

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

**NOVELPOINT SECURITY LLC,**

Plaintiff,

v.

**HEWLETT-PACKARD COMPANY,**

Defendant.

Case No. 2:12-cv-104

**PATENT CASE**

**JURY TRIAL DEMANDED**

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**FIRST AMENDED COMPLAINT**

Plaintiff NovelPoint Security LLC files this First Amended Complaint against Hewlett-Packard Company, for infringement of United States Patent Nos. 5,434,562 (the “562 Patent”) and 6,212,635 (the “635 Patent”).

**PARTIES AND JURISDICTION**

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff NovelPoint Security LLC (“Plaintiff” or “NovelPoint”) is a Texas limited liability company with its principal office located in the Eastern District of Texas, at 1300 Ballantrae Drive, Allen, Texas 75013.

4. Upon information and belief, Defendant Hewlett-Packard Company (“Defendant”) is a Delaware corporation with its principal office located at 3000 Hanover Street, Palo Alto, CA 94304-1185. This Court has personal jurisdiction over Defendant because Defendant has committed, and continues to commit, acts of infringement in the state of Texas,

has conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas.

5. On information and belief, Defendant's products that are alleged herein to infringe were and/or continue to be made, used, imported, offered for sale, and/or sold in the Eastern District of Texas.

**VENUE**

6. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because Defendant is deemed to reside in this district. In addition, and in the alternative, Defendant has committed acts of infringement in this district.

**COUNT I**  
**(INFRINGEMENT OF UNITED STATES PATENT NO. 5,434,562)**

7. Plaintiff incorporates paragraphs 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

9. Plaintiff is the owner by assignment of the '562 Patent with sole rights to enforce the '562 Patent and sue infringers.

10. A copy of the '562 Patent, titled "Method for Limiting Computer Access to Peripheral Devices," is attached hereto as Exhibit A.

11. The '562 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

12. Upon information and belief, Defendant has directly infringed and continues to directly infringe one or more claims of the '562 Patent, including at least claims 3, 4, 7, 8, 9, 12, 13, 14, 18, and 19, by making, using, importing, selling and/or offering for sale computers that include a computer security system and/or a security method for a computer covered by one or

more claims of the '562 Patent, including without limitation the computer models HP EliteBook 8760w Mobile Workstation, HP Compaq dc5700 Small Form Factor PC, HP xw8600 Workstation, HP Compaq 6910p Notebook PC, and the other computer models identified by Plaintiff in its P.R. 3-1 disclosures in this case (the "Accused Products").

13. Upon information and belief, Defendant has induced infringement and continues to induce infringement of one or more claims of the '562 Patent, including at least claims 3, 4, 7, 8, 9, 12, 13, 14, 18, and 19, by end user customers of the Accused Products, with knowledge of the '562 Patent and with the specific intent to cause infringement. Allegations regarding Defendant's knowledge of the '562 Patent are set forth in Paragraph 28 below and are incorporated by reference herein. Defendant's specific intent to cause infringement can be inferred from the facts that Defendant makes, uses, sells, offers for sale and/or imports computers that include a Trusted Platform Module ("TPM") chip that is a critical part of the infringing activity, that Defendant markets that the TPM chip is included as a security feature in the Accused Products, and Defendant encourages its customers to use the security features of the TPM chip. In addition, Defendant is a founding member and a current member at the highest "Promoter" level of the Trusted Computing Group ("TCG") industry consortium that establishes and promulgates the TPM standards.

14. Defendant's actions complained of herein will continue unless Defendant is enjoined by this court.

15. Plaintiff is in compliance with 35 U.S.C. § 287.

16. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

**COUNT 2**  
**(INFRINGEMENT OF UNITED STATES PATENT NO. 6,212,635)**

17. Plaintiff incorporates paragraphs 1 through 6 herein by reference.

18. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

19. Plaintiff is the owner by assignment of the '635 Patent with sole rights to enforce the '635 Patent and sue infringers.

20. A copy of the '635 Patent, titled "Network Security System Allowing Access and Modification to a Security Subsystem After Initial Installation When a Master Token Is in Place," is attached hereto as Exhibit B.

21. The '635 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

22. Upon information and belief, Defendant has directly infringed and continues to directly infringe one or more claims of the '635 Patent, including at least claims 1, 2, 8, 18 and 21, by making, using, importing, selling and/or offering for sale computers that utilize a method for providing security for a computer and/or computers that include a computer security system covered by one or more claims of the '635 Patent, including without limitation the computer models HP EliteBook 8760w Mobile Workstation, HP Compaq dc5700 Small Form Factor PC, HP xw8600 Workstation, HP Compaq 6910p Notebook PC, and the other Accused Products.

23. Upon information and belief, Defendant has induced infringement and continues to induce infringement of one or more claims of the '635 Patent, including at least claims 1, 2, 8, 18 and 21, by end user customers of the Accused Products, with knowledge of the '635 Patent and with the specific intent to cause infringement. Allegations regarding Defendant's knowledge of the '635 Patent are set forth in Paragraph 28 below and are incorporated by reference herein.

