

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SOFTEX LLC,

Plaintiff,

vs.

**ABSOLUTE SOFTWARE CORPORATION
AND ABSOLUTE SOFTWARE, INC.**

Defendants.

Civil Action No. 1:22-cv-01308-DAE

**PLAINTIFF’S OBJECTIONS AND RESPONSES TO ABSOLUTE’S
INDIVIDUAL INTERROGATORIES TO PLAINTIFF (NOS. 1-8)**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and Local Court Rules CV-26 and CV-33 of the United States District Court for the Western District of Texas, Plaintiff Softex LLC (“Softex” or “Plaintiff”) submits the following objections to Defendants Absolute Software Corporation and Absolute Software, Inc.’s (collectively, “Absolute”) First Set of Interrogatories to Defendants dated August 24, 2023.

Plaintiff’s responses are made on the basis of information currently available to Absolute and without prejudice to Plaintiff’s right to produce evidence of any subsequently discovered fact or information, to add, modify, or otherwise change or amend its responses as appropriate, or to correct any inadvertent errors, mistakes or omissions.

In responding to Absolute’s First Set of Interrogatories, Plaintiff does not waive any objections that may be applicable to the use, for any purpose, of any information or documents provided in response, or the admissibility, relevance, or materiality of any such information or documents to any issue in this action.

GENERAL OBJECTIONS

Plaintiff makes the following general objections, whether or not separately set forth in response to each Interrogatory, to each instruction, definition, and Interrogatory made in Absolute's First Set of Interrogatories:

1. Plaintiff objects to the Instructions and Interrogatories to the extent that they seek to impose on Plaintiff obligations greater than that required by law, statute, the Federal Rules of Civil Procedure, the Local Rules, an operative scheduling order, or any other Court order in this matter, and/or would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense.

2. Plaintiff objects to the Interrogatories to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, the common interest privilege, or any other privilege or protection, including any duty or obligation of non-disclosure or confidentiality. Any inadvertent disclosure of such information shall not be deemed a waiver of any privilege or protection that may apply to such information.

3. Plaintiff objects to the Interrogatories to the extent they seek proprietary, confidential, trade secret, or competitively sensitive information. Plaintiff will provide any such information or documents in accordance with a Protective Order entered by the Court governing the disclosure and use of such information.

4. Plaintiff objects to the Interrogatories to the extent they seek information not in Plaintiff's possession, custody, or control, or refer to persons, entities, or events not known to Plaintiff, on the grounds that they would seek to require more of Plaintiff than any obligation imposed by law, would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and would seek to impose upon Plaintiff an obligation to investigate or

discover information from third parties that is equally accessible to Absolute. Similarly, Plaintiff objects to each Interrogatory to the extent it seeks information from entities other than Plaintiff.

5. Plaintiff objects to the Interrogatories to the extent they seek information or documents that are available from public sources, records, third parties, or that are otherwise equally available to Absolute on the grounds that any such Interrogatory unreasonably subjects Plaintiff to undue burden, oppression, and expense.

6. Plaintiff objects to the Interrogatories to the extent they call for expert opinion or the construction of any patent claim terms. Plaintiff objects that any such Interrogatory is premature in seeking opinions, constructions, and contentions before the date required by either party's proposal in the Joint Rule 26(f) report.

7. Plaintiff objects to each of the Interrogatories to the extent they seek electronically stored information ("ESI") from sources that are not reasonably accessible because of undue burden and/or cost. Plaintiff further objects to the preservation of such ESI. To the extent Plaintiff maintains certain ESI in backup form, the cost and time required to restore such electronically stored information would be prohibitively expensive, so any such information is not reasonably accessible. Plaintiff shall follow the procedures for ESI discovery in accordance with the discovery plan agreed upon by the parties.

8. Plaintiff objects to the Interrogatories to the extent they seek to shift the burden from Absolute to Plaintiff on an issue for which Absolute bears the burden of proof.

9. Plaintiff objects to the Interrogatories to the extent they are unreasonably cumulative or duplicative of other discovery requests or are obtainable from some other source that is more convenient, less burdensome, or less expensive. Fed. R. Civ. P. 26(b)(2)(C).

