

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | | |
|---|-------------|---|---------------------|
| <hr/> | |) | |
| SIPCO, LLC and IP CO., LLC <i>d/b/a</i> INTUS | |) | |
| IQ, | |) | |
| | |) | |
| | Plaintiffs, |) | |
| | |) | |
| v. | |) | C.A. No. 16-830-RGA |
| | |) | |
| STREETLINE, INC., KAPSCH | |) | |
| TRAFFICCOM HOLDING CORP., and | |) | |
| KAPSCH TRAFFICCOM U.S. CORP. | |) | |
| | |) | |
| | Defendants. |) | |
| <hr/> | |) | |

**MEMORANDUM OF REASONS IN SUPPORT OF MOTION TO DISMISS
SIPCO'S FIRST AMENDED COMPLAINT WITH PREJUDICE PURSUANT
TO RULE 12(B)(6) OF DEFENDANTS STREETLINE, INC. AND
KAPSCH TRAFFICCOM HOLDING CORP.**

Of Counsel:

Pierre R. Yanney
Stephen E. Underwood
STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, NY 10038
(212) 806-5400
pyanney@stroock.com
sunderwood@stroock.com

ROSS ARONSTAM & MORITZ LLP
Benjamin J. Schladweiler (#4601)
100 S. West Street, Suite 400
Wilmington, DE 19801
(302) 576-1600
bschladweiler@ramllp.com

*Counsel for Defendants Streetline, Inc. and
Kapsch TrafficCom Holding Corp.*

Dated: February 21, 2017

TABLE OF CONTENTS

I. NATURE AND STAGE OF THE PROCEEDINGS 1

II. SUMMARY OF THE ARGUMENT 1

III. STATEMENT OF FACTS 2

IV. ARGUMENT..... 4

 A. Legal Standards..... 4

 1. Legal Standards – Pleading Induced Infringement..... 4

 2. Legal Standards – Dismissal with Prejudice..... 5

 B. The FAC Fails to State a Claim for Direct Infringement..... 7

 1. The FAC Fails to Allege Sufficient Facts to Plausibly Show That All the Elements of Any Asserted Claim Are Satisfied by the Accused Products 7

 2. For Additional Reasons, the FAC Fails to State a Claim of Direct Infringement Against Kapsch Holding 11

 C. The FAC Fails to State a Claim for Induced Infringement..... 14

 1. The FAC Fails to Adequately Allege Underlying Direct Infringement 14

 2. The FAC Fails to Adequately Identify the Alleged Direct Infringer(s)..... 14

 3. The FAC Fails to Allege the Required Mental State 15

 4. The Induced Infringement Allegations Against Kapsch Holding Are Deficient for At Least One Additional Reason..... 17

 D. The FAC Should Be Dismissed With Prejudice 18

V. CONCLUSION..... 19

TABLE OF AUTHORITIES

| | Page(s) |
|--|----------------|
| Cases | |
| <i>Addiction & Detoxification Inst. L.L.C. v. Carpenter</i> , 620 F. App'x 934 (Fed. Cir. 2015)..... | 17 |
| <i>Akamai Technologies, Inc. v. Limelight Networks, Inc.</i> , 692 F.3d 1301 (Fed. Cir. 2012)..... | 4, 14 |
| <i>Applera Corp. v. MJ Research, Inc.</i> , 297 F. Supp. 2d 459 (D. Conn. 2004)..... | 18 |
| <i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)..... | 5, 7, 8 |
| <i>Atlas IP, LLC v. Exelon Corp.</i> , 189 F. Supp. 3d 768 (N.D. Ill. 2016)..... | 7 |
| <i>In re Bill of Lading Transmission & Processing Sys. Patent Litig.</i> , 681 F.3d 1323 (Fed. Cir. 2012)..... | 5, 15, 16 |
| <i>Boyd v. Tempay</i> , No. CIV.A. 07-377-JJF, 2008 WL 5156307 (D. Del. Dec. 4, 2008)..... | 3, 6, 18, 19 |
| <i>California Pub. Employees' Ret. Sys. v. Chubb Corp.</i> , 394 F.3d 126 (3d Cir. 2004)..... | 6, 18 |
| <i>e-LYNXX Corp. v. InnerWorkings, Inc.</i> , No. 1-10-CV-02535, 2011 WL 3608642 (M.D. Pa. July 26, 2011)..... | 15 |
| <i>eDigital Corp. v. iBaby Labs, Inc.</i> , No. 15-5790, 2016 WL 4427209 (N.D. Cal. Aug. 22, 2016)..... | 8 |
| <i>Foman v. Davis</i> , 371 U.S. 178 (1962)..... | 6 |
| <i>Global-Tech Appliances, Inc. v. SEB S.A.</i> , 131 S.Ct. 2060 (2011)..... | 5, 10, 16 |
| <i>Global-Tech Led, LLC v. Every Watt Matters, LLC</i> , No. 15-CV-61933, 2016 WL 6682015 (S.D. Fla. May 19, 2016)..... | 9, 10 |
| <i>Kearns v. Gen. Motors Corp.</i> , 94 F.3d 1553 (Fed. Cir. 1996)..... | 9 |

