

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CYBERSECURE IPS LLC,

Plaintiff,

v.

NETWORK INTEGRITY SYSTEMS, INC.,

Defendant.

Case No. 8:25-cv-1940

CYBERSECURE IPS LLC’S SECOND AMENDED COMPLAINT

Plaintiff CyberSecure IPS LLC (“CyberSecure”) by and through its undersigned counsel, as and for its Second Amended Complaint against Defendant Network Integrity Systems, Inc. (“NIS”) (and together with CyberSecure, the “Parties”), alleges as follows:

Introduction

1. This action arises from NIS’s misrepresentations of its intellectual property and patent portfolios, and breach of a Letter Agreement dated May 5, 2023, between NIS and CyberSecure (the “Letter Agreement”). The Letter Agreement was entered into by the Parties to resolve disputes that had arisen between the Parties, including misuse of intellectual property, under an Exclusive Strategic Relationship Agreement (“the ESR Agreement”). In short, NIS fraudulently misrepresented its own intellectual property and patent portfolios in affidavits required under the Letter Agreement to induce CyberSecure to resolve the disputes between the Parties and release CyberSecure from liability.

2. During their relationship, CyberSecure discovered that NIS had been using CyberSecure’s intellectual property to design, develop, and/or modify its products to provide the same functionality as CyberSecure products. Not content with merely copying CyberSecure technology,

NIS had in fact been *patenting* CyberSecure technology. NIS unfairly reaped benefits from CyberSecure's technology through the sales of products utilizing the stolen technology.

3. On April 26, 2023, CyberSecure notified NIS that it was aware of its misuse of CyberSecure's intellectual property and threatened to terminate the ESR immediately unless NIS cured its breaches by assigning all patents and other intellectual property utilizing the technology.

4. To resolve the disputes under the ESR, CyberSecure and NIS entered into the Letter Agreement, in which NIS agreed to: (1) assign eleven patents and two patent applications from NIS to CyberSecure and (2) perform an internal review of all intellectual property assigned to NIS and provide affidavits to CyberSecure "admitting or denying" whether NIS possessed any intellectual properties that "are similar to or provide the same functionality as CS Products and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products." NIS agreed to assign any intellectual property or additional patents that were within the scope of that review. NIS thereafter provided sworn affidavits that it did not possess any such additional patents or other intellectual property.

5. CyberSecure has now discovered additional intellectual property that NIS should have discovered and assigned to CyberSecure under the terms of the Letter Agreement. Specifically, NIS failed to disclose and assign U.S. Patent No. 7,706,641 (the "'641 patent") and the intellectual property underlying its patent application no. US-20230236045 (the "'045 application"). The '641 patent and the '045 application are similar to or provide the same functionality as CS Products and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure Products. As such, the '641 patent and the '045 application should have been assigned to CyberSecure pursuant to the Letter Agreement.

6. NIS and its officers, Messrs. Giovanni and Murphy, committed fraud, and/or breached the Letter Agreement, when they denied, under penalty of perjury in their Affidavits, that NIS

possessed any additional patents and/or other intellectual property that are similar to or provide the same functionality as CS Products and/or supports the interoperability of NIS products with other products that provide the same functionality as CyberSecure Products.

7. By its Second Amended Complaint, CyberSecure seeks to have this Court declare that NIS should have assigned the '641 patent and the '045 application under the terms of the Letter Agreement, and assess damages against NIS in favor of CyberSecure related to its failure to assign such patents and intellectual property.

8. NIS has now brazenly filed a patent infringement lawsuit against CyberSecure in federal court in which NIS alleges that CyberSecure infringes the '641 patent. Based on NIS's own allegations, the '641 patent is similar to or provides the same functionality as CS Products that were part of the Solutions and/or supports the interoperability of NIS products with other products that provide the same functionality as CyberSecure products. In other words, NIS has admitted that it should have assigned the '641 patent and that the Affidavits provided by Messrs. Giovannini and Murphy were a fiction.

Parties, Jurisdiction and Venue

9. CyberSecure is a Maryland Limited Liability Company with its principal place of business in Bethesda, Maryland.

10. NIS is a North Carolina corporation with its principal place of business in Hickory, North Carolina.

11. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) as Defendant stated in its Notice of Removal.

12. NIS provided written consent to jurisdiction in Maryland Courts in a Memorandum of Understanding (MOU) between CyberSecure and NIS, which includes a Termination of the ESR Agreement and references and relies upon the Letter Agreement referred to above.

Factual Background

13. CyberSecure and NIS executed the ESR Agreement on or about October 01, 2015.¹

14. The ESR Agreement provided that the parties would work together to integrate their respective products and services to jointly market them. Each party granted the other the right to market and sublicense certain products (the “Solution(s)”).

15. The ESR also contained clauses ensuring that neither party could use the other’s intellectual property to develop their own products.

16. On April 26, 2023, CyberSecure sent NIS a Notice of Termination of the ESR Agreement (and related amendments and agreements). The Notice of Termination set forth specific allegations of NIS’s breach of certain intellectual property provisions of the ESR Agreement.

17. More specifically, Cybersecure provided evidence that NIS had breached, among other sections, Sections 5.2 and 5.4 of the ESR Agreement by designing, developing, modifying and/or revising products that provide similar or the same functionality as CS Products that are part of the Solutions (as defined in the ESR Agreement), and/or support the interoperability of NIS products with other products that provide the same functionality as Cybersecure products, including, but not limited to, Cybersecure products IMS, Manhole Protection System (MPS), and StopLight. In the Notice, CyberSecure demanded that NIS disavow certain patent filings and assign those patent filings to CyberSecure pursuant to Section 6.3 of the ESR Agreement.

