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By Fax

8 Attorneys for Plaintiff Network Signatures, Inc.

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **SOUTHERN DIVISION**

12 NETWORK SIGNATURES, INC.,  
13 Plaintiff,  
14 v.  
15 ELI LILLY AND COMPANY, an Indiana  
corporation,  
16 Defendant.

Case No. SACV10-1211 AG(RNBX)  
**COMPLAINT FOR PATENT  
INFRINGEMENT, PERMANENT  
INJUNCTION AND DAMAGES**  
**DEMAND FOR JURY TRIAL**

17  
18 For its Complaint against Defendant Eli Lilly and Company ("Defendant"), Plaintiff  
19 Network Signatures, Inc. ("Network Signatures") alleges as follows:

20 **THE NAVAL RESEARCH LABORATORY**

21 1. The Naval Research Laboratory ("NRL") is one of the most accomplished  
22 research-and-development organizations in the country. NRL scientists have not only  
23 made remarkable breakthroughs in military technology, they have literally changed the  
24 world for all of us. Without their efforts, we would not have GPS, modern radar, and any  
25 number of other technological innovations that we now take for granted. This lawsuit  
26 concerns another such innovation: technology that allows for the safe and secure  
27 communication of sensitive information via the Internet, such as personal, banking,  
28 commercial, financial, and other information.



1                    **NETWORK SIGNATURES LICENSES THE NAVY'S TECHNOLOGY**

2            7.        On April 23, 1996, the United States Patent & Trademark Office duly and  
3 legally issued United States Letters Patent No. 5,511,122 ("the '122 Patent"), entitled  
4 "Intermediate Network Authentication."

5            8.        The '122 patent claims, among other things, a critical method of  
6 authenticating a computer in which a private electronic key is used, together with a  
7 validating public electronic key, to create a cryptographic signature, the cryptographic  
8 signature is transmitted in at least one packet to the validating computer, and the signature  
9 is verified by the validating computer using its private key and the public key of the  
10 computer to be authenticated. This authentication method allows for the safe and secure  
11 communication of sensitive information, such as personal, banking, commercial, financial,  
12 and other information, as is transmitted between computers by Defendant and its  
13 customers, vendors and users herein.

14           9.        The '122 Patent is owned by the United States of America, as represented by  
15 the Secretary of the Navy. To allow enforcement, commercialization of and protection of  
16 this patent and the technology it represents, in September 2004, the United States Navy  
17 executed an exclusive license agreement with Metrix Services, Inc. ("Exclusive License  
18 Agreement") and, by this Exclusive License Agreement, expressly granted Metrix Services  
19 the exclusive right to practice, enforce, and sublicense, among other rights, the '122 Patent,  
20 subject to the general limitations imposed by federal law. A true and correct copy of the  
21 Exclusive License Agreement is attached hereto as Exhibit A and incorporated herein by  
22 reference. With the express approval of the United States Navy, Metrix Services  
23 transferred its entire right, title, and interest to, and in, the '122 Patent to Network  
24 Signatures on February 14, 2006. A true and correct copy of the First Amendment to the  
25 Exclusive License Agreement, which, among other things, approved the assignment of the  
26 Exclusive License Agreement to Network Signatures, is attached hereto as Exhibit B and  
27 incorporated herein by reference. A true and correct copy of the Assignment from Metrix  
28 to Network Signatures is attached as Exhibit C and incorporated herein by reference.

1           10. Pursuant to its rights under the Exclusive License Agreement, Network  
2 Signatures has begun the commercial development of a product, known as EasyConnect,  
3 that utilizes the ‘122 Patent. Network Signatures has demonstrated the product to NRL  
4 personnel and has received NRL’s recognition of its development efforts. A true and  
5 correct copy of an October 12, 2006, letter from the Navy to Network Signatures reflects  
6 this and is attached as Exhibit D and incorporated by reference herein.

