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Attorneys for Plaintiff  
RSA DATA SECURITY, INC.

May 19 8 05 AM '94

SAL...  
BY \_\_\_\_\_

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

RSA DATA SECURITY, INC., a  
Delaware corporation,  
  
Plaintiff,  
  
vs.  
  
CYLINK CORPORATION, a California  
corporation, CARO-KANN  
CORPORATION, a California  
corporation, and DOES 1 through  
25, inclusive,  
  
Defendants.

CASE NO.: C7740794

VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

1. Plaintiff RSA Data Security, Inc. ("Plaintiff") is a  
Delaware corporation with its principal place of business in  
Redwood City, California. RSA develops, markets and distributes  
encryption software which secures and authenticates electronic  
data transmissions.

2. Defendant Caro-Kann Corporation ("CKC") is a  
California corporation with its principal place of business in  
Sunnyvale, California.

/ / /

1           3. Defendant Cylink Corporation ("Cylink") is a  
2 California corporation with its principal place of business in  
3 Sunnyvale, California.

4           4. Defendants DOE 1 through DOE 25 are sued under  
5 fictitious names. Their true names and capacities are unknown to  
6 Plaintiff. When Plaintiff learns their true names and  
7 capacities, it will amend this complaint to include their names  
8 and capacities. Plaintiff is informed and believes that each of  
9 the fictitiously named defendants is responsible in some manner  
10 for the occurrences alleged in this complaint, and that  
11 Plaintiff's harm and threatened harm as alleged, were proximately  
12 caused by those defendants.

13           5. Robert B. Fougner ("Fougner") is an individual and  
14 member of the State Bar of California.

15           6. In or about April 1990, Plaintiff, CKC and Cylink  
16 entered an Agreement of Intent ("Intent Agreement") document that  
17 contains four exhibits bearing letters A through D as follows: A.  
18 Cylink License Agreement; B. Partnership Agreement; C. RSA  
19 License Agreement; and D. Cylink's Option to Sublicense RSA. The  
20 Exhibit B. Partnership Agreement is for a California general  
21 partnership called Public Key Partners (the "PKP" partnership).  
22 At all relevant times, the PKP partnership is and has been  
23 comprised of only two partners: Plaintiff and defendant CKC.  
24 Pursuant to the Intent Agreement, the PKP partnership was formed  
25 by CKC and Plaintiff to jointly license patents for encryption  
26 and decoding telecommunications transmissions to third parties.

27           7. Fougner acted as counsel to the PKP partnership from  
28 its inception in or about April 1990, through in or about January

1 1994. In or about January 1994, Plaintiff learned that Fougner  
2 was acting as counsel for defendants CKC and Cylink in a dispute  
3 against Plaintiff arising out of the Intent Agreement, while he  
4 was still representing the PKP partnership.

5 8. On or about January 26, 1994, Plaintiff notified  
6 Fougner that he had a conflict of interest in representing PKP  
7 partner CKC in a dispute against the other PKP partner,  
8 Plaintiff. Plaintiff is informed and believes that Fougner, CKC  
9 and Cylink then retained the professional law corporation Hopkins  
10 & Carley ("H&C") of San Jose to represent them to pursue the  
11 dispute against Plaintiff arising out of the Intent Agreement.

12 9. On or about February 2, 1994, Plaintiff notified H&C  
13 that it also had a conflict of interest in that H&C had also  
14 represented the PKP partnership and could not represent PKP  
15 partner CKC against the other PKP partner, Plaintiff, under the  
16 circumstances. In or about February 25, 1994 H&C denied that it  
17 had any conflict of interest based on its prior representation of  
18 the PKP partnership.

19 10. Despite Plaintiff's written notice to both Fougner and  
20 H&C, Fougner and H&C have continued to represent CKC and Cylink  
21 in their dispute against Plaintiff.

22 11. On or about April 4, 1994, defendants Cylink and CKC  
23 through their counsel Fougner, attempted to provide Plaintiff  
24 with a written demand for arbitration under the partnership  
25 agreement for the PKP partnership (Exhibit B. to the Intent  
26 Agreement). A true and correct copy of the arbitration provision  
27 contained in Exhibit B. to the PKP partnership agreement is  
28 attached hereto as Exhibit A, and incorporated by this reference.

1 A true and correct copy of the April 4, 1994 arbitration demand  
2 letter is attached hereto as Exhibit B and incorporated by this  
3 reference. The attempted demand in the April 4, 1994 letter does  
4 not seek arbitration under the Intent Agreement itself, which has  
5 a separate arbitration clause with different provisions. A true  
6 and correct copy of the arbitration provision contained in the  
7 Intent Agreement is attached hereto as Exhibit C and incorporated  
8 by this reference. Although the demand letter only seeks  
9 arbitration under the PKP partnership agreement arbitration  
10 clause (Exhibit A hereto), it requests adjudication of numerous  
11 provisions of the Intent Agreement.

12 12. On or about May 2, 1994 Plaintiff notified CKC and  
13 Cylink that the attempted demand for arbitration was defective on  
14 numerous grounds. These include that: (1) defendant Cylink  
15 attempted to demand arbitration under the PKP partnership  
16 agreement, although Cylink is not a partner in the PKP  
17 partnership and is not a party to the Exhibit B. PKP partnership  
18 agreement; (2) the demand letter attempts to appoint an  
19 arbitrator (Henry C. Bunsow, Esq.) who has a conflict of interest  
20 because he is currently a law partner with RSA's former counsel  
21 (one Robert Gunderson, Esq.); and (3) that Fougner continues to  
22 have a conflict of interest in representing CKC in the dispute  
23 against Plaintiff. Plaintiff also provided written notice to  
24 defendants CKC and Cylink of its appointment of David R.  
25 Halvorson, Esq. as its choice as Plaintiff's party arbitrator in  
26 a written letter dated May 4, 1994, sent by facsimile  
27 transmission to Fougner. A true and correct copy of Plaintiff's

28 / / /

1 letter appointing Mr. Halvorson is attached hereto as Exhibit D  
2 and incorporated by this reference.

