

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

**EIGHTH STREET SOLUTIONS LLC,**

**Plaintiff,**

v.

**MCAFEE, LLC,**

**Defendant.**

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**JURY TRIAL DEMANDED**

**CIVIL ACTION NO. 2:20-CV-00313**

**PLAINTIFF’S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Eight Street Solutions LLC (“ESS” or “Plaintiff”) files this Original Complaint against Defendant McAfee, LLC (“McAfee” or “Defendant”) for infringement of U.S. Patent Nos. 7,664,924 (“924 patent”) (**Exhibit A**); 9,600,661 (“661 patent”) (**Exhibit B**); and 10,503,418 (“418 patent”) (**Exhibit C**), (collectively, “the patents-in-suit”).

**THE PARTIES**

- 1. Plaintiff is a Texas limited liability company with its principal place of business located at 312 W 8<sup>th</sup> Street, Dallas, TX 75208.
- 2. Upon information and belief, McAfee, LLC is a Delaware limited liability company having a principal place of business located at 2821 Mission College Blvd., Santa Clara CA, 95054. McAfee does business in the State of Texas and in this District.

**JURISDICTION AND VENUE**

- 3. This action arises under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, McAfee is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute because McAfee, directly or through intermediaries, has conducted and does conduct substantial business in this forum, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this District. McAfee has sought protection and benefit from the laws of the State of Texas by placing, and continuing to place, infringing security related software into the stream of commerce via an established distribution channel with the knowledge and/or intent that those products were sold and continue to be sold in the United States and Texas, including in this District.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 because, among other things, McAfee has a regular and established place of business in this District. For example, McAfee maintains a regular and established place of business at 5000 Headquarters Dr., Plano, TX, 75024.

7. On information and belief, McAfee has significant ties to, and presence in, the State of Texas and the Eastern District of Texas. McAfee maintains a regular and established place of business within this District via its Plano location. Further, at least in part in connection its Plano location, McAfee's employees develop, market, and sell McAfee software from within the Eastern

District of Texas, and to consumers within the District. Therefore, venue in this judicial district both proper and convenient for this action.

**COUNT I**

(INFRINGEMENT OF U.S. PATENT NO. 7,664,924)

8. Plaintiff incorporates paragraphs 1 through 7 herein by reference.

9. ESS is the assignee of the '924 patent, entitled "System and method to secure a computer system by selective control of write access to a data storage medium," with ownership of all substantial rights in the '924 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

10. The '924 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '924 patent issued from U.S. Patent Application No. 11/858,752.

11. The '924 patent is directed to patent eligible subject matter under 35 U.S.C. § 101. The specification of the '924 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed in the '924 patent resolve or overcome those shortcomings. *See, e.g.*, '924 patent at 1:17-42; *generally* Detailed Description of the Preferred Embodiments.

12. McAfee has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '924 patent in this judicial District and elsewhere in Texas and the United States.

13. Upon information and belief, McAfee develops and sells security software to secure endpoints (laptops, servers and mobile devices) and networks against evolving cyberattack techniques, including ransomware, malware, exploits, data exfiltration, active-adversary breaches,

phishing, and more. *See, e.g.*, mcafee.com. Upon information and belief, the primary business of McAfee is the development and sale of this software.

14. McAfee directly infringes the '924 patent via 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing that security software that incorporates the fundamental technologies covered by one or more claims of the '924 patent, or by having its controlled subsidiaries do the same. Examples of how McAfee's software infringes claim 1 of the '924 patent are shown in **Exhibit D**.

15. At a minimum, McAfee has known of the '924 patent and of its infringement of the same at least as early as the filing date of the complaint.

16. Upon information and belief, since at least the above-mentioned date when McAfee was on notice of its infringement, McAfee has actively induced, under U.S.C. § 271(b), consumers that purchase its security software that includes or performs all of the limitations of one or more claims of the '924 patent to directly infringe one or more claims of the '924 patent by using the software. Since at least the notice provided on the above-mentioned date, McAfee does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '924 patent. Upon information and belief, McAfee intends to cause, and has taken affirmative steps to induce, infringement by the distributors, importers, and/or consumers by, *inter alia*, creating advertisements that promote the infringing use of the software, creating established distribution channels for the software into and within the United States, selling the software in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for software to purchasers and prospective buyers, and/or providing technical support, software fixes, or services for these products to these purchasers in the United States. *See, e.g.*, McAfee's support webpage: <https://service.mcafee.com>.

17. ESS has been damaged as a result of McAfee's infringing conduct described in this Count. McAfee is, thus, liable to ESS in an amount that adequately compensates ESS for McAfee's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

## **COUNT II**

(INFRINGEMENT OF U.S. PATENT NO. 9,600,661)

18. Plaintiff incorporates paragraphs 1 through 17 herein by reference.

19. ESS is the assignee of the '661 patent, entitled "System and method to secure a computer system by selective control of write access to a data storage medium," with ownership of all substantial rights in the '661 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

20. The '661 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '661 patent issued from U.S. Patent Application No. 11/292,910.

21. The '661 patent is directed to patent eligible subject matter under 35 U.S.C. § 101. The specification of the '661 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed in the '661 patent resolve or overcome those shortcomings. *See, e.g.*, '661 patent at 1:9-32; *generally* Detailed Description of the Preferred Embodiments.

22. McAfee has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '661 patent in this judicial District and elsewhere in Texas and the United States.