¹ CyberSecure incorporates all its exhibits from its Complaint (ECF No. 3) pursuant to Local Rule 103.6(b).

18. On May 2, 2025, NIS responded to the Notice of Termination, via correspondence from its CEO Joseph Giovannini, seeking to cure NIS's breaches of the ESR Agreement. NIS agreed to assign certain patents to CyberSecure to cure the breaches of the ESR Agreement.

19. CyberSecure responded in writing on May 5, 2023, with the Letter Agreement. In the Letter Agreement, CyberSecure set forth specific terms upon which it would agree that NIS had "cured" the breaches of the ESR Agreement.

20. Those terms included NIS's agreement that it would execute and file a Patent Assignment, attached to the Letter Agreement, transferring all of its rights and interests in certain patents—including the '940 and '616 patents—that CyberSecure had identified that provide similar to or the same functionality as CS Products and/or support the interoperability of NIS products with other products that provide the same functionality as Cybersecure products.

21. In addition, in order to comprehensively determine whether NIS possessed any further intellectual property that provided the same or similar functionality as CyberSecure products, the terms of the Letter Agreement required NIS, within thirty days, to perform a comprehensive review of its design and development work and patent portfolio. NIS was required to:

deliver to CyberSecure an affidavit from Mr. Giovannini, or other knowledgeable officer of NIS, setting forth (a) the scope of your internal audit and review of all intellectual property currently assigned to NIS (including filings by Inventors commonly known to Network Integrity Systems, including but not limited to: Cary Murphy, Mark Bridges, Joseph Giovannini, Daniel Goertzen, and David Vokey) and (b) admitting or denying that NIS possesses any internal development documents, unpatented and copyrightable inventions, software and applications (in source code or object code), images, schematics, protocols and/or prototypes, additional patents and other materials, not set forth in the attached Patent Assignment, similar to or that provide the same functionality as CS Products that are part of the Solutions, and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

22. The Letter Agreement required that NIS assign to CyberSecure any additional patents that fell within the scope of its intellectual property review. *Id.*

23. Mr. Giovannini signed the Letter Agreement and Patent Assignment on May 5, 2023, the very day he received it.

24. On May 26, 2023, Mr. Giovannini executed an Affidavit pursuant to the terms of the Letter Agreement. In his affidavit, Mr. Giovannini attested that he had reviewed NIS's intellectual property files and patent portfolio and that he "identified U.S. Patent Nos. 10,263,696 and 11,361,653 because each of these two patents have claims that include limitations that may fall within the domain of both NIS and CyberSecure." In his affidavit, he nevertheless ultimately "concluded that NIS does not possess any ... additional patents and other materials, not set forth in the Patent Assignment dated May 5, 2023, similar to or that provide the same functionality as CS Products that are part of the Solutions and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products."

25. On the same day he signed his affidavit—and seemingly in direct contradiction of the statements quoted above, Mr. Giovannini executed another patent assignment in which he assigned the 10,263,696 and 11,361,653 patents.

26. On June 2, 2023, Cary Murphy, the Chief Technology Officer at NIS, submitted an additional affidavit in support of the Letter Agreement. Mr. Murphy has been NIS's CTO since 2003. Based on a review he performed and, without limitation, his "recollection of research and development done at NIS", Mr. Murphy attested that other than the projects identified in his and Mr. Giovannini's affidavits, "NIS does not possess any ... additional patents or other materials, not set forth in the Patent Assignment dated May 5, 2023, similar to or that provide the same functionality as CS Products that are part of the Solutions and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products."

27. Neither Mr. Giovannini nor Mr. Murphy identified the ‘641 patent or the ‘045 application in their respective affidavits.

28. On April 7, 2025, NIS filed a lawsuit in federal court in the Eastern District of Virginia styled *Network Integrity Systems, Inc. v. CyberSecure IPS LLC*, Case No. 1:25-cv-590. This action has now been transferred to the District of Maryland. Therein, NIS alleges that CyberSecure has infringed its ‘641 patent in several ways, including by “use of the CS Controller, Opti-Guard, and/or Cyber-Sensor Products for manhole, lockbox, and other FBG monitoring.” See Ex. F at para. 38.

29. CyberSecure’s Manhole Protection System (MPS) was part of the Solutions and has always been established as a CyberSecure product. CyberSecure’s Infrastructure Monitoring System (IMS) included MPS prior to the execution of the ESR Agreement. This product was sold by NIS under the ESR Agreement and was clearly within the scope of NIS’s obligations under the Letter Agreement to identify patents that provide the same or similar functionality as CyberSecure products.

30. MPS, as described in the exhibits provided by NIS with its EDVA Complaint (see e.g., Exhibit 8 to the Complaint), with full knowledge by NIS, utilized FBG (Fiber Bragg Grating) sensor technology over the course of the ESR Agreement.

31. In the EDVA Complaint and exhibits, NIS also alleges CyberSecure infringes the ‘641 patent through deployment of point-to-multipoint, full daisy-chain, and split daisy-chain layouts. Similar to MPS, deployment of point-to-multipoint, full daisy-chain, and split daisy-chain layouts were part of the Solutions under the ESR Agreement and were deployed for customers jointly by the Parties pursuant to their installations under the ESR Agreement.

