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TREND MICRO INCORPORATED

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 TREND MICRO INCORPORATED,

15 Plaintiff,

16 v.

17 RPOST HOLDINGS, INC., RPOST
18 COMMUNICATIONS LIMITED, RPOST
INTERNATIONAL LIMITED and
RMAIL LIMITED,

19 Defendants.
20

CASE NO.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF PATENT NON-
INFRINGEMENT AND INVALIDITY**

DEMAND FOR JURY TRIAL

21 Plaintiff Trend Micro Incorporated (“Trend Micro”) hereby pleads the following claims
22 for Declaratory Judgment against Defendants RPost Holdings, Inc. (“RPost Holdings”), RPost
23 Communications Limited (“RPost Communications”), RPost International Limited (“RPost
24 International”) and RMail Limited (“RMail”) (collectively, “RPost”), and alleges as follows:

25 **NATURE OF THE ACTION**

26 1. This action is based on the patent laws of the United States, Title 35 of the United
27 States Code. RPost has alleged infringement of U.S. Patent Nos. 8,504,628 (“the ’628 patent”),
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1 8,224,913 (“the ’913 patent”), 8,209,389 (“the ’389 patent”) and 8,468,199 (“the ’199 patent”)
2 (collectively, the “Patents-in-Suit”) based on certain alleged ongoing activity by Trend Micro.
3 Trend Micro contends that it has the right to engage in the accused activity without license to any
4 of the Patents-in-Suit. Trend Micro thus seeks a declaration that it does not infringe the Patents-
5 in-Suit and that the Patents-in-Suit are invalid.

6 **PARTIES**

7 2. Plaintiff Trend Micro is a California corporation having its principal place of
8 business in the United States at 10101 N. De Anza Blvd., Cupertino, California 95014. Trend
9 Micro is a global leader in cloud security that develops Internet content security and threat
10 management solutions that make the world safe for businesses and consumers to exchange digital
11 information.

12 3. On information and belief, Defendant RPost Holdings is a corporation organized
13 under the laws of the State of Delaware with its headquarters located at 6033 W. Century Blvd.,
14 Suite 1278, Los Angeles CA 90045-6422.

15 4. On information and belief, Defendant RPost Communications is a corporation
16 organized under the laws of the Nation of Bermuda.

17 5. On information and belief, Defendant RPost International is a corporation
18 organized under the laws of the Nation of Bermuda.

19 6. On information and belief, Defendant RMail is a corporation organized under the
20 laws of the Nation of Bermuda.

21 **JURISDICTION AND VENUE**

22 7. This is a civil action regarding allegations of patent infringement and patent
23 invalidity arising under the patent laws of the United States, Title 35 of the United States Code, in
24 which Trend Micro seeks declaratory relief under the Declaratory Judgment Act. Thus, the Court
25 has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and
26 2202.

27 8. An actual, justiciable controversy exists between Trend Micro (on the one hand)
28 and RPost (on the other) by virtue of RPost’s allegations that Trend Micro infringes the Patents-

1 in-Suit by making, using, offering to sell or selling electronic message outbound content filtering
2 and security products (content filtering, email encryption, data leak prevention, archive, etc.) and
3 message delivery/failure tracking products in the United States.

4 9. Trend Micro contends that it has a right to make and sell its software, systems, and
5 technology, including those incorporated in its products, without license from RPost.

6 10. The Court has personal jurisdiction over RPost because RPost has conducted
7 substantial business in (and has substantial contact with) the Northern District of California.
8 Among other things, RPost has sent letters to Trend Micro in this District accusing it of infringing
9 the Patents-in-Suit and offering to “discuss...a business resolution” with Trend Micro. True and
10 correct copies of RPost’s October 16, 2013, letter to Trend Micro and November 4, 2013, letter to
11 Trend Micro are attached hereto as Exhibit A and Exhibit B. Trend Micro, who RPost accuses of
12 infringing the Patents-in-Suit, resides in this District. On information and belief, RPost also has
13 accused others in this District of infringement, and negotiated and entered into agreements with
14 others who reside in this District. On further information and belief, RPost and/or its affiliated
15 companies also market, offer for sale and sell products in this District. *See, e.g.,* www.rpost.com.

16 11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that a
17 substantial part of the acts giving rise to the claim occurred in this judicial district, and because
18 RPost is subject to personal jurisdiction in this judicial district.

19 **INTRADISTRICT ASSIGNMENT**

20 12. This is an Intellectual Property Action subject to district-wide assignment under
21 Local Rule 3-2(c).

22 **FACTUAL BACKGROUND**

23 13. On August 6, 2013, the United States Patent and Trademark Office (“PTO”) issued
24 the ’628 patent entitled “System And Method For Verifying Delivery And Integrity Of Electronic
25 Messages.” The ’628 patent states on its face that it was assigned to RPost Communications. A
26 true and correct copy of the ’628 patent is attached to this Complaint as Exhibit C.

