

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

GATEKEEPER SOLUTIONS INC.
7 NORTHWOOD COURT
DIX HILLS, NEW YORK 11746
Plaintiff

v.

FORCEPOINT, LLC
10900-A STONELAKE BLVD.
QUARRY OAKS 1, STE. 350
AUSTIN, TX 78759
Defendant

Civil Action No.:

24-cv-601

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Gatekeeper Solutions Inc., by its undersigned counsel, alleges as follows for its Complaint against Defendant Forcepoint, LLC.

THE NATURE OF THIS ACTION

1. Gatekeeper brings this action against Forcepoint pursuant to 35 U.S.C. §101 et. seq. and §§271, 281, 283, 284, & 285 inclusive, for infringement of one or more claims of U.S. Patent 9,032,038 (“the ‘038 patent”) titled “Recipient control system for ensuring non-conflicting and comprehensive distribution of digital information and method thereof.”

THE PARTIES

2. Plaintiff is a New York corporation having an address located at 7 Northwood Court, Dix Hills, New York 11746. Plaintiff is the owner of the ‘038 patent by assignment.

3. Defendant Forcepoint is a Delaware Corporation with a regular and established place of business at 10900-A Stonelake Blvd., Quarry Oaks 1, Ste. 350 Austin, TX 78759. Forcepoint makes, uses, develops, offers to sell, and sells the accused products throughout the

United States. Forcepoint manages, maintains and provides the Forcepoint Data Loss Prevention (DLP) product (the accused product) which infringes the patent in suit.

4. Defendant, and customers of Defendant, use the accused products to practice the claimed system and methods of the '038 patent.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the laws of the United States, 35 U.S.C. §271 et seq.

6. This Court has subject matter jurisdiction over this action pursuant to 35 U.S.C. §§271, 281 and 28 U.S.C. §§1331 and 1338(a), federal question.

7. This Court has personal jurisdiction over Defendant because Defendant is located in this district and maintains a regular and established place of business in this District.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a), 1400(b) and based on information set forth herein. Defendant maintains a place of business in this District and has committed acts of infringement, including development, use, sale, and offers to sell infringing products.

BACKGROUND AND GENERAL ALLEGATIONS

9. Gatekeeper is the current owner and assignee of the '038 patent.

10. Defendant Forcepoint provides, distributes, licenses and sells the Forcepoint DLP products on and between devices on a system and which implement a method that infringes the '038 patent.

11. Forcepoint infringes at least claims 1-45 of the '038 Patent.

12. On May 12th, 2015, United States Patent No. 9,032,038, entitled "Recipient Control System for Ensuring Non-conflicting and Comprehensive Distribution of Digital

Information and Method Thereof” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). The ‘038 Patent claims patent-eligible subject matter and is valid and enforceable. Gatekeeper is the exclusive owner by assignment of all rights, title, and interest in the ‘038 Patent, including the right to bring this suit for injunction and damages, and including the right to sue and recover all past, present, and future damages for infringement of the ‘038 Patent. Defendant is not licensed to the ‘038 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to the ‘038 patent whatsoever. A true and correct copy of the ‘038 Patent is attached hereto as **Exhibit A**.

13. The ‘038 Patent is referred to herein as the “Patent-in-suit.” The Patent-in-suit is presumed valid under 35 U.S.C. § 282.

THE PATENT

14. The claims of the ‘038 patent are directed to “A system for ensuring an electronic communication being sent by a user to two or more recipients, each recipient having at least one associated email address, telephone number and/or title, is not sent to another conflicting recipient” Claim 1 of the ‘038 patent recites:

1. A system for ensuring an electronic communication being sent by a user to two or more recipients, each recipient having at least one associated email address, telephone number and/or title, is not sent to another conflicting recipient, comprises:
 - a. means for receiving one or more parameters identifying conditions for a conflicting recipient for each recipient;
 - b. means for storing said parameters;
 - c. means for comparing the parameters of each recipient of said electronic communication with said parameters of other recipients to determine whether any of the other recipients is a conflicting recipient;
 - d. means for stopping the sending of the electronic communication when said comparing means determines at least one conflicting recipient;
 - e. means for notifying the user of each conflicting recipient as determined by said comparing means and the parameters that identify each conflicting recipient; and

f. means for sending the electronic communication when said comparing means does not determine at least one conflicting recipient.

INFRINGEMENT

15. Defendant engineers and provides the Forcepoint DLP product which has a feature to prevent sending of an e-mail on an email client such as Outlook to conflicting recipients. The Forcepoint Data Loss Prevention product infringes claims of the '038 patent.

16. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '038 patent, by making, using, testing, selling, offering for sale and/or importing into the United States Defendant's Accused Products.

17. Defendant also indirectly infringes the '038 Patent by actively inducing the direct infringement by third parties under 35 U.S.C. §271(b). Defendant has knowingly and intentionally actively induced others to directly infringe at least one claim of the '038 patent by providing software through which its customers practice the claimed methods and by providing infringing systems used by its customers, including Forcepoint DLP users throughout the United States. Defendant continues to induce infringement of the '038 patent. Defendant has contributorily infringed and continues to contributorily infringe under 35 U.S.C. §271(c) because, with knowledge of the '038 patent, they supply a material part of an infringing method and/or system, where the material part is not a staple article of commerce, and is incapable of substantial noninfringing use. Defendant contributes to its customers' infringement because, with knowledge of the '038 patent, Defendant supplies the technology that allows its customers to infringe the patent, including allowing Defendant's customers to practice the method claims.