32. Because NIS alleges that CyberSecure infringes the ‘641 patent through activities related to MPS, point-to-multi-point, full daisy-chain, and split daisy-chain layouts, and these accused technologies/layouts were part of the Solutions under the ESR Agreement, the ‘641 patent is similar to or provides the same functionality as CyberSecure Products and/or supports the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

33. The ‘641 patent should therefore have been identified by NIS to CyberSecure as part of the Letter Agreement and/or identified by Mr. Murphy and Mr. Giovannini in their affidavits attesting that they had performed a comprehensive search, and no other additional patents existed within the scope of the Letter Agreement. The ‘641 patent would then have been assigned by NIS to CyberSecure pursuant to the terms of the Letter Agreement.

34. The ‘045 patent application was likewise within the scope of the Letter Agreement because it is similar to or provides the same functionality as CyberSecure products that were part of the Solutions. Specifically, the ‘045 patent application is similar to or provides the same functionality as CyberSecure’s IMS which includes MPS which was a part of the Solutions per the ESR. IMS monitors fibers for disturbances to protect sensitive data. Part of IMS’s value is that it monitors environmental factors, like temperature, using a self-adjusting time-based algorithm to filter out ambient noise to reduce false alarms.² The ‘045 application has claims that include using environmental factors to reduce false alarms.

35. Importantly, the ‘045 patent application was pending when NIS executed the Letter Agreement and provided CyberSecure with the affidavits from Mr. Murphy and Mr. Giovannini.

² This technology is commercially important because constant false alarms reduce the system’s value to its customers.

36. NIS, Mr. Murphy, and Mr. Giovannini misrepresented that the '641 patent and the '045 application held by NIS were not within the scope of the Letter Agreement. NIS used those patents to enrich themselves in violation of the ESR. In addition, NIS is now using the '641 patent to claim that CyberSecure products infringe on that patent.

37. CyberSecure entered into the Letter Agreement with NIS to resolve completely any and all claims by NIS related to CyberSecure products and thereafter released NIS from any claims based on those misrepresentations.

38. NIS, Mr. Murphy, and Mr. Giovannini breached the Letter Agreement, misrepresented the nature of NIS's patent portfolio, induced CyberSecure to enter into agreements and provide releases based on those misrepresentations and committed fraud on CyberSecure.

39. CyberSecure seeks to obtain a declaratory judgment from this honorable court that NIS (a) has breached the Letter Agreement by omitting the '641 patent and the '045 application from the affidavits of Mr. Murphy and Mr. Giovannini, (b) failing to assign the '641 patent and the '045 application pursuant to the terms of the Letter Agreement, (c) is obligated to reimburse and indemnify CyberSecure for any and all legal fees, cost and expenses expended by CyberSecure in defense of the patent infringement action filed by NIS, (d) is obligated to indemnify CyberSecure for any damages awarded in the patent infringement lawsuit.

COUNT I
Fraud

40. Paragraphs 1 through 39 are incorporated by reference into this count as if fully set forth herein.

41. NIS made false representations in the affidavits of Mr. Giovannini and Mr. Murphy regarding the existence/non-existence of additional patents and intellectual property that NIS possessed that fell within the scope of the Letter Agreement as set forth in the paragraphs above.

42. NIS, through Mr. Giovannini and Mr. Murphy knew that their representations that no additional patents or intellectual property fell within the scope of the Letter Agreement were false. They knew the falsity based on their claimed review of NIS's patent holdings and intellectual property and their intimate knowledge of NIS's product offerings and CyberSecure product offerings as part of the Parties' joint efforts under the ESR.

43. NIS, through the obligations it undertook in the Letter Agreement, and through the sworn affidavits of Mr. Giovannini and Mr. Murphy, intended that CyberSecure would rely on those false representations in order to induce CyberSecure to abandon its claims of breach of the ESR Agreement and to induce CyberSecure to believe that NIS did not hold any additional patents or other intellectual property that could be used to claim that CyberSecure was infringing on NIS's patents.

44. CyberSecure reasonably relied on the misrepresentations by NIS and was induced to abandon its claims of breach of the ESR Agreement and lulled into believing that it had eliminated any risk that NIS would claim that CyberSecure's products infringed on NIS's intellectual property. Further, CyberSecure entered into agreements with NIS in which it released NIS from claims based on the misrepresentations made in the Letter Agreement and affidavits referred to above.

45. CyberSecure has suffered damages caused by misrepresentations and fraudulent conduct as set forth above, including, but not limited to, the legal fees, expenses and costs related to the patent infringement action, the lost time and work from its engineers and executives as their attention has been diverted to defending the patent infringement lawsuit, and the damages, if any, that NIS may be awarded through the patent infringement action.

WHEREFORE, CyberSecure respectfully request that this Court enter judgment in favor of CyberSecure and against NIS for such damages in the amounts proven at trial, plus costs and fees, and grant such other and further relief as is just and appropriate under the circumstances.

COUNT II
Breach of Contract (Letter Agreement)

46. Paragraphs 1 through 45 are incorporated by reference into this count as if fully set forth herein.

47. NIS entered into the Letter Agreement with CyberSecure and freely undertook obligations to review and examine its intellectual property, including its additional patents, to determine if any patents covered products or methods similar to or that provided the same functionality as CyberSecure products and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

48. NIS provided sworn affidavits from its CEO and CTO that no additional patents or other intellectual property existed that were within the scope of the Letter Agreement.

49. NIS's representations, through its CEO and CTO, were false and such falsity has been admitted by NIS in the patent infringement lawsuit referenced above.