10. Plaintiff objects to each Interrogatory to the extent it is not properly limited in time.

11. Plaintiff objects to the Interrogatories to the extent they improperly seek or require a legal conclusion.

12. Plaintiff objects to each Interrogatory to the extent it seeks information that may be derived from documents that will be provided to Absolute, where the burden of deriving such information is the same for Absolute as it is for Plaintiff.

13. Plaintiff objects to the Interrogatories to the extent they are compound and join subparts that seek information about discrete subjects, and therefore constitute two or more interrogatories under Rule 33(a) of the Federal Rules of Civil Procedure. Similarly, Plaintiff objects to each Interrogatory to the extent it seeks information which exceeds any limits of discovery entered by the Court in this case or otherwise limited by the discussions and negotiations of the parties.

14. Plaintiff objects to each Instruction, Definition, and Interrogatory to the extent it either assumes the existence of facts that Plaintiff disputes or constitutes an inaccurate characterization of the facts. Plaintiff does not hereby admit, adopt, or acquiesce in any factual or legal contention, assertion, characterization, or implication that is contained in any definition, instruction, or interrogatory. Any response or objection in response to the Interrogatories is without prejudice to Plaintiff's continuing objection to such characterizations.

15. Plaintiff objects to the definitions of "Communication" and "Communications," and to any instructions and specific Interrogatories in which this term appears on the grounds that this definition is overly broad, unduly burdensome, and not proportional to the needs of the above captioned matters because the burden of the proposed discovery outweighs its likely benefit to the extent it seeks to impose a burden on Plaintiff exceeding that required by the Federal Rules of Civil Procedure, the Local Rules, and the discovery plan submitted by the parties. Plaintiff will

construe the terms “communication” and “communications” in a manner consistent with the discovery plan.

16. Plaintiff objects to the definition of the terms “Identification,” “Identify,” “Identity,” and “Identifying,” and to any Instructions and specific Interrogatories in which these terms appear on the grounds that this definition is overly broad, unduly burdensome, and not proportional to the needs of the above-captioned matters because the burden of the proposed discovery outweighs its likely benefit to the extent it seeks to impose a burden on Plaintiff exceeding that required by the Federal Rules of Civil Procedure and the Local Rules. In addition, this definition is objectionable because it renders all specific Interrogatories in which these terms appear compound.

17. Plaintiff objects to the definition of the term “Concerning” and to any Instructions and specific Interrogatories in which this term appears on the grounds that this definition is overly broad, unduly burdensome, and not proportional to the needs of the above-captioned matters because the burden of the proposed discovery outweighs its likely benefit to the extent it seeks to impose a burden on Plaintiff exceeding that required by the Federal Rules of Civil Procedure and the Local Rules. In addition, this definition is objectionable because it renders all specific Interrogatories in which this term appears compound.

18. Plaintiff objects to the definition of “You,” “Your,” “Softex,” and “Plaintiff” as overly broad and not proportional to the needs of the above-captioned matters to the extent it includes persons or entities other than Softex LLC.

19. Plaintiff objects to the discovery requests to the extent they purport to call for information that is in the possession, custody, or control of a third party.

20. Any specific objection asserted in answer to an interrogatory herein is not a waiver of the general objections set forth above.

21. Plaintiff incorporates these General Objections in full into each of the individual responses set forth below.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

Without waiving or limiting in any manner any of the foregoing General Objections, but rather incorporating them into each of the following responses to the extent applicable, Plaintiff objects and responds to the specific requests in Absolute's Interrogatories as follows:

INTERROGATORY NO. 1:

Describe in detail Your relationship with and to Fortress Investment Group, LLC including any enforcement or acquisition of intellectual property rights.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 1 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections as if fully set forth herein. Plaintiff further objects as follows:

Plaintiff objects that any relationship with and to Fortress Investment Group, LLC ("FIG") is irrelevant to the claims and defenses in the case and is, therefore, not discoverable. Fed. R. Civ. P. 26(b)(1). Plaintiff objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, common interest privilege, attorney-work product doctrine, and/or any other applicable privilege or immunity. Plaintiff further objects to this request to the extent it seeks information about Plaintiff's finances, the litigation budget, and provides insight into Plaintiff's litigation strategy as seeking information and/or protected by the attorney-client privilege, attorney-work product doctrine, the common interest privilege, and/or any other applicable privilege or immunity and/or is irrelevant and not reasonably calculated to lead to the discovery of

admissible evidence. Plaintiff objects to this Interrogatory as vague and ambiguous, and as a result overbroad and unduly burdensome, in its use of the undefined terms “relationship” and “enforcement.” Plaintiff objects to this Interrogatory as vague and ambiguous, and as a result overbroad and unduly burdensome, in its request to “describe” its relationship with Fortress. Plaintiff objects to this Interrogatory as unduly burdensome and not proportional to the needs of the case.

