

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

MYKEY TECHNOLOGY INC.,

Plaintiff,

v.

ROBERT BOTCHEK,

Defendant.

Case No. 13-cv-302

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff MyKey Technology Inc. (“MyKey”), for its Complaint against Defendant Robert Botchek (“Botchek”), states and alleges as follows:

**THE PARTIES**

1. MyKey is a Delaware corporation with its principal place of business in Gaithersburg, Maryland.
2. Defendant Botchek is an individual residing in Brookfield, Wisconsin.

**JURISDICTION AND VENUE**

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271. The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

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## **BACKGROUND**

5. MyKey owns all right, title, and interest in U.S. Patent No. 6,813,682 (the “’682 patent”), U.S. Patent No. 7,159,086 (the “’086 patent”) and U.S. Patent No. 7,228,379 (the “’379 patent”) (collectively, the “patents-in-suit”).

6. The ’682 patent, entitled “Write Protection for Computer Long-Term Memory Devices,” was duly and legally issued by the United States Patent and Trademark Office on November 2, 2004, after full and fair examination. A true and correct copy of the ’682 patent is attached hereto as Exhibit A.

7. The ’086 patent, entitled “Systems and Methods For Creating Exact Copies Of Computer Long-Term Storage Devices,” was duly and legally issued by the United States Patent and Trademark Office on January 2, 2007, after full and fair examination. A true and correct copy of the ’086 patent is attached hereto as Exhibit B.

8. The ’379 patent, entitled “Systems and Methods For Removing Data Stored On Long-Term Memory Devices,” was duly and legally issued by the United States Patent and Trademark Office on June 5, 2007, after full and fair examination. A true and correct copy of the ’379 patent is attached hereto as Exhibit C.

9. TEFKAT LLC (“TEFKAT”). TEFKAT is a Wisconsin limited liability corporation with its principal place of business in Brookfield, Wisconsin 53005. TEFKAT was known as Tableau LLC prior to May 10, 2010.

10. Defendant Botchek is the sole owner and officer of TEFKAT. Defendant Botchek controls all aspects of the existence and operation of TEFKAT for his personal benefit, and without regard for TEFKAT’s ability to carry out normal business activities and satisfy its obligations.

11. As a result of the actions of Defendant Botchek by which he appropriated substantially all of TEFKAT's assets for his personal benefit, and in derogation of TEFKAT's ability to satisfy its obligations, TEFKAT is undercapitalized and has only minimal assets in its name.

12. On or about May 10, 2010, Tableau entered into a contract with Guidance Software Inc. ("Guidance") pursuant to which Guidance purported to pay more than \$12,300,000 for the assets of Tableau LLC. Guidance assumed and continued the business of Tableau, as it was conducted before the Tableau/Guidance transaction was concluded. Although Guidance assumed the business of Tableau, the Tableau/Guidance transaction was structured as an asset sale in an attempt to frustrate the efforts of MyKey and other creditors to recover obligations due as a result of the operation of TEFKAT's business.

13. As a result of his control of TEFKAT, Defendant Botchek was able to transfer substantially all of the funds paid to TEFKAT by Guidance into his personal bank account, for his personal benefit, and without regard for the rights or interests of MyKey or other creditors of TEFKAT.

14. Defendant Botchek has employed TEFKAT as a mere shell, instrumentality, or conduit from which Defendant Botchek carried out his business as if TEFKAT does not exist to such an extent that any individuality or separateness of Defendant Botchek and TEFKAT does not exist.

15. Adherence to the fiction of TEFKAT's separate existence would permit an abuse of the corporate privilege and promote injustice by allowing Defendant Botchek to frustrate MyKey's ability to be compensated according to law for the acts complained of herein

**COUNT I**  
**INFRINGEMENT OF THE '682 PATENT**

16. MyKey incorporates each of the preceding paragraphs 1-15 as if fully set forth herein.

17. Defendant Botchek infringed the '682 patent, literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing in or into the United States, without authority, products that fall within the scope of at least claims 1-8, 11-13, 16-21, 24-36 and 40-45 of the '682 patent, including, but not limited to the Tableau T3u, T4, T5, T8, T9, T10, T14, T15, T35e, T35es/T35es-RW, T35i, T335, T345, T3458is, T34589is products.

18. Defendant Botchek became aware of the '682 patent and the content of the claims of the '682 patent at least as early as 2005 through a third-party company. Defendant Botchek also became aware of MyKey's write-blocker products at least as early as 2005 through a third-party company. Defendant Botchek further received information about the existence and content of the patents-in-suit, including the '682 patent, no later than in or about August 2009 during the High Tech Crime Investigation Association Conference ("HTCIA").

19. Defendant Botchek personally attended industry conferences, such as Computer and Enterprise Investigations Conference (CEIC), Techno Security, International Association of Computer Investigative Specialists, and HTCIA, to market, promote, offer to sell, and sell the accused Tableau products.