50. By virtue of its allegations in the EDVA Complaint, NIS has admitted that the '641 patent is similar to or provides the same functionality as CyberSecure products, such as CyberSecure's MPS, and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

51. NIS breached its duty to CyberSecure through its misrepresentations and omissions regarding the nature of the '641 patent and the '045 application.

52. NIS breached its duty to CyberSecure by violating the covenants of good faith and fair dealing and the duty to cooperate.

53. NIS breached its duty to CyberSecure by failing to assign to CyberSecure the '641 patent, and the '045 application.

54. CyberSecure relied upon those misrepresentations in entering into the Letter Agreement and subsequent agreements with NIS, including, but not limited to, the release of claims it had against NIS for breach of the ESR.

55. As a direct and proximate result of NIS's wrongful conduct, CyberSecure has suffered significant damage and loss, including, but not limited to: (a) the payment of legal fees and costs in defending itself against the claims made in the patent infringement suit filed by NIS; and (b) the damages, if any, awarded to NIS against CyberSecure in the patent infringement lawsuit.

WHEREFORE, CyberSecure respectfully request that this Court enter judgment in favor of CyberSecure and Order NIS to assign the '641 patent and the '045 application to CyberSecure and award damages in the amounts proven at trial, plus costs and fees, and grant such other and further relief as is just and appropriate under the circumstances.

COUNT III
(Declaratory Relief)

56. Paragraphs 1 through 55 are incorporated by reference into this count as if fully set forth herein.

57. This is an action for declaratory judgment pursuant to the Court and Judicial Proceedings Article of the Annotated Code of Maryland for the purpose of determining questions of actual controversies between the Parties.

58. NIS has breached the Letter Agreement and committed fraud against CyberSecure as set forth in the paragraphs above.

59. NIS is seeking damages against CyberSecure in the patent infringement lawsuit referenced above, which is based on a patent that should have been assigned to CyberSecure under the Letter Agreement.

60. There exists an actual controversy of a justiciable issue between CyberSecure and NIS regarding the misrepresentations made by NIS and relied upon by CyberSecure.

61. Antagonistic claims are present between the Parties.

62. A declaratory judgment by this Court will terminate the Controversy.

WHEREFORE, the CyberSecure respectfully requests:

- a. That this Court determine and adjudicate that the Letter Agreement entitles CyberSecure to any damages claimed by NIS in the patent infringement lawsuit pending in the D. Md.;
- b. That this Court determine and adjudicate that NIS must reimburse/indemnify CyberSecure for any and all legal fees, expenses and costs related to the patent infringement lawsuit and for any damages awarded to NIS in the patent infringement lawsuit; and
- c. Any other relief this Court finds proper.

Dated: September 15, 2025

Respectfully Submitted,

/s/ Benjamin S. Boyd

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Attorneys for Plaintiff CyberSecure IPS LLC

DEMAND FOR JURY TRIAL

Plaintiff CyberSecure IPS LLC requests that the captioned case and all claims asserted therein be tried by a Jury.

Dated: September 15, 2025

Respectfully Submitted,

/s/ Benjamin S. Boyd

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Attorneys for Plaintiff CyberSecure IPS LLC

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CYBERSECURE IPS LLC,

Plaintiff,

v.

NETWORK INTEGRITY SYSTEMS, INC.,

Defendant.

Case No. 8:25-cv-1940

CYBERSECURE IPS LLC'S ~~FIRST~~SECOND AMENDED COMPLAINT

Plaintiff CyberSecure IPS LLC ("CyberSecure") by and through its undersigned counsel, as and for its ~~First~~Second Amended Complaint against Defendant Network Integrity Systems, Inc. ("NIS") (and together with CyberSecure, the "Parties"), alleges as follows:

Introduction

1. This action arises from NIS's ~~misuse of CyberSecure's intellectual property in breach of the Exclusive Strategic Relationship Agreement (the "ESR Agreement") between the Parties, fraud and misrepresentations of its intellectual property and patent portfolios, and breach of a Letter Agreement dated May 5, 2023, between NIS and CyberSecure (the "Letter Agreement"). In short, NIS breached the ESR Agreement by misusing CyberSecure's intellectual property for its own gain, and, after it was caught doing so, it~~The Letter Agreement was entered into by the Parties to resolve disputes that had arisen between the Parties, including misuse of intellectual property, under an Exclusive Strategic Relationship Agreement ("the ESR Agreement"). In short, NIS fraudulently misrepresented its own intellectual property and patent portfolios in affidavits required under the Letter Agreement to induce CyberSecure to resolve the disputes between the Parties and release CyberSecure from liability.

~~2. The ESR Agreement provided that the parties would work together to integrate their respective products and services to jointly market them. CyberSecure granted NIS the right to market and sublicense certain CyberSecure products. Ex. A at §§ 2.1, 2.2. NIS agreed not to design, develop, or manufacture any product that “can reasonably be considered to perform and/or provide the same functionality as the [CyberSecure] hardware and software” that the parties were jointly marketing. Ex. A at § 5.2.~~

2. ~~3.~~ **During their relationship,** CyberSecure discovered that NIS had been using CyberSecure’s intellectual property to design, develop, and/or modify its products to provide the same functionality as CyberSecure products. Not content with merely copying CyberSecure technology, NIS had in fact been *patenting* CyberSecure technology. NIS unfairly reaped benefits from CyberSecure’s technology through the sales of products utilizing the stolen technology.

3. ~~4.~~ On April 26, 2023, CyberSecure notified NIS that it was aware of its misuse of CyberSecure’s intellectual property and threatened to terminate the ESR immediately unless NIS cured its breaches by assigning all patents and other intellectual property utilizing the technology.

