

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

TRUSTED KNIGHT CORPORATION,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION AND TRUSTEER, INC.,

Defendant.

C.A. No. _____

COMPLAINT FOR PATENT INFRINGEMENT

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent No. 8,316,445 (“the ‘445 patent”). This action arises under the laws of the United States relating to patents, including 35 U.S.C. § 281.

THE PARTIES

2. Plaintiff Trusted Knight Corporation (“Trusted Knight”) is a Delaware corporation having its principal place of business at 301 Fourth Street, Suite #20, Annapolis, MD 21403. Trusted Knight develops and delivers top-tier custom security solutions to government organizations and leading businesses to combat the evolving and sophisticated attacks performed by internet criminals.

3. Defendant International Business Machines Corporation (“IBM”) is a New York corporation having a principal place of business at 1 New Orchard Road, Armonk, New York 10504. IBM has appointed The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its registered agent in the State of Delaware.

4. Defendant Trusteer, Inc. (“Trusteer”) (together with IBM, “Defendants”) is a Delaware corporation having a principal place of business at 545 Boylston Street, 5th Floor, Boston, Massachusetts 02116. Trusteer has appointed The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its registered agent in the State of Delaware.

JURISDICTION AND VENUE

5. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and pursuant to the patent laws of the United States of America, 35 U.S.C. § 101 *et seq.*

6. Defendants are subject to personal jurisdiction in this district because they have purposefully engaged in activities giving rise to these claims for patent infringement that were and are directed at this judicial district. Further, Trusteer is subject to personal jurisdiction in this district because it is a corporation duly incorporated under the laws of Delaware.

7. Venue properly lies within the District of Delaware pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c) and (d) and 28 U.S.C. § 1400(b), because Defendants maintain or have maintained continuous and systematic contacts with this judicial district, because Defendants are subject to personal jurisdiction in this state, and because Defendants reside in this judicial district for purposes of 28 U.S.C. §§ 1391(c) and 1400(b).

FACTUAL BACKGROUND

8. Trusted Knight is headquartered in Annapolis, Maryland with operations throughout the United States. The Trusted Knight management has its roots in the National Security Agency, military intelligence, and security across the financial industry. The Trusted Knight management has focused on delivering top-tier custom security solutions to government organizations and leading businesses to combat the evolving and sophisticated attacks performed by internet criminals.

9. On information and belief, Trusteer has and currently makes, uses, offers for sale, and/or sells within the United States the Trusteer Rapport product(s) (“Trusteer Rapport”). Trusteer Rapport is anti-key-logging software that protects against malware in a variety of applications. It “can be installed on any end user platform including Windows, Mac OS, and Virtual Desktops.” *See* <https://www.trusteer.com/products/trusteer-rapport>.

10. On information and belief, IBM acquired Trusteer in September 2013. Since September 2013, Defendants collectively have made, make, have used, use, have offered for sale, offer for sale, have sold, and/or sell Trusteer Rapport within the United States, and/or import Trusteer Rapport into the United States.

11. On information and belief, Defendants compete with Trusted Knight in the anti-crimeware and advanced fraud solutions industry.

THE ASSERTED PATENT

12. United States Patent No. 8,316,445 (“the ’445 patent”) was issued on November 20, 2012, to Lloyd Liske. A copy of the ’445 patent, titled “System and Method for Protecting Against Malware Utilizing Key Loggers,” is attached as Exhibit A.

13. Trusted Knight is the owner of the entire right, title and interest in and to the ’445 patent.

COUNT I

Infringement of United States Patent No. 8,316,445

14. Trusted Knight realleges and incorporates the preceding paragraphs of its Complaint.

15. Defendants have directly infringed and continue to directly infringe the ’445 patent, both literally and under the doctrine of equivalents, by making, using, offering for sale, and/or selling within the United States, without permission or license from Trusted Knight,

products that embody the inventions disclosed and claimed in the '445 patent, and/or by importing into the United States products that embody the inventions disclosed and claimed in the '445 patent. By way of example and not limitation, the Trusteer Rapport product infringes at least claims 1, 22, and 23 of the '445 patent.

16. In addition to direct infringement, Trusted Knight is informed and believes that Defendants have indirectly infringed and continue to indirectly infringe, both by inducement and contribution, the '445 patent. By way of example and not limitation, Defendants distribute, offer to sell and/or sell within the United States or import into the United States software, including but not limited to, Trusteer Rapport knowing it to be especially made or especially adapted for use in an infringement of at least claims 1, 22, and 23 of the '445 patent. Such components are not staple articles or commodities of commerce suitable for substantial noninfringing use.

17. Defendants had actual notice of the '445 patent at least as of the date of service of this Complaint.

18. Evidence of inducement of infringement will include, but is not limited to: (i) Defendants' knowledge of the '445 patent since at least as of the filing date of this Complaint; (ii) Defendants' intent to induce direct infringement of the '445 patent by, for example, distributing and/or selling software known to infringe; (iii) Defendants' active inducement of third parties' direct infringement; and (iv) Defendants' actual or constructive knowledge that its actions would induce infringement. For example, Defendants induce infringement by at least providing the Trusteer Rapport products in a default configuration that implement the infringing features, and by instructing its customers and/or downstream end-users to operate the Trusteer Rapport products in an infringing manner.

19. Evidence of Defendants' contributory infringement includes, but is not limited to: (i) Defendants' knowledge of the '445 patent since at least as of the filing date of this Complaint; (ii) Defendants' knowledge that the Trusteer Rapport product is especially adapted to infringe the '445 patent; and (iii) the lack of substantial noninfringing uses for the Trusteer Rapport product. Not only are all the components designed to implement the infringing features, but the default settings of the infringing Trusteer Rapport, as sold, are set accordingly.

20. As a result of Defendants' acts of infringement, Trusted Knight has suffered and will continue to suffer damages in an amount to be proven at trial.

21. Trusted Knight has been irreparably harmed by Defendants' acts of infringement, and will continue to be harmed unless and until Defendants' acts of infringement are enjoined and restrained by order of this Court. Trusted Knight has no adequate remedy at law and is entitled to a preliminary and permanent injunction against Defendants and their infringing products.

PRAYER FOR RELIEF

WHEREFORE, Trusted Knight respectfully requests that judgment be entered:

A. Declaring that Trusteer has directly infringed and is directly infringing the claims of the '445 patent;

B. Declaring that IBM has directly infringed and is directly infringing the claims of the '445 patent;

C. Declaring that Defendants have indirectly infringed and continue to indirectly infringe, both by inducement and contribution, the claims of the '445 patent;

D. Compensating Trusted Knight for all damages caused by Defendants' infringement of the '445 patent;

- E. Enhancing Trusted Knight's damages up to three times their amount under 35 U.S.C. § 284;
- F. Granting Trusted Knight pre- and post-judgment interests, together with all costs and expenses;
- G. Granting Trusted Knight its reasonable attorneys' fees under 35 U.S.C. § 285;
- H. Granting preliminary and permanent injunctive relief enjoining and restraining Defendants' and their agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with them, from making, using, offering to sell, selling, and importing into the United States any product, or using, offering to sell, or selling any service, that fall within the scope of any claim of the '445 patent; and
- I. Awarding such other relief as this Court may deem just and proper.

Dated: August 18, 2014

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