Subject to and without waiving the foregoing general and specific objections, Plaintiff states as follows:

FIG LLC (d/b/a Fortress Investment Group) (“FIG”) is an advisor to certain investment funds that have an indirect ownership interest in Softex LLC. These investment funds provide capital funding to Softex LLC upon Softex LLC’s request. Softex LLC is independently run by its CEO and Board. Certain individuals employed by FIG sit on the Board of Managers to Softex LLC.

INTERROGATORY NO. 2:

Identify and describe in detail the factual basis for Your contention relating to the amount of damages owed to You for any alleged infringement by Defendants of the Asserted Patents, including the form(s) of damages sought, the amount sought, the complete basis and theories for Your damages claim(s), the smallest salable patent practicing unit, any features You contend drive demand for the Accused Products, any purportedly comparable license agreements, any alleged competition between Softex and Absolute, all facts and evidence relevant to each of the factors identified in *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970), a complete description of the hypothetical negotiation as contemplated by *Georgia-Pacific* for the Asserted Patents and/or Accused Products (including without limitation

all applicable date(s) of hypothetical negotiation and all relevant facts and circumstances), an identification by Bates number of the Documents You intend to rely upon in support of damages, and the names of any witnesses You intend to rely upon in support of damages.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 2 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections as if fully set forth herein.

Plaintiff further objects as follows:

Plaintiff objects to this Contention Interrogatory as premature, as a response at this time could irreparably prejudice Plaintiff's further investigation, development and prosecution of this litigation and serves no purpose other than to harass and burden Plaintiff and to unnecessarily delay and needlessly increase the cost of this litigation to all parties. The parties are in the process of obtaining discovery, and Plaintiff has not yet begun taking depositions. Given the complexity of this case and the scope of discovery, Plaintiff will need time to process the information it learns in discovery before it can respond to this Contention Interrogatory. Plaintiff objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney-work product doctrine, the common interest privilege, and/or any other applicable privilege or immunity. Plaintiff objects to this Interrogatory as compound and consisting of multiple sub-parts that seek information about discrete subjects, and therefore consists of multiple interrogatories under Rule 33(a) of the Federal Rules of Civil Procedure. Plaintiff objects to this Interrogatory as vague and ambiguous, and as a result overbroad and unduly burdensome, in its use of the undefined terms "smallest salable patent practicing unit," "comparable license agreement," and "hypothetical negotiation." Plaintiff further objects to this Interrogatory and the foregoing terms to the extent that they call for a legal conclusion. Plaintiff further objects to this Interrogatory as vague and ambiguous. Plaintiff objects to this Interrogatory as overly broad and unduly burdensome to the

extent it seeks the “complete basis and theories” for various forms of relief, “all facts and evidence relevant to each of the factors identified in *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970), and “a complete description of the hypothetical negotiation as contemplated by *Georgia-Pacific* for the Asserted Patents and/or Accused Products (including without limitation all applicable date(s) of hypothetical negotiation and all relevant facts and circumstances).” Plaintiff objects to this Interrogatory on the grounds that it calls for Plaintiff to set forth its positions or arguments, or to identify or produce documents prior to when Absolute has produced sufficient financial information for the Accused Products to Plaintiff to provide an answer. Plaintiff objects to this Interrogatory on the grounds that it calls for Plaintiff to set forth its positions or arguments, or to identify or produce documents prior to the appropriate dates as set forth in the Scheduling Order entered by the Court. Plaintiff will set forth its contentions, position, or arguments in accordance with the dates set forth in the Scheduling Order. Plaintiff further objects to this Interrogatory as premature and unduly burdensome to the extent that it calls for expert testimony. Plaintiff will provide its expert opinions in accordance with the Scheduling Order entered by the Court.

