

1 Jack Russo (Cal. Bar No. 96068)  
Christopher Sargent (Cal. Bar No. 246285)  
2 Ansel Halliburton (Cal. Bar No. 282906)  
COMPUTERLAW GROUP LLP  
3 401 Florence Street  
Palo Alto, CA 94301  
4 (650) 327-9800  
(650) 618-1863 fax  
5 jrusso@computerlaw.com  
csargent@computerlaw.com  
6 ahalliburton@computerlaw.com

7 Attorneys for Plaintiff  
XIMPLEWARE CORP.

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 **XimpleWare Corp.**, a California  
Corporation,

13 Plaintiff;

14 v.

15 **Versata Software, Inc., f/k/a Trilogy**  
16 **Software, Inc.**, a Delaware corporation;  
17 **Trilogy Development Group, Inc.**, a  
California corporation; **Ameriprise**  
18 **Financial, Inc.**, a Delaware corporation;  
19 **Ameriprise Financial Services, Inc.**, a  
Delaware corporation; **Aurea Software, Inc.**,  
20 **a/k/a Aurea, Inc.**, a Delaware corporation;  
21 **Pacific Life Insurance Company**, a  
Nebraska corporation; **United HealthCare**  
22 **Services, Inc.**, a Minnesota corporation;  
23 **Metropolitan Life Insurance Company**, a  
New York corporation; **The Prudential**  
24 **Insurance Company of America**, a New  
Jersey corporation; **Wellmark, Inc.**, an Iowa  
corporation, **Waddell & Reed Financial,**  
**Inc.**, a Delaware corporation; and **Aviva USA**  
**Corporation**, an Iowa corporation,

25 Defendants.

Case No. 5:13-cv-05161-PSG

**AMENDED COMPLAINT FOR:**

- 16 **(1) DIRECT PATENT INFRINGEMENT**
- 17 **(2) INDUCING PATENT INFRINGEMENT**
- 18 **(3) DECLARATORY RELIEF**

**Jury Trial Demanded**

Computerlaw Group LLP  
www.computerlaw.com<sup>sm</sup>

1 Plaintiff XimpleWare Corp. alleges the following against Defendants Versata Software,  
2 Inc., f/k/a Trilogy Software, Inc., Trilogy Development Group, Inc., and Aurea Software, Inc.  
3 a/k/a Aurea, Inc. (collectively “Versata” or the “Versata Defendants”); and against Ameriprise  
4 Financial, Inc., Ameriprise Financial Services, Inc., Pacific Life Insurance Company, United  
5 HealthCare Services, Inc., Metropolitan Life Insurance Company, The Prudential Insurance  
6 Company of America, Wellmark, Inc., Waddell & Reed Financial, Inc., and Aviva USA  
7 Corporation (collectively the “Customer Defendants”; and the Versata Defendants and the  
8 Customer Defendants are collectively the “Defendants”):

#### 9 NATURE OF ACTION

10 1. This action involves claims of patent infringement under 35 U.S.C. § 271 *et seq.*  
11 and declaratory relief.

#### 12 PARTIES

13 2. Plaintiff XimpleWare Corp. (“XimpleWare”) is a corporation organized under the  
14 laws of, and registered to do business in, California, with its principal place of business in  
15 Milpitas, California.

16 3. Plaintiff XimpleWare is the designer, developer, and distributor of advanced  
17 computer software and, as an enterprise that practices its own patents, it has delivered to the  
18 marketplace advanced computer software that provides enterprises, Fortune 5000 corporations,  
19 firms, and other businesses with an advanced data processing solution for challenging data  
20 processing problems. Plaintiff XimpleWare has a number of licensed customers including  
21 Matrikon, Inc., Smith & Tinker, Inc., United Stationers Technology Services LLC, and Zoosk,  
22 Inc.

23 4. Defendant Versata Software, Inc., f/k/a Trilogy Software, Inc. (“Versata”) is a  
24 private corporation registered to do business in California, organized under the laws of Delaware,  
25 with its principal place of business in Austin, Texas.

26 5. Defendant Trilogy Development Group, Inc. (“Trilogy”) is a corporation  
27 organized under the laws of California, with its principal place of business in Austin, Texas. On  
28

1 information and belief, Trilogy acquired Defendant Versata in or about February 2006, and  
2 Trilogy is now the parent company of Versata and its subsidiaries.

3 6. Defendant Aurea Software, Inc. a/k/a Aurea, Inc. (“Aurea”) is a corporation  
4 registered to do business in California, organized under the laws of Delaware with its principal  
5 place of business in Austin, Texas. On information and belief, Aurea merged with Trilogy and  
6 Versata in October, 2013.<sup>1</sup>

7 7. Defendant Ameriprise Financial, Inc. is a corporation registered to do business in  
8 California, organized under the laws of Delaware, with its principal place of business located in  
9 Minneapolis, Minnesota. On information and belief, Ameriprise is a leading diversified financial  
10 services provider, providing a range of financial planning products and is a customer of Versata  
11 and Trilogy.