3 13. On or about May 5, 1994, Fougner sent Plaintiff a  
4 letter denying any problems with its April 4, 1994 letter  
5 containing the demand for arbitration, denying a conflict of  
6 interest on the part of the arbitrator named in its letter and  
7 claiming that Plaintiff's notice of the appointment of David R.  
8 Halvorson, Esq. as Plaintiff's party arbitrator was defective.

9 14. On May 5, 1994, defendants CKC and Cylink advised  
10 their chosen party arbitrator Mr. Bunsow that he was empowered to  
11 arbitrate their dispute against Plaintiff over the Intent  
12 Agreement as the sole arbitrator. Continuing in his role as CKC  
13 and Cylink's counsel, Fougner sent a exhibit binder to Mr. Bunsow  
14 for Mr. Bunsow's use in conducting the arbitration.

15  
16 **FIRST CAUSE OF ACTION**  
(Declaratory Relief)

17 15. Plaintiff incorporates each and every allegation  
18 contained in paragraphs 1 through 14, inclusive as if each  
19 allegation were set forth in full in this cause of action.

20 16. Actual controversies have arisen and now exist  
21 relating to the rights and duties of Plaintiff, CKC, and Cylink  
22 as follows:

23 A. Plaintiff contends that defendants CKC and  
24 Cylink's written demand for arbitration as contained in  
25 Fougner's letter dated April 4, 1994 (attached hereto as  
26 Exhibit A) is defective and cannot function to initiate  
27 arbitration proceedings under Paragraph 12.1 of the PKP  
28 partnership agreement (Exhibit B. to the Intent Agreement)

1 because defendant Cylink is not a party to this agreement  
2 and cannot demand arbitration under its provisions; whereas  
3 defendants CKC and Cylink contend that the demand is valid  
4 and that Cylink can demand arbitration under the PKP  
5 partnership agreement, despite the fact that Cylink is not  
6 a party to the PKP partnership agreement.

7 B. Plaintiff contends that defendants CKC and  
8 Cylink's written demand for arbitration as contained in  
9 Fougner's letter dated April 4, 1994 (attached hereto as  
10 Exhibit A) is defective and cannot function to initiate  
11 arbitration proceedings under Paragraph 12.1 of the PKP  
12 partnership agreement (Exhibit B. to the Intent Agreement)  
13 because it seeks adjudication of provisions of the Intent  
14 Agreement that are not contained within the language of the  
15 PKP partnership agreement and because defendants CKC and  
16 Cylink must demand arbitration under Paragraph 5.1 of the  
17 Intent Agreement if they wish to adjudicate the Intent  
18 Agreement's provisions; whereas defendants CKC and Cylink  
19 contend that the demand is valid and that an arbitration  
20 conducted under the PKP partnership agreement arbitration  
21 provision alone can adjudicate contract provisions  
22 contained within the Intent Agreement.

23 C. Plaintiff contends that defendants CKC and Cylink  
24 cannot utilize the services of Fougner as their counsel to  
25 pursue their dispute against Plaintiff, in that Fougner has  
26 a conflict of interest that has not been waived because he  
27 represented the PKP partnership from its inception through  
28 and including the current dispute and is now attempting to

1 represent one of the PKP partners, CKC, and Cylink in an  
2 action against the other PKP partner, Plaintiff, as to  
3 matters arising out of the partnership business in  
4 violation of Business and Professions Code Sections 6076-77  
5 and California Rules of Professional Conduct 3-600, 3-310  
6 and 3-300; whereas defendants CKC and Cylink contend that  
7 they are entitled to utilize the professional services of  
8 Fougner to represent them against Plaintiff as to matters  
9 arising out of the PKP partnership's business, although  
10 Fougner represented the PKP partnership for many years and  
11 Plaintiff is one of only two PKP partners.

12 D. Plaintiff contends that defendants CKC and Cylink  
13 cannot utilize the services of the law corporation H&C as  
14 their counsel to pursue their dispute against Plaintiff, in  
15 that H&C has a conflict of interest that has not been  
16 waived because it represented the PKP partnership when  
17 Plaintiff was one of the two PKP partners and is now  
18 attempting to represent one of the PKP partners, CKC and  
19 Cylink in an action against the other PKP partner,  
20 Plaintiff, as to matters of PKP's partnership business in  
21 violation of Business and Professions Code Sections 6076-77  
22 and California Rules of Professional Conduct 3-600 and 3-  
23 310; whereas defendants CKC and Cylink contend that they  
24 are entitled to utilize the professional services of H&C to  
25 represent them against Plaintiff as to matters arising out  
26 of the PKP partnership's business, even though H&C  
27 represented the PKP partnership, and Plaintiff is one of  
28 the two PKP partners.

1           E.    Plaintiff contends that its written notice of  
2           Plaintiff's appointment of its party arbitrator dated May  
3           4, 1994 sent by facsimile transmission and regular mail to  
4           Fougner and which was received by defendants on May 4, 1994  
5           is effective to appoint that arbitrator to resolve the  
6           disputes identified by defendants CKC, and Cylink; whereas  
7           defendants CKC, and Cylink contend that Plaintiff's written  
8           notice is defective and that the arbitration can proceed  
9           with their party arbitrator (Henry C. Bunsow, Esq.) as the  
10          sole arbitrator in this dispute.

11          F.    Plaintiff contends that defendants CKC and Cylink  
12          cannot utilize Henry C. Bunsow, Esq. as their party  
13          arbitrator in this dispute because he has a conflict of  
14          interest which has not been waived in that he is currently  
15          a law partner with RSA's former counsel.

