

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

INGENIADOR, LLC	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 2:12-cv-807
	§	
v.	§	JURY TRIAL DEMANDED
	§	
BMC SOFTWARE, INC.	§	
	§	
Defendant.	§	

COMPLAINT FOR PATENT INFRINGEMENT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Ingeniador, LLC (“Ingeniador”), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 of the United States Code (“U.S.C.”) to prevent and enjoin Defendant BMC Software, Inc. (hereinafter “BMC” or “Defendant”) from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or consent from Ingeniador, from U.S. Patent No. 6,990,629 (the “629 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. §271, and to recover damages, attorneys’ fees, and costs.

II. THE PARTIES

2. Plaintiff Ingeniador is a Puerto Rico limited liability company with its principal place of business at 1607 Colón St. #101, San Juan, Puerto Rico 00911.

3. BMC is a Delaware corporation with its principal place of business at 2101 City West Blvd., Houston, Texas 77042. BMC maintains a registered agent at CT Corporation, 350 N. St. Paul St. Ste. 2900, Dallas, Texas 75201.

III. JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 et seq.

5. This Court has personal jurisdiction over BMC by virtue of its systematic and continuous contacts with this jurisdiction, as alleged herein, as well as because of the injury to Ingeniador and the cause of action Ingeniador has raised, as alleged herein.

6. BMC is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

7. BMC has conducted and does conduct business within the state of Texas, including the geographic region within the Eastern District of Texas, directly or through intermediaries, resellers or agents, or offers for sale, sells, advertises (including, but not limited

to, the use of interactive web pages with promotional material) products or services, or uses or induces others to use services or products in Texas that infringe the '629 Patent, knowingly induces others to infringe and/or contribute to infringement of the '629 Patent occurring within Texas and elsewhere.

8. In addition to BMC's continuously and systematically conducting business in Texas, the causes of action against BMC are connected (but not limited) to BMC's purposeful acts committed in the state of Texas, including the geographic region within the Eastern District of Texas, including BMC's making, using, offering for sale, or selling web-based editing and publishing products which include features that fall within the scope of at least one claim of the '629 Patent.

9. Venue lies in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b).

IV. FACTUAL ALLEGATIONS

10. On January 24, 2006, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '629 Patent, entitled "Publishing System for Intranet" after a full and fair examination. A true and correct copy of the '629 patent is attached hereto as Exhibit "A". Ingeniador is presently the owner of the Patent, having received all right, title and interest in and to the '629 Patent from the previous assignee of record. Ingeniador possesses all rights of recovery under the '629 Patent, including the exclusive right to recover for past infringement. The '629 Patent is valid and enforceable.

11. The '629 Patent contains two independent claims and twenty three dependent claims. BMC uses methods that perform one or more steps of the claims, and also makes, uses, and sells or offers for sale products that encompass one or more of the claims.

12. The invention claimed in the '629 Patent includes a system and process for web-based editing and publishing of files using a network of client computers, network file server and a Light Weight Directory Access Protocol (LDAP) directory server.

13. The LDAP directory server is adapted to store information defining and limiting the rights of authors and readers in the system. For example, network content management products use this feature to restrain access or editing privileges to selected personnel.

14. The network file server is adapted to resolve file server pointers to one or more files on the file server and directory files on the LDAP directory server transmitted from client computer into requests for files and directory files. For example, network content management products use file servers to store shareable information. The LDAP directory server stores information on the identity and privileges of users of the network. Therefore, when a user requests information on a client computer, the file server and the LDAP directory server interact to identify if the user's identity is associated with the required access privileges in order to allow or deny access to that information.

15. The network file server is adapted to retrieve from the LDAP directory server directory content. The network file server is also adapted to convert the directory content into web publishable information and including web publishable information as part of the requested files displayed on the client computer for editing further parts of the files. For example, network content management products display on client computers the name of a user or users and allow editing of the requested file.

V. BMC'S PRODUCTS

16. BMC is a company that offers a unified business service management platform that simplifies and automates IT processes and orchestrates workflow across cloud, virtual, distributed, and mainframe resources. BMC's products include workload automation software that allows users to schedule jobs and manage other aspects of the business process.

17. With BMC's software users can automate the scheduling and processing of tasks from one interface.

18. BMC's software allows users to collaborate with other users regardless of location or time zone. And, because data is stored in a common repository, users can create and change workload elements without worrying about synchronization issues.

19. BMC's software has a check-in and check-out facility that identifies the current owner of a particular work and protects said work from modification while it is checked out.

