

(“the ’749 Patent”) (attached as Exhibit A) and 7,603,674 (“the ’674 Patent”) (attached as Exhibit B) (collectively, “the patents-in-suit”) under the Patent Laws of the United States 35 U.S.C. § 1 *et seq.*

Jurisdiction and Venue

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

6. This Court has personal jurisdiction over Defendants because, among other things, Defendant Software AG, Inc. is incorporated in Delaware and Defendants have done business in Delaware. On information and belief, Defendants have committed and/or participated in the commission of patent infringement in Delaware and elsewhere in the United States, and have harmed and continue to harm YYZ in Delaware.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

The Patents-in-Suit

8. On June 13, 2006, the ’749 Patent, titled “Measuring, Monitoring and Tracking Enterprise Communications and Processes,” was duly and legally issued by the United States Patent and Trademark Office (“US PTO”).

9. On January 10, 2013, the US PTO issued a reexamination certificate for the ’749 Patent and confirmed original claims 1-58 of the ’749 Patent.

10. YYZ is the assignee of all rights, title, and interest in the ’749 Patent, and possesses all rights to sue and recover for any current or past infringement of the ’749 Patent.

11. On October 13, 2009, the ’674 Patent, titled “Apparatus And System For Measuring, Monitoring, Tracking and Simulating Enterprise Communications and Processes,” was duly and legally issued by the US PTO.

12. On January 24, 2013, the US PTO issued a reexamination certificate for the ’749 Patent and confirmed original claims 1-173 of the ’674 Patent.

13. YYZ is the assignee of all rights, title, and interest in the '674 Patent, and possesses all rights to sue and recover for any current or past infringement of the '674 Patent.

14. The '749 and '674 Patents claim apparatuses and methods for measuring, monitoring, and tracking enterprise communications and processes in an asynchronous messaging environment.

Defendants' Pre-Suit Knowledge of the Patents-In-Suit

15. Upon information and belief, Defendants have been aware of the '749 and '674 Patents since at least June 11, 2010.

16. In a letter dated June 11, 2010, Vincent Cyr, a named inventor of the patents-in-suit and Managing Partner of YYZ, informed Mr. Alex Chartove of Morrison Foerster of the patents-in-suit and further that a license to the '749 and '674 Patents should be taken with respect to the webMethods business process management suite. Mr. Chartove had previously presented himself to Mr. Cyr as outside counsel for webMethods, Inc., which was acquired by Defendants, and had requested Mr. Cyr to direct all correspondence to him.

17. Upon information and belief, Mr. Chartove fulfilled his attorney obligations and informed Defendants of Mr. Cyr's June 11, 2010 letter and its contents.

18. Furthermore, in a separation action filed on February 10, 2012, YYZ had asserted that Defendants infringed one of YYZ's patents that is in the same family as the patents-in-suit and a continuation of the '749 Patent ("2012 Action").

19. Upon information and belief, as a result of litigating the 2012 Action, Defendants further informed themselves of the patents-in-suit and they knew, or should have known, of their likely infringement of those patents.

20. By way of the filing of the instant action on January 24, 2013, Defendants were once more notified of their infringement of the '749 and '674 Patents.

Count I

Infringement of U.S. Patent No. 7,062,749

21. Paragraphs 1-20 are incorporated by reference as if fully restated herein.

22. Defendants have infringed the '749 Patent, and continue to infringe the '749 Patent even after notice thereof, under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by making, using, offering for sale, and/or selling products that contain or incorporate business process or business activity monitoring, measuring, or tracking functionalities as claimed in the '749 Patent (“'749 Infringing Products”), including at least the Software AG webMethods business product suite, including the webMethods Business Process Management Suite, webMethods Broker, Optimize for Process, Trading Networks, and Optimize for B2B.

23. Defendants have also indirectly infringed and continues to indirectly infringe the '749 Patent.

24. Since Defendants have been on notice of the '749 Patent, Defendants have actively, knowingly, and intentionally induced, and continue to actively, knowingly, and intentionally induce, infringement of the '749 Patent by others (e.g., Defendants' customers and the users of the '749 Infringing Products who directly infringed and continue to directly infringe the '749 Patent) by making, using, offering for sale, selling, and/or importing the '749 Infringing Products, knowing the '749 Patent and its claims, knowing that others will use the '749 Infringing Products in an infringing manner, and knowing and intending to encourage and facilitate those infringing uses of the '749 Infringing Products through the creation and dissemination of promotional and marketing materials, instruction materials, product manuals, and technical materials related to the '749 Infringing Products.