16          17.   Plaintiff desires a judicial determination of its  
17          rights and duties, and a declaration as follows:

18                A.   That defendants CKC and Cylink's written demand  
19                for arbitration as contained in Fougner's letter dated  
20                April 4, 1994 (attached hereto as Exhibit A) is defective  
21                and does not function to initiate arbitration proceedings  
22                under Paragraph 12.1 of the PKP partnership agreement  
23                (Exhibit B. to the Intent Agreement) because defendant  
24                Cylink is not a party to this agreement and cannot demand  
25                arbitration under its provisions;

26                B.   That defendants CKC and Cylink's written demand  
27                for arbitration as contained in Fougner's letter dated  
28                April 4, 1994 (attached hereto as Exhibit A) is defective



1 and does not function to initiate arbitration proceedings  
2 under Paragraph 12.1 of the PKP partnership agreement  
3 (Exhibit B. to the Intent Agreement) because it seeks  
4 adjudication of provisions of the Intent Agreement that are  
5 not contained within the language of the PKP partnership  
6 agreement and because defendants CKC and Cylink must demand  
7 arbitration under Paragraph 5.1 of the Intent Agreement if  
8 they wish to adjudicate the Intent Agreement's provisions;

9 C. That defendants CKC and Cylink cannot utilize the  
10 services of Fougner as their counsel to pursue their  
11 dispute against Plaintiff, in that Fougner has a conflict  
12 of interest that has not been waived because he represented  
13 the PKP partnership from its inception through and  
14 including the current dispute and is now attempting to  
15 represent one of the PKP partners, CKC, and Cylink in an  
16 action against the other PKP partner, Plaintiff, as to  
17 matters of partnership business in violation of Business  
18 and Professions Code Sections 6076-77 and California Rules  
19 of Professional Conduct 3-600, 3-310 and 3-300;

20 D. That defendants CKC and Cylink cannot utilize the  
21 services of the law corporation H&C as their counsel to  
22 pursue their dispute against Plaintiff, in that H&C has a  
23 conflict of interest that has not been waived because it  
24 represented the PKP partnership when Plaintiff was one of  
25 the two PKP partners and is now attempting to represent one  
26 of the PKP partners, CKC, and Cylink in an action against  
27 the other PKP partner, Plaintiff, as to matters of PKP's  
28 partnership business in violation of Business and

1 Professions Code Sections 6076-77 and California Rules of  
2 Professional Conduct 3-600 and 3-310;

3 E. That Plaintiff's written notice of Plaintiff's  
4 appointment of its party arbitrator dated May 4, 1994 sent  
5 by facsimile transmission and regular mail to Fougner and  
6 which was received by defendants on May 4, 1994 is  
7 effective to appoint that arbitrator to resolve the  
8 disputes identified by defendants CKC, and Cylink; and

9 F. That defendants CKC and Cylink cannot utilize  
10 Henry C. Bunsow, Esq. as their party arbitrator in this  
11 dispute because he has a conflict of interest which has not  
12 been waived in that he is currently a law partner with  
13 RSA's former counsel.

14 18. A judicial declaration is necessary and appropriate at  
15 this time under the circumstances in order that Plaintiff may  
16 ascertain its rights and duties with respect to the arbitration  
17 and with respect to the conflicts of interest of Fougner, the law  
18 firm of H&C and the purported party arbitrator for defendants CKC  
19 and Cylink, Henry C. Bunsow, Esq. The unsettled state of affairs  
20 has created an extreme burden on Plaintiff in that defendants CKC  
21 and Cylink are now attempting to adjudicate Plaintiff's rights by  
22 proceeding with the arbitration under Paragraph 12.1 of the PKP  
23 partnership agreement (Exhibit B. to the Intent Agreement)  
24 pursuant to the defective demand, using counsel with conflicts of  
25 interest and presided over by defendants' sole party arbitrator  
26 who also has a conflict of interest with respect to Plaintiff.

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SECOND FIRST CAUSE OF ACTION  
(Injunctive Relief)

19. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 18, inclusive as if they were set forth in full in this cause of action.

20. As set forth above, Plaintiff has notified defendants CKC and Cylink that their attempt to demand arbitration under Paragraph 12.1 of the PKP partnership agreement (Exhibit B. to the Intent Agreement) was defective, and that their chosen counsel (Fougner and H&C) and chosen party arbitrator (Henry Bunsow, Esq.) have conflicts of interest that make it impossible for them to proceed in these roles on behalf of defendants. Defendants CKC and Cylink have refused and still refuse to provide a proper demand for arbitration and to refrain from using counsel and a party arbitrator who have conflicts of interest in pursuing their dispute against Plaintiff.

21. Defendants CKC and Cylink threaten to proceed with an arbitration pursuant to the defective demand, utilizing counsel with a conflict of interest (H&C and Fougner), utilizing a party arbitrator with a conflict of interest (Mr. Bunsow) and having Mr. Bunsow preside over the arbitration as the sole arbitrator who will decide the dispute. They sent a letter to Mr. Bunsow on May 5, 1994 purporting to empower him to conduct the arbitration against Plaintiff as the sole arbitrator. Unless and until this behavior is enjoined by order of this court, Plaintiff will suffer irreparable injury in that Plaintiff's rights under the Intent Agreement and its exhibits will be adjudicated in violation of the terms of the applicable arbitration provision,

1 and in an improper forum infected by conflicts of interest at  
2 every level.

3 22. Plaintiff has no adequate remedy at law for the  
4 injuries threatened in that defendants are attempting to proceed  
5 with the arbitration under their false and improper  
6 interpretations of the applicable provisions of the documents,  
7 and it will be impossible for Plaintiff to determine the precise  
8 amount of monetary damage it will suffer if defendants CKC and  
9 Cylink's conduct is not restrained.

10 WHEREFORE, Plaintiff prays judgment as follows:

11 1. For a declaration:

12 A. That defendants CKC and Cylink's written demand  
13 for arbitration as contained in Fougner's letter dated  
14 April 4, 1994 (attached hereto as Exhibit B) is defective  
15 and does not function to initiate arbitration proceedings  
16 under Paragraph 12.1 of the PKP partnership agreement  
17 (Exhibit B. to the Intent Agreement) (attached hereto as  
18 Exhibit A) because defendant Cylink is not a party to this  
19 agreement and cannot demand arbitration under its  
20 provisions;

21 B. That defendants CKC and Cylink's written demand  
22 for arbitration as contained in Fougner's letter dated  
23 April 4, 1994 (attached hereto as Exhibit B) is defective  
24 and does not function to initiate arbitration proceedings  
25 under Paragraph 12.1 of the PKP partnership agreement  
26 (Exhibit B. to the Intent Agreement) (attached hereto as  
27 Exhibit A) because it seeks adjudication of provisions of  
28 the Intent Agreement that are not contained within the

