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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAP Co. Ltd., a Korean corporation, Plaintiff, vs. MCAFEE, INC., a Delaware corporation; Defendant.	Case No. 3:14-cv-05068-JD **AMENDED COMPLAINT FOR PATENT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

AMENDED COMPLAINT

Plaintiff CAP Co., Ltd. ("Plaintiff" or "CAP Co.") files this Amended Complaint for patent infringement against McAfee, Inc. ("McAfee" or "Defendant") alleging as follows:

THE PARTIES

1. Plaintiff CAP Co. is a corporation organized under the laws of the Republic of Korea. It has its principal place of business at 22, Gomae-ro 234beon-gil, Giheung-gu, Yongin-si, Gyeonggi-do, Korea. It is the owner of United States Patent Nos. RE42196 and 8,544,078 ("Patents-in-Suit").

2. Defendant McAfee, on information and belief, is a corporation organized under the laws of the State of Delaware. McAfee is a wholly owned subsidiary of Intel Corporation with its headquarters at 2821 Mission College Blvd., Santa Clara, California. McAfee is doing business in California.

JURISDICTION & VENUE

3. This is an action for infringement of a United States patent. Accordingly, this

action arises under the patent laws of the United States of America, 35 U.S.C. § 1 et seq., and jurisdiction is properly based on 35 U.S.C. § 271 and 28 U.S.C. § 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391(b-c) and 1400(b). Upon information and belief, Defendant transacts or has transacted business in this judicial district, or committed and/or induced acts of patent infringement in this district.

INTRADISTRICT ASSIGNMENT

5. This action is an intellectual property action subject to district-wide assignment.

FACTUAL BACKGROUND

6. On March 1, 2011, United States Patent No.RE42,196 (the '196 patent") entitled "System and method for blocking harmful information online, and computer readable medium therefor" was duly and legally issued. CAP Co. holds the title by assignment from the inventor, including the right to sue for past, present and future damages. A copy of the '196 patent is attached as Exhibit A.

7. On September 24, 2013, United States Patent No. 8,544,078 ("the '078 patent") entitled "Flexible network security system and method for permitting trusted process" was duly and legally issued. CAP Co. holds the title by assignment from the inventor, including the right to sue for past, present and future damages. A copy of the '078 patent is attached as Exhibit B.

8. The '196 patent is a reissue patent derived from a patent issued on June 13, 2006, U.S. Pat. No. 7,062,552 (hereinafter the "anti-virus patent"). This patent is directed to systems and methods for protection of computer systems by the blocking of harmful information such as viruses. The '078 patent is directed at systems and methods for controlling inbound traffic by using a firewall (hereinafter the "firewall patent").

9. Pursuant to 35 U.S.C. § 282, the Patents-in-Suit are presumed valid.

10. McAfee's security products offer real-time services called McAfee's Global Threat Intelligence (GTI) Technology. McAfee itself has called this "revolutionary technology":

Revolutionary security delivers immediate detection of threats through Active Protection technology.

McAfee's revolutionary new Active Protection technology provides immediate protection against malicious threats to your PC. A new threat can be analyzed and blocked in milliseconds, rather than waiting hours for traditional techniques. Available for McAfee consumer products, Active Protection is the best technology to keep consumers safe from emerging online threats.

McAfee customers with any of the following products can download this software for their PC at no additional cost:

2008 McAfee® VirusScan Plus® / McAfee® Internet Security Suite / McAfee® Total Protection
2009 McAfee® VirusScan Plus® / McAfee® Internet Security / McAfee® Total Protection

You must have one of the products listed above installed on your PC in order to install Active Protection.

http://promos.mcafee.com/LegacyLp/en-us/landingpages/activeprotection.asp

11. In around 2008, McAfee introduced GTI as an add-on to its endpoint protection software under its code name, "Artemis." McAfee explained:

> McAfee software uses our GTI (Global Threat Intelligence, formerly Artemis) technology for enhanced detection of unknown threats based on the behavior of the file. Artemis is included in the detection name for any file that is quarantined or blocked by GTI. GTI helps to secure your computer from unknown threats by allowing your McAfee Security software to communicate with McAfee servers in real-time to identify new threats and take appropriate action using a combination of signature and behavior analysis with community threat intelligence.

http://service.mcafee.com/faqdocument.aspx?id=TS100414.