27 14. On July 17, 2012, the PTO issued the ’913 patent entitled “System And Method
28 For Verifying Delivery And Integrity Of Electronic Messages.” The ’913 patent states on its face

1 that it was assigned to RPost Communications. A true and correct copy of the '913 patent is
2 attached to this Complaint as Exhibit D.

3 15. On June 26, 2012, the PTO issued the '389 patent entitled "System And Method
4 For Verifying Delivery And Integrity Of Electronic Messages." The '389 patent states on its face
5 that it was assigned to RPost Communications. A true and correct copy of the '389 patent is
6 attached to this Complaint as Exhibit E.

7 16. On June 18, 2013, the PTO issued the '199 patent entitled "System And Method
8 For Verifying Delivery And Integrity Of Electronic Messages." The '199 patent states on its face
9 that it was assigned to RPost International. A true and correct copy of the '199 patent is attached
10 to this Complaint as Exhibit F.

11 17. On information and belief, RPost Communications asserts that it has right, title,
12 and interest in the '628, '913 and '389 patents.

13 18. On information and belief, RPost International asserts that it has right, title, and
14 interest in the '199 patent.

15 19. On information and belief, RPost Holdings asserts that it is an exclusive licensee
16 of at least the '389 and '913 patents.

17 20. On October 16, 2013, Ray Owens of RPost sent a letter to Felix Sterling, legal
18 counsel for Trend Micro, with the Re: line "Claim Charts per Patent Infringement Notice." The
19 October 16 letter alleges that "[b]y this letter, we would like to ensure that you are informed that
20 Trend Micro is offering products and services, namely electronic message outbound content
21 filtering and security products (content filtering, email encryption, data leak prevention, archive,
22 etc.) and message delivery/failure tracking that we believe infringe certain patents owned by
23 RPost." Exhibit A at 1.

24 21. RPost's October 16 letter contains "Preliminary Summary Analyses" with claim
25 charts alleging infringement of certain Trend Micro products for claim 30 of the '628 patent,
26 claim 1 of the '913 patent, claim 7 of the '389 patent, and claim 1 of the '199 patent. Exhibit A at
27 2-5. The letter also names a number of other RPost patents. *Id.*

28 22. On November 4, 2013, Ray Owens of RPost sent another letter to Felix Sterling,

1 legal counsel for Trend Micro, with the Re: line “Claim Charts per Patent Infringement Notice.”
2 The November 4 letter alleges that “additional product names” are accused and that “Trend Micro
3 is offering products and services, namely InterScan Messaging Security, Email Encryption,
4 ScanMail Suite with optional data loss prevention, Messaging and Collaboration Security, Trend
5 Micro Security as a Service, [and] Hosted Email Encryption that we believe infringe certain
6 patents owned by RPost.” Exhibit B at 1.

7 23. RPost’s November 4 letter also contains “Preliminary Summary Analyses” with
8 claim charts alleging infringement of certain Trend Micro products for claim 30 of the ’628
9 patent, claim 1 of the ’913 patent, claim 7 of the ’389 patent, and claim 1 of the ’199 patent.
10 Exhibit B at 2-5. The letter also names a number of other RPost patents. *Id.*

11 24. RPost’s October 16 and November 4 letters request that Trend Micro “consider the
12 value of your use of RPost’s patents, the adverse effects of having to remove the covered features
13 from use, and your cost to compensate RPost for past damages. Please also consider that RPost
14 practices its patents and your continued willful infringement of its patents may result in trebled
15 damages of RPost’s lost profits.” Exhibit A at 1; Exhibit B at 1. RPost further requests that
16 Trend Micro “immediately cease and desist from manufacture, use, or offer for sale RPost’s
17 patented technology through your products and services that contain RPost’s patented
18 technology.” *Id.*

19 25. Trend Micro does not infringe the Patents-in-Suit. Additionally, the Patents-in-
20 Suit are invalid. Accordingly, an actual and justiciable controversy exists between Trend Micro
21 and RPost as to whether Trend Micro infringes any valid claim of the Patents-in-Suit. Absent a
22 declaration of non-infringement and/or invalidity, RPost will continue to wrongly assert the
23 Patents-in-Suit against Trend Micro, and thereby cause Trend Micro irreparable harm.

24 COUNT I

25 **(Declaratory Relief Regarding Noninfringement of U.S. Patent No. 8,504,628)**

26 26. Trend Micro restates and incorporates by reference each of the allegations set forth
27 in paragraphs 1 through 25 above, as if fully set forth herein.

28 27. RPost contends that Trend Micro has or is infringing one or more claims of the

1 '628 patent.