1 language of the PKP partnership agreement and because  
2 defendants CKC and Cylink must demand arbitration under  
3 Paragraph 5.1 of the Intent Agreement (attached hereto as  
4 Exhibit C) if they wish to adjudicate the Intent  
5 Agreement's provisions;

6 C. That defendants CKC and Cylink cannot utilize the  
7 services of Fougner as their counsel to pursue their  
8 dispute against Plaintiff, in that Fougner has a conflict  
9 of interest that has not been waived because he represented  
10 the PKP partnership from its inception through and  
11 including the current dispute and is now attempting to  
12 represent one of the PKP partners, CKC, and Cylink in an  
13 action against the other PKP partner, Plaintiff, as to  
14 matters of partnership business in violation of Business  
15 and Professions Code Sections 6076-77 and California Rules  
16 of Professional Conduct 3-600, 3-310 and 3-300;

17 D. That defendants CKC and Cylink cannot utilize the  
18 services of the law corporation H&C as their counsel to  
19 pursue their dispute against Plaintiff, in that H&C has a  
20 conflict of interest that has not been waived because it  
21 represented the PKP partnership when Plaintiff was one of  
22 the two PKP partners and is now attempting to represent one  
23 of the PKP partners, CKC, and Cylink in an action against  
24 the other PKP partner, Plaintiff, as to matters of PKP's  
25 partnership business in violation of Business and  
26 Professions Code Sections 6076-77 and California Rules of  
27 Professional Conduct 3-600 and 3-310;

28 / / /

1           E.    That Plaintiff's written notice of Plaintiff's  
2           appointment of its party arbitrator dated May 4, 1994 sent  
3           by facsimile transmission and regular mail to Fougner and  
4           which was received by defendants on May 4, 1994 (attached  
5           hereto as Exhibit D) is effective to appoint that  
6           arbitrator to resolve the disputes identified by defendants  
7           CKC, and Cylink; and

8           F.    That defendants CKC and Cylink cannot utilize  
9           Henry C. Bunsow, Esq. as their party arbitrator in this  
10          dispute because he has a conflict of interest which has not  
11          been waived in that he is currently a law partner with  
12          RSA's former counsel.

13          2.    For issuance of a temporary restraining order,  
14          preliminary injunction, and permanent injunction restraining and  
15          enjoining defendants CKC and Cylink, each of them, their agents,  
16          servants, and employees, and all persons acting under, in concert  
17          with, or for them, from:

18               A.   proceeding with an arbitration pursuant to  
19               Paragraph 12.1 of the Public Key Partners ("PKP")  
20               Partnership Agreement (Exhibit B. to the Agreement of  
21               Intent dated April 6, 1990 ("Intent Agreement")) based on  
22               their defective demand;

23               B.   proceeding with an arbitration pursuant to  
24               Paragraph 12.1 of the PKP Partnership Agreement (Exhibit B.  
25               to the Intent Agreement) that would adjudicate provisions  
26               of the Intent Agreement;

27       / / /

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1 C. proceeding with an arbitration utilizing Henry S.  
2 Bunsow, Esq. as their party arbitrator despite his conflict  
3 of interest;

4 D. proceeding with an arbitration in which only  
5 defendants' party arbitrator presides and renders a  
6 decision rather than the three arbitrator panel  
7 contemplated by both Paragraph 12.1 of the PKP partnership  
8 agreement (Exhibit B. to the Intent Agreement) and  
9 Paragraph 5.1 of the Intent Agreement;

10 E. utilizing the law firm of Hopkins & Carley to  
11 represent CKC and Cylink against Plaintiff in any dispute  
12 arising out of or related to the PKP partnership; and

13 F. utilizing attorney Robert B. Fougner to represent  
14 CKC and Cylink against Plaintiff in any dispute arising out  
15 of or related to the PKP partnership;

16 3. For costs of suit herein incurred; and

17 4. For such other and further relief as the court may  
18 deem proper.

19 DATED: May 18, 1994

20 TOMLINSON, ZISKO, MOROSOLI & MASER

21  
22 By: Mary E. O'Byrne

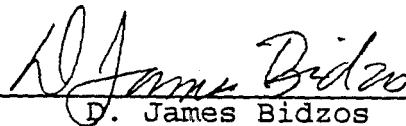
23 Mary E. O'Byrne  
24 Attorneys for Plaintiff  
25 RSA DATA SECURITY, INC.  
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## VERIFICATION

I, D. James Bidzos, declare:

I am President and Chief Executive officer of the plaintiff RSA Data Security, Inc. in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on May 17, at Palo Alto, CA.



D. James Bidzos  
President and Chief Executive Officer  
RSA Data Security, Inc.



(ENDORSED)  
FILED

JUN 16 9 01 AM '94

STEVEN J. HINE  
COURT CLERK  
SANTA CLARA COUNTY  
BY \_\_\_\_\_ DEPUTY

1 Jon Michaelson, Esq. (State Bar No. 83815)  
2 Liza K. Toth, Esq. (State Bar No. 122947)  
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9 Attorneys for Defendants/Petitioners  
10 Cylink Corporation and Caro-Kann Corporation

SENT TO DOCKET

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SANTA CLARA

13 RSA DATA SECURITY, INC., a Delaware  
14 Corporation,

15 Plaintiff/Respondent,

16 v.