18. Plaintiff has conducted a detailed analysis, establishing and confirming that Defendant's Accused Products directly infringe, contribute to and when used according to Defendant's instructions for operation, indirectly infringe claims of the '038 Patent.

19. Attached as **Exhibit B** to the Complaint is a claim chart demonstrating the correspondence of the operation of the accused products with elements of exemplary claims of the '038 patent.

20. Defendant and its customers have continued infringement.

21. The accused products satisfy the elements of the asserted claims, shown below is an example usage of Forcepoint DLP which infringes claim 1 of the '038 patent:

1. A system for ensuring an electronic communication being sent by a user to two or more recipients, each recipient having at least one associated email address, telephone number and/or title, is not sent to another conflicting recipient, comprises:

→ **Identify and automatically prevent** sharing of sensitive data to external users or unauthorized internal users.

a. means for receiving one or more parameters identifying conditions for a conflicting recipient for each recipient;

Use the **Condition** tab of the **Policy Rule** wizard to **define the rule:**

1) Use the drop-down box next to **This rule monitors** to select one of the following options:

- To trigger the rule on any content without analysis, select **All activities**. This may lead to large numbers of incidents.
- To monitor one or more specific classifiers, select **Specific data**, then use the **in** drop-down list to indicate when to trigger incidents.

b. means for storing said parameters;

Rules define the logic of the policy. They can be added to a policy, edited, or deleted from a policy at any time, as well as enabled or disabled.

When a policy is created, a rule is created automatically as content classifiers are configured.

c. means for comparing the parameters of each recipient of said electronic communication with said parameters of other recipients to determine whether any of the other recipients is a conflicting recipient;

■ A **policy engine** resides on all Forcepoint DLP servers, Web Content Gateway servers, and Forcepoint Email Security appliances. Policy engines are also integrated with Windows, and Mac OS X running Forcepoint DLP Endpoint.
The policy engine is responsible for parsing data and using analytics to compare it to the rules in policies.

d. means for stopping the sending of the electronic communication when said comparing means determines at least one conflicting recipient;

1) Under Email, select an action to take when a breach is discovered on network email channels.
With Forcepoint Email Security (on-premises), the action option configured here applies to all email directions.
For cloud infrastructure deployments such as Microsoft Azure, this option applies only to outbound email. (Inbound and Internal email is permitted, and an alert is sent to the Forcepoint Email Security administrator.)

- **Permit** the message to go through.
- **Block** or deny the message or post.
- **Quarantine** the message.
Select **Encrypt on release** to have the system encrypt the message before it's released.

e. means for notifying the user of each conflicting recipient as determined by said comparing means and the parameters that identify each conflicting recipient; and

To send notifications when there is a violation of a particular attribute setting, mark the **Send the following notification** check box.

- To configure who receives notifications, click the notification name ("Email policy violation"), then define the mail server, email subject, and message body, as well as other required properties.
- By default, for inbound messages, policy owners receive notifications. For outbound messages, both policy owners and message senders receive them.

f. means for sending the electronic communication when said comparing means does not determine at least one conflicting recipient.

After installing Forcepoint DLP software and configuring system settings, the next step is to create a policy. DLP policies enable monitoring and control of the flow of sensitive data throughout an organization. Depending on the existing Forcepoint DLP configuration, administrators can set up policies to monitor information sent via email and over HTTP and HTTPS channels, and ensure all communications are in line with applicable regulations and compliance laws. It is also possible to monitor email being sent to users' mobile devices.

There are 5 kinds of DLP policies. These include:

- A single **email DLP policy** that contains attributes to monitor in inbound and outbound messages. For each attribute (for example, the appearance of a defined key phrase), define whether to **permit** or quarantine the message, and whether a notification should be sent.

22. Defendant has infringed, and continues to infringe, at least claims 1-45 of the '038 Patent, under 35 U.S.C. § 271(a)(b) and/or (c), by (a) making, using, distributing offering to sell, selling and/or importing into the United States, systems, and methods that infringe the asserted claims and by performing the claimed methods in the United States, (b) by inducing others to use the accused products and/or sell the accused products and to perform the claimed methods in the United States, (c) by contributing to the infringement of others and by selling

components of the patented systems and (b & c) by selling a product for performing the patented process. Defendant continues to manufacture, use, offer to sell, sell and import accused products. The accused products are also being used to infringe. Defendant continues to sell accused products inducing and contributing to infringement by others and also continues to perform infringing activity by performing the claimed method in the United States.

23. By engaging in accused activity including making, using, distributing, offering to sell, selling and importing accused products in the United States, defendant continues to infringe claims of the '038 patent.

