

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.:**

KASPERSKY LAB, INC.,

Plaintiff,

v.

DEVICE SECURITY, LLC,

Defendant.

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**COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT  
NONINFRINGEMENT AND INVALIDITY**

Plaintiff, Kaspersky Lab, Inc. (“Kaspersky”) sues Defendant, Device Security, LLC (“Device Security”) and alleges:

**Nature of Action**

1. This is an action for declaratory relief in which Kaspersky requests entry of judgment of patent invalidity and noninfringement for the reasons set forth below.

**Parties and Jurisdiction**

2. Plaintiff Kaspersky is a Massachusetts corporation with its principal place of business at 500 Unicorn Park, Woburn, Massachusetts 01801.

3. Defendant Device Security is a Florida LLC with its principal place of business at 175 SW 7<sup>th</sup> Street, Suite 1803 Miami, Florida 33130.

4. Device Security contends that it owns rights in U.S. Patent 6,813,487 (the “Device Security Patent”).

5. There is an immediate, real, and substantial controversy between the parties because Device Security has alleged that Kaspersky infringes the Device Security Patent and Kaspersky disputes this allegation.

6. Examples of Device Security's allegations that give rise to such a controversy are found in Device Security's letter to Kaspersky dated September 18, 2013 (Exhibit A).

7. On August 23, 2013, Device Security sued Asurion, LLC for allegedly infringing the Device Security Patent in the District of Delaware (Civ. No. 13-1478-SLR).

8. Device Security is a subsidiary of Wi-LAN Technologies, Inc.

9. Wi-LAN Technologies, Inc. is a privately held subsidiary of Wi-LAN, Inc., a publicly traded company on the Toronto Stock Exchange.

10. Device Security's mailing address is 11 Holland Avenue, Suite 608, Ottawa, Ontario, K1Y 4S1 CANADA; this is the same address as Wi-LAN, Inc.

11. Wi-LAN, Inc. has filed 27 patent-infringement suits since 2007, including in this District *Wi-LAN Inc. et al v. LG Electronics, Inc. et al.*, Case No. 1:2012-cv-23611 (filed Oct. 3, 2012) (transferred to D.N.J. as case 2:13-cv-04895).

12. On information and belief, Wi-LAN USA, Inc., an entity related to Wi-LAN, Inc., has filed nine (9) patent-infringement suits since 2012 in this District:

A. *Wi-LAN USA, Inc. et al v. Research in Motion Limited et al.*, Case No. 1:2012-cv-20232 (filed Jan. 20, 2012);

B. *Wi-LAN USA, Inc. et al v. Alcatel-Lucent USA Inc.*, Case No. 1:2012-cv-23568 (filed Oct. 1, 2012);

C. *Wi-LAN USA, Inc. et al v. Ericsson, Inc. et al.*, Case No. 1:2012-cv-23569 (filed Oct. 1, 2012);

- D. *Wi-LAN USA, Inc. et al v. Toshiba Corporation et al.*, Case No. 1:2012-cv-23744 (filed Oct. 15, 2012);
- E. *Wi-LAN USA, Inc. et al v. Apple Inc.*, Case No. 1:2012-cv-24318 (filed Dec. 6, 2012) (transferred to S.D. Cal. as case 3:13-cv-00798);
- F. *Wi-LAN USA, Inc. et al v. HTC Corporation et al.*, Case No. 1:2012-cv-24319 (filed Dec. 6, 2012) (transferred to S.D. Cal. as case 3:13-cv-00871);
- G. *Wi-LAN USA, Inc. et al v. Sierra Wireless America, Inc.*, Case No. 1:2012-cv-24320 (filed Dec. 6, 2012) (transferred to S.D. Cal. as case 3:13-cv-00843);
- H. *Wi-LAN USA, Inc. v. Research in Motion Limited et al.*, Case No. 1:2012-cv-24349 (filed Dec. 10, 2012); and
- I. *Wi-LAN USA, Inc. et al v. Research in Motion Limited et al.*, Case No. 1:2013-cv-21662 (filed May 8, 2013).

13. No other U.S. patents list the named inventor of the Device Security Patent, David A. Trommelen (“Trommelen”), as an inventor.

14. On information and belief, Trommelen also was or is an employee or owner (or both) of Tromco Enterprises.

15. Tromco Enterprises has a business address in Malton, New Jersey.

16. Trommelen’s address in his declaration of inventorship for the Device Security Patent is stated as Malton, New Jersey.

17. On information and belief, the attached resume describes Trommelen (Exhibit B).

18. On information and belief, Trommelen’s background at the time of the filing of the Device Security patent was as stated in Exhibit B:

Since 1986, Mr. Trommelen has provided a wide range of cost estimating services. The types of projects include real property assets such as manufacturing plants, warehouses, flex industrial/office buildings, laboratory/research & development facilities, food processing plants, refineries, power generating facilities, co-generation plants, shopping centers and various commercial/industrial site development. The services provided include new construction, renovations and demolition estimating.