7           11. Network Signatures has also begun exercising its other primary obligation  
8 under the Exclusive License Agreement: protecting the Navy’s intellectual property rights  
9 from infringement.

10   **FIRST CLAIM FOR RELIEF**

11   **AGAINST DEFENDANT FOR DIRECT, CONTRIBUTORY AND INDUCING**  
12   **INFRINGEMENT OF U.S. PATENT NO. 5,511,122**

13           12. Plaintiff incorporates herein by reference the allegations set forth in  
14 paragraphs 1-11 of the Complaint as though fully set forth herein.

15           13. A true and correct copy of the ‘122 Patent is attached as Exhibit E and  
16 incorporated herein by reference. On information and belief, Defendant uses digital  
17 certificates and digital signatures implemented though the use of public key infrastructure  
18 to facilitate communication with its employees and customers. For example, Defendant  
19 enables a computer of a Defendant customer, affiliate, business partner, or employee  
20 (“sending computer”) to send a secure communication over the Internet to another  
21 computer (“receiving computer”) by using a confidential private key, and a public key, to  
22 digitally sign the message being sent. When the receiving computer receives the signed  
23 message, it uses the sending computer’s public key, and its private key, to decrypt the  
24 signature (collectively referred to as “Defendant Authentication Activities”).

25           14. By making, using, selling, and offering for sale Defendant Authentication  
26 Activities, Defendant has directly infringed and continues to directly infringe the ‘122  
27 Patent, including infringement under 35 U.S.C. § 271(a) and (f).

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1           15. On information and belief, Defendant has also indirectly infringed and  
2 continues to indirectly infringe the '122 Patent by actively inducing direct infringement by  
3 other persons—specifically, customers, vendors and partners of Defendant—who operate  
4 methods that embody or otherwise practice one or more of the claims of the '122 Patent  
5 when Defendant had knowledge of the '122 Patent and knew or should have known that  
6 their actions would induce direct infringement by others and intended that their actions  
7 would induce direct infringement by others.

8           16. On information and belief, Defendant has also indirectly infringed and  
9 continues to indirectly infringe the '122 Patent by contributory infringement by providing  
10 non-staple articles of commerce to others for use in an infringing system or method with  
11 knowledge of the '122 Patent and knowledge that these non-staple articles of commerce are  
12 used as a material part of the claimed invention of the '122 Patent.

13           17. On information and belief, Defendant's foregoing acts of infringement  
14 include infringement by use and implementation of the Defendant Authentication Activities  
15 which are made part of their retail products and services.

16           18. On information and belief, Defendant will continue to infringe the '122 Patent  
17 unless enjoined by this Court.

18           19. On information and belief, Defendant's infringement of the '122 Patent is, has  
19 been, and continues to be willful and deliberate.

20           20. As a direct and proximate result of Defendant's infringement of the '122  
21 Patent, Network Signatures and the United States Government have been and continue to  
22 be damaged in an amount yet to be determined.

23           21. Unless a preliminary and permanent injunction are issued enjoining  
24 Defendant and its officers, agents, servants and employees, and all others acting on their  
25 behalf or in concert with Defendant, from infringing the '122 Patent, Network Signatures,  
26 and the United States Government, will be greatly and irreparably harmed.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Network Signatures prays for judgment against Defendant as follows:

(1) For a judicial determination and declaration that Defendant has directly infringed, and continues to directly infringe, United States Letters Patent No. 5,511,122;

(2) For a judicial determination and declaration that Defendant has induced, and continues to induce, the infringement of United States Letters Patent No. 5,511,122;

(3) For a judicial determination and declaration that Defendant has contributorily infringed, and continues to contributorily infringe, United States Letters Patent No. 5,511,122;

(4) For a judicial determination and decree that Defendant's infringement of United States Letters Patent No. 5,511,122 has been, and continues to be, willful and deliberate;