24. Upon information and belief, Defendant has directly infringed one or more of claims of the '554 and '534 patents under 35 USC §271(a):

"(a) Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

by engaging in accused activity including making, using, distributing, offering to sell, selling and importing accused products in the United States. Defendant continues to infringe claims of the '038 Patent.

25. Upon information and belief, Defendant has indirectly infringed one or more of the claims of the '038 Patent under 35 USC §271(b):

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

by providing accused products, with instructions, which are used to create a patented system and/or used to practice the patented methods according to the instructions and thereby inducing others to use the products in an infringing manner.

26. Upon information and belief, Defendant has indirectly infringed one or more of the claims of the '038 Patent under 35 USC §271(c):

(c) Whoever offers to sell or sells within the United States or imports into the United States . . . or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

by providing accused products, and other components and supplies, which are combined to form an infringing system and/or used in practicing methods which infringe the claims of the '038 Patent, thus contributing to the infringement of the '038 Patent.

27. Defendant does not have a license or authority to use the '038 Patent.

28. Defendant has been willfully infringing the '038 Patent since at least as early as they became aware of the '038 Patent. Upon information and belief, Defendant has no good faith defense to Plaintiff's infringement allegations and have refused to cease selling products or to engage in further attempts to reach a business resolution. Instead, Defendant has intentionally continued their knowing infringement.

29. As a result of Defendant's infringement of the '038 Patent, Plaintiff has suffered and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty.

**COUNT I
DIRECT INFRINGEMENT OF U.S. PATENT NO. 9,032,038**

30. The allegations of each of the paragraphs above are hereby re-alleged and incorporated herein by reference.

31. Defendant Forcepoint has directly infringed, and continues to directly infringe, at least claims 1-45 of the '038 Patent, under 35 U.S.C. § 271(a), by making, using, offering to sell, selling and importing the Accused Products in the United States.

32. Defendant does not have a license or authority to use the '038 Patent.

33. As a result of Forcepoint's infringement of the '038 Patent, Plaintiff has suffered and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty.

34. Forcepoint's infringement of the '038 patent has been willful under 35 U.S.C. § 284.

COUNT II

INDIRECT INDUCED INFRINGEMENT OF U.S. PATENT NO. 9,032,038

35. The allegations of each of the paragraphs above are hereby re-alleged and incorporated herein by reference.

36. Upon information and belief, Defendant Forcepoint has indirectly infringed one or more of the claims of the '534 patents under 35 USC §271(b) by providing accused products, with instructions, which are used to create an accused system and/or to practice the patented methods according to the instructions and thereby inducing others to use the products in an infringing manner.

37. Defendant does not have a license or authority to use the '038 Patent.

38. As a result of Forcepoint's infringement of the '038 Patent, Plaintiff has suffered and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty.

39. Forcepoint's infringement of the '038 patent has been willful under 35 U.S.C. § 284.

COUNT III
INDIRECT CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 9,032,038

40. The allegations of each of the paragraphs above are hereby re-alleged and incorporated herein by reference.

41. Upon information and belief, Defendant Forcepoint has indirectly infringed one or more of the claims of the '038 patent under 35 USC §271(c) by providing accused products, and components and supplies, which are used as components of infringing systems which infringe the claims of the '038 patent, thus contributing to the infringement of the '038 patent.

42. Upon information and belief, Defendant Forcepoint has indirectly infringed one or more of the claims of the '038 patent under 35 USC §271(c) by providing accused products, and components and supplies, which are used as components of infringing systems which are used to practice methods which infringe the claims of the '038 patent, thus contributing to the infringement of the '038 patent.

43. Defendant does not have a license or authority to use the '038 Patent.

44. As a result of Forcepoint's infringement of the '038 Patent, Plaintiff has suffered and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty.

45. Forcepoint's infringement of the '038 patent has been willful under 35 U.S.C. § 284.

PRAYER FOR RELIEF

- A. For a Judgment declaring that Defendant has infringed the '038 Patent.
- B. For a judgment declaring that Defendant's infringement of the '038 Patent has been willful and for enhancement of damages in accordance with 35 U.S.C. 284;
- C. For a grant of a permanent injunction pursuant to 35 U.S.C. §283, enjoining the Defendant from further acts of infringement;
- D. For a judgment awarding Plaintiff compensatory damages as a result of Defendant's infringement sufficient to reasonably and entirely compensate Plaintiff for infringement of the '038 Patent in an amount to be determined;
- E. For a judgement and order awarding a compulsory ongoing royalty;
- F. For a judgment declaring that this case is exceptional and awarding Plaintiff its expenses, costs and attorneys' fees in accordance with 35 U.S.C. §285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- G. For a judgment awarding Plaintiff prejudgment interest pursuant to 35 U.S.C. §284, and a further award of post judgment interest, pursuant to 28 U.S.C. §1961, continuing until such judgment is paid; and.
- H. For a judgment awarding Plaintiff enhanced damages under 35 U.S.C. §284; and
- L. For such other relief to which Plaintiff is entitled under the applicable United States laws and regulations or as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to the Federal Rules of Civil Procedure Rule 38(b), Plaintiff hereby demands trial by jury as to all claims in this litigation.

Respectfully Submitted:

/s/ Joseph J. Zito

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