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Military Flash Drive Producer Sued For Copyright And Patent Infringement

By Kerrie Spencer, staff technology writer – July 26, 2011

California based IronKey is being slapped with two lawsuits in federal court. One is for patent infringement, the other copyright infringement.

Most companies that do business in the technology area are global in reach, and spend a lot of time importing and exporting various components, parts and other things from companies in other countries. On the surface, that may sound like one big happy family swapping things that each other needs, but even when everyone gets along in the family someone usually steps on another's toes and the fight is on.

The two lawsuits involved in this case are against the same California company, IronKey. One is for alleged patent infringement, and the other is for copyright infringement. There is a line of thought that goes if you are going to be sued, you might just as well be sued for something worthwhile; a real issue, instead of one of the many patent infringement cases in the fashion industry. Those can border on the ridiculous at times, but nonetheless, ultimately have legal validity.

While you may not have heard about IronKey, they are definitely not small potatoes. Boasting about 100 employees, the company is well known for its military grade thumb or flash drives that protect the data stored on them. For those that want serious data security, IronKey may have the product that would suit their requirements.

The most recent lawsuit filed, the copyright infringement one, was filed by a company called Securework Inc. Its correspondence address in Newark, New Jersey, but its corporate offices are located in Hong Kong. This lawsuit states that IronKey licensed software from them in 2006 and paid \$30,000 in royalties. Evidently, IronKey then failed to make any further royalty payments and did not acknowledge Securework's copyright on IronKey products, and that included the licensed software. It also appears that IronKey may have been marketing the products without making royalty payments.

The copyright infringement case is a bit of a shotgun lawsuit, in that it also alleges breach of license, unfair competition and trade secret misappropriation. They are hoping for a jury trial and want to be able to impound or destroy any IronKey products that have their software in them. That would be a tough economic blow to IronKey.

The patent infringement lawsuit was filed in early June 2011 by three companies, Trek 2000 International Ltd., S-Com System Pte. Ltd., and Trek Technology Pte.Ltd, all based in Singapore. No one really knows how these three companies are related, or if they are, but in the greater scheme of things, it likely does not matter. What matters is that they develop external data storage technology, and you can see how that would relate to IronKey's niche.

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This lawsuit alleges that IronKey imports Trek 2000's components into the U.S. for assembly and sale of their secure data-storage thumb drives. Importing the components is not the problem. The problem appears to be that those parts use the ornamental design for this storage device created by Trek Technology, thus infringing on a patent owned by Trek Technology.

This case also alleges other infractions on the part of IronKey, including contributory copyright infringement and direct and active inducement. They hope to have a jury trial.

What is interesting about IronKey is that the company, was founded in 2005 with a grant from the U.S. Department of Homeland Security. In fact, they have about \$50 million in funding from various investment firms. Seems a tad odd that they would be accused of copyright and patent infringement, but then stranger things have happened when it comes to filing lawsuits.

When it comes to copyright infringement, few areas of law cause as much confusion as this one does, and it is not unusual for a copyright lawyer to spend a lot of time explaining copyright law to their clients. Typically, the definition of copyright infringement is using material (an unauthorized use), and that includes software, in a manner that violates the owner's exclusive rights and one of those rights is to make derivative works. So you see how this may be applicable to this case. Other exclusive rights copyright holders have are the right to distribute copies of the material; display it, and reproduce it.

Proving copyright infringement means the copyright holder who is created the original work must demonstrate ownership of an original work (including software) and a prima facie case for infringement. In other words, ownership is proven by showing authorship of an original work – software, books, movies, etc. The copyright holder can assign the copyright to a third person, as appears to have happened when Secureworks assigned the copyright for their software to IronKey for the royalty sum of \$30,000.

However, the company then kept marketing the product without paying royalties and without acknowledging Securework's copyright. The key here is simply claiming ownership of an original work (software) and registering it may still leave the registration open for attack when rights to use it become an issue. Section 17 U.S.C. § 102(a) states that copyright protection does exist for original works in any tangible medium, from which they can be reproduced etc., with the help of a machine. That is the short form of the section, but you get the drift and how this could apply in the Securework's lawsuit.

You cannot copyright an idea, but you might be able to patent it, which brings us to the second lawsuit in which component pieces are allegedly being used with the symbol created by the maker, Trek Technology, without attribution or permission. An idea? Possibly. A design that could be infringed upon? Could be. And this is something the courts will be taking a look at when the case hits the docket. Generally, infringement happens when a third party/person copies copyrighted, protected work. Unauthorized copying is typically proven with direct evidence or through inference, which means quite

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often circumstantial evidence of copying is important in showing infringement.

These days, thanks to the Internet, it is easier than ever to copy a copyrighted item. Original works are becoming harder and harder to protect, but on the other side of the fence, tracking infringement is also easier, again, thanks to the Internet. It will be interesting to keep a watchful eye on both of these cases to see who comes out the winner.

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