17 CYLINK CORPORATION, a California  
18 Corporation, CARO-KANN  
19 CORPORATION, a California Corporation,  
20 and DOES 1 through 25, inclusive, ,

21 Defendants/Petitioners.

No. CV 740794

PETITION TO COMPEL  
ARBITRATION AND TO STAY ALL  
PROCEEDINGS

DATE: JULY 5, 1994  
TIME: 9:00 a.m.  
DEPT.: 13

22 Defendants/petitioners Cylink Corporation ("Cylink") and its wholly owned  
23 subsidiary Caro-Kann Corporation ("CKC") allege:

- 24 1. The agreements herein alleged were made in Santa Clara County California.
- 25 2. On or about April 6, 1990, Cylink, CKC and plaintiff/respondent RSA Data  
26 Security, Inc. ("RSADSI") entered into a written agreement entitled "Agreement of Intent" ("Intent  
27 Agreement") which contained in Section 5.1 a broad arbitration agreement. A true and correct  
28 copy of said Agreement of Intent containing the arbitration agreement is attached hereto as Exhibit  
A and incorporated herein by reference. Concurrently with execution of the Agreement of Intent,  
CKC executed a General Partnership Agreement ("Partnership Agreement"), forming a general

1 partnership with RSADSI known as Public Key Partners ("PKP"). A true and correct copy of the  
2 Partnership Agreement is attached hereto as Exhibit B and incorporated herein by reference. The  
3 Partnership Agreement contained a broad arbitration clause at Article 12, paragraph 1. The  
4 Partnership Agreement incorporates by reference the Intent Agreement. See, Exh. B, Article 12,  
5 paragraph 12. The arbitration provisions in both agreements are materially identical and require  
6 the parties to arbitrate all disputes between them relating in any manner to the agreements.

7           3.       Following PKP's formation, a controversy arose between Cylink and  
8 RSADSI in that Cylink asserts, among other claims, certain rights to a patent license while  
9 RSADSI contends no such right exists. Cylink and RSADSI also disagree on the interpretation of  
10 certain provisions of the Intent Agreement and the Partnership Agreement. The controversy is  
11 further described in the Exhibits referenced hereinbelow. The arbitration agreements herein  
12 alleged require that the parties arbitrate their controversy in its entirety.

13           4.       On or about April 4 and again on May 18, 1994, Cylink and CKC demanded  
14 that RSADSI submit the controversy to arbitration as agreed. True and correct copies of the  
15 demands for arbitration are attached hereto as Exhibits C and D, respectively, and incorporated  
16 herein by reference. RSADSI has at all times refused, and still refuses to arbitrate. RSADSI has  
17 further filed the instant action and is proceeding with motions and discovery to decide issues which  
18 are subject to the arbitration provisions contained in the agreements.

19       WHEREFORE, Cylink and CKC pray:


- 20           1. That the court order RSADSI to arbitrate the controversy as herein alleged;  
21           2. That the court stay all court proceedings pending completion of arbitration;  
22           3. That Cylink and CKC be awarded its reasonable attorneys fees incurred in the suit  
23 herein;  
24           4. That Cylink and CKC be awarded costs of suit incurred herein;

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5. For such other and further relief as the court deems just and proper.

DATED: June 16, 1994

HOPKINS & CARLEY  
A Law Corporation

By:   
Linda Larson Isoz  
Attorneys for Defendants/Petitioners  
Cylink Corporation and Caro-Kann  
Corporation

**TOMLINSON, ZISKO, MOROSOLI & MASER**

ATTORNEYS AT LAW  
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PALO ALTO, CALIFORNIA 94306

THOMAS F. MASER  
EUGENE B. MOROSOLI, JR.  
WILLIAM E. ZISKO  
TIMOTHY TOMLINSON  
JIM CRAIG CULLETT  
JAMES R. BUSSELLE  
POLLY A. DINKEL  
CLIFFORD M. GOVAERTS\*  
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MARY E. O'BYRNE  
THOMAS E. MOORE III  
RICHARD D. JUCKINS  
TERRI R. PREZANT  
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\*CERTIFIED SPECIALIST, TAXATION LAW,  
THE STATE BAR OF CALIFORNIA  
BOARD OF LEGAL SPECIALIZATION

TELEPHONE  
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(415) 324-1808

June 17, 1994

RSA01 3650

VIA HAND DELIVERY

CYLINK CORPORATION  
310 North Mary Avenue  
Sunnyvale, California 94086

Attention: Lewis C. Morriss

CARO-KANN CORPORATION  
310 North Mary Avenue  
Sunnyvale, California 94086

Attention: Robert B. Fougner, Esq.

Re: Response to Amended Arbitration Demand

Dear Sirs:

RSA Data Security, Inc. ("RSA") responds to Cylink Corporation's and Caro-Kann Corporation's (hereinafter collectively referred to as "Cylink") Amended Demand for Arbitration dated May 18, 1994 as follows:

**DESIGNATION OF ARBITRATOR**

RSA hereby appoints as its arbitrator:

David R. Halvorson, Esq.  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
1279 Oakmead Parkway  
Sunnyvale, California 94086-4039  
Telephone: (408) 720-8598

Cylink Corporation  
Caro-Kann Corporation  
June 17, 1994  
Page 2

### ANSWER TO CLAIMS

RSA denies all of the claims set forth in Cylink's Amended Arbitration Demand in all material respects.

### RSA COUNTERCLAIMS

RSA hereby counterclaims against Cylink as follows:

1. Alter Ego Liability Against Cylink. RSA seeks alter ego liability against Cylink Corporation for the unlawful activities of its wholly owned subsidiary, Caro-Kann Corporation, because there exists and at all relevant times has existed a unity of interest and ownership between Caro-Kann Corporation and Cylink Corporation such that any individuality and separateness between them has ceased to exist, and Cylink Corporation is the alter ego of Caro-Kann Corporation. Adherence to the fiction of Cylink Corporation as an entity distinct from Caro-Kann Corporation would permit abuse of the corporate privilege and would sanction fraud and promote injustice.

2. Breach of Fiduciary Duty. Cylink, their officers, directors and employees have in the past and continuing to the present violated their fiduciary duties to RSA under the General Partnership Agreement for Public Key Partners entered into between Caro-Kann and RSA as of April 6, 1990 ("the Partnership Agreement"). RSA seeks monetary damages and appropriate injunctive relief against further breaches of the fiduciary duties owed under the Partnership Agreement.

3. Rescission of the Agreements Including Partnership Agreement. RSA seeks rescission of the Agreement of Intent and its exhibits including the Exhibit B Partnership Agreement, and a judgment putting the parties back into the position they were in prior to entry into the Agreement of Intent and its exhibits including the Exhibit B Partnership Agreement on April 6, 1990, on the grounds of coercion, fraud and/or mistake.