(5) For a judicial determination and decree that Defendant, its respective subsidiaries, officers, agents, servants, employees, licensees, and all other persons or entities acting or attempting to act in active concert or participation with it or acting on its behalf, be preliminarily and permanently enjoined from further infringement of the '122 Patent;

(6) For a declaration that Defendant notify all of its customers, vendors and users of the infringing system and customers' participation in the infringement with Defendant's encouragement, and that Defendant encourage its customers, vendors and users to cease all such infringing actions;

(7) For a judicial decree that orders Defendant to account for and pay to Network Signatures all damages caused to Network Signatures by reason of Defendant's infringement pursuant to 35 U.S.C. Section 284, including enhanced damages under 35 U.S.C. Section 285;

(8) For an award of damages according to proof at trial;

1 (9) For a judicial declaration that this case is exceptional under 35 U.S.C. Section  
2 285 and Defendant be ordered to pay Network Signatures' costs, expenses, and reasonable  
3 attorney's fees pursuant to 35 U.S.C. Sections 284 and 285;

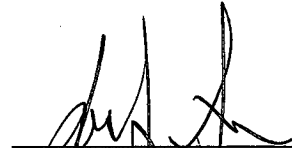
4 (10) For a judicial order awarding to Network Signatures pre-judgment and post-  
5 judgment interest on the damages caused to it by Defendant's infringement; and

6 (11) For any such other and further relief as the Court may deem just and proper  
7 under the circumstances.

8  
9 Dated: August 9, 2010

**ONE LLP**

10  
11  
12 By: \_\_\_\_\_

  
Joseph K. Liu

Attorneys for Plaintiff, Network Signatures, Inc.

**DEMAND FOR JURY TRIAL**

Plaintiff Network Signatures, Inc. hereby demands trial by jury in this action.

Dated: August 9, 2010

**ONE LLP**

By: 

Joseph K. Liu

Attorneys for Plaintiff, Network Signatures, Inc.

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27 September 2004

RECEIVED  
Between  
MURPHY BROWNE, INC.  
and  
LONDON BRIDGE OF AMERICA  
As Represented by  
THE SECRETARY OF THE TRUST

100-110-04-03-101

EXHIBIT A

3

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BACKGROUND

This exclusive license (hereinafter called "LICENSE") is made and entered into by and between the United States of America as represented by the Secretary of the Navy (hereinafter called "LICENSEE") and Metrix Services, Inc., a corporation organized and existing under the laws of the State of California (hereinafter called "LICENSOR") having an address at 1 Peters Canyon, Irvine, CA 92618.

WITNESSETH:

WHEREAS Title 35 of the United States Code, Section 207, authorizes Federal agencies to license their patents; and

WHEREAS Title 37 of the Code of Federal Regulations, Chapter IV, Part 404 entitled "Licensing of Government Owned Inventions" sets forth the terms and conditions under which licenses may be granted; and

WHEREAS the above-cited authorities provide that licensing of Government inventions will best serve the interests of the Federal Government and the public when utilization of such inventions is promoted and such inventions are brought to practical application; and

WHEREAS LICENSOR has an assignment of full right, title, and interest in the invention disclosed and claimed in U.S. Patent No. 5,811,123 issued on April 23, 1998, for "Intermediate Network Authentication"; and

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WHEREAS LICENSOR has published in the Federal Register of December 17, 1996, the availability of a license under U.S. Patent No. 5,511,122; and

WHEREAS LICENSOR has supplied LICENSEE with a plan for development and marketing of this invention and has expressed its intention to carry out this plan upon the granting of this license; and

WHEREAS LICENSOR has agreed that any products embodying this invention or produced through the use of this invention for use or sale in the United States will be manufactured substantially in the United States; and

WHEREAS LICENSOR has published in the Federal Register of September 8, 2004, notice of its intention to grant this license under U.S. Patent No. 5,511,122 to LICENSOR and has provided the public with an opportunity for filing written objections; and

WHEREAS LICENSOR has determined that:

(A) The interest of the Federal Government and the public will best be served by the proposed license, in view of the LICENSOR's intentions, plans, and ability to bring the invention described and claimed in U.S. Patent No. 5,511,122 to practical application or otherwise promote the invention's utilization by the public;

(B) The desired practical application has not been achieved, nor is not likely expeditiously to be achieved, under any

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nonexclusive license which has been granted, or which may be granted, on the invention;

(C) Exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to Practical Application or otherwise promote the invention's utilization by the public;

(D) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to Practical Application or otherwise promote the invention's utilization by the public; and

WHEREAS INVENTOR has not determined that the grant of this LICENSE will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates or to create or maintain other situations inconsistent with the antitrust laws; and

WHEREAS INVENTOR has considered the capabilities of INVENTOR to bring the invention to Practical Application and has found that the INVENTOR is a responsible party for negotiating this LICENSE on terms and conditions most favorable to the public interest and that to grant this exclusive LICENSE would be in the public interest;

AND, therefore, in accordance with and to the extent provided by the aforementioned authorities and in consideration of the foregoing promises and of the covenants and obligations

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hereinafter set forth to be well and truly performed, and other good and valuable consideration, the parties hereto agree to the foregoing and as follows:

SECTION I

Definitions

The following definitions shall apply to the defined words where such words are used in this LICENSE:

A. The "Licensed Patent" means U.S. Patent No. 5,511,122 entitled "Intermediate Network Authentication" issued April 23, 1996, to Randall Arkinson;

B. A "Licensed Invention" means an invention claimed in the Licensed Patent and any patents issuing thereon;

C. To "Practice the Licensed Invention" means to make, use, import, offer for sale, and sell by or on behalf of licensee or otherwise through or according to law any machine, article of manufacture, composition of matter, or process physically embodying or made according to a Licensed Invention;

D. "Practical Application" means to manufacture in the case of a composition, product or article of manufacture, to practice in the case of a process or method, or to operate in the case of a machine or system, and, in each case under such conditions as to establish that a Licensed Invention is being utilized and that its benefits are to the extent permitted by law and Government regulations available to the public on reasonable terms;

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H. A "Royalty-Bearing Product" means any product defined by any claim of the licensed patent or made by a method claimed in the licensed patent;

I. "Net Selling Price" shall mean the invoice price of the Royalty-Bearing Product sold, less all discounts and rebates actually allowed, allowances actually granted on account of rejections, returns, or billing errors, and separately billed duties, insurance, taxes, and other government or regulatory charges. A Royalty-Bearing Product will be considered to be sold when shipped or delivered to a customer or, in case of a service, will be considered to be sold when placed into service for a customer or made available to a customer for use.

J. "United States" means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico;

K. A "Fiscal Year" is the period after September 30 of a calendar year and before January 1 of the following calendar year;

L. "Affiliate" shall mean any company, corporation, association or business in which INTERSINE owns directly or indirectly a controlling interest.

M. "Subsidiary" shall mean any non-affiliate granted a sublicense under Article II;

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K. "Antilicense Income" shall mean any payments that LICENSEE or an AFFILIATE receives from a SUBLICENSEE in consideration of the sublicense of the rights granted by LICENSEE and AFFILIATE under Article K, including without limitation license fees, milestone payments, license maintenance fees, royalty fees, upfront fees, one-time royalties and other payments.

ARTICLE II

LICENSE GRANT

LICENSOR grants to LICENSEE an exclusive right and license to practice the Licensed Invention throughout the United States commencing on the date of execution of this LICENSE by LICENSOR, which shall become the effective date of the LICENSE, until the expiration of U.S. Patent No. 5,911,122 unless the LICENSE is sooner notified or terminated in whole or in part.

LICENSOR hereby grants to LICENSEE the right to extend the LICENSE granted hereunder in one or more JURISDICTIONS subject to the terms and conditions hereof, provided that the JURISDICTION is not directly or indirectly controlled by a foreign company, corporation, association, business or government.