4. ~~5.~~ To resolve the disputes under the ESR, CyberSecure and NIS entered into the Letter Agreement, in which NIS agreed to: (1) assign eleven patents and two patent applications from NIS to CyberSecure and (2) perform an internal review of all intellectual property assigned to NIS and provide affidavits to CyberSecure “admitting or denying” whether NIS possessed any intellectual properties that “are similar to or provide the same functionality as CS Products and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.” NIS agreed to assign any intellectual property or additional patents that were within the scope of that review. NIS thereafter provided sworn affidavits that it did not possess any such additional patents or other intellectual property.

5. ~~6.~~ CyberSecure has now discovered additional intellectual property that NIS should have discovered and assigned to CyberSecure under the terms of the Letter Agreement. Specifically, NIS failed to disclose and assign U.S. Patent No. 7,706,641 (the “‘641 patent”) and the intellectual property underlying its patent application no. US-20230236045 (the “‘045 application”). The ‘641 patent and the ‘045 application are similar to or provide the same functionality as CS Products and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure Products. As such, the ‘641 patent and the ‘045 application should have been assigned to CyberSecure pursuant to the Letter Agreement.

6. ~~7.~~ NIS and its officers, Messrs. Giovanni and Murphy, committed fraud, and/or breached the Letter Agreement, when they denied, under penalty of perjury in their Affidavits, that NIS possessed any additional patents and/or other intellectual property that are similar to or provide the same functionality as CS Products and/or supports the interoperability of NIS products with other products that provide the same functionality as CyberSecure Products.

7. ~~8. NIS’s fraudulent Affidavits induced CyberSecure to resolve its disputes with NIS under the ESR and release NIS from claims related to its misuse of CyberSecure’s intellectual property. CyberSecure now seeks to assert those claims and have this Court assess the damages CyberSecure has suffered related to the misuse of its intellectual property by NIS.~~ By its Second Amended Complaint, CyberSecure seeks to have this Court declare that NIS should have assigned the ‘641 patent and the ‘045 application under the terms of the Letter Agreement, and assess damages against NIS in favor of CyberSecure related to its failure to assign such patents and intellectual property.

8. ~~9.~~ NIS has now brazenly filed a patent infringement lawsuit against CyberSecure in federal court in which NIS alleges that CyberSecure infringes the ‘641 patent. Based on NIS’s own

allegations, the '641 patent is similar to or provides the same functionality as CS Products that were part of the Solutions and/or supports the interoperability of NIS products with other products that provide the same functionality as CyberSecure products. In other words, NIS has admitted that it should have assigned the '641 patent and that the Affidavits provided by Messrs. Giovannini and Murphy were a fiction.

Parties, Jurisdiction and Venue

9. ~~10.~~ CyberSecure is a Maryland Limited Liability Company with its principal place of business in Bethesda, Maryland.

10. ~~11.~~ NIS is a North Carolina corporation with its principal place of business in Hickory, North Carolina.

11. ~~12.~~ This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) as Defendant stated in its Notice of Removal.

12. ~~13.~~ NIS provided written consent to jurisdiction in Maryland Courts in a Memorandum of Understanding (MOU) between CyberSecure and NIS, which includes a Termination of the ESR Agreement and references and relies upon the Letter Agreement referred to above.

Factual Background

13. ~~14.~~ CyberSecure and NIS executed the ESR Agreement on or about October 01, 2015. ~~The ESR Agreement is attached hereto as Exhibit A.~~¹

14. ~~15.~~ The ESR Agreement provided that the parties would work together to integrate their respective products and services to jointly market them. Each party granted the other the right to market and sublicense certain products (the "Solution(s)").

¹ CyberSecure incorporates all its exhibits from its Complaint (ECF No. 3) pursuant to Local Rule ~~6~~103.6(b).

15. ~~16.~~ The ESR also contained clauses ensuring that neither party could use the other's intellectual property to develop their own products.

~~17. Section 5.2 of the ESR provided that:~~

~~During the Term of the Agreement, NIS agrees not to design, develop, manufacture, private label, or offer for sale, any product that can reasonably be considered to perform and/or provide the same functionality as the CS hardware and software Products included as part of the Solution.~~

~~18. Section 5.4 of the ESR provides that:~~

~~During the Term of the Agreement, NIS agrees not to modify, revise, iterate, or customize NIS Products or develop new versions of NIS Products to effect or support the interoperability of NIS Products with products that can reasonably be considered to perform and/or provide the same functionality in the Market as the CS hardware and software Products included as part of the Solution.~~

~~19. Sections 5.2 and 5.4 ensured that even while the parties were jointly marketing their products, NIS could not utilize CyberSecure's intellectual property or incorporate CyberSecure product functionality into their own designs. Nevertheless, that is exactly what NIS did.~~

16. ~~20.~~ On April 26, 2023, CyberSecure sent NIS a Notice of Termination of the ESR Agreement (and related amendments and agreements). The Notice of Termination set forth specific allegations of NIS's breach of certain intellectual property provisions of the ESR Agreement.

17. ~~21.~~ More specifically, Cybersecure provided evidence that NIS had breached, among other sections, Sections 5.2 and 5.4 of the ESR Agreement by designing, developing, modifying and/or revising products that provide similar or the same functionality as CS Products that are part of the Solutions (as defined in the ESR Agreement), and/or support the interoperability of NIS products with other products that provide the same functionality as Cybersecure products, including, but not limited to, Cybersecure products IMS, Manhole Protection System (MPS), and StopLight. In the Notice, CyberSecure demanded that NIS disavow certain patent filings and assign those patent filings to CyberSecure pursuant to Section 6.3 of the ESR Agreement.