4. Breach of Agreements Including Partnership Agreement and Partnership Accounting. RSA seeks a judgment that Cylink has breached the Agreement of Intent and its exhibits, including the Exhibit B Partnership Agreement in numerous material respects with resulting damage to RSA.

5. Business Torts. Cylink, their officers, directors and employees, have committed numerous business torts, specifically including, but not limited to inducing breach of contract, intentional misrepresentation, negligent misrepresentation and interference with prospective economic advantage which have been the proximate cause of damage to RSA. RSA seeks monetary damages, including both compensatory and punitive damages for its injuries suffered as a result of these torts.

Cylink Corporation  
Caro-Kann Corporation  
June 17, 1994  
Page 3

6. Breaches of Business and Professions Code. Cylink, their officers, directors and employees have breached the provisions of the California Business and Professions Code and have participated in numerous acts of unfair business practices which have proximately damaged RSA. RSA seeks monetary damages, including both compensatory and punitive damages for its injuries suffered as a result of these acts.

7. Violations of Lanham Act. Cylink, their officers, directors and employees have violated the provisions of the Lanham Act which have proximately damaged RSA. RSA seeks monetary damages, including compensatory and punitive damages for its injuries suffered as a result of these acts and injunctive relief to prohibit repetition of these acts.

8. Conspiracy. Cylink, their officers, directors and employees have conspired among themselves and with third parties to commit the wrongful acts outlined above and, in so doing, have committed a separate tort which has proximately caused damage to RSA. RSA seeks monetary damages, including punitive damages for its injuries suffered as a result of these acts and injunctive relief to prohibit repetition of these acts.

9. Costs of This Proceeding. In accordance with Article 12, paragraph 6 of the Partnership Agreement, and the various statutes cited above, RSA claims all costs and attorney's fees incurred due to this proceeding.

#### RESERVATION OF RIGHTS

RSA reserves its rights to amend its counterclaims or to add additional counterclaims at any time prior to the closure of the arbitrator's hearings or in subsequent proceedings.

Very truly yours,

TOMLINSON, ZISKO, MOROSOLI & MASER

By: 

James R. Busselle  
Attorneys for  
RSA DATA SECURITY, INC.

JRB:sb

cc: Mr. James Bidzos  
Jon Michaelson, Esq.



**TOMLINSON  
ZISK &  
MOROSOLI  
& MASER  
ATTORNEYS**

**August 15, 1994**

**READ-3450**

**VIA FAX and U.S. MAIL**

THOMAS F. MASER  
EUGENE B. MOROSOLI, JR.  
WILLIAM E. ZISKO  
TIMOTHY TOMLINSON  
JIM CRAIG CURLETT  
JAMES R. BUSSELLE  
POLLY A. DINIOL  
CLIFFORD M. COMARITS  
JANETTE M. HOOVER  
MARY E. O'BRYNE  
THOMAS F. MCKENNA III  
RICHARD D. JUDSON  
TERI R. PREZANT  
OLEG A. VIKTORCHIK

**David R. Halverson, Esq.  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
1279 Oakmead Parkway  
Sunnyvale, California 94086-4039**

**Henry C. Bunsow, Esq.  
BROBECK, PHLEGER & HARRISON  
Spear Street Tower  
One Market Street  
San Francisco, California 94105**

**Re: Cylink/Caro-Kann/RSA Arbitration**

**Gentlemen:**

Enclosed please find a copy of the Notice of Rulings issued by Judge Ambler in the declaratory judgment action filed by RSA in conjunction with the above-entitled arbitration. As you will note from the Notice, Judge Ambler has disqualified the law firm of Hopkins & Carley from representing Cylink and Caro-Kann. We are in the process of preparing an Order which will be signed and filed in due course.

In view of Judge Ambler's ruling, I assume that Cylink and Caro-Kann will be appointing new counsel to represent them in this matter. This new counsel will undoubtedly wish to be heard on the currently pending arbitration issues such as the choice of law and appointment of a third arbitrator.

Since Cylink and Caro-Kann are temporarily unrepresented, I ask that you provide us with some guidance as to how you wish for us to proceed, particularly with regard to the directions set forth in Mr. Halverson's August 3, 1994 letter.

RSA is anxious to proceed with the arbitration as expeditiously as possible. However, we thought that it was appropriate that you be informed of all current

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TELEPHONE (415) 325-8666  
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19210.

David R. Halvorsen, Esq.  
Henry C. Bunsow, Esq.  
August 15, 1994  
Page 2

developments in order that the arbitration proceedings be conducted fairly.

I would appreciate it if you would communicate your decision on this request to the undersigned at your earliest convenience.

Very truly yours,



James R. Busselle

JRB:sh

cc: Jon Michaelson, Esq. (via Facsimile)  
Mr. D. James Bidzos



**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA**

DATE: August 11, 1994

**CASE NUMBER:** CV 740794

**PRESENT: HON READ AMBLER**

**JUDGE** D. De La Vega

**DEPUTY-CLERK**

**REPORTER**

**M. Wyllie**

# BAILIFF

**TITLE**

**RSA Data Security, Inc., a Delaware corp.,  
vs Plaintiff.**

Cylink Corporation, a California corporation  
et al., Defendants.

**COUNSEL PRESENT:**

Mary E. O'Byrne, Esq. STEVEN V. LOVE  
Jon Michaelson, Esq.

**NATURE OF PROCEEDINGS:**

## Notice of Rulings

**Plaintiff RSA Data Security, Inc.'s (1) Motion for Order Disqualifying Opposing Counsel (Hopkins & Carley) was heard June 16, 1994, and submitted for decision July 19, 1994<sup>1</sup>; its (2) Motion for Order Disqualifying Robert B. Fougner; its (3) Motion to Compel Deposition Re: Access to Partnership Records Under Corporations Code Section 15019; and its (4) Motion for Protective Order and to Seal Portions of Court File; and (5) defendants/petitioners Cylink Corporation's and Gro-Kann Corporation's Petition to Compel Arbitration and to Stay All Proceedings; were heard August 9, 1994.**

**Motion (4).**

Motion (4) was mooted by a stipulation and order signed August 9, 1994.