Subject to and without waiving the foregoing general and specific objections, Plaintiff states as follows:

Plaintiff seeks a reasonable royalty for infringement of the Asserted Patents. The estimate for that reasonable royalty will consider and conform to various valuation approaches, including the Income Approach, the Market Approach, Cost Approach, and/or the *Georgia-Pacific* framework. It will include an apportioned royalty amount determined from a royalty base and a royalty rate. The hypothetical negotiation date in each instance will be at or right before the date of first infringement. And the relevant time frame for such analysis will go back as far as six years before the filing of the Complaint in this case, through the expiration dates of the Asserted Patents. Plaintiff does not presently seek damages for lost profits.

Discovery is ongoing. For example, Absolute and defendants in the other cases have not produced complete financial records or sufficiently explained any produced financial records. In addition, and by way of further example, Absolute and defendants in the other cases have produced no licenses. Plaintiff will timely supplement its Response to this Interrogatory as discovery proceeds. Finally, because this Interrogatory seeks the premature disclosure of detailed expert opinions, Plaintiff will supplement this Response in a timely manner, consistent with the Scheduling Order by serving an expert report on damages.

INTERROGATORY NO. 3:

Describe in detail and identify all supporting facts and evidence regarding the circumstances surrounding the conception and reduction to practice of the alleged invention(s) of each Asserted Claim of the Asserted Patents, including the precise date of conception and actual or constructive reduction to practice, the date and circumstances of first experimental or test use, the steps constituting diligence from conception to actual or constructive reduction to practice, and the names of all persons involved and the nature of their involvement or contribution.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 3 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections as if fully set forth herein. Plaintiff further objects as follows:

Plaintiff objects to this Interrogatory on the grounds that certain of the information sought is not relevant to the prosecution and defense of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this Interrogatory as compound and consisting of multiple sub-parts that seek information about discrete subjects, and therefore consists of multiple interrogatories under Rule 33(a) of the Federal Rules of Civil Procedure. Plaintiff objects to this Interrogatory on the grounds that it is vague, ambiguous, and/or overly broad, and unreasonably requires Plaintiff to speculate as to the nature and scope of the information sought. Plaintiff objects to

this Interrogatory to the extent that it requests the discovery or disclosure of information that is immune from discovery, protected by the attorney-client privilege, common interest privilege, and/or work product doctrine or other applicable privilege.

Subject to and without waiving the foregoing general and specific objections, Plaintiff states as follows:

Each of the Asserted Patents are entitled to a conception and constructive reduction to practice no later than August 23, 2003. The named inventors worked collaboratively to conceive and actually or constructively reduce to practice the asserted claims of the Asserted Patents.

While the named inventors worked collaboratively to conceive and actually or constructively reduce to practice the asserted claims of the Asserted Patents, the efforts to reduce to practice the disclosed inventions can generally be described as follows, which characterizes general areas where the inventors likely spent more rather than less of their time:

- Apurva Mahendrakumar Bhansali – Architecture and component development
- Manoj Kumar Jain – Architecture and component development
- Shradha Dube – Architecture and component development
- Gayathri Rangarajan – Component development
- Mehul Ramjibhai Patel – Component development and architecture
- Rayesh Kashinath Raikar – Component development
- Kamal Mansukhlal Dhanani – Architecture and component development
- Ranjit Kapila – Server infrastructure development
- Elza Abraham – Server/website/user interface component development
- Thomas David Tucker – Server/website/user interface component development
- David Cheung – Component development

- Rajnish Chauhan – Component development

Additionally, pursuant to Rule 33(d), Plaintiff will perform a reasonable search for, collect, produce and/or identify additional non-privileged documents responsive to this interrogatory.

INTERROGATORY NO. 4:

To the extent not discussed in response to Interrogatory No. 3, describe in detail and identify all supporting facts and evidence regarding the specific contribution of each named inventor to the conception of each Asserted Claim of the Asserted Patents.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 4 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections and Objections to Interrogatory No. 3. Plaintiff's Objections and Response to Interrogatory No. 3 is sufficient to provide a response to Interrogatory No. 4.