25. Since Defendants have been on notice of the '749 Patent, Defendants have also contributed to the direct infringement by others (e.g., Defendants' customers and the users of the '749 Infringing Products who directly infringed and continue to directly infringe the '749 Patent), and continue to contribute to direct infringement by others, by making, using, offering for sale, selling, and/or importing the '749 Infringing Products into the United States knowing the '749 Patent and its claims, knowing that others will use the '749 Infringing Products in an infringing manner, knowing that those products constitute a material part of the invention of the

'749 Patent, knowing those products to be especially made or adapted to infringe the '749 Patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

26. To date, upon information and belief, Defendants have not made any changes to the relevant operation of the '749 Infringing Products and have not provided their customers and the users of the '749 Infringing Products instructions on how to avoid infringement since they had notice of the '749 Patent.

27. To date, Defendants have not produced or, upon information and belief, relied upon, an opinion of counsel related to the '749 Patent.

28. Upon information and belief, Defendants have willfully infringed, and continues to willfully infringe the '749 Patent.

29. YYZ has been and continues to be damaged by Defendants' infringement of the '749 Patent.

Count II

Infringement of U.S. Patent No. 7,603,674

30. Paragraphs 1-29 are incorporated by reference as if fully restated herein.

31. Defendants have infringed the '674 Patent, and continues to infringe the '674 Patent after notice thereof, under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by making, using, offering for sale, and/or selling products that contain or incorporate business process or business activity monitoring, measuring, or tracking functionalities as claimed in the '674 Patent (“'674 Infringing Products”), including at least the Software AG webMethods business product suite, including the webMethods Business Process Management Suite, webMethods Broker, Optimize for Process, Trading Networks, and Optimize for B2B.

32. Defendants have also indirectly infringed and continues to indirectly infringe the '674 Patent.

33. Since Defendants have been on notice of the '674 Patent, Defendants have

actively, knowingly, and intentionally induced, and continue to actively, knowingly, and intentionally induce, infringement of the '674 Patent by others (e.g., Defendants' customers and the users of the '674 Infringing Products who directly infringed and continue to directly infringe the '674 Patent) by making, using, offering for sale, selling, and/or importing the '674 Infringing Products, knowing the '674 Patent and its claims, knowing that others will use the '674 Infringing Products in an infringing manner, and knowing and intending to encourage and facilitate those infringing uses of the '674 Infringing Products through the creation and dissemination of promotional and marketing materials, instruction materials, product manuals, and technical materials related to the '674 Infringing Products.

34. Since Defendants have been on notice of the '674 Patent, Defendants have also contributed to the direct infringement by others (e.g., Defendants' customers and the users of the '674 Infringing Products who directly infringed and continue to directly infringe the '674 Patent), and continue to contribute to direct infringement by others, by making, using, offering for sale, selling, and/or importing the '674 Infringing Products into the United States knowing the '674 Patent and its claims, knowing that others will use the '674 Infringing Products in an infringing manner, knowing that those products constitute a material part of the invention of the '674 Patent, knowing those products to be especially made or adapted to infringe the '674 Patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

35. To date, upon information and belief, Defendants have not made any changes to the relevant operation of the '674 Infringing Products and have not provided their customers and the users of the '674 Infringing Products instructions on how to avoid infringement since they had notice of the '674 Patent.

36. To date, Defendants have not produced or, upon information and belief, relied upon, an opinion of counsel related to the '674 Patent

37. Upon information and belief, Defendants have willfully infringed, and continues to willfully infringe the '674 Patent.

38. YYZ has been and continues to be damaged by Defendants' infringement of the '674 Patent.

Prayer for Relief

Wherefore, Plaintiff YYZ respectfully requests that this Court enter judgment against Defendants Software AG and Software AG, Inc. as follows:

- a) adjudging that the Defendants have infringed, literally or under the doctrine of equivalents, U.S. Patent Nos. 7,062,749 and 7,603,674;
- b) awarding YYZ the damages to which it is entitled under 35 U.S.C. § 284 for Defendants' past infringement and any continuing or future infringement up until the date Defendants are finally and permanently enjoined from further infringement, including both compensatory damages and enhanced/treble damages of willful infringement, and ordering a full accounting of same;
- c) awarding YYZ pre-judgment and post-judgment interest on its damages; and
- d) awarding YYZ such other and further relief in law or equity that the Court deems just and proper.

Demand for Jury Trial

YYZ hereby demands a trial by jury on all claims and issues so triable.

Dated: March 26, 2013

FARNAN LLP

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