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12 SUPER MICRO COMPUTER, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 SUPER MICRO COMPUTER, INC.,
16
17 Plaintiff,
18
19 v.
20
21 COMPUTER PROTECTION IP, LLC,
22
23 Defendant.

24 CASE NO. 16-cv-00566 EDL
25
26 **FIRST AMENDED COMPLAINT FOR
27 DECLARATORY RELIEF**
28
29 **DEMAND FOR JURY**

30 Plaintiff Super Micro Computer, Inc. ("Supermicro") brings this First Amended
31 Complaint for Declaratory Judgment ("Complaint") against Defendant Computer Protection IP,
32 LLC ("Computer Protection"). Supermicro seeks declaratory relief pursuant to 28 U.S.C. §§ 2201
33 and 2202, declaring United States Patent No. 8,468,591 ("the '591 patent" or "patent-in-suit") not
34 to be infringed by any product sold by Supermicro and to be invalid.

35 **THE PARTIES**

36 1. Plaintiff Super Micro Computer, Inc. is a Delaware corporation with its principal
37 place of business at 980 Rock Avenue, San Jose, California 95131.

38 2. Upon information and belief, Computer Protection IP, LLC ("Computer
39 Protection") is a limited liability company organized under the laws of Georgia and headquartered
40 at 6055 Southard Trace, Cumming, GA 30040. On information and belief, Computer Protection is
41 an entity that has been organized, in part, to secret the identity of individuals and/or entities that

1 control and are participating in, and/or obtaining benefit from, the activities of Computer
2 Protection.

3 NATURE OF THE ACTION

4 3. Supermicro brings this declaratory judgment action against what appears to be a
5 patent assertion entity that, on information and belief, exists for the sole purpose of monetizing
6 patents by threatening to file suit against server manufactures that are compatible with Intel's
7 Trusted Execution Technology ("Intel TXT") and/or the OpenStack Foundation's OpenStack
8 ("OpenStack") for the purposes of obtaining licensing and settlement amounts measured by the
9 cost of litigation. As explained herein, it appears that rather than seek to license its patent to Intel,
10 or to bring claims against the large and well-defended entity Intel, or to bring claims against the
11 non-profit OpenStack foundation, Computer Protection has sent a demand letter to at least one,
12 and possibly other, server manufactures making and selling systems compatible with Intel TXT
13 and/or OpenStack.

14 4. On information and belief, Computer Protection is threatening Supermicro to
15 obtain a license or settlement which bears no reasonable relation to the value, if any, or scope of
16 the Computer Protection patent. Computer Protection's infringement allegations are not specific
17 to Supermicro and instead are directed at the design and operation of Intel TXT and/or OpenStack
18 based on the fact that Supermicro's server systems are compatible with these products. The letter
19 itself is devoid of any specific information regarding Supermicro or its products, and its analysis
20 is based on a product not sold or manufactured by Supermicro, (i.e., Intel TXT, OpenStack).
21 Supermicro is aware of at least one company receiving a nearly-identical infringement letter. On
22 December 23, 2015, McAfee, Inc., a wholly-owned subsidiary of Intel, received such a letter and
23 subsequently brought suit against Computer Protection in Georgia (*Intel Corporation and*
24 *McAfee, Inc.'s Complaint for Declaratory Judgment*, Case No. 2:16-cv-00028-RWS).

25 5. An editorial in the New York Times authored in part by Chief Judge Rader of the
26 United States Court of Appeals for the Federal Circuit called out the litigation tactics Computer
27 Protection appears to employ now, in which it is pursuing a server manufacturer rather than Intel,
28 if allowed to go forward, would be an improper use of the U.S. Federal Court system and an

1 undue burden on the Courts and the business community. As Judge Rader states:

2 The onslaught of litigation brought by "patent trolls" — who
3 typically buy up a slew of patents, then sue anyone and everyone
4 who might be using or selling the claimed inventions — has slowed
5 the development of new products, increased costs for businesses
6 and consumers, and clogged our judicial system. Their business
7 plan is simple: trolls (intellectual-property lawyers use less
8 evocative terms like "non-practicing entities" and "patent assertion
9 entities") make money by threatening companies with expensive
10 lawsuits and then using that cudgel, rather than the merits of a case,
11 to extract a financial settlement. In the apt summary of President
12 Obama, who on Tuesday announced a plan to stave off frivolous
13 patent litigation, trolls just want to "hijack somebody else's idea
14 and see if they can extort some money."