INTERROGATORY NO. 5:

Excluding the "References Cited" on the faces of the Asserted Patents, identify all Prior Art of which You and/or the Named Inventor are aware, including all public uses, offers for sale, or sales in the United States, and all patents, books, articles, and publications (including but not limited to prior art discovered or identified during any pre-filing investigation, negotiation, lawsuit, or proceeding); for each item of Prior Art identified, state the date and circumstances under which You and/or the Named Inventor first became aware of the Prior Art, and identify all Documents concerning the Prior Art (including by Bates number) and all Persons with knowledge of the Prior Art.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 5 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections as if fully set forth herein. Plaintiff further objects as follows:

Plaintiff objects to this Interrogatory on the grounds that certain of the information sought is not relevant to the prosecution and defense of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this Interrogatory on the grounds that it contains multiple subparts and should properly be considered as multiple interrogatories. Plaintiff objects to this Interrogatory on the grounds that it seeks information not in Plaintiff's possession, custody, or control. Plaintiff objects to this Interrogatory as overly broad and unduly burdensome to the extent it requests that Plaintiff "identify all Prior Art of which You and/or the Named Inventor are aware." Plaintiff objects to this Interrogatory to the extent that it requests the discovery or disclosure of information that is immune from discovery, protected by the attorney-client privilege, common interest privilege, and/or work product doctrine, or other applicable privilege. Plaintiff objects to this Interrogatory as overly broad and unduly burdensome. For example, Defendants' proposed definition of Prior Art renders the Interrogatory so broad and burdensome that it seeks irrelevant and/or inadmissible information.

Subject to and without waiving the foregoing general and specific objections, Plaintiff states as follows:

Beyond the prior art disclosed by or to Softex, Inc. during prosecution of the Asserted Patents, and to the extent not duplicative of the art disclosed therein, Plaintiff is also aware of the prior art references disclosed in the Petition for Inter Partes Review of U.S. Patent No. 8,506,649 filed by Microsoft Corporation and real parties-in-interest Dell Technologies Inc., HP Inc., Lenovo Group Ltd., Lenovo (Shanghai) Electronics Technology Co. Ltd., Lenovo Beijing, Ltd. Lenovo PC HK Limited, and Lenovo (United States), Inc. The full record of that Petition is publicly available and the burden of deriving or ascertaining relevant facts and circumstances from that record is substantially the same for Plaintiff as for Absolute. Plaintiff is aware of prior art references disclosed to Plaintiff in Absolute's Invalidity Contentions and the references disclosed

to Plaintiff in Dell (*Softex LLC v. Dell Techs. Inc.*, No. 1:22-cv-01309) and HP's (*Softex LLC v. HP Inc.*, No. 1:22-cv-01311) Invalidity Contentions.

Additionally, pursuant to Rule 33(d), Plaintiff will perform a reasonable search for, collect, produce and/or identify additional non-privileged documents responsive to this Interrogatory.

INTERROGATORY NO. 6:

Identify and describe in detail each license, agreement, or negotiation involving the Asserted Patents, Related Patents and/or Applications, and/or the subject matter of the Asserted Patents, including the parties and the terms of such license or agreement, the people involved in offering or negotiating each such license or agreement, the amount of any actual or expected future sales of any products associated with such license or agreement, and the Documents concerning the negotiation of each such license or agreement (including by Bates number).

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 6 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections as if fully set forth herein. Plaintiff further objects as follows:

Plaintiff objects to this Interrogatory on the grounds that certain of the information sought is not relevant to the prosecution and defense of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this Interrogatory as compound and consisting of multiple sub-parts that seek information about discrete subjects, and therefore consists of multiple interrogatories under Rule 33(a) of the Federal Rules of Civil Procedure. Plaintiff objects to this Interrogatory as overly broad and unduly burdensome to the extent it requests that Plaintiff "describe in detail" every license, agreement, or negotiation involving the Asserted Patents, Related Patents, and every patent or patent application regarding the "subject matter of the Asserted Patents." Plaintiff further objects to this Interrogatory as vague, ambiguous, and/or overly broad to the extent it seeks information regarding the details of negotiation involving "the subject

matter of the Asserted Patents,” which is undefined. Plaintiff objects to this Interrogatory to the extent it seeks to improperly shift Absolute’s burden to Plaintiff. Plaintiff objects to this Interrogatory to the extent that it requests the discovery or disclosure of information that is immune from discovery, protected by the attorney-client privilege, common interest privilege, and/or work product doctrine, or other applicable privilege.