20. The web-based editing and publishing systems infringing the '629 Patent include, but are not limited to, the products called "BMC Software Control-M", "BMC's Control M", and "BMC's Control-M/EM" These various applications and web-based software will be collectively referred to as "BMC Products".

21. BMC's Software Control-M is a web-based editing and publishing system that allows users to view and manage jobs and processes.

22. BMC's Control-M/EM includes client computers and servers.

23. BMC's Control-M provides for LDAP user authentication and control of users' authorizations.

24. BMC's Control-M allows seeing the contents of the script "script1.bat" right on the screen.

25. BMC Control-M resolves file pointers into requests for directory files for authentication when users log in with their user credentials.

26. BMS Control-M retrieves directory content (user names), which is then converted into web-publishable information that is published on the website, where users can further edit and manage content.

VI. DIRECT INFRINGEMENT

27. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-26.

28. Taken together, either partially or entirely, the features included in BMC Products, including but not limited to, products called “BMC Software Control-M”, “Control-M/EM”, and “BMS’s Control-M”, perform the process recited in one or more of the claims of the '629 Patent.

29. Taken together, either partially or entirely, the features included in BMC Products including, but not limited to, that software sold as “BMC Software Control-M”; and “BMC’s Control-M/EM” perform the process recited in one or more of the claims of the '629 Patent.

30. BMC directly infringes one or more of the claims of the '629 Patent by making, using, selling, offering to sell and/or importing products for web-based editing and publishing, such as BMC Products, which illegally perform and use the process and system defined by the claims of the '629 Patent, in violation of 35 USC 271(a).

VII. INDIRECT INFRINGEMENT

INDUCING INFRINGEMENT

31. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-30.

32. BMC has had knowledge of the '629 Patent for at least ten years because public records show that the '629 Patent has been cited as "Prior Art" by at least fourteen patents issued by the United States Patent and Trademark Office over that period.

33. BMC has had knowledge of its infringement at least as of service of the present complaint.

34. BMC has been and now is indirectly infringing by way of inducing infringement by others of the '629 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, illegally making, using, importing, offering for sale, and/or selling, products for performing processes and using systems that fall within the scope of one or more claims of the '629 Patent, in violation of 35 USC § 271(b). Such products include, without limitation, one or more of the BMC Products. For example, BMC indirectly infringes one or more claims of the '629 Patent by actively inducing its customers, users, subscribers and licensees who directly infringe due to their use of the BMC Products.

35. Furthermore, BMC indirectly infringes one or more claims of the '629 Patent by actively inducing third-party developers to create applications enabling functionality including, without limitation, the function to make use of the services offered and sold by BMC, who directly infringe one or more of the claims of the '629 Patent due to their use of the BMC Products.

CONTRIBUTORY INFRINGEMENT

36. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-35.

37. BMC contributes to the infringement of one or more of the claims of the '629 Patent in violation of 35 USC 271(c).

38. With knowledge of the patent in suit, BMC indirectly infringes the '629 Patent by contributing to the direct infringement of a class of actors which includes the end-users of the BMC Products, as well as consumers, users, subscribers and licensees, by encouraging the class of actors to operate the BMC Products, aware of the fact that such acts amount to infringement of one or more claims of the '629 Patent.

39. Products sold by BMC for implementation of BMC Products are components of a patented device covered by one or more of the claims of the '629 Patent, which constitute a material part of the invention and are not a staple article or commodity of commerce suitable for substantial noninfringing use. The BMC Products lack substantial noninfringing use and are for use in product configurations that infringe the '629 Patent.

40. BMC has known that devices that implement BMC products are especially made or especially adapted for use in infringement of the '629 Patent at least as of service of the present complaint.

VIII. DEMAND FOR JURY TRIAL

Ingeniador demands a trial by jury of any and all causes of action.

IX. PRAYER FOR RELIEF

WHEREFORE, Ingeniador prays for the following relief:

1. That Defendant be adjudged to have infringed the '629 Patent, directly and/or indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;
2. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly and/or indirectly infringing the '629 Patent;
3. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Ingeniador for the Defendant's past infringement and any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;
4. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;
5. That Defendant be directed to pay enhanced damages, including Ingeniador's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285;
and
6. That Ingeniador have such other and further relief as this Court may deem just and proper.

Dated: December 19, 2012

Respectfully Submitted,

By: /s/ William E. Davis, III
William E. Davis, III
Texas State Bar No. 24047416
The Davis Firm, PC
111 West Tyler Street
Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661
Email: bdavis@bdavisfirm.com

**ATTORNEY FOR PLAINTIFF
INGENIADOR, LLC**