12 8. Defendant Ameriprise Financial Services, Inc. is a corporation registered to do  
13 business in California, organized under the laws of Delaware, with its principal place of business  
14 located in Minneapolis, Minnesota. On information and belief, Defendant Ameriprise Financial  
15 Services, Inc. is a subsidiary of Defendant Ameriprise Financial, Inc. (together, Ameriprise  
16 Financial, Inc. and Ameriprise Financial Services Inc. shall be referred to as “Ameriprise”).

17 9. Defendant Pacific Life Insurance Company (“Pacific Life”) is a Nebraska  
18 corporation with its principal place of business in Newport Beach, California. On information  
19 and belief, Pacific Life is a customer of Versata and Trilogy.

20 10. Defendant United HealthCare Services, Inc. (“UHS”) is a public corporation  
21 registered to do business in California organized under the laws of Minnesota with its principal  
22 place of business in Minnetonka, Minnesota. On information and belief, UHS is a diversified  
23 managed health care company and a customer of Versata and Trilogy.

24 11. Defendant Metropolitan Life Insurance Company (“MetLife”) is a public  
25 corporation registered to do business in California organized under the laws of New York with its  
26 principal place of business in New York, New York. On information and belief, MetLife is a  
27

28 <sup>1</sup> <http://www.aurea.com/pressrelease/20131013>

1 global provider of insurance, annuities, and employment benefit programs and is a customer of  
2 Versata and Trilogy.

3 12. Defendant The Prudential Insurance Company of America (“Prudential”) is a  
4 public corporation registered to do business in California organized under the laws of New  
5 Jersey with its principal place of business in Newark, New Jersey. On information and belief,  
6 Prudential provides insurance and financial services and is a customer of Versata and Trilogy.

7 13. Defendant Wellmark, Inc. (“Wellmark”) is a corporation organized under the laws  
8 of Iowa, operating under the fictitious names “Blue Cross and Blue Shield of Iowa” and  
9 “Wellmark Blue Cross and Blue Shield.” Wellmark has its principal place of business in Des  
10 Moines, Iowa. On information and belief, Wellmark is an insurance company and a customer of  
11 Versata and Trilogy.

12 14. Defendant Waddell & Reed Financial, Inc. (“W&R”) is a public corporation  
13 registered to do business in California, organized under the laws of Delaware with its principal  
14 place of business in Overland Park, Kansas. On information and belief, W&R provides asset  
15 management and financial planning services and is a customer of Versata and Trilogy.

16 15. Defendant Aviva USA Corporation (“Aviva”) is a company organized under the  
17 laws of Iowa with its principal place of business in West Des Moines, Iowa. On information and  
18 belief, Aviva is a subsidiary of Aviva, plc., a multinational insurance company headquartered in  
19 London, United Kingdom, and is a customer of Versata and Trilogy.

20 16. Plaintiff is informed and believes and on that basis alleges (collectively  
21 hereinafter “on information and belief”), that at all relevant times Trilogy was and is the  
22 operating entity of, and has effective, if not actual, control over the business decisions made by  
23 its subsidiaries, Versata and Aurea.

24 17. On information and belief, at all relevant times, Versata and Aurea were the mere  
25 solely controlled instrumentalities of Trilogy and functioned as Trilogy’s *alter egos*, and all  
26 undertakings by Versata and Aurea were known by, sanctioned, or done at the direction and  
27 under the sole control of Trilogy, or by others serving under Trilogy’s direction and/or sole  
28 control.



1 **BACKGROUND FACTS**

2 **XML Parsing**

3 23. A parser is a piece of software that reads certain electronic files and makes the  
4 information from those files available to applications and programming languages, acting as a  
5 go-between as underlying code which can be written in any number of programming languages  
6 and what a user sees when the program runs.

7 24. Extensible Markup Language (known as XML) is a set of rules for encoding  
8 documents electronically. Known as a metalanguage, XML allows one to design a markup  
9 language which is in turn used for the easy interchange of documents on the World Wide Web.  
10 XML is itself a subset of a standard called SGML, and can be used to design a tagging scheme  
11 that allows elements of a document to be marked according to their content rather than their  
12 format.

13 25. Information stored in XML documents can be used more effectively when  
14 parsed—read line by line or node by node to fetch pieces of information for the program to read  
15 and translate. In essence, parsing is the act of analyzing a set of characters or data and then  
16 determining, recognizing, deciphering, or acquiring the significant data and commands from a  
17 sequence of programming code, and translating the code which allows the program to do the job  
18 for which it was designed.