20. Defendant Botchek knowingly induced infringement of the '682 patent by actively encouraging and directing TEFKAT and others to make, use, sell, offer to sell, and/or import in or into the United States accused Tableau products, all with knowledge of the '682 patent and the content of its claims, and with the intent to induce conduct he knew to fall within the scope of the claims of the '682 patent. The actions by which Defendant Botchek induced

infringement of the '682 patent included instructing others to make sales of the accused Tableau products, instructing others to test the accused Tableau products, and creating and disseminating, or directing the creation or dissemination of, promotional and marketing materials, instructional materials and product manuals, and technical materials related to the accused Tableau products.

21. As a direct and proximate result of Defendant Botchek's acts of patent infringement and inducement of infringement, MyKey was injured and sustained substantial damages in an amount not presently known.

22. MyKey has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and MyKey is entitled to recover its reasonable and necessary fees and expenses.

## **COUNT II INFRINGEMENT OF THE '086 PATENT**

23. MyKey incorporates each of the preceding paragraphs 1-22 as if fully set forth herein.

24. Defendant Botchek infringed the '086 patent, literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing in or into the United States, without authority, products that fall within the scope of at least claims 1-4, 7-9, 13-18 and 20-21 of the '086 patent, including, but not limited to the Tableau TD1 Forensic SATA/IDE Duplicator Kit.

25. Defendant Botchek became aware of the '086 patent and the content of the claims of the '086 patent at least as early as August 2009. Defendant Botchek further received information about the existence and content of the patents-in-suit, including the '086 patent, no

later than in or about August 2009 during the High Tech Crime Investigation Association Conference (“HTCIA”).

26. Defendant Botchek personally attended industry conferences, such as Computer and Enterprise Investigations Conference (CEIC), Techno Security, International Association of Computer Investigative Specialists, and HTCIA, to market, promote, offer to sell, and sell the accused Tableau products.

27. Defendant Botchek knowingly induced infringement of the '086 patent by actively encouraging and directing TEFKAT and others to make, use, sell, offer to sell, and/or import in or into the United States accused Tableau products, all with knowledge of the '086 patent and the content of its claims, and with the intent to induce conduct he knew to fall within the scope of the claims of the '086 patent. The actions by which Defendant Botchek induced infringement of the '086 patent included instructing others to make sales of the accused Tableau products, instructing others to test the accused Tableau products, and creating and disseminating, or directing the creation or dissemination of, promotional and marketing materials, instructional materials and product manuals, and technical materials related to the accused Tableau products.

28. As a direct and proximate result of Defendant Botchek's acts of patent infringement and inducement of infringement, MyKey was injured and sustained substantial damages in an amount not presently known.

29. MyKey has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and MyKey is entitled to recover its reasonable and necessary fees and expenses.

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**COUNT III**  
**INFRINGEMENT OF THE '379 PATENT**

30. MyKey incorporates each of the preceding paragraphs 1-29 as if fully set forth herein.

31. Defendant Botchek infringed the '379 patent, literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing in or into the United States, without authority, products that fall within the scope of at least claims 1-2 of the '379 patent, including, but not limited to the Tableau TDW1 Drive Tool / Drive Wiper, Tableau TD1 Forensic SATA/IDE Duplicator Kit.

32. Defendant Botchek became aware of the '379 patent and the content of the claims of the '379 patent at least as early as August 2009. Defendant Botchek further received information about the existence and content of the patents-in-suit, including the '379 patent, no later than in or about August 2009 during the High Tech Crime Investigation Association Conference ("HTCIA").

33. Defendant Botchek personally attended industry conferences, such as Computer and Enterprise Investigations Conference (CEIC), Techno Security, International Association of Computer Investigative Specialists, and HTCIA, to market, promote, offer to sell, and sell the accused Tableau products.

34. Defendant Botchek knowingly induced infringement of the '379 patent by actively encouraging and directing TEFKAT and others to make, use, sell, offer to sell, and/or import in or into the United States accused Tableau products, all with knowledge of the '379 patent and the content of its claims, and with the intent to induce conduct he knew to fall within the scope of the claims of the '379 patent. The actions by which Defendant Botchek induced infringement of the '379 patent included instructing others to make sales of the accused Tableau

products, instructing others to test the accused Tableau products, and creating and disseminating, or directing the creation or dissemination of, promotional and marketing materials, instructional materials and product manuals, and technical materials related to the accused Tableau products.

35. As a direct and proximate result of Defendant Botchek's acts of patent infringement and inducement of infringement, MyKey was injured and sustained substantial damages in an amount not presently known.

36. MyKey has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and MyKey is entitled to recover its reasonable and necessary fees and expenses.

#### **PRAYER FOR RELIEF**

MyKey requests that judgment be entered in its favor and against Defendant Botchek as follows:

- (a) For compensatory damages in an amount according to proof, and in no event less than a reasonable royalty for Defendant Botchek's infringement and inducement of infringement of the patents-in-suit;
- (b) For reasonable costs and expenses, including attorneys' fees, incurred by MyKey pursuant to 35 U.S.C. §§ 284 and 285;
- (c) For prejudgment and post-judgment interest; and
- (d) For such other relief as the Court deems just and proper.

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## **JURY DEMAND**

In accordance with Federal Rules of Civil Procedure 38 and 39, MyKey asserts its rights under the Seventh Amendment of the United States Constitution and demands a trial by jury on all issues.

Dated: March 15, 2013

Respectfully submitted,

By: s/ Qudus B. Olaniran

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