Kohan Prod. Ltd. v. Comerica Bank,
 No. CV 10–0034 PSG, 2010 WL 956402 (C.D. Cal. Mar. 11, 2010)1

Limelight Networks, Inc. v. Akamai Techs., Inc.,
 134 S. Ct. 2111 (2014).....14

McIntosh v. Crist,
 No. CIV.A. 3:13-103, 2015 WL 418982 (W.D. Pa. Feb. 2, 2015).....6, 18

MEMC Elec. Materials, Inc. v. Mitsubishi Materials Silicon Corp.,
 420 F.3d 1369 (Fed. Cir. 2005).....13

NTP, Inc. v. Research In Motion, Ltd.,
 418 F.3d 1282 (Fed. Cir. 2005).....12

Philips v. ASUSTeK Computer Inc.,
 No. 15-1125-GMS, 2016 WL 6246763 (D. Del. Oct. 25, 2016).....9

Price v. Gen. Cable Indus., Inc., No.
 CIV.A. 05-424J, 2006 WL 3393686 (W.D. Pa. Sept. 29, 2006)4, 6, 18, 19

Raindance Techs., Inc. v. 10X Genomics, Inc.,
 No. 15-152-RGA, 2016 WL 927143 (D. Del. Mar. 4, 2016)8, 14

Scripps Research Institute v. Illumina, Inc.,
 No. 16-661, 2016 WL 6834024 (S.D. Cal. Nov. 21, 2016).....7

Sicom Sys., Ltd. v. Agilent Techs., Inc.,
 427 F.3d 971 (Fed. Cir. 2005).....7, 18

Smith v. Garlock Equip. Co.,
 658 F. App'x 1017 (Fed. Cir. 2016).....12, 13

SynQor, Inc. v. Artesyn Technologies, Inc.,
 709 F.3d 1365 (Fed. Cir. 2013).....5, 16

Tai v. Minka Lighting, Inc.,
 No. CV-16-02810-PHX-DLR, 2017 WL 568519 (D. Ariz. Feb. 13, 2017).....8

TeleSign Corp. v. Twilio, Inc.,
 No. 16-2106, 2016 WL 4703873 (C.D. Cal. Aug. 3, 2016)8

Varian Med. Sys., Inc. v. Elekta AB,
 No. CV 15-871-LPS, 2016 WL 3748772 (D. Del. July 12, 2016)14

Warner-Lambert Co. v. Apotex Corp.,
 316 F.3d 1348 (Fed. Cir. 2003).....4

Wright's Well Control Servs., LLC v. Oceaneering Int'l, Inc.,
No. CV 15-1720, 2017 WL 568781 (E.D. La. Feb. 13, 2017)8

Statutes

35 U.S.C. § 271(a)12, 13, 14

Other Authorities

Fed. R. Civ. P. 12(b)(6).....1, 3
Fed. R. Civ. P. 15(a)(2).....5
Fed. R. Evid. 902(1).....1

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.