19 **Formation of XimpleWare**

20 26. In October 2002, Zhengyu “Jimmy” Zhang founded XimpleWare (the  
21 “Company”) with a since-departed co-founder Hui Tian. Mr. Ying Shum (who has since passed  
22 away) was an advisor to the Company during its early stages. Using experience gained from  
23 fifteen years in the software engineering field, Mr. Zhang started XimpleWare with the goal of  
24 achieving maximum efficiency for XML processing by using dedicated integrated circuits as a  
25 system on a chip (SOC). Mr. Tian left the venture in 2003, and since then Mr. Zhang has handled  
26 all creative and managerial responsibilities at XimpleWare.

27 //

28 //



1           33.     Due to the fundamental properties of XML technology, XML parsing innovations  
2 are very hard to sell. A parser is not an end-user product, *i.e.*, is a component that must be  
3 integrated into another existing product, analogous to how an engine is a component that must be  
4 integrated into a car—it has little utility on its own, but matters a great deal to the larger product.  
5 XimpleWare therefore made the business decision to license its Source Code under the GNU  
6 General Public License version 2 (“GPL”). A copy of the GPL is attached to this Complaint as  
7 **Exhibit 1**. By licensing its technology under the GPL, XimpleWare enabled potential  
8 commercial licensees to evaluate XimpleWare’s technology before going into commercial  
9 production, and allowed free non-commercial use of its technology, which would likely spur  
10 adoption in the overall market for high-efficiency XML processing software.

11           34.     The GPL requires, among other things, (1) that any changes made to the code  
12 carry notices stating that the files were changed, and the date of all changes; (2) any code created  
13 or derived from GPL-protected code must also be licensed under the GPL; (3) copyright notices  
14 must print or display when the code is run; and (4) that when distributed, the program must be  
15 accompanied by the complete machine-readable source code.

16           35.     The text of the GPL contains a lengthy “Preamble” section. This preamble is not a  
17 legally operative part of the GPL, as is generally understood in the open source community. For  
18 example, Lawrence Rosen, an attorney and noted open source expert, states in a 2004 book:

19                   The preamble, of course, is not an operative part of the GPL license. It is not  
20                   among its *terms and conditions*. There is nothing in its words that must be  
21                   obeyed. It is merely a helpful preface so that you can better understand the GPL in  
                      its context.

22           LAWRENCE ROSEN, OPEN SOURCE LICENSING: SOFTWARE FREEDOM AND INTELLECTUAL  
23           PROPERTY LAW 109 (Prentice Hall 2004) (emphasis in original).

24           36.     XimpleWare chose the GPL approach because it is one of the most restrictive  
25 open source licenses available, requiring that any derivative code incorporating GPL-protected  
26 code must be returned to the open source community in its entirety. This concept is often referred  
27 to as “copyleft,” which the Free Software Foundation explains succinctly on its “Frequently  
28 Asked Questions” page for the GPL:



1 [Q:] You have a GPL'ed program that I'd like to link with my code to build a proprietary  
 2 program. Does the fact that I link with your program mean I have to GPL my program?  
 [A:] Yes.

3 Frequently Asked Questions about version 2 of the GNU GPL, Free Software Foundation,  
 4 <http://www.gnu.org/licenses/old-licenses/gpl-2.0-faq.html> (last accessed Dec. 16, 2013)  
 5 (archived at <http://perma.cc/LLM9-3SED>). In other words, if Developer A creates Product A and  
 6 licenses it under the GPL, and Developer B creates Product B which incorporates Product A,  
 7 then Developer B must also license Product B under the GPL.

8 37. In general, a computer cannot run source code directly. Before a computer can run  
 9 a program, its source code must be translated into machine-readable form called "object code"<sup>2</sup>  
 10 which is also sometimes referred to as a "binary" or "binaries" because object code is not  
 11 human-readable text, but rather machine-readable binary code.

12 38. The GPL also requires that any distribution of the binary version of a GPL-  
 13 licensed software must be accompanied by either source code or an offer to provide source code.  
 14 This is explained clearly in Section 3 of the GPL, as well as the Free Software Foundation's GPL  
 15 "Frequently Asked Questions" page:

16 [Q:] I downloaded just the binary from the net. If I distribute copies, do I have to  
 17 get the source and distribute that too?