<sup>1</sup>Though the court entered a minute order submitting the matter on July 5, 1994, a dispute arose concerning whether some of the responding parties' pleadings should be considered, and that was not resolved (favorably to responding parties) until the hearing on July 19, 1994, on which date the matter is deemed to have been resubmitted.

Motion (5)

Petitioners' assertion is that the broad sweep of the agreement to arbitrate includes all pending motions; that is, if the court grants the petition, it would be improper for the court to intrude upon the province of the arbitrators to deal with any of said motions. The court disagrees. Though the arbitration clauses at issue cover "all disputes, controversies or differences arising out of or in relation to or in connection with" the agreements, the court finds, under the particular circumstances of this case (see analysis in plaintiff's MPA in Opposition filed July 12, 1994, pp. 2, 7-10), "with positive assurance that the arbitration clause is *not* susceptible of an interpretation that covers the asserted dispute." (Emphasis provided.) (Morris v. Zuckerman (1968) 257 Cal. App.2d 92, 95.) Though the State Bar of California, not the court, is charged with primary responsibility for enforcing the ethical obligations of practicing attorneys; the court has express authority "(t)o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." (C.C.P. §128(a)(5); and see Responsible Citizens v. Superior Court (1993) 16 Cal.App.4th 1717, 1723; Bidermann Industries Licensing, Inc. v. Aymer N.V. Leit Motif, Inc. (1991) 173 A.D.2d 401, 570 N.Y.S. 2d 33; Glauber v. Glauber (1993) 192 A.D.2d 94, 600 N.Y.S. 2d 740, 742.) The court concludes that motions (1, (2) and (3) are not part of the arbitration; and the petition is accordingly denied.

Motions (1) and (2).

"A court confronted with an attorney disqualification motion should proceed with caution in order to avoid hardships on innocent clients where disqualifications are unnecessarily ordered." (In re

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**Lee G. (1991) 1 Cal.App.4th 17, 28.) "(T)he significant question is whether there exists a genuine likelihood that the status or misconduct of the attorney in question will affect the outcome of the proceedings before the court. Thus, disqualification is proper where, as a result of a prior representation or through improper means, there is a reasonable probability counsel has obtained information the court believes would likely be used advantageously against an adverse party during the course of the litigation." (Gregori v. Bank of America (1989) 207 Cal.App.3d 291, 309.) Alternatively, the court must find a "substantial relationship" between the former representation and the current representation such that possession of material confidential information may be presumed. (H.F. Ahmanson & Co. v. Solomon Bros., Inc. (1991) 229 Cal. App.3d 1445, 1459.) As responding parties point out, determination of these motions is a 'fact-specific exercise.'**

Mindful of these principles, the court has carefully considered all of the relevant and admissible evidence submitted, and the authorities argued by counsel. Reluctantly, for orders of this nature are disruptive not only to the parties and counsel but to the overall administration of justice, the court grants motion (1) on the grounds that Hopkins and Carley's current representation of defendants, substantially related to the former representation, violates California Rule of Professional Conduct 3-310 in that this representation is adverse to PKP and RSA, and that Hopkins & Carley did not obtain any waiver prior to their current representation. (See factual discussion in plaintiffs MPA in Support of Motion to Disqualify the Law Firm of Hopkins & Carley filed June 1, 1994, pp. 6-10.)

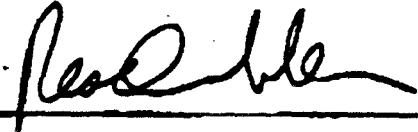
Motion (2) is denied. The court cannot prohibit Fougner from being a party or witness; and the court does not find that Fougner is pre-

sently serving as an attorney in this matter.

Motion (3)

The motion is granted.

Plaintiff shall prepare the appropriate orders.

A handwritten signature in black ink, appearing to read "Read Ambler", is written over a horizontal line.

READ AMBLER

Judge of the Superior Court

08/16/94 16:04  
08/16/94 14:05

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TOMLINSON  
Z I S K O  
MOROSOLI  
& MASER  
ATTORNEYS

August 16, 1994

22401369

VIA FAX AND U. S. MAIL

THOMAS E. MASER  
EUGENE B. MOROSOLI, JR.  
WILLIAM E. ZISK  
TIMOTHY TOMLINSON  
JIM CRAIG CURLETT  
JAMES E. MURPHY  
ROBERT A. DINKEL  
CHARLES M. GOWEN  
JANETTE M. HICKER  
HARRY E. UYEN  
THOMAS E. MOORE  
RICHARD D. JUDSON  
TERRY S. PREZANT  
ALEX A. VIGORINI

Jon Michaelson, Esq.  
Hopkins & Carley  
150 Almaden Boulevard  
Fifteenth Floor  
San Jose, California 95113-2089:

Re: RSA Data Security v. Cylink Corporation et. al.

Dear Mr. Michaelson:

In his Notice of Rulings dated August 11, 1994, Judge Ambler specifically ordered that "Plaintiff shall prepare the appropriate orders" to implement his rulings. In accord with California Rule of Court 391 and Santa Clara County Local Rule 7-P., we now enclose a copy of our proposed order as requested by Judge Ambler.

If the order is acceptable to you as drafted, we ask that you execute it at the line indicated for your signature and return it to us so that we can forward it on to Judge Ambler for signature and filing.

If the enclosed order is not acceptable to you as drafted, we ask that you provide your response in writing and that you request the inclusion of any additional information that you would like to appear in the order within the five-day period set forth in Rule 391. It is our hope that we will then be able to work out any differences we may have about the order. However, if we are unable to reach agreement, your written response will be transmitted by us to the Court pursuant to Rule of Court 391(b).

Thank you, and I will look forward to hearing from you.