~~22. CyberSecure informed NIS that its Pulse product, and the designs and developments covered by NIS's patents U.S. Patent No. 11,515,940 (the "940 patent") and U.S. Patent No. 11,501,616 (the "616 patent") provide the same functionality as CyberSecure's StopLight products.~~

18. ~~23.~~ On May 2, 2025, NIS responded to the Notice of Termination, via correspondence from its CEO Joseph Giovannini, seeking to cure NIS's breaches of the ESR Agreement. NIS agreed to assign certain patents to CyberSecure to cure the breaches of the ESR Agreement.

19. ~~24.~~ CyberSecure responded in writing on May 5, 2023, with the Letter Agreement. In the Letter Agreement, CyberSecure set forth specific terms upon which it would agree that NIS had "cured" the breaches of the ESR Agreement.

20. ~~25.~~ Those terms included NIS's agreement that it would execute and file a Patent Assignment, attached to the Letter Agreement, transferring all of its rights and interests in certain patents—including the '940 and '616 patents—that CyberSecure had identified that provide similar to or the same functionality as CS Products and/or support the interoperability of NIS products with other products that provide the same functionality as Cybersecure products.

21. ~~26.~~ In addition, in order to comprehensively determine whether NIS possessed any further intellectual property that provided the same or similar functionality as CyberSecure products, the terms of the Letter Agreement required NIS, within thirty days, to perform a comprehensive review of its design and development work and patent portfolio. NIS was required to:

deliver to CyberSecure an affidavit from Mr. Giovannini, or other knowledgeable officer of NIS, setting forth (a) the scope of your internal audit and review of all intellectual property currently assigned to NIS (including filings by Inventors commonly known to Network Integrity Systems, including but not limited to: Cary Murphy, Mark Bridges, Joseph Giovannini, Daniel Goertzen, and David Vokey) and (b) admitting or denying that NIS possesses any internal development documents, unpatented and copyrightable inventions, software and applications (in source code or object code), images, schematics, protocols and/or prototypes, additional patents and other materials, not set forth in the attached Patent Assignment, similar to or that provide the same functionality as CS Products that are part of the Solutions, and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

22. ~~27.~~ The Letter Agreement required that NIS assign to CyberSecure any additional patents that fell within the scope of its intellectual property review. *Id.*

23. ~~28.~~ Mr. Giovannini signed the Letter Agreement and Patent Assignment on May 5, 2023, the very day he received it.

24. ~~29.~~ On May 26, 2023, Mr. Giovannini executed an Affidavit pursuant to the terms of the Letter Agreement. In his affidavit, Mr. Giovannini attested that he had reviewed NIS's intellectual property files and patent portfolio and that he "identified U.S. Patent Nos. 10,263,696 and 11,361,653 because each of these two patents have claims that include limitations that may fall within the domain of both NIS and CyberSecure." In his affidavit, he nevertheless ultimately "concluded that NIS does not possess any ... additional patents and other materials, not set forth in the Patent Assignment dated May 5, 2023, similar to or that provide the same functionality as CS Products that are part of the Solutions and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products."

25. ~~30.~~ On the same day he signed his affidavit—and seemingly in direct contradiction of the statements quoted above, Mr. Giovannini executed another patent assignment in which he assigned the 10,263,696 and 11,361,653 patents.

26. ~~31.~~ On June 2, 2023, Cary Murphy, the Chief Technology Officer at NIS, submitted an additional affidavit in support of the Letter Agreement. Mr. Murphy has been NIS's CTO since 2003. Based on a review he performed and, without limitation, his "recollection of research and development done at NIS", Mr. Murphy attested that other than the projects identified in his and Mr. Giovannini's affidavits, "NIS does not possess any ... additional patents or other materials, not set forth in the Patent Assignment dated May 5, 2023, similar to or that provide the same

functionality as CS Products that are part of the Solutions and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.”

27. ~~32.~~ Neither Mr. Giovannini nor Mr. Murphy identified the ‘641 patent or the ‘045 application in their respective affidavits.

28. ~~33.~~ On April 7, 2025, NIS filed a lawsuit in federal court in the Eastern District of Virginia styled *Network Integrity Systems, Inc. v. CyberSecure IPS LLC*, Case No. 1:25-cv-590. This action has now been transferred to the District of Maryland. Therein, NIS alleges that CyberSecure has infringed its ‘641 patent in several ways, including by “use of the CS Controller, Opti-Guard, and/or Cyber-Sensor Products for manhole, lockbox, and other FBG monitoring.” See Ex. F at para. 38.

29. ~~34.~~ CyberSecure’s Manhole Protection System (MPS) was part of the Solutions and has always been established as a CyberSecure product. CyberSecure’s Infrastructure Monitoring System (IMS) included MPS prior to the execution of the ESR Agreement. This product was sold by NIS under the ESR Agreement and was clearly within the scope of NIS’s obligations under the Letter Agreement to identify patents that provide the same or similar functionality as CyberSecure products.

30. ~~35.~~ MPS, as described in the exhibits provided by NIS with its EDVA Complaint (see e.g., Exhibit 8 to the Complaint), with full knowledge by NIS, utilized FBG (Fiber Bragg Grating) sensor technology over the course of the ESR Agreement.