18 [A:] Yes. The general rule is, if you distribute binaries, you must distribute the  
 19 complete corresponding source code too. The exception for the case where you  
 received a written offer for source code is quite limited.<sup>3</sup>

20 39. The GPL requires strict compliance, and, under its Section 4, any failure to  
 21 comply with **any** of the GPL's multiple conditions means there is no license granted and this  
 22 means any use, distribution, or other exploitation is not licensed and all rights the violator could  
 23 have obtained under the GPL are voided:

24  
 25 \_\_\_\_\_  
 26 <sup>2</sup> "Object Code," Merriam-Webster.com, [http://www.merriam-](http://www.merriam-webster.com/dictionary/object%20code)  
[webster.com/dictionary/object%20code](http://www.merriam-webster.com/dictionary/object%20code) ("a computer program after translation from source code  
 usually into machine language by a compiler") (last accessed Dec. 16, 2013).

27 <sup>3</sup> Frequently Asked Questions about version 2 of the GNU GPL, Free Software Foundation,  
 28 <http://www.gnu.org/licenses/old-licenses/gpl-2.0-faq.html> (last accessed Dec. 16, 2013)  
 (archived at <http://perma.cc/LLM9-3SED>).

1 You may not copy, modify, sublicense, or distribute the Program except as  
 2 expressly provided under this License. Any attempt otherwise to copy, modify,  
 3 sublicense or distribute the Program is void, and will automatically terminate your  
 4 rights under this License...

5 GPL at § 4.

### 6 **The XimpleWare Product**

7 40. The complete XimpleWare software product, known as “VTD-XML” or “VTD-  
 8 XML Extended” (collectively, the “Product”), is made up of a number of constituent parts, each  
 9 with individual functions, and is written in several different programming languages. Most of the  
 10 code, however, is written in Java, which is one of the most popular programming languages in  
 11 use today.

12 41. XML is ubiquitous in today’s business world. For example, since 2007, the file  
 13 formats for Microsoft Office are based on XML,<sup>4</sup> and many web pages are coded in XML.<sup>5</sup>

14 42. The XimpleWare Source Code and Product reads and parses XML at a rate  
 15 estimated to be five to ten times faster than other current XML parsing programs, effecting  
 16 greater efficiency and speed. It also provides indexing and incremental capabilities that are  
 17 crucial to many high performance XML applications and are not available in any other XML  
 18 parsing libraries. Efficiency and speed are critical in many applications of XML, especially in  
 19 large scale enterprise data interchange applications where entire server computers are dedicated  
 20 to handling streams of XML data. If XML data can be processed faster, then fewer servers are  
 21 needed, less leased space in data centers is needed for those servers, and less energy is required  
 22 to power those servers—altogether greatly reducing computing needs and costs.

23 43. The Product is an enabler for any program that uses XML in its applications, but  
 24 to see the upside in the parsing speed, customers have to try it.

25 <sup>4</sup> Tom Ngo, “Office Open XML Overview”, Ecma International, [http://www.ecma-  
 26 international.org/news/TC45\\_current\\_work/OpenXML%20White%20Paper.pdf](http://www.ecma-international.org/news/TC45_current_work/OpenXML%20White%20Paper.pdf) (last accessed  
 27 Sep. 10, 2013) (archived at <http://perma.cc/0fyzpuJ6Vzg>).

28 <sup>5</sup> Murray Altheim and Shane McCarron, eds., XHTML™ 1.1 - Module-based XHTML - Second  
 Edition, W3C Recommendation, World Wide Web Consortium, Nov. 23, 2010,  
<http://www.w3.org/TR/xhtml11/> (last accessed Sep. 10, 2013) (archived at  
<http://perma.cc/05zB2mzwJW8>).

1 44. XimpleWare has had interest and licensing discussions with several industry  
2 leaders, and has established its VTD-XML software as a leading technology in XML parsing.

### 3 **The XimpleWare Source Code**

4 45. Over the course of over ten years, Mr. Zhang updated and improved the Source  
5 Code and Product (and still does), checking out sections of code to work on and then checking it  
6 back into an open source database called SourceForge. SourceForge is a community-based  
7 website where software developers can publish source code to a global audience, and can join  
8 and collaborate on open source projects.<sup>6</sup>

9 46. One of the principal tools SourceForge provides is version control systems. A  
10 version control system is a computer program that manages a set of source code. Programmers  
11 use version control systems by “checking out” a copy of the source code to their own computer,  
12 making changes, and then submitting those changes back into the version control system in a  
13 process called “checking in.” Each check-in is documented in the version control system with  
14 time, date, and contributor information, as well as comments from the programmer describing his  
15 or her changes. With a version control system, it is possible to review all changes to a set of  
16 source code and to know who made those changes.

17 47. SourceForge also provides a system where programmers not affiliated with a  
18 project may submit suggested changes to members of the project. The members may then choose  
19 to check those changes in to the version control system, or to reject them. As with any other  
20 check-in, time, date, contributor, and other information are logged in the version control system.

21 48. One version control system offered by SourceForge is the Concurrent Versions  
22 System, commonly known as “CVS”. Like other version control systems, CVS tracks who made  
23 which changes to the managed source code, and CVS keeps a log of those revisions.