9 Rader, Randall R., Colleen V. Chien, and David Hricik, *Make Patent Trolls Pay in Court*, The
10 New York Times June 4, 2013.

11 6. Accordingly, Supermicro brings the present suit as it has received a generic
12 demand letter from Computer Protection and with the understanding that Computer Protection
13 will bring further demands for licensing royalties and has threatened "one of more lawsuits in the
14 United States District Court." A true and correct copy of this letter is attached hereto as **Exhibit**
15 **A.**

16 7. Counsel for Computer Protection met with Supermicro's counsel in Redwood City,
17 California on March 11, 2016 to discuss potential licensing of the '591 patent. At that meeting,
18 counsel for Computer Protection indicated that the company was no longer asserting patent rights
19 based on the Intel TXT product, but on newly-alleged violations based on OpenStack. Computer
20 Protection has not made this stance in writing, however, leaving Supermicro to guess which angle
21 of attack (violation based on Intel TXT, OpenStack, or both) Computer Protection will attempt to
22 assert in the future. The email received from counsel for Computer Protection on March 1, 2015
23 attaching its new OpenStack allegations is attached hereto as **Exhibit B.**

24 8. This is a civil declaratory judgment action seeking a determination that
25 Supermicro does not infringe any valid or enforceable claim of the '591 patent under 35 U.S.C. §
26 271.

27 9. This is a declaratory judgment action seeking a determination that the '591 patent
28 is unenforceable, in whole or in part.

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1 10. On information and belief, Computer Protection is the owner by assignment of the
2 '591 patent, which is entitled "Client authentication and data management system" and was issued
3 on June 18, 2013. A true and correct copy of the '591 patent is attached hereto as **Exhibit C**.

4 **JURISDICTION AND VENUE**

5 11. This is a complaint for declaratory relief under the patent laws of the United
6 States, 35 U.S.C. §§ 1, *et seq.*

7 12. Supermicro seeks declaratory relief under 28 U.S.C. §§ 2201 and 2202.

8 13. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§
9 1331, 1338, 2201, and 2202.

10 14. This Court has personal jurisdiction over Computer Protection. On information
11 and belief, Computer Protection has conducted business in and directed at California pertaining to
12 the patent-in-suit. *See* Exhibit A, Exhibit B.

13 15. Computer Protection's threat letter alleges infringement of the patent-in-suit by
14 Supermicro, and gives rise to an actual and justiciable controversy between Supermicro and
15 Computer Protection as to the non-infringement and invalidity of the patents-in-suit.

16 16. Computer Protection's lawsuits and infringement allegations threaten actual and
17 imminent injury to Supermicro that can be redressed by judicial relief and that injury is of
18 sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Absent a
19 declaration of non-infringement or invalidity, Computer Protection's continued wrongful
20 assertions of infringement related to the Intel TXT and/or OpenStack products will cause
21 Supermicro harm.

22 17. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1391(c)
23 because, among other reasons, Computer Protection is subject to personal jurisdiction in this
24 jurisdictional district and Computer Protection have conducted or conduct business in this
25 jurisdictional district, or because a substantial part of the events or omissions giving rise to the
26 claim occurred in this jurisdictional district.

27 **THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES**

28 18. Supermicro is a global leader in high-performance, high-efficiency server

1 technology. It is a premier provider of end-to-end green computing solutions for HPC, Data
2 Center, Cloud Computing, Enterprise IT, Hadoop/Big Data, and Embedded Systems.

