

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>CYBERSOFT IP, LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No. 1:21-cv-10704</b>
<b>v.</b>	)	
	)	
<b>KASPERSKY LAB, INC.</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>Defendant.</b>	)	

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

Cybersoft IP, LLC (“Cybersoft”) files this Original Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 6,763,467 (“the ‘467 patent”) (referred to as the “Patent-in-Suit”) by Kaspersky Lab, Inc. (“Kaspersky”).

**I. THE PARTIES**

1. Plaintiff Cybersoft is a Texas Limited Liability Company with its principal place of business located in Harris County, Texas.

2. On information and belief, Kaspersky is a corporation existing under the laws of the State of Massachusetts, with a principal place of business located at 500 Unicorn Park Dr., #300, Woburn, Massachusetts, 01801. On information and belief, Kaspersky sells and offers to sell products and services throughout Massachusetts, including in this judicial district, and introduces products and services that perform infringing methods or processes into the stream of commerce knowing that they

would be sold in Massachusetts and this judicial district. Kaspersky may be served through their registered agent Angelo Gentile, 500 Unicorn Park Dr., #300, Woburn, Massachusetts, 01801 or wherever they may be found.

## **II. JURISDICTION AND VENUE**

3. This Court has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271, et. seq.

4. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of Massachusetts and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Massachusetts and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Massachusetts and in this judicial district.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Massachusetts and this District.

### **III. INFRINGEMENT**

#### **A. Infringement of the ‘467 Patent**

6. On July 13, 2004, U.S. Patent No. 6,763,467 (“the ‘467 patent”, attached as Exhibit A) entitled “Network Traffic Intercepting Method and System” was duly and legally issued by the U.S. Patent and Trademark Office. Cybersoft owns the ‘467 patent by assignment.

7. The ‘467 patent relates to a novel and improved method and system for protecting computers from invasion by viruses, trojan horses, worms, and other malicious algorithms.

8. Kaspersky maintains, operates, and administers online and software based training platforms, products and services that facilitate remote training that infringes claim 1 of the ‘467 patent, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the ‘467 Patent into service (i.e., used them); but for Defendant’s actions, the claimed-inventions embodiments involving Defendant’s products and services would never have been put into service. Defendant’s acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant’s procurement of monetary and commercial benefit from it.

9. Support for the allegations of infringement may be found in the following preliminary table:

<p>1. A method conducted within a single computer system connected to a network for intercepting, examining, and controlling data flowing via transport connections between the transport layer of an operating system and user applications, said method comprising the steps of:</p>	<p>“Kaspersky Secure Mail Gateway lets you deploy a <b>virtual mail gateway</b> and integrate it into the existing corporate mail infrastructure.</p> <p>An operating system, mail server, and Kaspersky Lab anti-virus application are preinstalled on the virtual mail gateway.</p> <p>Kaspersky Secure Mail Gateway protects incoming and outgoing email against malware and spam and performs content filtering of messages.</p> <p>Kaspersky Secure Mail Gateway:</p> <ul style="list-style-type: none"> <li>• <b>Scans incoming and outgoing email for spam, phishing, and malware.</b> To respond to new threats promptly, Kaspersky Secure Mail Gateway protection components can use information from Kaspersky Security Network.” [1]</li> </ul> <p>“<b>Sends and receives messages via a secure TLS/SSL link.</b>” [1]</p>
<p>a) intercepting all said data flowing between said transport layer and said user application;</p>	<p>“Kaspersky Secure Mail Gateway:</p> <ul style="list-style-type: none"> <li>• Scans <b>incoming and outgoing email</b> for spam, phishing, and malware. To respond to new threats promptly, Kaspersky Secure Mail Gateway protection components can use information from Kaspersky Security Network.” [1]</li> </ul>
<p>b) examining said data for information content, which comprises examining said data streams to determine if they are scannable for information content or nonscannable for information content; passing said nonscannable data streams to said user application; and passing said scannable data streams to said processing step (c) wherein said information content</p>	<p>“Detects and <b>blocks messages containing encrypted objects</b>, deletes messages or attachments, and <b>places copies of messages in Backup.</b>” [2]</p> <p>“<b>Scans incoming and outgoing email messages for spam, phishing and malware</b>, and, when integrated with KATA, scans messages for signs of targeted attacks into the corporate IT infrastructure.” [2]</p>