19. On information and belief, when the Device Security Patent was filed Trommelen had never worked in the telecommunications industry.

20. On information and belief, when the Device Security Patent was filed, Trommelen's knowledge of the telecommunications industry, including the concepts described in the Device Security Patent, were learned from publicly available sources.

21. On information and belief, Trommelen did not reduce any claim of the Device Security Patent to practice before filing the application that became the Device Security Patent.

22. On information and belief, the earliest priority date for the Device Security Patent is October 18, 2000.

23. This court has subject matter jurisdiction in accordance with 28 U.S.C. §§ 2201, 2202, 1331 and 1338.

24. Venue is proper in this District because Device Security's principal place of business is at 175 SW 7<sup>th</sup> Street, Suite 1803 Miami, Florida 33130.

25. This court has personal jurisdiction over Device Security because Device Security is an entity created under the laws of the State of Florida and has therefore consented to be sued in this District.

## **Count I**

### **Declaration of Noninfringement of the Device Security Patent**

26. Kaspersky realleges Paragraphs 1 through 25 as though fully alleged herein.
27. Claim one of the Device Security Patent requires a subscriber of a network provider and a remote electronic device serviced by the network provider.
28. Claim one of the Device Security Patent includes a method step wherein the subscriber must communicate to the network provider that the remote electronic device is either lost or stolen, and the network provider must be able to tell the difference between these two possible communications.
29. Claim one of the Device Security Patent requires the network provider to treat a subscriber's report of a lost electronic device differently than a subscriber's report of a stolen electronic device.
30. Kaspersky does not operate or control a network for subscribers with remote electronic devices.
31. Users of Kaspersky Mobile Security cannot use the application to report that a mobile device has been stolen.
32. It is not possible to tell whether a Kaspersky Mobile Security user's mobile device has been stolen simply because the user elects to lock the device.
33. From the commands available to users of Kaspersky Mobile Security, there is no way for the user to explain why the user is executing a particular command.
34. There is no command available to users of Kaspersky Mobile Security that specifically informs a network that a particular device has been lost, as opposed to stolen.

35. Based on the reasons described above, all of which is based upon publicly available information, the Device Security Patent is plainly not infringed by Kaspersky Mobile Security or any other Kaspersky product.

36. For the reasons described above and as will be further demonstrated at trial, Kaspersky does not infringe any claim of the Device Security Patent.

## **Count II**

### **Declaration of Invalidity of the Device Security Patents**

37. Kaspersky realleges Paragraphs 1 through 25 as though fully alleged herein.

38. The ETSI standards attached as Exhibit C were published in January 2000.

39. Before the priority date of the Device Security Patent, F.C.C. regulations, including E911 regulations issued in 1999, required network providers to be able to locate mobile phones upon demand.

40. Before the priority date of the Device Security Patent, Exhibit D, European Patent Application 0899647A2 was published.

41. European Patent Application 0899647A2 discloses remotely securing electronic devices, including specifically cell phones at paragraph (0041) and claim 16.

42. The claims of the Device Security Patent recite no technical innovations over the prior art.

43. The claims of the Device Security Patent recite method steps that, when performed, yield predictable results in view of the prior art.

44. It was obvious (and obvious to try) in October 2000 the method steps recited in the claims of the Device Security Patent in view of industry standards requiring mobile devices

to be locatable by service providers and prior-art teaching that remote devices could be secured in the event of loss or theft.

45 Based on the reasons described above, all of which is based on publicly available information in the field of the invention, the claims of the Device Security Patent are obviously invalid.

46. In view of the prior art described above, and other prior art to be presented at trial, the claims of Device Security Patent are invalid because of anticipation, obviousness, failure to recite patentable subject matter, or are otherwise invalid or unenforceable for failure to comply with the requirements of 35 U.S.C. § 101, § 102, or § 103.

#### **Prayer for Relief**

Kaspersky requests judgment that:

1. Plaintiff Kaspersky has not directly infringed, willfully infringed, induced infringement, or contributorily infringed the Device Security Patents;
2. The Device Security Patents are invalid;
3. Device Security, and those in active concert of participation with Device Security who receive actual notice thereof, are permanently enjoined from initiating patent infringement litigation against Kaspersky, or threatening Kaspersky, or any of its customers, dealers, licensees, subsidiaries, parents, agents, servants, or employees, or any prospective or present sellers, dealers, licensees, distributors, customers, or users of Kaspersky's products or services, with patent infringement litigation based on the Device Security Patent, or charging any of them with infringement of the Device Security Patent;
4. A judgment awarding to Kaspersky its costs, disbursements, and attorneys' fees incurred in prosecuting this action, with interest, including damages for an exceptional case,

pursuant to 35 U.S.C. § 285, costs pursuant to 28 U.S.C. § 1920, § 1927, and otherwise according to law; and

5. For such other relief as the Court may deem just, equitable, and proper.

Respectfully submitted,

Dated: October 18, 2013

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