This LICENSE is nonassignable without written approval of LICENSOR except to the successor of that part of LICENSEE's business to which this Licensed Invention pertains, provided that the successor is not directly or indirectly controlled by a foreign company, corporation, association, business or government.



ARTICLE III

LICENSEE'S Performance

LICENSEE agrees to carry out the plan for development and marketing of a Licensed Invention submitted with LICENSEE's Application for License dated August 27, 2004 and amended September 13, 2004, to bring this Licensed Invention to Practical Application one (1) year from date of execution of the LICENSE and LICENSEE will, thereafter, continue to make the benefits of this Licensed Invention reasonably accessible to the public for the remainder of the period of this LICENSE.

LICENSEE agrees that during the period of this LICENSE any products embodying this Licensed Invention or produced through the use of a Licensed Invention for use or sale by LICENSEE or its sublicensees in the United States will be manufactured substantially in the United States.

LICENSEE shall pay to the LICENSOR a non-refundable licensing fee in the amount of twenty five thousand dollars (\$25,000) payable upon the execution of this LICENSE by LICENSEE. Payment will be made in the manner prescribed in Article IV.

LICENSEE agrees to promptly report to LICENSOR any changes in mailing address, name or company affiliation during the period of this LICENSE and to promptly report discontinuance of LICENSEE's making the benefits of this Licensed Invention reasonably accessible to the United States public.

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ARTICLE IV

Royalties

LICENSEE shall pay a royalty to LICENSOR of three percent (3%) of the Net Selling Price for each Royalty-Bearing Product made, used, or sold by LICENSEE or its licensed AFFILIATES. LICENSEE shall also pay a royalty to LICENSOR of three percent (3%) of the Sublicensee Income. Notwithstanding the above, in no event shall any single sale or license be subjected to the payment of a royalty greater than 3% or multiple royalties of 3%.

If a Royalty-Bearing Product is distributed in whole or in part for non-cash consideration (whether or not at a discount), the Net Selling Price shall be calculated as the price of the Royalty-Bearing Product charged to an independent third party during the same royalty reporting period, or in the absence of such sales, as the fair market value of the Royalty-Bearing Product.

Non-cash consideration shall not be accepted by LICENSEE or any sublicensees for the sale of any Royalty-Bearing Product without the prior written consent of LICENSOR.

Royalties will not be paid on items sold directly to agencies of the U.S. Government or for known U.S. Government end use.

In sales made between LICENSEE and its AFFILIATES or sublicensees for resale, the royalty shall be paid on the higher Net Selling Price.

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27 August 2004

Notwithstanding the provisions of the preceding paragraphs in this Article IV, LICENSOR agrees to pay at least a minimum annual royalty of ten thousand dollars (\$10,000) for calendar year 2006, and each calendar year thereafter throughout the period of the LICENSE. The minimum annual royalty for each calendar year shall be due and payable in advance on or before September 30 of the preceding year and will be credited as advance payment of royalties to accrue during the calendar year following payment. The minimum annual royalty payments will not be returned in whole or in part.

LICENSOR shall send to INVENTOR all royalties which accrue between January 1 and December 31 of each year by February 28 of the following year. A royalty report shall be included with each payment setting forth the quantity and Net Selling Price of each Royalty-bearing Product sold during the period covered by the report, to whom sold and the date of such sale, and the total amount of royalties being paid for that year. Royalty reports are due each calendar year. The last royalty report is the sixty (60) days after the expiration of this license.

All payments due LICENSOR under this LICENSE shall be paid in United States dollar amounts to the U.S. DEPT OF NAVY and mailed to:

Office of Naval Research  
Patent Counsel of the Navy (ONR-PLC)  
800 N. Quincy Street  
Washington, VA 22217-5650

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with a copy of each royalty report to:

Head, Technology Transfer Office  
Naval Research Laboratory, Code 1004  
4555 Overlook Ave., NW  
Washington, DC 20375-5330

INCENSE agrees to make and keep and shall require its AFFILIATES and sublicensees to make and keep full, accurate and complete books and records (together with supporting documentation) as are necessary to establish its compliance with this Article IV. Such records shall be retained for at least three (3) years following the end of the reporting period to which they relate.