includes the presence of proscribed data; and,	
c) processing said data, including scanning said data for said proscribed data, based on said information content to protect the computer system and the network by preventing said computer system and network from accessing proscribed data,	<p>“Kaspersky Secure Mail Gateway:</p> <ul style="list-style-type: none"> <li>• <b>Scans incoming and outgoing email messages for spam, phishing and malware</b>, and, when integrated with KATA, scans messages for signs of targeted attacks into the corporate IT infrastructure. To promptly respond to new threats that have not yet been added to the anti-virus databases, protection components of Kaspersky Secure Mail Gateway can utilize information from Kaspersky Security Network...</li> <li>• <b>Detects and blocks spam, probable spam and mass mailings</b> (including marketing mail-outs), deletes messages, and places copies of messages in Backup.</li> <li>• <b>Detects messages containing Unicode spoofing</b>. If Unicode spoofing is detected, the message is considered to be spam. The application adds the unicode_spoof tag to the X-KSMG-AntiSpam-Method message header...</li> <li>• <b>Detects, blocks, and disinfects infected email messages and infected attachments</b>, deletes messages and attachments, and places copies of messages in Backup.” [2]</li> </ul> <p>“Saves backup copies of messages in Backup based on the results of their processing by the Anti-Virus, Anti-Spam and Anti-Phishing modules, and based on the results of content filtering and KATA scans of messages” [2]</p>
c1) wherein said operating system includes protocols implemented on top of said transport layer, said protocols having a plurality of states, and wherein said processing step (b) further includes the step of parsing, said parsing tracking the state of said protocols with a parser.	<p>“<b>Detects, blocks, and disinfects infected email messages and infected attachments</b>, deletes messages and attachments, and places copies of messages in Backup.” [2]</p> <p>”In the <b>Protocol</b> settings group, select one of the email transmission protocols:</p> <ul style="list-style-type: none"> <li>• <b>SMTP</b>, if you want to configure email transmission via the SMTP protocol.” [3]</li> </ul>

References	
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1	<a href="https://help.kaspersky.com/KSMG/1.0/en-EN/91686.htm">https://help.kaspersky.com/KSMG/1.0/en-EN/91686.htm</a>
2	<a href="https://help.kaspersky.com/KSMG/1.1.2/en-US/154729.htm">https://help.kaspersky.com/KSMG/1.1.2/en-US/154729.htm</a>
3	<a href="https://help.kaspersky.com/KSMG/1.1/en-US/100478.htm">https://help.kaspersky.com/KSMG/1.1/en-US/100478.htm</a>

These allegations of infringement are preliminary and are therefore subject to change.

10. Kaspersky has and continues to induce infringement. Kaspersky has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., payment products and services that facilitate purchases from a vendor using a bridge computer) such as to cause infringement of claim 1 of the ‘467 patent, literally or under the doctrine of equivalents. Moreover, Kaspersky has known or should have known of the ‘467 patent and the technology underlying it from at least the date of issuance of the patent.

11. Kaspersky has and continues to contributorily infringe. Kaspersky has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., payment products and services that facilitate purchases from a vendor using a bridge computer) and related services such as to cause infringement of claim 1 of the ‘467 patent, literally or under the doctrine of equivalents. Moreover, Kaspersky has known or should have known of the ‘467 patent and the technology underlying it from at least the date of issuance of the patent.

12. Kaspersky has caused and will continue to cause CYBERSOFT damage by direct and indirect infringement of (including inducing infringement of) the claims of the ‘467 patent.

#### **IV. JURY DEMAND**

CYBERSOFT hereby requests a trial by jury on issues so triable by right.

**V. PRAYER FOR RELIEF**

WHEREFORE, CYBERSOFT prays for relief as follows:

- a. enter judgment that Defendant has infringed the claims of the ‘467 patent through Kaspersky payment links;
- b. award CYBERSOFT damages in an amount sufficient to compensate it for Defendant’s infringement of the ‘467 patent in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- c. award CYBERSOFT an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- d. declare this case to be “exceptional” under 35 U.S.C. § 285 and award CYBERSOFT its attorneys’ fees, expenses, and costs incurred in this action;
- e. declare Defendant’s infringement to be willful and treble the damages, including attorneys’ fees, expenses, and costs incurred in this action and an increase in the damage award pursuant to 35 U.S.C. § 284;
- f. a decree addressing future infringement that either (i) awards a permanent injunction enjoining Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an amount consistent with the fact that for future infringement the Defendant will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law; and
- g. award CYBERSOFT such other and further relief as this Court deems just and proper.

Respectfully submitted,

**/s/ John T. Martin**

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Date: April 28, 2021