3 19. Supermicro offers an array of modular, interoperable components for building
4 energy-efficient, application-optimized, computing solutions. Its product lines includes servers,
5 blades, GPU systems, workstations, motherboards, chassis, power supplies, storage technologies,
6 networking solutions, server management software, cabinets, and accessories.

7 20. Supermicro's server architecture innovations include Twin Architecture,
8 FatTwin™, SuperServer®, SuperBlade®, MicroBlade, MicroCloud, Super Storage Bridge Bay
9 (SBB), Double-Sided Storage®, Battery Backup Power modules, Universal I/O, and WIO
10 expansion technology.

11 21. Among the servers sold by Supermicro, some are compatible and can utilize Intel
12 TXT and OpenStack.

13 22. On information and belief, Computer Protection is a non-practicing entity
14 organized for the purpose of pursuing infringement lawsuits and shielding the real parties in
15 interest from exposure and liability associated with such lawsuits, such as may result from an
16 imposition of costs or attorney's fees that may be obtained by the defendants in the lawsuits,
17 and/or to hide prior actions of, or obligations that might be owed by, the real parties in interest.
18 On information and belief, Computer Protection does not commercialize any products or services
19 embodying the patent-in-suit.

20 23. Computer Protection purports to be the owner of the '591 patent. The '591 patent is
21 entitled "Client authentication and data management system" and issued June 18, 2013.

22 24. Computer Protection's ownership stems from assignment of the patent application
23 from the inventor, Ariel Silverstone, on May 16, 2013. A true and correct copy of the assignment
24 record available on the USPTO's website is attached as **Exhibit D**.

25 25. Computer Protection is represented by Stadheim & Gear, a law firm located in
26 Chicago, Illinois. Stadheim & Gear describes itself as "provid[ing] independent inventors,
27 companies and universities with the highest quality patent assertion services on a contingent fee
28 basis." A copy of the first page of the Stradheim & Gear website, located at

1 www.stadheimandgear.com, is attached as **Exhibit E**.

2 26. Supermicro was unable to find any business records for Computer Protection with
3 the sole exception of its Georgia business license as available via the Secretary of State business
4 records. A true and correct copy of this information is attached as **Exhibit F**.

5 27. On December 23, 2015, Stadheim & Gear sent Supermicro a letter (Exhibit A)
6 communicating predominantly the resume of Mr. Ariel Silverstone, the inventor of the '591
7 patent. The letter further communicated Computer Protection's belief that the Supermicro's
8 servers, when used with Intel TXT, "uses technology covered by the '591 Patent." The letter
9 further offers what it described as "uncommonly favorable terms" to the "*first company* to take
10 the ['591 patent] license" (emphasis added). Computer Protection's letter did not just imply or
11 threaten that Supermicro must take a license or be subjected to a patent enforcement suit, it
12 directly stated it would do so: "The day after the offer expires we will file one or more lawsuits in
13 United States District Court for infringement of the '591 patent."

14 28. On March 11, 2016, Rolf Stadheim, counsel for Computer Protection, flew to
15 California to meet with counsel for Supermicro regarding potential licensing of the '591 patent.
16 At this meeting, Mr. Stadheim indicated that Computer Protection was no longer alleging
17 violation based on Intel TXT, but was alleging violation of the '591 patent based on OpenStack.
18 This had been foreshadowed, but not disclosed, in Mr. Stadheim's email of March 1, 2016
19 (Exhibit B), which included several "Comparison of an Exemplary Claim from U.S. Patent No.
20 8,468,591 to OpenStack-based Cloud Computing Systems Made and Sold by Supermicro"
21 attachments. Despite verbal and written request, Computer Protection has failed to provide
22 written verification of its change in position from accusations based on Intel TXT to accusations
23 based on OpenStack.

24 29. Supermicro does not require specific software be loaded on to servers or server
25 systems it sells. Its servers and server systems will function with a variety of available software
26 platforms available to consumers. Supermicro does not pre-load any software on to client's new
27 hardware except when requested by the client.