Defendant's specific intent to cause infringement can be inferred from the facts that Defendant makes, uses, sells, offers for sale and/or imports computers that include a Trusted Platform Module ("TPM") chip that is a critical part of the infringing activity, that Defendant markets that the TPM chip is included as a security feature in the Accused Products, and Defendant encourages its customers to use the security features of the TPM chip. In addition, Defendant is a founding member and a current member at the highest "Promoter" level of the Trusted Computing Group ("TCG") industry consortium that establishes and promulgates the TPM standards.

24. Defendant's actions complained of herein will continue unless Defendant is enjoined by this court.

25. Plaintiff is in compliance with 35 U.S.C. § 287.

26. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

**COUNT 3**  
**WILLFUL INFRINGEMENT**

27. Plaintiff incorporates paragraphs 1 through 26 herein by reference.

28. The infringement of the '562 and '635 Patents by Defendant has been willful and continues to be willful. Defendant had knowledge of the '562 and '635 Patents, including in at least one or more of the following ways, without limitation:

- a. The '562 and '635 Patents are prominent, pioneering patents in the field of hardware-based computer security. This is evidenced in part by the extent to which each of these patents has been forward-cited as prior art in connection with the examination of subsequently-issued U.S. patents. The '562 Patent

has been forward-cited in at least 64 subsequently-issued U.S. patents, including patents originally assigned to such prominent companies as Dell, Canon, Packard Bell, IBM (7 times), Intel, Sun Microsystems, Samsung, Lucent, Iomega, Hitachi, Myspace, Novell, Lockheed Martin, STMicroelectronics, Lenovo and Seagate. The '635 Patent has been forward-cited in at least 186 subsequently-issued U.S. patents, including patents originally assigned to such prominent companies as Dell, Intel (86 times), IBM (8 times), Novell, Nortel, Texas Instruments, Freescale, Nokia, AT&T, Ingersoll-Rand, Lenovo, AOL, Matsushita (now Panasonic), Microsoft, Cisco, Lockheed Martin, Samsung, RIM, Wells Fargo Bank, Avaya, STMicroelectronics, McAfee, Tellabs and Seagate.

- b. The '635 Patent was forward-cited in at least four subsequently-issued U.S. patents originally assigned to Defendant – U.S. Patent Nos. 7,069,439 (filed 3/3/2000, issued 6/27/2006); 7,200,747 (filed 10/31/2001, issued 4/3/2007); 7,779,267 (filed 9/4/2001, issued 8/17/2010); and 8,123,126 (filed 7/20/2007, issued 2/28/2012).
- c. Defendant is a founding member and a current member at the highest “Promoter” level of the TCG industry consortium that establishes and promulgates the standards for the TPM chip that is a critical part of Defendant’s infringement of the '562 and '635 Patents. Defendant also has a seat on the Board of Directors of the TCG. Because of its very nature in promulgating standards for hardware-based computer security, the TCG – and thus, its members, such as Defendant – should be aware of prominent patents

in that field, such as the '562 and '635 Patents. In addition, numerous members of the TCG industry consortium, in addition to Defendant, are original assignees of subsequently-issued U.S. patents that forward-cited the '562 and/or '635 Patents or otherwise had notice of the '562 and/or '635 Patents. Moreover, some of the members of the TCG industry consortium had been approached by the inventor of the '562 and '635 Patents with offers to license or otherwise utilize the inventions.

- d. Defendant is a member of RPX Corporation, a defensive patent aggregation service, and one or more of the individual members of Plaintiff disclosed the '562 and '635 Patents to RPX in 2010. Upon information and belief, RPX provides its member companies with updates about patents that might be of concern to them. Because the purpose of RPX is to obtain patent rights for its members, it is plausible – and indeed, likely – that RPX would have identified the '562 and '635 Patents to Defendant and other member companies who have products implicated by the '562 and/or '635 Patents.
- e. Through the filing and service of the original Complaint in this lawsuit, in March 2012.

29. Since the time Defendant received notice of the '562 and/or '635 Patents, it has continued to infringe those patents. Upon information and belief, Defendant has done so despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '562 and/or '635 Patents), and this objectively-defined risk was known to Defendant or so obvious that it should have been known to Defendant.

**DEMAND FOR JURY TRIAL**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of all issues so triable by right.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the Court to:

- a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;
- b) Enjoin Defendant, its agents, officers, servants, employees, attorneys and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 5,434,562;
- c) Enjoin Defendant, its agents, officers, servants, employees, attorneys and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 6,212,635;
- d) Award Plaintiff damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- e) Award Plaintiff enhanced damages as provided under 35 U.S.C. § 284.
- f) Award Plaintiff pre-judgment and post-judgment interest and costs;
- g) Enter judgment and an order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees;  
and
- h) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.



Dated: January 24, 2013

Respectfully submitted,

/s/ Craig Tadlock  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 24th day of January, 2013, the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Craig Tadlock  
Craig Tadlock