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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

TRANXITION, INC., a Delaware
corporation,

Plaintiff,

vs.

TOTAL DEFENSE, INC., a Delaware
corporation, **CA, INC.**, a Delaware
corporation

Defendants.

Case No.: 3:12-CV-1066-HZ

**FIRST AMENDED AND SUPPLEMENTAL
COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

**FIRST AMENDED AND SUPPLEMENTAL
COMPLAINT FOR PATENT INFRINGEMENT**

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Plaintiff Tranxition, Inc. ("Tranxition") alleges as follows:

PARTIES

1. Tranxition is a Delaware corporation with its principal place of business at Maddox Building, 1231 NW Hoyt Street, Suite 206, Portland, OR 97209.

2. On information and belief, defendant Total Defense, Inc. ("Total Defense") is a Delaware corporation with its principal place of business at 555 Twin Dolphin Drive, Suite 610, Redwood City, CA 94065. On information and belief, Total Defense has appointed its agent for service as follows: Marcus Smith, 555 Twin Dolphin Drive, Suite 610, Redwood City, CA 94065.

3. On information and belief, defendant CA, Inc. ("CA") is a Delaware corporation with its principal place of business at One CA Plaza, Islandia, New York 11749. On information and belief, CA has appointed its agent for service as follows: The Prentice-Hall Corporation Systems, Inc., 285 Liberty St. NE, Salem, OR, 97301.

4. Total Defense and CA are collectively referred to as "Defendants."

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(d) and 1400(b) because Defendants are subject to personal jurisdiction in this District, have committed acts of patent infringement in this District, including, on information and belief, selling or offering to sell infringing products to customers in this District, or have a regular and established place of business in this District.

7. Joinder is appropriate in this case pursuant to 35 U.S.C. § 299. On information and belief, Total Defense was until a recent a business of CA. *See* <http://www.totaldefense.com/about/mission.aspx>. On information and belief, the technology

used by Total Defense in its infringing products is the same as the technology used in the infringing CA products. Tranxition's claims therefore arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the infringing products.

FACTUAL BACKGROUND

8. Tranxition was founded in 1998. It is currently and has been headquartered in Portland, Oregon.

9. Tranxition was founded to address the problem of migrating a computer "personality" (*i.e.*, the custom settings, files, etc. that users set on their computer) to another computer. Indeed, Tranxition pioneered this market. Tranxition spent a significant amount of time and money developing and refining its technology. As a result of Tranxition's hard work, Tranxition obtained a number of patents, including U.S. Patent No. 6,728,877 (the "'877 patent") and U.S. Patent No. 7,346,766 (the "'766 patent").

10. Tranxition is the owner by assignment of the '877 and '766 patents. The '877 patent is entitled "Method and System for Automatically Transitioning Of Configuration Settings Among Computer Systems." The '877 patent issued on April 27, 2004. A true and correct copy of the '877 patent is attached hereto as Exhibit A. The '766 patent is entitled "Method and System for Automatically Transitioning Of Configuration Settings Among Computer Systems." The '766 patent issued on March 18, 2008. A true and correct copy of the '766 patent is attached hereto as Exhibit B.

COUNT I

(INFRINGEMENT OF THE '877 PATENT)

11. Defendants have been and still are directly infringing at least claims 1 and 16 of the '877 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, software and systems that prepare to transfer configuration settings from a source computer to a target computer including, but not limited to,

Defendants' manufacture, use, sale, offer for sale or importation of Total Defense's Internet Security Suite product and CA's Desktop DNA and Client Automation (formerly known as IT Client Manager) products and computer systems using Defendants' products. Thus, by making, using, importing, offering for sale, and/or selling such software, Defendants have injured Tranxition and are thus liable to Tranxition for infringement of the '877 patent under 35 U.S.C. § 271(a).

12. Defendants have been and still is indirectly infringing, by way of inducing infringement by others of the '877 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claims 1 and 16 of the '877 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Total Defense's Internet Security Suite product and CA's Desktop DNA and Client Automation (formerly known as IT Client Manager) products and computer systems using Defendants' products. These software and systems are made, used, imported, offered for sale, and/or sold by direct infringers of the '877 patent in the United States, such as Defendants' customers and end-users of Defendants' customers. Defendants induce others to directly infringe by inducing or encouraging the use of its infringing software. *See, e.g.,* <http://www.ca.com/us/~media/files/productbriefs/it-client-mgr-desktop-migration-ds-us.aspx>; <http://www.totaldefense.com/shop/total-defense-internet-security-suite.aspx>. Since at least the filing of this complaint, Defendants have had knowledge of the '877 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that their actions would, induce infringement of the '877 patent. Thus, by making, using, importing, offering for sale, and/or selling infringing products and services, Defendants have injured Tranxition and are thus liable to Tranxition for infringement of the '877 patent under 35 U.S.C. § 271(b).