31. ~~36.~~ In the EDVA Complaint and exhibits, NIS also alleges CyberSecure infringes the ‘641 patent through deployment of point-to-multipoint, full daisy-chain, and split daisy-chain layouts. Similar to MPS, deployment of point-to-multipoint, full daisy-chain, and split daisy-chain layouts

were part of the Solutions under the ESR Agreement and were deployed for customers jointly by the Parties pursuant to their installations under the ESR Agreement.

32. ~~37.~~ Because NIS alleges that CyberSecure infringes the ‘641 patent through activities related to MPS, point-to-multi-point, full daisy-chain, and split daisy-chain layouts, and these accused technologies/layouts were part of the Solutions under the ESR Agreement, the ‘641 patent is similar to or provides the same functionality as CyberSecure Products and/or supports the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

33. ~~38.~~ The ‘641 patent should therefore have been identified by NIS to CyberSecure as part of the Letter Agreement and/or identified by Mr. Murphy and Mr. Giovannini in their affidavits attesting that they had performed a comprehensive search, and no other additional patents existed within the scope of the Letter Agreement. The ‘641 patent would then have been assigned by NIS to CyberSecure pursuant to the terms of the Letter Agreement.

34. ~~39.~~ The ‘045 patent application was likewise within the scope of the Letter Agreement because it is similar to or provides the same functionality as CyberSecure products that were part of the Solutions. Specifically, the ‘045 patent application is similar to or provides the same functionality as CyberSecure’s IMS which includes MPS which was a part of the Solutions per the ESR. IMS monitors fibers for disturbances to protect sensitive data. Part of IMS’s value is that it monitors environmental factors, like temperature, using a self-adjusting time-based algorithm to filter out ambient noise to reduce false alarms.² The ‘045 application has claims that include using environmental factors to reduce false alarms.

² This technology is commercially important because constant false alarms reduce the system’s value to its customers.

35. ~~40.~~ Importantly, the '045 patent application was pending when NIS executed the Letter Agreement and provided CyberSecure with the affidavits from Mr. Murphy and Mr. Giovannini.

36. ~~41.~~ NIS, Mr. Murphy, and Mr. Giovannini misrepresented that the '641 patent and the '045 application held by NIS were not within the scope of the Letter Agreement. NIS used those patents to enrich themselves in violation of the ESR. In addition, NIS is now using the '641 patent to claim that CyberSecure products infringe on that patent.

37. ~~42.~~ CyberSecure entered into the Letter Agreement with NIS to resolve completely any and all claims by NIS related to CyberSecure products and thereafter released NIS from any claims based on those misrepresentations.

38. ~~43.~~ NIS, Mr. Murphy, and Mr. Giovannini breached the Letter Agreement, misrepresented the nature of NIS's patent portfolio, induced CyberSecure to enter into agreements and provide releases based on those misrepresentations and committed fraud on CyberSecure.

39. ~~44.~~ CyberSecure seeks to obtain a declaratory judgment from this honorable court that NIS (a) has breached the Letter Agreement by omitting the '641 patent and the '045 application from the affidavits of Mr. Murphy and Mr. Giovannini, (b) failing to assign the '641 patent and the '045 application pursuant to the terms of the Letter Agreement, (c) is obligated to reimburse and indemnify CyberSecure for any and all legal fees, cost and expenses expended by CyberSecure in defense of the patent infringement action filed by NIS, (d) is obligated to indemnify CyberSecure for any damages awarded in the patent infringement lawsuit. ~~CyberSecure further seeks an award of damages for breach of the ESR and breach of the Letter Agreement, in an amount to be proven at trial.~~

COUNT I
Fraud

40. ~~45.~~ Paragraphs 1 through ~~44~~39 are incorporated by reference into this count as if fully set forth herein.

41. ~~46.~~ NIS made false representations in the affidavits of Mr. Giovannini and Mr. Murphy regarding the existence/non-existence of additional patents and intellectual property that NIS possessed that fell within the scope of the Letter Agreement as set forth in the paragraphs above.

42. ~~47.~~ NIS, through Mr. Giovannini and Mr. Murphy knew that their representations that no additional patents or intellectual property fell within the scope of the Letter Agreement were false. They knew the falsity based on their claimed review of NIS's patent holdings and intellectual property and their intimate knowledge of NIS's product offerings and CyberSecure product offerings as part of the Parties' joint efforts under the ESR.

43. ~~48.~~ NIS, through the obligations it undertook in the Letter Agreement, and through the sworn affidavits of Mr. Giovannini and Mr. Murphy, intended that CyberSecure would rely on those false representations in order to induce CyberSecure to abandon its claims of breach of the ESR Agreement and to induce CyberSecure to believe that NIS did not hold any additional patents or other intellectual property that could be used to claim that CyberSecure was infringing on NIS's patents.

44. ~~49.~~ CyberSecure reasonably relied on the misrepresentations by NIS and was induced to abandon its claims of breach of the ESR Agreement and lulled into believing that it had eliminated any risk that NIS would claim that CyberSecure's products infringed on NIS's intellectual property. Further, CyberSecure entered into agreements with NIS in which it released NIS from claims based on the misrepresentations made in the Letter Agreement and affidavits referred to above.

45. ~~50.~~ CyberSecure has suffered damages caused by misrepresentations and fraudulent conduct as set forth above, including, but not limited to, the legal fees, expenses and costs related to the patent infringement action, the lost time and work from its engineers and executives as their attention has been diverted to defending the patent infringement lawsuit, and the damages, if any, that NIS may be awarded through the patent infringement action.