2 28. On information and belief, RPost claims to be the owner of all right, title and
3 interest in the '628 patent, including the right to assert all causes of action arising under that
4 patent and the right to any remedies for infringement of it.

5 29. Trend Micro does not infringe any claim of the '628 patent, directly or indirectly,
6 contributorily or otherwise, through its or its customer's activities in conjunction with any of
7 Trend Micro's products or services.

8 30. As set forth above, an actual and justiciable controversy exists between Trend
9 Micro and RPost as to Trend Micro's noninfringement of the '628 patent.

10 31. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
11 Trend Micro requests that this Court enter a judgment that Trend Micro does not infringe, under
12 any theory of infringement, any valid claim of the '628 patent.

13 **COUNT II**

14 **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,504,628)**

15 32. Trend Micro restates and incorporates by reference each of the allegations set forth
16 in paragraphs 1 through 31 above, as if fully set forth herein.

17 33. Upon information and belief, RPost contends that the '628 patent is valid.

18 34. The claims of the '628 patent are invalid for failure to comply with one or more of
19 the conditions for patentability set forth in Title 35 of the United States Code, including without
20 limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

21 35. As set forth above, an actual and justiciable controversy exists between Trend
22 Micro and RPost as to whether the claims of the '628 patent are invalid.

23 36. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
24 Trend Micro requests that this Court enter a judgment that the claims of the '628 patent are
25 invalid pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§
26 101, 102, 103, and/or 112.

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1 **COUNT III**

2 **(Declaratory Relief Regarding Noninfringement of U.S. Patent No. 8,224,913)**

3 37. Trend Micro restates and incorporates by reference each of the allegations set forth
4 in paragraphs 1 through 36 above, as if fully set forth herein.

5 38. RPost contends that Trend Micro has or is infringing one or more claims of the
6 '913 patent.

7 39. On information and belief, RPost claims to be the owner of all right, title and
8 interest in the '913 patent, including the right to assert all causes of action arising under that
9 patent and the right to any remedies for infringement of it.

10 40. Trend Micro does not infringe any claim of the '913 patent, directly or indirectly,
11 contributorily or otherwise, through its or its customer's activities in conjunction with any of
12 Trend Micro's products or services.

13 41. As set forth above, an actual and justiciable controversy exists between Trend
14 Micro and RPost as to Trend Micro's noninfringement of the '913 patent.

15 42. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
16 Trend Micro requests that this Court enter a judgment that Trend Micro does not infringe, under
17 any theory of infringement, any valid claim of the '913 patent.

18 **COUNT IV**

19 **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,224,913)**

20 43. Trend Micro restates and incorporates by reference each of the allegations set forth
21 in paragraphs 1 through 42 above, as if fully set forth herein.

22 44. Upon information and belief, RPost contends that the '913 patent is valid.

23 45. The claims of the '913 patent are invalid for failure to comply with one or more of
24 the conditions for patentability set forth in Title 35 of the United States Code, including without
25 limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

26 46. As set forth above, an actual and justiciable controversy exists between Trend
27 Micro and RPost as to whether the claims of the '913 patent are invalid.

28 47. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,

1 Trend Micro requests that this Court enter a judgment that the claims of the '913 patent are
2 invalid pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§
3 101, 102, 103, and/or 112.

4 **COUNT V**

5 **(Declaratory Relief Regarding Noninfringement of U.S. Patent No. 8,209,389)**

6 48. Trend Micro restates and incorporates by reference each of the allegations set forth
7 in paragraphs 1 through 47 above, as if fully set forth herein.

8 49. RPost contends that Trend Micro has or is infringing one or more claims of the
9 '389 patent.

10 50. On information and belief, RPost claims to be the owner of all right, title and
11 interest in the '389 patent, including the right to assert all causes of action arising under that
12 patent and the right to any remedies for infringement of it.

13 51. Trend Micro does not infringe any claim of the '389 patent, directly or indirectly,
14 contributorily or otherwise, through its or its customer's activities in conjunction with any of
15 Trend Micro's products or services.

16 52. As set forth above, an actual and justiciable controversy exists between Trend
17 Micro and RPost as to Trend Micro's noninfringement of the '389 patent.

18 53. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
19 Trend Micro requests that this Court enter a judgment that Trend Micro does not infringe, under
20 any theory of infringement, any valid claim of the '389 patent.

21 **COUNT VI**

22 **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,209,389)**

23 54. Trend Micro restates and incorporates by reference each of the allegations set forth
24 in paragraphs 1 through 53 above, as if fully set forth herein.

25 55. Upon information and belief, RPost contends that the '389 patent is valid.

26 56. The claims of the '389 patent are invalid for failure to comply with one or more of
27 the conditions for patentability set forth in Title 35 of the United States Code, including without
28 limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

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Dated: November 11, 2013

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