12. On information and belief, with respect to the'196 patent, Defendant McAfee develops markets and distributes infringing products including McAfee Internet Security, McAfee AntiVirus Plus, McAfee Total Protection, McAfee Mobile Security, McAfee LiveSafe, McAfee All Access, McAfee Small Business Security, McAfee Server Security Suite Essentials, McAfee Endpoint Protection, McAfee VirusScan, McAfee VirusScan, McAfee SaaS Total Protection, McAfee Host Intrusion Prevention and McAfee Next Generation Firewall.

13. On information and belief, with respect to the'078 patent, Defendant McAfee develops markets and distributes infringing products including McAfee Next Generation Firewall, McAfee Firewall Enterprise / McAfee Firewall Enterprise Appliance, McAfee Endpoint Protection (Advanced, Essential, Complete, Suite, SMB, Business, Enterprise, Windows, Mac, Linux), McAfee Total Protection (Endpoint, Business, Enterprise), McAfee SaaS / Cloud Protection (Total, Advanced, & Email, SMB), McAfee Security for Business, McAfee Host Intrusion Prevention for Desktop, McAfee Management for Optimized Virtual Environments AntiVirus,

McAfee Network Security Platform, McAfee Server Security Suite Advanced (Physical, Virtual, and Cloud), McAfee LiveSafe, McAfee AntiVirus Plus, and McAfee Internet Security (Windows, Mac).

14. McAfee contributed and continues to contribute to acts of infringement by causing and encouraging others to use the aforementioned products. These products are sold directly to customers and used by them pursuant to McAfee's user manuals guides, and support articles. McAfee continues to provide and sell goods and services including products designed for use in practicing one or more claims of the Patents-in-Suit, where the goods and services constitute a material part of the invention and are not staple articles of commerce, and which have no use other than infringing one or more claims of the Patents-in-Suit.

15. For example, through its website at http://www.macafee.com, McAfee advertises and provide instructions on how to use the feature in the '196 accused software products of monitoring file input and output and providing code from a server to block harmful information of files to be executed. Such advertisements and instructions are provided in, for example, technical documentation made available by McAfee through its website, including but not limited to Administration Guides and User Guides for the accused software products. For example, McAfee promotes the infringing products by explaining the need for the patented feature:

> Why do signatures fall short? Signatures document known threats only after they are validated, and signature distribution and installation can lag announcement of a problem by days (or longer). … Compromised content and zero-day, unknown threats now present great risk to enterprises. In the absence of a confirmed threat, tools must judge risk based on behavior, reputation, source and recipient addresses, and the content itself (including disguised content that has been decrypted and de-obfuscated). The more data points and threat vectors you can draw on, the more accurate and timely your evaluation will be. When the assessment happens instantly, in real time, it offers the best chance of protection in advance of known threats. …. We also compare new content and activity against an intelligence base of messaging and communication behavior, including reputation, volume, and trends covering email, web traffic, and malware. …. protect you before a specific threat has been through the formal signature process.

http://www.mcafee.com/us/resources/solution-briefs/sb-mcafee-firewall-enterprise.pdf.

16. On information and belief, by using features in the accused software products such

as this feature, McAfee's customers have directly infringed and continue to directly infringe one or more claims of the '196 patent. On information and belief, McAfee knew or should have known its activities in encouraging and instructing customers in the use of the accused software products, including but not limited to the activities set forth above, would induce their customers' direct infringement of the '196 patent. All of the specially designed software that operates the accused features was designed, authored and provided by McAfee.