INCENSE agrees that INCENSE may, if INCENSE so desires at a future time or times, have a duly authorized agent or representative in INCENSE's behalf examine all such books and records and supporting documentation either at INCENSE's business premises or at a place mutually agreed upon by INCENSE and INCENSE for the sole purpose of verifying reports and payments hereunder. In conducting examinations pursuant to this paragraph, INCENSE's representative shall have access to all records that INCENSE reasonably believes to be relevant to the calculation of royalties under Article IV. If a royalty payment deficiency is determined, INCENSE shall pay the royalty deficiency not outstanding within thirty (30) days of receiving written notice thereof. Payments made by INCENSE after the due date shall include interest at the annual rate of two percentage points above the

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27/10/2007

Prime Rate (as reported in the Wall Street Journal for the due date) for the period of lateness. Such examination by LICENSOR's representative shall be at LICENSOR's expense, except that if such examination shows an underpayment or underpayment in excess of five percent (5%) for any twelve (12) month period, then LICENSOR shall pay the cost of such examination.

Article V

Patent Marking and Enforcement

LICENSOR hereby agrees to mark each product manufactured or sold under this LICENSE (or when the character of the product precludes marking, the package containing any such product) with the notation "Licensed from U.S. Navy under U.S. Patent No. 5,511,129". LICENSOR agrees not to create the appearance that LICENSOR endorses LICENSOR's business or products.

Article VI

Representation and Warranties

LICENSOR makes no representation or warranty as to validity of U.S. Patent No. 5,511,129 or of the scope of any of the claims contained therein or that the exercise of this LICENSE will not result in the infringement of other patent(s). Neither LICENSOR nor its employees assumes any liability whatsoever resulting from the exercise of this LICENSE.

(15)

27 September 2004

Nothing relating to the grant of this LICENSE, nor the grant itself, shall be construed to confer upon LICENSEE or any sub-licensee hereunder or any other person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this LICENSE shall not be immunized from the operation of State or Federal law by reason of the source of the grant.

Nothing contained in this LICENSE shall be interpreted to grant to LICENSEE any rights with respect to any invention other than the licensed invention.

ARTICLE VII

Reports

LICENSEE agrees to submit annual reports on or before March 1 of each calendar year on its efforts to achieve practical application of the licensed invention by one (1) year from date of expiration of the LICENSE, with particular reference to LICENSEE's plan for development and marketing of the licensed invention submitted with LICENSEE's application for license. These reports shall contain a discussion of the actual number of staff and dollars spent during the preceding year committed to the commercialization effort. These reports shall contain information within LICENSEE's knowledge, or which it may acquire under normal business practices, pertaining to the commercial use being made of this licensed invention and other information which LICENSEE may

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27 September 2004

determine is pertinent to Government licensing activities, LICENSOR agrees to submit such reports to LICENSOR until such time that the invention has been brought to the point of Practical Application.

ARTICLE VIII

Modification and Termination

This LICENSE may be terminated in whole or in part by LICENSOR if:

(a) LICENSOR determines that LICENSOR is not executing the plan submitted with the request for license dated August 27, 2004 and amended September 13, 2004, and LICENSOR cannot otherwise demonstrate to the satisfaction of LICENSOR that it has taken or can be expected to take within a reasonable time effective steps to achieve Practical Application of this licensed invention;

(b) LICENSOR determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of this LICENSE and such requirements are not reasonably satisfied by LICENSOR;

(c) LICENSOR willfully made a false statement of or willfully omitted a material fact in its application for license or in any report required by this LICENSE; or

(d) LICENSOR commits a substantial breach of a covenant or agreement herein contained.

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