Very truly yours,

*Mary E. O'Byrne*  
Mary E. O'Byrne

300 PARK HILL STREET  
SECOND FLOOR  
SAN JOSE, CALIFORNIA 95128

TELEPHONE (415) 553-8888  
FACSIMILE (415) 524-1588

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08/16/94 16:04  
08/16/94 14:06

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TZMAN

Jen Michaelson, Esq.  
August 16, 1994  
Page 2

MEB:sh  
Enclosure

cc: Mr. D. James Bidros

JAMES R. BUSSELLE, ESQ. (SEN: 75980)  
MARY E. O'BYRNE, ESQ. (SEN: 121067)  
TOMLINSON, ZISKO, MOROSOLI & MASER  
200 Page Mill Road, Second Floor  
Palo Alto, California 94306  
Telephone: (415) 325-8666

Attorneys for Plaintiff  
RSA DATA SECURITY, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

RSA DATA SECURITY, INC., a  
Delaware corporation,

Plaintiff,

vs.

CYLINK CORPORATION, a California  
corporation, CARO-KANN  
CORPORATION, a California  
corporation, and DOES 1 through  
25, inclusive,

Defendants.

CASE NO.: CV 740794

ORDER RE: PLAINTIFF'S MOTIONS  
AND DEFENDANTS' PETITION TO  
COMPEL ARBITRATION

The following matters came on regularly for hearing before  
the Honorable Read Amblar as follows:

- (1) Defendants Cylink Corporation and Caro-Kann  
Corporation's ("Defendants") Petition to Compel  
Arbitration and to Stay All Proceedings (heard on  
August 9, 1994);
- (2) Plaintiff RSA Data Security, Inc.'s ("Plaintiff's")  
Motion for Order Disqualifying Opposing Counsel  
(Hopkins & Carley) (heard on June 16, 1994, and  
submitted for decision on July 19, 1994);

TOMLINSON, ZISKO, MOROSOLI & MASER

ATTORNEYS AT LAW

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PALO ALTO, CALIFORNIA 94306

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- (3) Plaintiff's Motion for Order Disqualifying Robert B. Fougner (heard on August 9, 1994);
- (4) Plaintiff's Motion to Compel Deposition Re: Access to Partnership Records Under Corporations Code Section 15019 (heard on August 9, 1994); and
- (5) Plaintiff's Motion for a Protective Order and to Seal Portions of Court File (mooted by stipulation and order signed by the Honorable Read Ambler on August 9, 1994).

Plaintiff appeared at all hearings in the above matters through its counsel, Mary E. O'Byrne, Esq. of Tomlinson, Zisko, Morosoli & Maser. Defendants appeared at all hearings on the above matters through their counsel, Jon Michaelson, Esq. of Hopkins & Carley. Defendants were also represented by Liza K. Toth, Esq. on June 16, 1994 and by Linda Larson-Usoz, Esq. on July 19, 1994, both of Hopkins & Carley.

The Court having received, read and considered the pleadings and documents filed in support of and in opposition to the motions and petition, and having taken judicial notice of the matters for which the parties had requested that judicial notice be taken (and to which there was no objection), and having allowed and considered extensive oral argument of counsel on these matters, issued its written Notice of Rulings on August 11, 1994. A true and correct copy of the Court's Notice of Rulings is attached hereto as Exhibit A and incorporated by this reference.

TOMLINSON, ZISKO, MOROSOLI & MASER

ATTORNEYS AT LAW  
200 POST MALL ROAD, SECOND FLOOR  
PALO ALTO, CALIFORNIA 94306  
(415) 286-8899



1 The Court now makes and enters the following orders for the  
2 reasons set forth in its Notice of Filings incorporated in this  
3 Order and attached as Exhibit A:

4 (1) Defendants' Petition to Compel Arbitration and to Stay  
5 All Proceedings is denied;

6 (2) Plaintiff's Motion for Order Disqualifying Opposing  
7 Counsel (Hopkins & Carley) is granted. Hopkins &  
8 Carley is disqualified and barred from representing or  
9 assisting defendants Cylink Corporation and/or Caro-  
10 Kana Corporation in this action and/or in the  
11 arbitration first initiated by Defendants against  
12 Plaintiff on April 4, 1994 and/or in any matter  
13 arising out of the partnership affairs of the  
14 California general partnership, Public Key Partners;

15 (3) Plaintiff's Motion for Order Disqualifying Robert B.  
16 Fougner is denied; and

17 (4) Plaintiff's Motion to Compel Deposition Re: Access to  
18 Partnership Records Under Corporations Code Section  
19 15019 is granted. Defendant Caro-Kana Corporation  
20 shall comply with Plaintiff's Notice of Deposition  
21 dated June 9, 1994 by producing a witness for  
22  
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TOMLINSON, ZISKO, MOROSOLI &amp; MASER

ATTORNEYS AT LAW

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deposition and producing documents, as applicable,  
within seven days of entry of this order.

IT IS SO ORDERED.

THE HONORABLE READ AMBLER  
Judge of the Superior Court

APPROVED AS TO FORM:

HOPKINS & CARLEY

By: Jon Michaelson, Esq.  
Attorneys for Defendants

TOWLINSON, ZISKO, MOROSOLI & MASER  
ATTORNEYS AT LAW  
200 PAGE MILL ROAD, SUITE 200  
PALO ALTO, CALIFORNIA 94306  
(415) 325-8985

U.S. District Court  
U.S. District for the Northern District of California (S.F.)

CIVIL DOCKET FOR CASE #: 94-CV-2332

Cylink Corporation v. RSA Data Security  
Assigned to: Judge Claudia Wilken  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None

Filed: 06/30/94  
Nature of Suit: 830  
Jurisdiction: Federal Question

Cause: 28:2201 Declaratory Judgement (Insurance)

CYLINK CORPORATION  
plaintiff

Kurt H. Taylor  
[COR LD NTC]  
Jon Michaelson  
[COR LD NTC]  
Robert W. Ricketson  
[COR LD NTC]  
Hopkins & Carley  
150 Almaden Blvd 15th Flr  
San Jose, CA 95113  
(408) 286-9800

v.

RSA DATA SECURITY, INC.  
defendant

INTERNAL USE ONLY: Proceedings include all events.  
3:94cv2332      Cylink Corporation v. RSA Data Security

6/30/94    1      COMPLAINT n Summons(es) issued; Fee status pd entered on  
6/30/94    in the amount of \$ 120.00 ( Receipt No. 92401)  
[3:94-cv-02332] (bfv)