28 30. Supermicro sells servers and server systems compatible with Intel TXT and

1 OpenStack.

2 31. Supermicro does not develop or control Intel TXT or OpenStack.

3 32. Supermicro does not control the website www.intel.com, or information available
4 on the website referenced in the letter is available at

5 [http://www.intel.com/content/www/us/en/architecture-and-technology/trusted-execution-
7 technology/where-to-buy-isv-txt.html](http://www.intel.com/content/www/us/en/architecture-and-technology/trusted-execution-
6 technology/where-to-buy-isv-txt.html) titled "Solutions and Products with Intel® Trusted
8 Execution Technology ("Intel Site").

9 33. Supermicro is listed as one of twenty-three (23) companies on the Intel Site, which
10 lists twenty-three (23) companies with a brief description of their services.

11 34. The letter received from Computer Protection alleges that "several claims of the
12 '591 patent read on Intel TXT. *See* Exhibit A. The letter further asserts that "According to
13 publicly available records, Super Micro Computers, Inc. employs Intel TXT to ensure server
14 security, and thus uses technology covered by the '591 Patent." *Id.*

15 35. The letter received from Computer Protection includes an attachment labeled
16 "FOR SETTLEMENT PURPOSES UNDER FRE 408 HIGHLY CONFIDENTIAL" which
17 consists of an analysis of publically available information analyzing the '591 patent in comparison
18 to Intel TXT. This information appears to contain only an analysis of the '591 patent against the
19 Intel TXT system.

20 36. The email received from counsel for Computer Protection on March 1, 2016
21 (Exhibit B) includes attachments labeled "FOR SETTLEMENT PURPOSES UNDER FRE 408
22 HIGHLY CONFIDENTIAL" which consists of an analysis of publically available information
23 analyzing the '591 patent in comparison to OpenStack. This information appears to contain only
24 an analysis of the '591 patent against the OpenStack system. The other documents included with
25 the email are all publically available, the majority of which are available on Supermicro's website,
26 <http://www.supermicro.com>.

27 37. Supermicro has not infringed and does not infringe, either directly or indirectly,
28 any valid and enforceable claim of the '591 patent, either literally or under the doctrine of
equivalents.

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1 Supermicro, on the one hand, and Computer Protection, on the other, concerning whether the
2 claims of the '591 patent are invalid for failure to comply with the statutory prerequisites of Title
3 35 of the United States Code, including without limitation, one or more of §§ 101, 102, 103,
4 and/or 112.

5 48. As a result of the acts described in the foregoing paragraphs, there exists a
6 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
7 declaratory judgment. Such a judicial declaration is necessary and appropriate so that Computer
8 Protection may ascertain its rights regarding the '591 patent.

9 49. The claims of the '591 patent are invalid for failure to comply with the statutory
10 prerequisites of Title 35 of the United States Code, including without limitation, one or more of
11 §§ 101, 102, 103, and/or 112.

12 50. Supermicro is entitled to a judicial declaration that the claims of the '519 patent are
13 invalid.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Supermicro prays that the Court enter judgment in its favor and against
16 Defendants as follows:

- 17 1. Declaring that all claims of the '591 patent are invalid;
- 18 2. Declaring that Supermicro's products have not, do not, and will not infringe, either
19 directly or indirectly, any valid and enforceable claim of the '591 patent;
- 20 3. Declaring that the use, offer to sell, and/or sale of Supermicro's products does not,
21 and will not, infringe any valid and enforceable claim of the '591 patent;
- 22 4. Declaring that Supermicro is a prevailing party and that this is an exceptional case,
23 awarding Supermicro its costs, expenses, and reasonable attorney's fees under 35 U.S.C. § 285,
24 and all other statutes, rules, and common law;
- 25 5. Awarding Supermicro all costs and expenses associated with this action; and
- 26 6. Awarding any and all such other relief as the Court determines to be just and
27 proper.

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JURY DEMAND

Supermicro demands a trial by jury on all issues so triable.

Dated: March 22, 2016

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Lael D. Andara
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