



patent as the “patents-in-suit”; a copy of which is attached as Exhibit C). Plaintiff is the assignee of the patents-in-suit. Plaintiff seeks injunctive relief and monetary damages.

### **PARTIES**

2. Plaintiff Tallgrass Prairie Management, LLC is a limited liability company organized and existing under the laws of Texas with its principal place of business at 104 East Houston Street, Suite #170, Marshall, Texas 75670. Plaintiff is the assignee of all title and interest of the patents-in-suit. Plaintiff possesses the entire right to sue for infringement and recover past damages.

3. Upon information and belief, Defendant Microsoft Corporation (“Microsoft”) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at One Microsoft Way, Redmond, Washington 98052.

4. Upon information and belief, Defendant Apple Inc. (“Apple”) is a corporation organized and existing under the laws of the state of California, with its principal place of business located at 1 Infinite Loop, Cupertino, CA 95014.

5. Upon information and belief, Defendant Symantec Corporation (“Symantec”) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 350 Ellis Street, Mountain View, CA 94043.

6. Upon information and belief, Defendant WinMagic (USA), Inc. (“WinMagic”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2711 Centerville Road, Suite 300, Wilmington, DE 19808.

7. Upon information and belief, Defendant Checkpoint Software Technologies, Inc. (“CheckPoint”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 800 Bridge Parkway, Redwood City, CA 94065

## **JURISDICTION AND VENUE**

8. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 13331 and 1338(a).

9. The Court has personal jurisdiction over each Defendant because each Defendant has minimum contacts within the State of Texas, and the Eastern District of Texas; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; each Defendant has sought protection and benefit from the laws of the State of Texas; each Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's cause of action arise directly from Defendants' business contacts and other activities in the State of Texas and in the Eastern District of Texas.

10. More specifically, each Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Each Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Each Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Each Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use respective Defendant's products and services in the State of Texas and in the Eastern District of Texas.

11. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **COUNT I – PATENT INFRINGEMENT**

12. United States Patent No. 5,436,972 entitled “Method for Preventing Inadvertent Betrayal by a Trustee of Escrowed Digital Secrets” was duly and legally issued by the United States Patent and Trademark Office on July 25, 1995 after full and fair examination. Plaintiff is the assignee of all rights, title, and interest in and to the ‘972 patent and possesses all rights of recovery under the ‘972 patent including the right to sue for infringement and recover past damages.

13. Microsoft has infringed and continues to infringe one or more claims of the ‘972 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Microsoft has also contributed to the infringement of one or more claims of the ‘972 patent and/or actively induced others to infringe one or more claims of the ‘972 patent, in this district and elsewhere in the United States.

14. Apple has infringed and continues to infringe one or more claims of the ‘972 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Apple has also contributed to the infringement of one or more

claims of the '972 patent and/or actively induced others to infringe one or more claims of the '972 patent, in this district and elsewhere in the United States.

15. Symantec has infringed and continues to infringe one or more claims of the '972 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Symantec has also contributed to the infringement of one or more claims of the '972 patent and/or actively induced others to infringe one or more claims of the '972 patent, in this district and elsewhere in the United States.

16. WinMagic has infringed and continues to infringe one or more claims of the '972 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, WinMagic has also contributed to the infringement of one or more claims of the '972 patent and/or actively induced others to infringe one or more claims of the '972 patent, in this district and elsewhere in the United States.

17. CheckPoint has infringed and continues to infringe one or more claims of the '972 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information.

Upon information and belief, CheckPoint has also contributed to the infringement of one or more claims of the '972 patent and/or actively induced others to infringe one or more claims of the '972 patent, in this district and elsewhere in the United States.

18. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

19. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of Defendants' wrongful acts of infringing the '972 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

20. Defendants' infringement of Plaintiff's exclusive rights under the '972 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

## **COUNT II – PATENT INFRINGEMENT**

21. United States Patent No. 6,141,423 entitled "Method for Preventing Inadvertent Betrayal by a Trustee of Escrowed Digital Secrets" was duly and legally issued by the United States Patent and Trademark Office on October 31, 2000 after full and fair examination. Plaintiff is the assignee of all rights, title, and interest in and to the '423 patent and possesses all rights of recovery under the '423 patent including the right to sue for infringement and recover past damages.