24 49. XimpleWare placed its Source Code on SourceForge, and managed that Source  
25 Code in SourceForge’s CVS system.

26  
27 <sup>6</sup> SourceForge “About” page, <http://sourceforge.net/about> (last accessed Sep. 10, 2013) (noting  
28 SourceForge has “3.4 million developers [who] create powerful software in over 324,000  
projects”) (archived at <http://perma.cc/0fwQ1xw51i1>).

### **The XimpleWare Issued Patents**

1  
2 50. XimpleWare applied for, and the United States Patent and Trademark Office  
3 issued, three patents (the “Patents”):

- 4 A. U.S. Patent No. 7,133,857, issued Nov. 7, 2006, titled “Processing structured  
5 data” (the “857 Patent”)  
6 B. U.S. Patent No. 7,620,652, issued Nov. 17, 2009, titled “Processing structured  
7 data” (the “652 Patent”)  
8 C. U.S. Patent No. 7,761,459, issued July 20, 2010, titled “Processing structured  
9 data” (the “459 Patent”)

10 51. All of the Patents received a term extension to February 2024 under 35 U.S.C.  
11 § 154(b). The named inventors on all of the Patents are Jimmy Zhang and Hui Tian, and all right,  
12 title, and interest are assigned to XimpleWare.

13 52. The first patent (the ‘857 Patent), filed in 2002 and issued in 2006, is titled  
14 “Processing Structured Data,” and contains 43 claims (including 7 independent claims) covering  
15 methods, apparatuses, and program storage devices for “efficiently processing a structured data  
16 file” or “efficiently processing structured data”—including XML. The ‘857 Patent has been cited  
17 by five other issued U.S. patents—including patents issued to IBM, HP, and Canon—and by  
18 three published U.S. patent applications.

19 53. The ‘652 Patent, filed in 2006 and issued in 2009, contains 35 claims (including 8  
20 independent claims) for methods, apparatuses, and program storage devices, and focuses on  
21 efficiently processing structured data like XML. The ‘652 Patent has been cited by two issued  
22 U.S. patents by IBM and Canon and by one published U.S. patent application.

23 54. The ‘459 Patent, filed in 2006 and issued in 2010, contains 24 claims (including 4  
24 independent claims) for methods, apparatuses, hardware devices, and program storage devices,  
25 and again focuses on efficiently processing structured data like XML. The ‘459 Patent has been  
26 cited by two issued U.S. patents and one published U.S. patent application.

27 55. There has been no challenge to any of the XimpleWare Patents or any other  
28 XimpleWare intellectual property rights.

56. The XimpleWare Source Code and Product practice the XimpleWare Patents.

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1 57. XimpleWare owned the three XimpleWare Patents throughout the period of the  
2 Defendants' infringing acts, and still owns the patents. XimpleWare uses the patent numbers on  
3 its Product and in its documentation to give actual and constructive notice of the existence of the  
4 XimpleWare patents.

5 58. XimpleWare's SourceForge project page also clearly indicates that the VTD-XML  
6 software is licensed under the GPL; the XimpleWare web site has always made clear that any  
7 and all commercial projects and those involving any distribution, requires a commercial license  
8 under the commercial terms and conditions to be concluded with XimpleWare, and that generally  
9 requires a signed written agreement between the parties and payment of commercial royalties to  
10 XimpleWare. Multiple other commercial parties who could not come within the GPL's strict  
11 conditions have agreed to sign and have signed commercial licenses with XimpleWare and the  
12 custom and practice in the industry is for the proposed licensee to do appropriate due diligence  
13 and to assure that his, her or its project is strictly within the GPL's conditions or else to contact  
14 XimpleWare to discuss the requirements for commercial licensing.

15 **Defendants Copy XimpleWare's Patented Source Code**

16 59. In the summer of 2013, XimpleWare learned of a Texas lawsuit between  
17 Defendants Versata and Ameriprise over a contract dispute (the "Texas Litigation").

18 60. According to documents filed in the Texas Litigation, Versata licensed its DCM  
19 software to Ameriprise until Ameriprise attempted to write its own software using programmers  
20 in India to replace the Versata product. Versata then sued for misappropriation, among other  
21 claims.

22 61. During the prosecution of the Texas Litigation, Ameriprise informed XimpleWare  
23 that it had discovered portions of XimpleWare's Source Code in the source code of Versata's  
24 DCM product, and with said XimpleWare Source code, none of the conditions of the GPL  
25 license had been met. There was also no evidence of any commercial license from XimpleWare  
26 and no reproduction of XimpleWare's copyright notice in Versata's DCM product.