13. Defendants have also been and still is indirectly infringing, by way of

contributing to the infringement by others of the '877 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claims 1 and 16 of the '877 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Total Defense's Internet Security Suite product and CA's Desktop DNA and Client Automation (formerly known as IT Client Manager) products and computer systems using Defendants' products. These software and systems are made, used imported, offered for sale, and/or sold by direct infringers of the '877 patent in the United States, such as Defendants' customers and end-users of Defendants' customers. Defendants induce others to directly infringe by inducing or encouraging the use of its infringing products and services. *See, e.g.,*

<http://www.ca.com/us/~media/files/productbriefs/it-client-mgr-desktop-migration-ds--us.aspx>;

<http://www.totaldefense.com/shop/total-defense-internet-security-suite.aspx>. Defendants' infringing products and services are a material part of the invention, and are especially made or especially adapted for use in the infringement of the '877 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least the filing of this complaint, Defendants have had knowledge of the '877 patent and, by continuing the actions described above, have had the specific intent to, or were willfully blind to the fact that their actions would, induce infringement of the '877 patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Tranxition and are thus liable to Tranxition for infringement of the '877 patent under 35 U.S.C. § 271(c).

14. To the extent that facts learned in discovery show that Defendants' infringement of the '877 patent is or has been willful, Tranxition reserves the right to request such a finding at time of trial.

15. To the extent necessary, Tranxition has marked its products pursuant to 35 U.S.C. § 287(a).

16. As a result of Defendants' infringement of the '877 patent, Tranxition has suffered monetary damages in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court, and Tranxition will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

17. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the '877 patent, Tranxition will be greatly and irreparably harmed, so that remedies available at law are inadequate to compensate for such harms.

COUNT II

(INFRINGEMENT OF THE '766 PATENT)

18. Defendants have been and still are directly infringing at least claim 1 of the '766 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, software and systems that prepare to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendants' manufacture, use, sale, offer for sale or importation of Total Defense's Internet Security Suite product and CA's Desktop DNA product and computer systems using Defendants' products. Thus, by making, using, importing, offering for sale, and/or selling such software, Defendants have injured Tranxition and is thus liable to Tranxition for infringement of the '766 patent under 35 U.S.C. § 271(a).

19. Defendants have been and still is indirectly infringing, by way of inducing infringement by others of the '766 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 1 of the '766 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Total Defense's Internet Security Suite product and CA's Desktop

DNA and Client Automation (formerly known as IT Client Manager) products and computer systems using Defendants' products. These software and systems are made, used, imported, offered for sale, and/or sold by direct infringers of the '766 patent in the United States, such as Defendants' customers and end-users of Defendants' customers. Defendants induce others to directly infringe by inducing or encouraging the use of its infringing software. *See, e.g.*, <http://www.ca.com/us/~media/files/productbriefs/it-client-mgr-desktop-migration-ds--us.aspx>; <http://www.totaldefense.com/shop/total-defense-internet-security-suite.aspx>. Since at least the filing of this complaint, Defendants have had knowledge of the '766 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that their actions would, induce infringement of the '766 patent. Thus, by making, using, importing, offering for sale, and/or selling infringing products and services, Defendants have injured Tranxition and are thus liable to Tranxition for infringement of the '766 patent under 35 U.S.C. § 271(b).

20. Defendants have also been and still is indirectly infringing, by way of contributing to the infringement by others of the '766 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 1 of the '766 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Total Defense's Internet Security Suite product and CA's Desktop DNA and Client Automation (formerly known as IT Client Manager) products and computer systems using Defendants' products. These software and systems are made, used imported, offered for sale, and/or sold by direct infringers of the '766 patent in the United States, such as Defendants' customers and end-users of Defendants' customers. Defendants induce others to directly infringe by inducing or encouraging the use of its infringing products and services. *See, e.g.*, <http://www.ca.com/us/~media/files/productbriefs/it-client-mgr-desktop-migration-ds--us.aspx>; <http://www.totaldefense.com/shop/total-defense-internet->

[security-suite.aspx](#). Defendants' infringing products and services are a material part of the invention, and are especially made or especially adapted for use in the infringement of the '766 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least the filing of this complaint, Defendants have had knowledge of the '766 patent and, by continuing the actions described above, have had the specific intent to, or were willfully blind to the fact that their actions would, induce infringement of the '766 patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Tranxition and are thus liable to Tranxition for infringement of the '766 patent under 35 U.S.C. § 271(c).

21. To the extent that facts learned in discovery show that Defendants' infringement of the '766 patent is or has been willful, Tranxition reserves the right to request such a finding at time of trial.

22. To the extent necessary, Tranxition has marked its products pursuant to 35 U.S.C. § 287(a).

23. As a result of Defendants' infringement of the '766 patent, Tranxition has suffered monetary damages in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court, and Tranxition will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

24. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the '766 patent, Tranxition will be greatly and irreparably harmed, so that remedies available at law are inadequate to compensate for such harms.

PRAYER FOR RELIEF

Tranxition prays for the following relief:

1. A judgment that Defendants have directly or indirectly infringed (either literally

or under the doctrine of equivalents) one or more claims of the '877 and '766 patents;

2. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with it, from infringing the '877 and '766 patents;

3. An award of damages resulting from Defendants' acts of direct infringement (either literal or under the doctrine of equivalents) in accordance with 35 U.S.C. § 284;

4. A judgment and order requiring Defendants to provide an accounting and to pay supplemental damages to Tranxition, including, without limitation, prejudgment and post-judgment interest; and

5. Any and all other relief to which Tranxition may show itself to be entitled.

JURY TRIAL DEMANDED

Tranxition hereby demands a trial by jury of all issues so triable.

Dated this 23rd day of October, 2012.

Respectfully submitted,

RUSS AUGUST & KABAT

By: /s/ Andrew D. Weiss
Andrew D. Weiss

Marc A. Fenster (pro hac vice)
Andrew D. Weiss (pro hac vice)

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