Subject to and without waiving the foregoing general and specific objections, Plaintiff states as follows:

At least as early as June 2003, a representative for Softex, Inc. contacted Absolute to discuss whether it might be interested in licensing Softex, Inc.’s proprietary, theft prevention and recovery technology, and Absolute expressed interest in licensing or acquiring Softex, Inc.’s intellectual property. In January 2004, Absolute’s Vice President of Marketing and Business Development emailed Softex, Inc.’s CEO that he was “getting a lot of heat to move one way or the other” with Softex, Inc. and that he believed “the best situation for both companies would be to combine efforts.” Absolute’s Vice President also attached a January 12, 2004 press release from Absolute announcing that Phoenix Technologies would begin installing Absolute’s infringing “Computrace” theft prevention and recovery software in the BIOS in conjunction with device manufacturers. Shortly after the January 2004 press release, Phoenix disregarded its longstanding relationship with Softex, Inc. and incorporated Absolute’s infringing Computrace software into OEM BIOSs. On February 17, 2004, counsel for Softex, Inc. sent Absolute a letter, notifying Absolute of Softex, Inc.’s provisional patent application, requesting that Absolute review its security software products for infringement, and requesting a meeting to discuss Absolute’s licensing of Softex, Inc.’s intellectual property. Absolute did not obtain a license to Softex, Inc.’s intellectual property. In the years that followed the 2004 press release, Absolute marketed and sold infringing persistent theft detection security products to OEMs and consumers.

During the period of Absolute's continued infringement, Absolute initiated meetings and took overt steps that led Softex, Inc. to believe that Absolute was interested in purchasing Softex, Inc. Absolute requested, and Softex, Inc. provided, years of financial data, information about all of Softex, Inc.'s product offerings, and details regarding Softex, Inc.'s relationships with software companies and OEMs. Absolute told Softex, Inc. it was particularly interested in Softex, Inc.'s "best of breed, excellence in engineering" and its relationships with OEMs.

On August 15, 2006, counsel for Softex, Inc. sent another letter to Absolute, this time notifying Absolute that Softex, Inc. had converted the provisional patent application, about which Absolute was informed in 2004, into a conventional utility application. Softex, Inc. notified Absolute that Absolute's persistent security patent applications, which were filed more than a year after Softex, Inc.'s provisional patent application, did not identify Softex, Inc.'s patent application or provisional application. Softex, Inc.'s counsel reminded Absolute of its "duty to disclose all information known to be material to patentability" and enclosed copies of 37 C.F.R. § 1.56, Softex, Inc.'s patent application, and Softex, Inc.'s provisional patent application. Absolute was slow to respond, but in late 2007, the companies began discussing Absolute's acquisition of Softex, Inc. and/or its intellectual property.

In early 2008, Absolute and Softex, Inc. exchanged multiple drafts of a Letter of Intent, wherein Absolute expressed its intent to purchase Softex, Inc., including all of its intellectual property rights, for \$20 million Canadian dollars, pending the parties' agreement on other terms. On information and belief, during the negotiations, Absolute performed due diligence by researching Softex, Inc.'s intellectual property rights, including the Asserted Patents and/or related applications. Absolute was, therefore, on notice of Softex, Inc.'s patent applications that published

before February 2008, including the applications that resulted in the '837 Patent and the '649 Patent.

The parties did not reach an agreement on Absolute's acquisition of Softex, Inc. On September 15, 2009, Softex, Inc. rekindled discussions with Absolute when it emailed Absolute a copy of the recently granted '837 Patent. Once again, Absolute led Softex, Inc. to believe that Absolute was interested in purchasing Softex, Inc. and its intellectual property, responding that it was "highly important that [the companies] collaborate." In late 2009, Absolute proposed that it proceed toward acquiring Softex, Inc. through a two-step process. First, Absolute would enter a licensing agreement whereby Absolute would market Softex, Inc.'s "OmniPass" and "SecureDrive" software. Second, after the parties had established a working relationship, Absolute would purchase Softex, Inc. and its intellectual property. In July 2010, Absolute and Softex, Inc. entered a white labeling agreement that provided Absolute with the opportunity to market Softex, Inc.'s OmniPass and SecureDrive products. After signing the licensing agreement, it became apparent that Absolute never intended to truly partner with Softex, Inc. or acquire its patents, and its purported negotiations were a pretense to permit Absolute to continue to use Softex, Inc.'s proprietary technology in its own persistent theft detection security software products while at the same time staving off the threat of litigation. Absolute sold a small number of OmniPass licenses and never sold any SecureDrive licenses. Absolute never licensed any other technology from Softex, Inc., including any technology related to the Asserted Patents, and never purchased any of Softex, Inc.'s intellectual property rights. Absolute has incorporated Softex, Inc.'s technology into its products and offerings without authorization.