27 //

28 //

1           62.     Based upon documents XimpleWare received from Ameriprise, for months and  
2 without ever contacting XimpleWare to check on the validity of its alleged reliance, Versata  
3 asserted a theory in the Texas Litigation that XimpleWare’s Source Code was licensed under an  
4 Oracle-based exception to the GPL known as the “classpath exception.” The “classpath  
5 exception” is an Oracle-based exception to the GPL that has been promulgated by Oracle  
6 Corporation (www.oracle.com) of Redwood City, California (owner of the Java programming  
7 language) for certain Java-related software packages. XimpleWare has never used and never  
8 authorized this exception or any exception other than commercial licensing directly with  
9 XimpleWare; neither Oracle nor any other company is authorized to make any statement on  
10 behalf of XimpleWare.

11           63.     The only copyright or license notices that XimpleWare has ever placed on its  
12 VTD-XML Source Code give notice that the Source Code is licensed under the GPL for those  
13 strictly complying with all conditions of the GPL, and that it is otherwise commercially available  
14 through license directly from XimpleWare. XimpleWare has never utilized the “classpath  
15 exception,” nor has it ever made any exceptions to licensing its Source Code under the unaltered  
16 GPL other than through paid commercial licenses obtained directly from XimpleWare.

17           64.     None of the defendants in this case did, have done, or have attempted to do any  
18 appropriate due diligence with XimpleWare, and therefore none of the Defendants in this case  
19 can assert truthfully that they are innocent infringers or that they otherwise relied reasonably in  
20 any way in commencing, continuing, or refusing to discontinue their respective infringements.

21           65.     Versata’s commercial distribution of the XimpleWare Product or Source Code  
22 outside the terms of the GPL was knowing and willful. According to documents filed in the  
23 Texas Litigation, Versata maintained in the course of business a list of open source software  
24 components that it included in its DCM product, and that list included VTD-XML as well as the  
25 fact that VTD-XML and several other components were licensed under the GPL—without any  
26 mention of the “classpath exception.”

27           66.     XimpleWare has never granted Versata any commercial license, permission, or  
28 authorization to use and redistribute any XimpleWare Product or Source Code.

1           67.     The only license the Versata Defendants have ever had was the GPL. However, by  
2 failing to meet any of the required conditions of the GPL license, no license was granted to any  
3 of the Versata Defendants and any alleged rights any of them had or purported to have to  
4 XimpleWare's VTD-XML computer software were void *ab initio* and terminated instantly and  
5 automatically, and all distributions and other exploitations including all attempts to sublicense  
6 were unauthorized, void, and without effect, and each constituted a wilful infringement of  
7 XimpleWare's rights.

8           68.     On information and belief, Versata has distributed thousands of unauthorized  
9 copies of the Product or the Source Code to a number of customers like the Customer  
10 Defendants, and Versata has illegally collected revenues on the sale and distribution of the  
11 derivative DCM product incorporating XimpleWare's Source Code, in violation of  
12 XimpleWare's Patents. XimpleWare estimates Versata's total sales of the infringing DCM  
13 product to exceed \$300,000,000.

14           69.     The majority of Ameriprise financial advisors are not Ameriprise employees.  
15 According to Ameriprise's own 2012 Annual Report, filed publicly with the U.S. Securities and  
16 Exchange Commission, Ameriprise operates a "nationwide network of more than 9,700  
17 advisors," of which "more than 7,400 are independent franchisees or employees or contractors of  
18 franchisees."

19           70.     On information and belief, Ameriprise distributed DCM and VTD-XML to these  
20 thousands of non-employee financial advisors. According to its 2012 Annual Report, "The  
21 support [Ameriprise] offer[s] to [its] franchisee advisors includes generalist and specialist  
22 leadership support, **technology platforms and tools**, training and marketing programs"  
23 (emphasis added). On information and belief, DCM is among the "technology platforms and  
24 tools" that Ameriprise provides its outside advisors.

25           71.     On information and belief, when Ameriprise made its outside distributions of  
26 DCM and VTD-XML, it did so under a commercial license (and not the GPL) without any  
27 attribution to XimpleWare, without any XimpleWare copyright notice, without any XimpleWare  
28

1 Source Code, and without any offer to convey the XimpleWare Source Code—all in violation of  
2 the GPL and all of which were void under the GPL.

3 72. XimpleWare has never granted Ameriprise or any other Defendant in this case any  
4 commercial license, permission, or authorization to use and redistribute any XimpleWare Product  
5 or Source Code.

6 73. Defendants have infringed, and are still infringing on XimpleWare’s intellectual  
7 property rights by making, selling, and using the DCM product that practices the XimpleWare  
8 Patents, and the Defendants will continue to do so unless this Court enjoins them.