23. Upon information and belief, McAfee develops and sells security software to secure endpoints (laptops, servers and mobile devices) and networks against evolving cyberattack techniques, including ransomware, malware, exploits, data exfiltration, active-adversary breaches, phishing, and more. *See, e.g.*, mcafee.com. Upon information and belief, the primary business of McAfee is the development and sale of this software.

24. McAfee directly infringes the '661 patent via 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing that security software that incorporates the fundamental technologies covered by one or more claims of the '661 patent, or by having its controlled subsidiaries do the same. Examples of how McAfee's software infringes claim 16 of the '661 patent are shown in **Exhibit E**.

25. At a minimum, McAfee has known of the '661 patent and of its infringement of the same at least as early as the filing date of the complaint.

26. Upon information and belief, since at least the above-mentioned date when McAfee was on notice of its infringement, McAfee has actively induced, under U.S.C. § 271(b), consumers that purchase its security software that includes or performs all of the limitations of one or more claims of the '661 patent to directly infringe one or more claims of the '661 patent by using the software. Since at least the notice provided on the above-mentioned date, McAfee does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '661 patent. Upon information and belief, McAfee intends to cause, and has taken affirmative steps to induce, infringement by the distributors, importers, and/or consumers by, *inter alia*, creating advertisements that promote the infringing use of the software, creating established distribution channels for the software into and within the United States, selling the software in conformity with U.S. laws and regulations, distributing or making available instructions or

manuals for software to purchasers and prospective buyers, and/or providing technical support, software fixes, or services for these products to these purchasers in the United States. *See, e.g.*, McAfee's support webpage: <https://service.mcafee.com>.

27. ESS has been damaged as a result of McAfee's infringing conduct described in this Count. McAfee is, thus, liable to ESS in an amount that adequately compensates ESS for McAfee's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **COUNT III**

(INFRINGEMENT OF U.S. PATENT NO. 10,503,418)

28. Plaintiff incorporates paragraphs 1 through 27 herein by reference.

29. ESS is the assignee of the '418 patent, entitled "System and method to secure a computer system by selective control of write access to a data storage medium," with ownership of all substantial rights in the '418 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements.

30. The '418 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code. The '418 patent issued from U.S. Patent Application No. 15/421,984.

31. The '418 patent is directed to patent eligible subject matter under 35 U.S.C. § 101. The specification of the '418 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed in the '418 patent resolve or overcome those shortcomings. *See, e.g.*, '418 patent at 1:29-49; *generally* Detailed Description.

32. McAfee has and continues to directly and/or indirectly infringe (by inducing infringement) one or more claims of the '418 patent in this judicial District and elsewhere in Texas and the United States.

33. Upon information and belief, McAfee develops and sells security software to secure endpoints (laptops, servers and mobile devices) and networks against evolving cyberattack techniques, including ransomware, malware, exploits, data exfiltration, active-adversary breaches, phishing, and more. *See, e.g.*, mcafee.com. Upon information and belief, the primary business of McAfee is the development and sale of this software.

34. McAfee directly infringes the '418 patent via 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing that security software that incorporates the fundamental technologies covered by one or more claims of the '418 patent, or by having its controlled subsidiaries do the same. Examples of how McAfee's software infringes claim 29 of the '418 patent are shown in **Exhibit F**.

35. At a minimum, McAfee has known of the '418 patent and of its infringement of the same at least as early as the filing date of the complaint.

36. Upon information and belief, since at least the above-mentioned date when McAfee was on notice of its infringement, McAfee has actively induced, under U.S.C. § 271(b), consumers that purchase its security software that includes or performs all of the limitations of one or more claims of the '418 patent to directly infringe one or more claims of the '418 patent by using the software. Since at least the notice provided on the above-mentioned date, McAfee does so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement of the '418 patent. Upon information and belief, McAfee intends to cause, and has taken affirmative steps to induce, infringement by the distributors, importers, and/or consumers by, *inter alia*,



creating advertisements that promote the infringing use of the software, creating established distribution channels for the software into and within the United States, selling the software in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for software to purchasers and prospective buyers, and/or providing technical support, software fixes, or services for these products to these purchasers in the United States. *See. e.g.*, McAfee's support webpage: <https://service.mcafee.com>.

37. ESS has been damaged as a result of McAfee's infringing conduct described in this Count. McAfee is, thus, liable to ESS in an amount that adequately compensates ESS for McAfee's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **CONCLUSION**

38. Plaintiff is entitled to recover from McAfee the damages sustained by Plaintiff as a result of McAfee'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.

39. Plaintiff has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute may give rise to an exceptional case within the meaning of 35 U.S.C. § 285, and Plaintiff is entitled to recover its reasonable and necessary attorneys' fees, costs, and expenses.

### **JURY DEMAND**

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

**PRAYER FOR RELIEF**

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

- a. A judgment that McAfee has infringed the patents-in-suit as alleged herein, directly and/or indirectly by way of inducing infringement of such patents;
- b. A judgment for an accounting of all damages sustained by Plaintiff as a result of the acts of infringement by McAfee;
- c. A judgment and order requiring McAfee to pay Plaintiff damages under 35 U.S.C. § 284, including up to treble damages as provided by 35 U.S.C. § 284, and any royalties determined to be appropriate;
- d. A judgment and order requiring McAfee to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;
- e. A judgment and order finding this to be an exceptional case and requiring McAfee to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and
- f. Such other and further relief as the Court deems just and equitable.

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Dated: September 24, 2020

Respectfully submitted,

/s/ Patrick J. Conroy

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