17. For example, through its website at http://www.macafee.com, McAfee advertises and provide instructions on how to use the feature in the '078 accused firewall products to automatically add applications and their server ports to the firewall's permitted applications and ports. Such advertisements and instructions are provided in, for example, technical documentation made available by McAfee through its website, including but not limited to Administration Guides and User Guides for the accused products. On information and belief, by using features in the accused software products such as this feature, McAfee's customers have directly infringed and continue to directly infringe one or more claims of the '078 patent. On information and belief, McAfee knew or should have known its activities in encouraging and instructing customers in the use of the accused software products, including but not limited to the activities set forth above, would induce their customers' direct infringement of the '078 patent. Use of the firewall features as described above are provided by the products by default. *See* https://kc.mcafee.com/resources/sites/MCAFEE/content/live/PRODUCT_DOCUMENTATION/22000/PD22894/en_US/Host%20Intrusion%20Prevention%20800%20Product%20Guide%20for%20ePO%20450.pdf at 87. All of the specially designed software that operates the accused features was designed, authored and provided by McAfee.

18. McAfee touts the patented features of the'196 patent in its printed literature:

> We combine this local, real-time intent analysis with comprehensive McAfee antivirus protection to quickly block known viruses and several cloud-based technologies—all powered by McAfee Labs. Use of multiple technologies enables McAfee Web Gateway to provide greater protection while optimizing security on a single platform with different, yet complementary, technologies—something many organizations want for their defense-in-depth security approaches.

> • "McAfee antivirus with real-time McAfee Global Threat Intelligence McAfee GTI) file reputation: With cloud-based McAfee GTI file reputation look-up capabilities, McAfee closes the gap between virus discovery and system update/protection.
> • McAfee GTI web reputation and web categorization: McAfee Web Gateway delivers enhanced web filtering functionality and protection through the powerful combination of both reputation and category-based filtering. McAfee GTI creates a profile of all Internet entities—websites, email, and IP addresses—based on hundreds of different attributes gathered from the massive, global data collection capabilities of McAfee Labs. It then assigns a reputation score based on the security risk posed, enabling administrators to apply very granular rules about what to permit or deny.

http://www.mcafee.com/us/resources/data-sheets/ds-web-gateway.pdf

19. McAfee touts the patented features of the '078 patent in its printed literature:

> In learn mode, Host Intrusion Prevention displays a learn mode alert when it intercepts unknown network traffic. This alert prompts the user to allow or block any traffic that does not match an existing rule, and automatically creates corresponding dynamic rules for the non-matching traffic. You can enable learn mode for incoming communication, for outgoing communication only, or both.
>
> In adaptive mode, Host Intrusion Prevention automatically creates an allow rule to allow all traffic that does not match any existing block rule, and automatically creates dynamic allow rules for non-matching traffic.

https://kc.mcafee.com/resources/sites/MCAFEE/content/live/PRODUCT_DOCUMENTATION/22000/PD22894/en_US/Host%20Intrusion%20Prevention%20800%20Product%20Guide%20for%20ePO%20450.pdf at 63-64.

20. McAfee's indirect and, with respect to certain method claims of the '196 patent, divided infringement, also derives from its sale and concerted activity with its customers in using McAfee's products for mutual advantage. McAfee directs and controls each of these customers by instructing end-users in the operation of the accused products, and taking technical steps to maintain control over the user's operation and access to parts of the software. McAfee contractually and technically seeks to control end-users' operation of the product. Contractually, McAfee requires users to agree to terms and conditions. http://www.mcafee.com/us/resources/legal/end-user-license-agreements-en-us.pdf; http://www.mcafee.com/us/resources/legal/mcafee-product-entitlement-definitions.pdf. To the extent that claims require a web server or a first web server to transmit a "harmful information blocking code module" to a client, McAfee owns or controls the web server. To the extent that certain method claims require multiple actors consisting of McAfee and its customers, McAfee serves as the mastermind in their joint infringement.

21. On information and belief, with respect to the '196 patent, McAfee supplies its

security products with specifically designed code that is used to integrate its GTI service with appropriately formatted rules and policies to block harmful information that have no substantial non-infringing uses. In addition, on information and belief, McAfee supplies its accused security products with specifically designed code that provides a sequence of operations by which its security engines execute, including instructions for the acquisition of server-provided code and use of that code in blocking harmful information.