9 **FIRST CLAIM FOR RELIEF**

10 **DIRECT PATENT INFRINGEMENT**

11 **(AGAINST ALL DEFENDANTS)**

12 74. XimpleWare incorporates the allegations in paragraphs 1–73 as if set forth here in  
13 full.

14 75. XimpleWare designs and licenses software designed to more effectively and more  
15 efficiently parse XML in an almost limitless range of products and applications.

16 76. XimpleWare has made substantial investments of time and money, as well as great  
17 efforts over a period of ten or more years developing a faster, more efficient way to parse XML.  
18 These investments in research and development have, over the years, yielded many innovations,  
19 including the innovations disclosed and claimed in the Patents.

20 77. The ‘857, ‘652, and ‘459 were duly and legally issued to XimpleWare, as assignee  
21 of the inventors named therein, for an invention entitled “Processing Structured Data.” True and  
22 correct copies of the Patents are attached as **Exhibits 2, 3, and 4**, respectively.

23 78. The Patents are valid and enforceable.

24 79. At all material times since the original issue dates, XimpleWare has been the  
25 owner of the entire right, title, and interest in the Patents.

26 80. XimpleWare’s Product as well as its Source Code practices each of the  
27 independent claims of the Patents.  
28



1           81.     On information and belief, Defendants have infringed and continue to infringe  
2 XimpleWare’s Patents and each of them by making, using, selling, and/or offering for sale in the  
3 United States a number of products that practice the claims contained in the Patent, and will  
4 continue to do so unless enjoined by this Court.

5           82.     Without entering a commercial license with XimpleWare and without strict  
6 compliance with any of the conditions for the GPL license, the Versata Defendants incorporated  
7 the XimpleWare Product and/or Source Code into a number of their own products (the “Versata  
8 Products”), including but not limited to the Versata DCM product. Therefore, the Versata  
9 Products **necessarily practice at least** independent Claims 1 and 7 the ‘857 Patent, independent  
10 Claims 1 and 9 of the ‘652 Patent, and independent Claim 1 of the ‘459 Patent.

11           83.     The Versata Products and each of them literally infringe because every element of  
12 each of those Claims is included in DCM, and are necessarily included in any other product into  
13 which Defendants incorporated the XimpleWare Source Code or Product. The Versata  
14 Defendants used and sold its infringing products in the United States, and did so willfully.

15           84.     On information and belief, and without entering a commercial license with  
16 XimpleWare and without strict compliance with any of the conditions for the GPL license, the  
17 Customer Defendants purchased the Versata Products from the Versata Defendants without  
18 authorization. The Customer Defendants infringed and continue to willfully infringe the Patents  
19 by using the infringing Versata Products, incorporated into the Customer Defendants’ internal  
20 software systems which the Customer Defendants used and continue to use in their daily course  
21 of business.

22           85.     On information and belief, and without entering a commercial license with  
23 XimpleWare and without strict compliance with any of the conditions for the GPL license, the  
24 Customer Defendants have distributed without authorization DCM and VTD-XML to thousands  
25 of non-employee independent contractor or franchisee advisors or “producers.”

26           86.     Defendants’ conduct constitutes direct infringement of XimpleWare’s patent  
27 rights under 35 U.S.C. § 271(a).

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1           87.     At all times, Defendants’ patent infringement was and is knowing and willful. The  
2 GPL, a copy of which must be included with all GPL-licensed source code, was always included  
3 with every version of the XimpleWare Source Code available on SourceForge. XimpleWare’s  
4 SourceForge project page—which XimpleWare has records of the Versata Defendants visiting—  
5 clearly indicates that VTD-XML is licensed under the GPL. Further, according to documents  
6 filed in the Texas Litigation, Versata maintained in the course of business a list of open source  
7 software components that it included in its DCM product, and that list included VTD-XML, and  
8 included the fact that VTD-XML was licensed under the GPL version 2. Therefore, Defendants  
9 actually knew or reasonably should have known that the Source Code was the work of  
10 XimpleWare, for which Defendants did not have a commercial license, and Defendants did in  
11 fact copy, adapt, and distribute works practicing the XimpleWare patents, derived from the  
12 Source Code in either source or compiled form without authorization from XimpleWare. No  
13 Defendants have ever obtained a commercial license from XimpleWare.

14           88.     Defendants’ direct infringement of XimpleWare’s exclusive patent rights has  
15 damaged, and/or will damage XimpleWare’s business, causing irreparable harm for which there  
16 is no adequate remedy at law, unless Defendants are enjoined by this Court pursuant to 35 U.S.C.  
17 § 283.

18           89.     Defendants’ direct infringement of XimpleWare’s Patents is the direct and  
19 proximate cause of damages to XimpleWare, and XimpleWare is entitled to compensatory  
20 damages in an amount to be determined at trial.