Softex Inc. engaged Phoenix Technologies Ltd. ("Phoenix") regarding its TheftGuard software. In May 2003, Softex Inc. and Phoenix entered into an agreement to integrate Softex's

TheftGuard software into Phoenix's Core Management Environment (cME) platform. Phoenix announced its partnership with Softex Inc. in a press release, dated May 27, 2003. Phoenix notified Softex Inc. that it intended to target OEMs, including IBM, HP, Sony, Legend, Dell, and Panasonic, to install Softex's TheftGuard software. Phoenix requested, and Softex Inc. provided, demonstration versions of TheftGuard software for Phoenix to share with target OEMs, including Dell. Between June 2003 and November 2003, Softex Inc. negotiated with Phoenix OEM SystemMax regarding the potential integration of TheftGuard into its BIOS.

Softex Inc. also executed non-disclosure agreements ("NDAs") pursuant to negotiations regarding its TheftGuard software.

Additionally, pursuant to Rule 33(d), Plaintiff will perform a reasonable search for, collect, produce and/or identify additional non-privileged documents responsive to this Interrogatory.

INTERROGATORY NO. 7:

Describe in detail Your contention, if any, that any secondary considerations support a conclusion that the Asserted Claims are not obvious under 35 U.S.C. § 103, including by identifying all facts, documents, persons with knowledge, and materials regarding such contention and identifying the factual and legal basis regarding the purported nexus between the secondary consideration and the specific Asserted Claims (with specific Bates numbers to any cited pages).

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 7 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections as if fully set forth herein. Plaintiff further objects as follows:

Plaintiff objects to this Contention Interrogatory as premature, as a response at this time could irreparably prejudice Plaintiff's further investigation, development, and prosecution of this litigation and serves no purpose other than to harass and burden Plaintiff and to unnecessarily

delay and needlessly increase the cost of this litigation to all parties. For example, Absolute has served invalidity contentions but failed to identify any specific combinations of references under 35 U.S.C. § 103. By way of further example, as to the asserted independent claims of U.S. Patent No. 7,590,837, Absolute has identified 10 purported prior art references for the application component, 10 purported prior art references for the non-viewable component, 16 purported prior art references for the BIOS component, 11 purported prior art references for check integrity, 6 purported prior art references for restore integrity, 23 purported prior art references for the server, and 8 purported prior art references for boot prevention. This results in over 19,000,000 possible combinations for the independent claims of one Asserted Patent

Further, the parties are in the process of obtaining discovery, and Plaintiff has not yet begun taking depositions. Given the complexity of this case and the scope of discovery, Plaintiff will need time to process the information it learns in discovery before it can respond to this Contention Interrogatory. Plaintiff objects to this Interrogatory on the grounds that certain of the information sought is not relevant to the prosecution and defense of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff objects to this Interrogatory as compound and consisting of multiple sub-parts that seek information about discrete subjects, and therefore consists of multiple interrogatories under Rule 33(a) of the Federal Rules of Civil Procedure. Plaintiff further objects to this Interrogatory on the grounds that it calls for Plaintiff to identify or produce documents prior to the appropriate dates as set forth in Scheduling Order entered by the Court. Plaintiff will set forth its contentions, position, or arguments in accordance with the dates set forth in the Scheduling Order. Plaintiff further objects to this Interrogatory as premature and unduly burdensome to the extent that it calls for expert testimony. Plaintiff will provide its expert opinions in accordance with the Scheduling Order entered by the Court. Plaintiff objects to this Interrogatory on the grounds that it improperly seeks to shift the burden on validity from Absolute

to Plaintiff. Plaintiff objects to this Interrogatory to the extent that it calls for a legal conclusion regarding “secondary considerations.”