22. On information and belief, with respect to the ’078 patent, McAfee provides customized computer code to automatically extract server port information to allow applications to be added to permitted applications lists while only allowing use of the applications on specifically identified server ports. Such code has no substantial non-infringing uses.

23. McAfee, by the filing and service of the Original Complaint in this action knows of CAP Co.’s patents and CAP Co.’s claim of infringement.

COUNT I
(Patent Infringement)
(RE42,196)

24. Plaintiff incorporates by reference the allegations of paragraphs 1 through 23, above.

25. CAP Co. is the owner of the ’196 patent.

26. Defendant has infringed and is still infringing the ’196 patent, by, without authority, consent, right or license, and in direct infringement of the patents, making, using, offering for sale and/or selling the aforementioned products using the methods claimed in the patent in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).

27. In addition, Defendant has infringed the ’196 patent in this country, if it continues to infringe after the service of the Original Complaint in this matter, through, inter alia, its active inducement of others to make, use, and/or sell the products and methods claimed in one or more claims of the patent. This conduct constitutes infringement under 35 U.S.C. § 271(b).

28. In addition, Defendant has infringed the’ 196 patent in this country, and is still infringing the ’196 patent in this country since the service of the Original Complaint in this matter

through, *inter alia*, providing and selling goods and services including the aforementioned products designed for use in practicing one or more claims of the ’196 patent, where the goods and services constitute a material part of the invention and are not staple articles of commerce, and which have no use other than infringing one or more claims of the ’196 patent. Defendant has committed these acts with knowledge that the goods and services it provides are specially made for use in a manner that directly infringes the ’196 patent. This conduct constitutes infringement under 35 U.S.C. § 271(c).

29. As a result of Defendant’s infringement, Plaintiff has been damaged, and will continue to be damaged, until Defendant discontinues from further acts of infringement.

COUNT II
(Patent Infringement)
(U.S. Patent No. 8,544,078)

30. Plaintiff incorporates by reference the allegations of paragraphs 1 through 29, above.

31. CAP Co. is the owner of the ’078 patent.

32. Defendant has infringed and is still infringing the ’078 patent, by, without authority, consent, right or license, and in direct infringement of the patents, making, using, offering for sale and/or selling the aforementioned products that use the systems and methods claimed in the patent in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).

33. In addition, Defendant has infringed, and continues since the service of the Original Complaint in this matter is still infringing the ’078 patent in this country, through, inter alia, its active inducement of others to make, use, and/or sell the aforementioned products and methods claimed in one or more claims of the patent. This conduct constitutes infringement under 35 U.S.C. § 271(b).

34. In addition, Defendant has infringed the ’078 patent in this country, and is still infringing the ’078 patent in this country since the service of the Original Complaint in this matter through, inter alia, providing and selling goods and services including the aforementioned products designed for use in practicing one or more claims of the ’078 patent, where the goods and services constitute a material part of the invention and are not staple articles of commerce, and which have no use other than infringing one or more claims of the ’078 patent. Defendant has committed these acts with knowledge that the goods and services it provides are specially made

for use in a manner that directly infringes the '078 patent. This conduct constitutes infringement under 35 U.S.C. § 271(c).

35. As a result of Defendant's infringement, Plaintiff has been damaged, and will continue to be damaged, until Defendant discontinues from further acts of infringement.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for entry of judgment:

A. declaring that Defendant has infringed one or more claims, specifically including claim 1, of each of the Patents-in-Suit;

B. that Defendant account for and pay to Plaintiff all damages caused by its infringement of the Patents-in-Suit, which by statute can be no less than a reasonable royalty;

C. that Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants infringement of the Patents-in-Suit;

D. that this be adjudged an exceptional case and that Plaintiff be awarded its attorney's fees in this action pursuant to 35 U.S.C. § 285;

E. that costs be awarded to Plaintiff; and

F. that Plaintiff be granted such other and further relief as the Court may deem just and proper under the current circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, by its undersigned attorneys, demands a trial by jury on all issues so triable.

Dated: July 10, 2015

Respectfully submitted,

By: /s/ *Bruce J. Wecker*

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