

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TPK AMERICA, LLC,)
)
Plaintiff,)
) C.A. No. _____
v.)
) JURY TRIAL DEMANDED
WINTEK CORPORATION,)
)
Defendant.)

**COMPLAINT FOR DECLARATORY JUDGMENT
OF PATENT NONINFRINGEMENT AND INVALIDITY**

Plaintiff TPK America, LLC (“TPK America”), for its Complaint against defendant Wintek Corporation (“Wintek”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for a declaratory judgment of noninfringement of U.S. Patent Nos. 8,294,677 (“the ’677 patent”), 8,330,738 (“the ’738 patent”), 8,477,113 (“the ’113 patent”) and 8,482,542 (“the ’542 patent”) (collectively, the “Wintek patents”); and invalidity of the ’677 patent and the ’738 patent. Copies of the Wintek patents are attached as Exhibits A-D, respectively.

THE PARTIES

2. TPK America is a limited liability corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Redwood City, CA.

3. Upon information and belief, defendant Wintek is a corporation organized and existing under the laws of Taiwan, with its principal place of business in Taichung, Taiwan.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code, and under the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201(a) and 2202.

5. This court has personal jurisdiction over Wintek because, at a minimum, Wintek has engaged in enforcement activities relating to the Wintek patents, Wintek has purposefully directed those enforcement activities toward this forum, and this action arises out of and relates to those enforcement activities.

6. Wintek previously sued TPK America, a Delaware corporation, for patent infringement in this District. In *Wintek Corporation v. TPK Holding Co. et al.*, C.A. 1:13-cv-00814-GMS, Wintek accused TPK America and other parties of infringing the '738 patent before voluntarily dismissing its claims without prejudice.

7. In the same action, Wintek also purposefully availed itself of the benefits of this forum by asking this Court to order the issuance of a certificate correcting inventorship of the '738 patent.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because the events which give rise to the claims herein occurred in this District, and because Wintek is subject to personal jurisdiction in this District.

EXISTENCE OF AN ACTUAL CONTROVERSY

9. There is an actual controversy between TPK America and Wintek relating to the claims of the Wintek patents within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

10. Wintek already has instituted litigation against TPK America in this District for allegedly infringing the '738 patent. Wintek withdrew its infringement suit regarding the '738 patent before TPK America filed its responsive pleading. Although Wintek voluntarily dismissed its claims without prejudice on July 8, 2013, TPK America is informed and believes that Wintek will continue to threaten and/or institute litigation against TPK America relating to the Wintek patents.

11. On information and belief, the '738 patent is a continuation of the '677 patent. On or around the time of Wintek's dismissal of its infringement suit against TPK America relating to the

'738 patent, TPK America is informed and believes that Wintek received two new patents which claim to be divisions of the '677 patent: the '113 patent, which issued on July 2, 2013, and the '542 patent, which issued on July 9, 2013.

12. On information and belief, all four Wintek patents relate to the ordering of layers in a capacitive touch panel. The four patents share the same specification, and the claims of the four patents consist of different arrangements of the same claim elements.

13. TPK America is informed and believes that Wintek withdrew its previous lawsuit in preparation for renewed litigation against TPK America involving a combination of the '677 patent, the '738 patent and the newly issued '113 and '542 patents.

14. By virtue of the foregoing, there is a continuing justiciable controversy between the parties as to TPK America's purported infringement, as well as the validity, of the Wintek patents.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

15. TPK America restates and realleges the allegations set forth in paragraphs 1 through 14 above and incorporates them by reference.

16. TPK America does not directly infringe, contribute to the infringement of, or actively induce the infringement of any valid claim of the Wintek patents.

17. An actual, justiciable controversy exists between the parties concerning the infringement of the claims of the Wintek patents.

18. TPK America is entitled to a judicial declaration that it does not directly or indirectly infringe the claims of the Wintek patents.

SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT OF INVALIDITY)

19. TPK America restates and realleges the allegations set forth in paragraphs 1 through 18 above and incorporates them by reference.

20. The claims of the '677 and '738 patents are invalid for failure to meet one or more of the conditions for patentability set forth in 35 U.S.C. §§ 102, 103 and 112.

21. An actual, justiciable controversy exists between the parties concerning the invalidity of the claims of the '677 and '738 patents.

22. TPK America is entitled to a judicial declaration that the claims of the '677 and '738 patents are invalid.

PRAYER FOR RELIEF

WHEREFORE, TPK America prays for the following:

23. A judgment and declaration that TPK America has not infringed and does not infringe, either directly or indirectly, any claim of the Wintek patents;

24. A judgment and declaration that the claims of the '677 and '738 patents are invalid and therefore without force or effect;

25. A permanent injunction against Wintek and its affiliates, subsidiaries, assigns, employees, agents or anyone acting in privity or concert with Wintek from asserting infringement or instituting any legal action for infringement of the Wintek patents against TPK America or anyone acting in privity with TPK America, including the divisions, successors, assigns, agents, suppliers, manufacturers, contractors and customers of TPK America and its parents, subsidiaries and brother/sister entities;

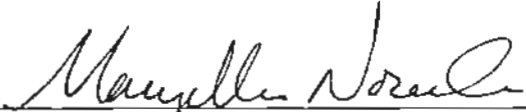
26. A judgment and declaration that this action is an exceptional case and awarding TPK America reasonable attorneys' fees pursuant to 35 U.S.C. § 284; and

27. A judgment for such other and further relief as the Court shall deem just and proper.

DEMAND FOR JURY TRIAL

28. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, TPK America demands a jury trial of all issues triable to a jury in this action.

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July 10, 2013