Subject to and without waiving the foregoing general and specific objections, Plaintiff states as follows:

Plaintiff states that the non-obviousness of each of the asserted claims of the Asserted Patents is demonstrated at least by its receipt of each patent and directs Absolute to each patent and its file history as identifying documents and things evidencing, and persons knowledgeable about, such facts. Based on presently available information, the below secondary considerations are present for each asserted claim:

- *Commercial success*: there is significant commercial success stemming from the claimed inventions at issue in this case. As an example, the infringing products identified in Plaintiff’s Preliminary Infringement Contentions served on Absolute are commercially successful—and that commercial success stems from elements of the asserted claims here. Absolute’s integration of its infringing software into OEM’s devices, and the separate and independent infringement by these OEMs of Plaintiff’s Asserted Patents, is further evidence of commercial success, including the Dell and HP electronic devices identified in the infringement contentions served in those cases as well as the infringing products identified in Plaintiff’s Second Amended Complaint against Lenovo Group Ltd., Lenovo (Shanghai) Electronics Technology Co. Ltd., Lenovo Beijing, Ltd. Lenovo PC HK Limited, and Lenovo (United States), Inc.
- *Long-felt but unfulfilled need*: there also was a long-felt and unfulfilled need for the claimed inventions. For example, with regard to the asserted claims of the Asserted

Patents, there was a long-felt but unfulfilled need for electronic device security and tracking systems and methods that include hardware, software and firmware components that cooperate to allow tracking, disabling, recovery and other interaction with lost or stolen devices. The claimed elements of the independent and dependent claims to provide just that.

- *Failure by others:* Other companies and individuals, such as Absolute and Phoenix, had tried, but failed, to derive the same claimed combinations reflected in the independent and dependent asserted claims of the Asserted Patents.
- *Copying:* Other companies and individuals, such as Absolute, copied Softex's Inc.'s inventions directly or indirectly.

INTERROGATORY NO. 8:

Separately for each Asserted Patent and Accused Product, describe in detail the factual and legal basis for Your contention that Defendants' alleged infringement of the Asserted Patent(s) has been willful.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 8 (September 25, 2023):

Plaintiff hereby incorporates by reference its General Objections as if fully set forth herein. Plaintiff further objects as follows:

Plaintiff objects to this Contention Interrogatory as premature, as a response at this time could irreparably prejudice Plaintiff's further investigation, development, and prosecution of this litigation and serves no purpose other than to harass and burden Plaintiff and to unnecessarily delay and needlessly increase the cost of this litigation to all parties. The parties are in the process of obtaining discovery, and Plaintiff has not yet begun taking depositions. Given the complexity of this case and the scope of discovery, Plaintiff will need time to process the information it learns

in discovery before it can respond to this Contention Interrogatory. Plaintiff objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, common interest privilege, attorney-work product doctrine, and/or any other applicable privilege or immunity. Plaintiff objects to this Interrogatory as compound and consisting of multiple sub-parts that seek information about discrete subjects, and therefore consists of multiple interrogatories under Rule 33(a) of the Federal Rules of Civil Procedure. For example, this Interrogatory seeks information regarding Absolute's willful infringement "for each Asserted Patent and Accused Product."

Subject to and without waiving the foregoing general and specific objections, Plaintiff states as follows:

Plaintiff incorporates its response to Interrogatory No. 6. Beyond this, since receiving the Complaint, on information and belief, Absolute has taken no steps to design around, remove, or alter the infringing components and instead has chosen to knowingly and intentionally infringe. Rather than choosing to avoid willful infringement, Absolute, on information and belief, has buried its head in the sand in favor of continued wanton infringement. Discovery is ongoing and Plaintiff will supplement this Interrogatory as discovery proceeds.

Additionally, pursuant to Rule 33(d), Plaintiff will perform a reasonable search for, collect, produce and/or identify additional non-privileged documents responsive to this Interrogatory.

Dated: September 25, 2023

Respectfully submitted,

McKool Smith, P.C.

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on September 25, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via electronic mail.

/s/ Blair M. Jacobs

Blair M. Jacobs