WHEREFORE, CyberSecure respectfully request that this Court enter judgment in favor of CyberSecure and against NIS for such damages in the amounts proven at trial, plus costs and fees, and grant such other and further relief as is just and appropriate under the circumstances.

COUNT II
Breach of Contract (ESR)

~~51. Paragraphs 1 through 50 are incorporated by reference into this count as if fully set forth herein.~~

~~52. NIS entered into the ESR with CyberSecure and promised not to design, develop, or manufacture any product that can reasonably be considered to perform and/or provide the same functionality as the CyberSecure products that were part of the Solutions.~~

~~53. NIS breached the ESR by designing, developing, modifying and/or revising products that provide similar or the same functionality as CyberSecure products that are part of the Solutions (as defined in the ESR Agreement), and or support the interoperability of NIS products with other~~

~~products that provide the same functionality as CyberSecure products, including, but not limited to, CyberSecure products IMS, Manhole Protection System (MPS), and StopLight.~~

~~54. NIS's Pulse products and the '940 and '616 patents provide the same functionality as CS's StopLight products.~~

~~55. As a direct and proximate result of NIS's wrongful conduct, CyberSecure has suffered significant damage and loss as measured by the sale of NIS products utilizing the stolen CyberSecure technology.~~

~~WHEREFORE CyberSecure respectfully requests that this Court enter judgment in favor of CyberSecure and award damages in the amounts proven at trial, plus costs and fees and grant such other and further relief as is just and appropriate under the circumstances.~~

COUNT III
Breach of Contract (Letter Agreement)

~~46. 56.~~ Paragraphs 1 through ~~55~~45 are incorporated by reference into this count as if fully set forth herein.

~~47. 57.~~ NIS entered into the Letter Agreement with CyberSecure and freely undertook obligations to review and examine its intellectual property, including its additional patents, to determine if any patents covered products or methods similar to or that provided the same functionality as CyberSecure products and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

~~48. 58.~~ NIS provided sworn affidavits from its CEO and CTO that no additional patents or other intellectual property existed that were within the scope of the Letter Agreement.

~~49. 59.~~ NIS's representations, through its CEO and CTO, were false and such falsity has been admitted by NIS in the patent infringement lawsuit referenced above.

50. ~~60.~~ By virtue of its allegations in the EDVA Complaint, NIS has admitted that the ‘641 patent is similar to or provides the same functionality as CyberSecure products, such as CyberSecure’s MPS, and/or support the interoperability of NIS products with other products that provide the same functionality as CyberSecure products.

51. ~~61.~~ NIS breached its duty to CyberSecure through its misrepresentations and omissions regarding the nature of the ‘641 patent and the ‘045 application.

52. ~~62.~~ NIS breached its duty to CyberSecure by violating the covenants of good faith and fair dealing and the duty to cooperate.

53. ~~63.~~ NIS breached its duty to CyberSecure by failing to assign to CyberSecure the ‘641 patent, and the ‘045 application.

54. ~~64.~~ CyberSecure relied upon those misrepresentations in entering into the Letter Agreement and subsequent agreements with NIS, including, but not limited to, the release of claims it had against NIS for breach of the ESR.

55. ~~65.~~ As a direct and proximate result of NIS’s wrongful conduct, CyberSecure has suffered significant damage and loss, including, but not limited to: (a) the payment of legal fees and costs in defending itself against the claims made in the patent infringement suit filed by NIS; and (b) the damages, if any, awarded to NIS against CyberSecure in the patent infringement lawsuit.

WHEREFORE, CyberSecure respectfully request that this Court enter judgment in favor of CyberSecure and Order NIS to assign the ‘641 patent and the ‘045 application to CyberSecure and award damages in the amounts proven at trial, plus costs and fees, and grant such other and further relief as is just and appropriate under the circumstances.

COUNT ~~IV~~III
(Declaratory Relief)

56. ~~66.~~ Paragraphs 1 through ~~65~~55 are incorporated by reference into this count as if fully set forth herein.

57. ~~67.~~ This is an action for declaratory judgment pursuant to the Court and Judicial Proceedings Article of the Annotated Code of Maryland for the purpose of determining questions of actual controversies between the Parties.

58. ~~68.~~ NIS has breached the Letter Agreement and committed fraud against CyberSecure as set forth in the paragraphs above.

59. ~~69.~~ NIS is seeking damages against CyberSecure in the patent infringement lawsuit referenced above, which is based on a patent that should have been assigned to CyberSecure under the Letter Agreement.

60. ~~70.~~ There exists an actual controversy of a justiciable issue between CyberSecure and NIS regarding the misrepresentations made by NIS and relied upon by CyberSecure.

61. ~~71.~~ Antagonistic claims are present between the Parties.

62. ~~72.~~ A declaratory judgment by this Court will terminate the Controversy.

WHEREFORE, the CyberSecure respectfully requests:

- a. That this Court determine and adjudicate that the Letter Agreement entitles CyberSecure to any damages claimed by NIS in the patent infringement lawsuit pending in the D. Md.;
- b. That this Court determine and adjudicate that NIS must reimburse/indemnify CyberSecure for any and all legal fees, expenses and costs related to the patent infringement lawsuit and for any damages awarded to NIS in the patent infringement lawsuit; and

c. Any other relief this Court finds proper.

Dated: September 415, 2025

Respectfully Submitted,

/s/ Benjamin S. Boyd

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DEMAND FOR JURY TRIAL

Plaintiff CyberSecure IPS LLC requests that the captioned case and all claims asserted therein be tried by a Jury.

Dated: September ~~4~~15, 2025

Respectfully Submitted,

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