR JURY TRIAL

Plaintiff, by its undersigned attorneys, demands a trial by jury on all issues so triable.

Dated: July 22, 2009

Respectfully submitted,

/s/ George F. Bishop
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Attorneys for Plaintiff
BACKWEB TECHNOLOGIES, LTD.

CERTIFICATE OF SERVICE

I, Janine DeAndre, am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action. My business address is Hosie Rice LLP, 188 The Embarcadero, Suite 750, San Francisco, California, 94105.

On July 22, 2009, I served the following attached

• SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

by Federal Express at San Francisco, California, addressed to the following party:

David A. Nelson
davenelson@quinnemanuel.com
QUINN EMANUEL URQUHART OLIVER & HEDGES LLP
250 S. Wacker Drive, Suite 230
Chicago, IL 60606

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 22, 2009

/s/ Janine DeAndre

Janine DeAndre