

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

INFORMATION PROTECTION AND
AUTHENTICATION OF TEXAS, LLC

Plaintiff,

v.

DIGITAL RIVER, INC.

Defendant.

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CIVIL ACTION NO. 2:11-cv-370

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Information Protection and Authentication of Texas, LLC (“IPAT”) by and through its undersigned counsel, files this Original Complaint against Digital River, Inc. (“Defendant”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent No. 5,311,591, entitled “Computer System Security Method and Apparatus for Creating and Using Program Authorization Information Data Structures” (the “’591 patent”; a copy of which is attached as Exhibit A) and United States Patent No. 5,412,717 entitled “Computer System Security Method and Apparatus Having Program Authorization Information Data Structures” (the “’717 patent”; a copy of which is attached as Exhibit B). IPAT is the assignee of the ‘591 patent and the ‘717 patent. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff IPAT is a limited liability company organized and existing under the laws of Texas with its principal place of business at 104 East Houston Street, Suite #170, Marshall, Texas 75670. IPAT is the assignee of all title and interest of the ‘591 patent and the ‘717 patent. Plaintiff possesses the entire right to sue for infringement and recover past damages.

3. Upon information and belief, Defendant Digital River, Inc. (“Digital River”) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 10380 Bren Road West, Minnetonka, Minnesota 55343 and whose registered agent is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 13331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because Defendant has minimum contacts within the State of Texas, and the Eastern District of Texas; the Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; the Defendant has sought protection and benefit from the laws of the State of Texas; the Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff’s cause of action arise directly

from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

6. More specifically, the Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, the Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. The Defendant solicits customers in the State of Texas and in the Eastern District of Texas. The Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use respective Defendant's products and services in the State of Texas and in the Eastern District of Texas.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT

8. United States Patent No. 5,311,591, entitled "Computer System Security Method and Apparatus for Creating and Using Program Authorization Information Data Structures," was duly and legally issued by the United States Patent and Trademark Office on May 10, 1994, after full and fair examination. United States Patent No. 5,412,717, entitled "Computer System Security Method and Apparatus for Creating and Using Program Authorization Information Data Structures," was duly and legally issued by the United States

Patent and Trademark Office on May 2, 1995 after full and fair examination. IPAT is the assignee of all rights, title, and interest in and to the '591 and '717 patents, and possesses all rights of recovery under the '591 and '717 patents, including the right to sue for infringement and recover past damages.

9. Digital River has infringed and continues to infringe one or more claims of the '591 patent by providing, offering to sell, and selling, in this district and elsewhere in the United States, copies of certain Kaspersky products, including, Kaspersky Internet Security, Kaspersky Work Space Security, Kaspersky Business Space Security, Kaspersky Enterprise Space Security, and Kaspersky Total Space Security. Upon information and belief, Digital River has also contributed to the infringement of one or more claims of the '591 patent and/or actively induced others to infringe one or more claims of the '591 patent, in this district and elsewhere in the United States.

10. Digital River has infringed and continues to infringe one or more claims of the '717 patent by providing, offering to sell, and selling, in this district and elsewhere in the United States, copies of certain Kaspersky products, including, Kaspersky Internet Security, Kaspersky Work Space Security, Kaspersky Business Space Security, Kaspersky Enterprise Space Security, and Kaspersky Total Space Security. Upon information and belief, Digital River has also contributed to the infringement of one or more claims of the '717 patent and/or actively induced others to infringe one or more claims of the '717 patent, in this district and elsewhere in the United States.

11. Digital River's aforesaid activities have been without authority and/or license from Plaintiff.

12. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

13. Defendant is jointly and severally liable with Kaspersky Lab, Inc. for the damages it has caused to Plaintiff as a result of Defendant's wrongful acts.

14. Plaintiff is currently in litigation with Kaspersky Lab, Inc. in this district in *Information Protection and Authentication, LLC v. Symantec, et. al.*, Civil Action 2:08-00484.

15. Plaintiff only seeks damages from Defendant to the extent that Kaspersky Lab, Inc. is unwilling or unable to pay damages as a result of its and Defendant's wrongful acts in an amount subject to proof at trial.

16. Defendant's infringement of Plaintiff's exclusive rights under the '591 patent and the '717 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

17. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '591 patent has been infringed, either literally and/or under the doctrine of equivalents, Defendant and/or by others to whose infringement Defendant has contributed and/or by others whose infringement has been induced by Defendant;
- B. An adjudication that one or more claims of the '717 patent has been infringed, either literally and/or under the doctrine of equivalents, Defendant and/or by others to whose infringement Defendant has contributed and/or by others whose infringement has been induced by Defendant;
- C. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- D. That one or more of the Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- E. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '591 patent;
- F. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of (1) infringement, (2) contributory

infringement, and (3) actively inducing infringement with respect to the claims of the '717 patent;

- G. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- H. Any further relief that this Court deem just and proper.

Dated: August 23, 2011

Respectfully submitted,

By: /s/ William E. Davis, III
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