21           90.     Defendants’ direct infringement of the Patents entitles XimpleWare to preliminary  
22 and permanent injunctive relief pursuant to 35 U.S.C. § 283, an award of all damages sustained  
23 by XimpleWare as a result of Defendants’ infringement, and enhanced damages adequate to  
24 compensate for Defendants’ collective and willful infringement of XimpleWare’s patent rights  
25 together with attorneys’ fees and costs, pursuant to 35 U.S.C. §§ 284 and 285.

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**SECOND CLAIM FOR RELIEF****INDUCING PATENT INFRINGEMENT****(AGAINST VERSATA DEFENDANTS)**

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3  
4 91. XimpleWare incorporates the allegations in paragraphs 1–73 as if set forth here in  
5 full.

6 92. The Versata Defendants have infringed and induced infringement of the ‘857,  
7 ‘652, and ‘459 Patents.

8 93. The Versata Defendants deliberately downloaded the XimpleWare Source Code  
9 from the SourceForge open source repository and incorporated it into DCM and a number of  
10 other products. On information and belief, the Versata Defendants then sold those products to a  
11 number of customers, without authorization, including, but not necessarily limited to, the  
12 Customer Defendants who incorporated those products into their own internal systems, which  
13 the Customer Defendants used and continue to use in the daily course of business without any  
14 authorization and without entering a commercial license with XimpleWare and without strict  
15 compliance with any of the conditions for the GPL license.

16 94. Without entering a commercial license with XimpleWare and without strict  
17 compliance with any of the conditions for the GPL license, the Versata Defendants, in violation  
18 of 35 U.S.C. § 271(b), have knowingly aided, abetted, and actively induced the Customer  
19 Defendants and others to infringe XimpleWare’s Patents.

20 95. The Versata Defendants have committed contributory infringement of  
21 XimpleWare’s exclusive rights has damaged and will continue to damage XimpleWare’s  
22 business, causing irreparable harm for which there is no adequate remedy at law, unless it is  
23 enjoined by this Court pursuant to 35 U.S.C. § 283.

24 96. The Versata Defendants’ infringement of XimpleWare’s exclusive patent rights  
25 has damaged, and/or will damage XimpleWare’s business, causing irreparable harm for which  
26 there is no adequate remedy at law, unless Defendants are enjoined by this Court pursuant to 35  
27 U.S.C. § 283.

28



1 **PRAYER FOR RELIEF**

2 XimpleWare prays for judgment against all Defendants, and each of them, and those  
3 persons in control of or acting in concert with them as follows:

4 A. On the First Claim for Relief, for preliminary and permanent injunctive relief  
5 enjoining the manufacture, production, marketing, or sale by Defendants, or any of them, of any  
6 product practicing the '857, '652, and/ or '459 Patents; for all damages sustained by XimpleWare  
7 as a result of Defendants' infringement; and for an award to XimpleWare of enhanced damages  
8 adequate to compensate for Defendants' collective infringement, up to and including trebling of  
9 XimpleWare's damages for the Versata Defendants' willful infringement.

10 B. On the Second Claim for Relief, for preliminary and permanent injunctive relief  
11 enjoining the Versata Defendants or any of them from contributing to the manufacture,  
12 production, marketing, or sale of any product practicing the '857, '652, and/ or '459 Patents; for  
13 all damages sustained by XimpleWare as a result of the Versata Defendants' infringement; and  
14 for an award to XimpleWare of enhanced damages adequate to compensate for the Versata  
15 Defendants' collective and willful infringement, up to and including trebling of XimpleWare's  
16 damages for the Versata Defendants' willful infringement.

17 C. On the Third Claim for Relief, for a declaration that:  
18 1. XimpleWare is the sole owner of the XimpleWare Patents;  
19 2. The XimpleWare Patents are valid and enforceable; and  
20 3. As such, XimpleWare has the exclusive right to make sell, offer for sale,  
21 distribute, and copy and otherwise exploit the XimpleWare Product and Source Code.

22 D. On all Claims for Relief, for a constructive trust of all benefits Defendants gained,  
23 and disgorgement of all revenues and profits associated with Defendants' licensing or sale of  
24 products containing the XimpleWare Source Code.

25 E. For costs of suit including any applicable interest and reasonably attorneys' fees  
26 as allowed by law.

27 F. For such other, further, and different relief as the Court deems just and proper.

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**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury on each and every cause of action which is triable by or which may otherwise be tried by jury in this action.

COMPUTERLAW GROUP LLP

Dated: December 17, 2013

By: /s/ Jack Russo  
Jack Russo  
Christopher Sargent  
Ansel Halliburton

Attorneys for Plaintiff  
XIMPLEWARE CORP.

Computerlaw Group LLP  
www.computerlaw.com<sup>sm</sup>

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