22. Microsoft has infringed and continues to infringe one or more claims of the '423 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows

trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Microsoft has also contributed to the infringement of one or more claims of the '423 patent and/or actively induced others to infringe one or more claims of the '423 patent, in this district and elsewhere in the United States.

23. Apple has infringed and continues to infringe one or more claims of the '423 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Apple has also contributed to the infringement of one or more claims of the '423 patent and/or actively induced others to infringe one or more claims of the '423 patent, in this district and elsewhere in the United States.

24. Symantec has infringed and continues to infringe one or more claims of the '423 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Symantec has also contributed to the infringement of one or more claims of the '423 patent and/or actively induced others to infringe one or more claims of the '423 patent, in this district and elsewhere in the United States.

25. WinMagic has infringed and continues to infringe one or more claims of the '423 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital

data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, WinMagic has also contributed to the infringement of one or more claims of the '423 patent and/or actively induced others to infringe one or more claims of the '423 patent, in this district and elsewhere in the United States.

26. CheckPoint has infringed and continues to infringe one or more claims of the '423 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, CheckPoint has also contributed to the infringement of one or more claims of the '423 patent and/or actively induced others to infringe one or more claims of the '423 patent, in this district and elsewhere in the United States.

27. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

28. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of Defendants' wrongful acts of infringing the '423 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

29. Defendants' infringement of Plaintiff's exclusive rights under the '423 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

### **COUNT III – PATENT INFRINGEMENT**



30. United States Patent No. 6,216,229 entitled “Method for Preventing Inadvertent Betrayal by a Trustee of Escrowed Digital Secrets” was duly and legally issued by the United States Patent and Trademark Office on April 10, 2001 after full and fair examination. Plaintiff is the assignee of all rights, title, and interest in and to the ‘229 patent and possesses all rights of recovery under the ‘229 patent including the right to sue for infringement and recover past damages.

31. Microsoft has infringed and continues to infringe one or more claims of the ‘229 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Microsoft has also contributed to the infringement of one or more claims of the ‘229 patent and/or actively induced others to infringe one or more claims of the ‘229 patent, in this district and elsewhere in the United States.

32. Apple has infringed and continues to infringe one or more claims of the ‘229 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Apple has also contributed to the infringement of one or more claims of the ‘229 patent and/or actively induced others to infringe one or more claims of the ‘229 patent, in this district and elsewhere in the United States.

33. Symantec has infringed and continues to infringe one or more claims of the '229 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, Symantec has also contributed to the infringement of one or more claims of the '229 patent and/or actively induced others to infringe one or more claims of the '229 patent, in this district and elsewhere in the United States.

34. WinMagic has infringed and continues to infringe one or more claims of the '229 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, WinMagic has also contributed to the infringement of one or more claims of the '229 patent and/or actively induced others to infringe one or more claims of the '229 patent, in this district and elsewhere in the United States.

35. CheckPoint has infringed and continues to infringe one or more claims of the '229 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, software that includes digital data structures for storing identifying information and encrypted digital secrets that allows trustees to access the encrypted digital secrets upon verification of the identifying information. Upon information and belief, CheckPoint has also contributed to the infringement of one or more

claims of the '229 patent and/or actively induced others to infringe one or more claims of the '229 patent, in this district and elsewhere in the United States.

36. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

37. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of Defendants' wrongful acts of infringing the '229 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

38. Defendants' infringement of Plaintiff's exclusive rights under the '229 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

#### **JURY DEMAND**

39. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### **PRAYER FOR RELIEF**

Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '972 patent has been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;

- B. An adjudication that one or more claims of the '423 patent has been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- C. An adjudication the claim of the '229 patent has been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- D. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendants' acts of infringement together with pre-judgment and post-judgment interest;
- E. That one or more of the Defendants' acts of infringement be found to be willful from the time that Defendants became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- F. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '972 patent;
- G. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement,

and (3) actively inducing infringement with respect to the claims of the '423 patent;

H. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '229 patent;

I. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

J. Any further relief that this Court deem just and proper.

Dated: September 14, 2011

Respectfully Submitted,

**TALLGRASS PRAIRIE MANAGEMENT,  
LLC**

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