

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

MAR 27 2008

JAMES N. WATTEN, Clerk
By: *[Signature]* Deputy Clerk

AMERICAN PANEL)
CORPORATION,)
)
Plaintiff,)
)
vs.)
)
GENE HUH and VERTEX LCD,)
INC.,)
)
Defendants.)
_____)

CIVIL ACTION
FILE NO.:

JEC

1:08-CV-1241

VERIFIED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Plaintiff American Panel Corporation ("APC") files this Complaint against Defendants Gene Huh ("Huh") and Vertex LCD, Inc. ("Vertex") as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff APC is a Georgia corporation with its principal place of business in Forsyth County, Georgia.

2.

Defendant Vertex is a California corporation with its principal place of business in Placentia, California. Vertex's registered agent for service of process, Gene Huh, may be served with summons and complaint at 600 South Jefferson Street, Unit K, Placentia, California, 92870.

3.

Defendant Huh is a California resident. He may be served with summons and complaint at 600 South Jefferson Street, Unit K, Placentia, California, 92870.

4.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121, in that this action arises in part under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that the parties are diverse and the amount in controversy is greater than \$75,000. This Court further has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because these claims are so related to Plaintiff's patent claims and claims under the Lanham Act that they form part of the same case or controversy.

5.

This Court has personal jurisdiction over Defendants Vertex and Huh because they do business in Georgia and have contacts with Georgia through that business. Defendant Huh, individually and as a representative of Defendant Vertex, has traveled to Georgia on multiple occasions to do business with APC, Flight Display Systems, and National Cash Register Company.

6.

Venue is appropriate in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's Complaint occurred in this district.

BACKGROUND

7.

APC provides high performance flat panel modules, including liquid crystal displays, for customers in various industries.

8.

Defendant Vertex is a manufacturer and vendor of displays. According to its website, "Vertex LCD Inc. provides total TFT LCD solutions including High-bright TFT LCD's (using CCFL or LED), Optical Bonding of Touch Screens/Cover Glass, Anti-reflective Coatings, NVIS compatible LCD's and Rugged LCD's for indoor and outdoor applications. With two manufacturing facilities conveniently located in the United States and the Far East, each with expert engineering teams, Vertex LCD Inc. provides its customers with seamless service from design to manufacture to on-time delivery."

9.

APC was formed on October 10, 2006.

10.

On January 29, 2007, APC purchased some of the assets of American Panel Corporation, an Arizona Corporation. This asset purchase included the assignment of American Panel Corporation, an Arizona Corporation's rights in any contracts with Defendant Vertex and in any disputes against Defendants Vertex and Huh.

Long Term Purchase and Supply Agreement

11.

On August 2, 2005, Defendant Vertex, APC, BOE Hydix Technology Co., Ltd. ("BOE Hydix") and BOE Hydix America, Inc. entered into a Long Term Purchase & Supply Agreement ("LTPSA").

12.

The purpose of the LTPSA was to facilitate the transactions between BOE Hydix Technology Co., Ltd. and BOE Hydix America, Inc., from whom Defendant Vertex guaranteed to purchase certain products. In turn, APC guaranteed to purchase certain products from Defendant Vertex.

13.

The LTPSA specifically identified the Models 1040, 500 VGA, 1000 and 1280 as "products" covered by the LTPSA.

14.

Section 9 of the LTPSA is entitled "Confidentiality."

15.

Section 9.1 of the LTPSA specifically provides that “[n]either party shall disclose the Confidential Information to any third party and use such Confidential Information for any purpose whatsoever other than that hereof, during the term of this Agreement and for three (3) years thereafter. Confidential Information used herein means any and all information disclosed by the disclosing party to the receiving party (parties) which, if disclosed in tangible form, is marked as “Confidential” or “Proprietary” or which, if disclosed in tangible form, is identified as confidential at the time of initial disclosure, and summarized in writing to the receiving party (parties) within thirty (30) days after such initial disclosure.”

16.

“Three (3) years thereafter” means August 5, 2008.

17.

Although the LTPSA governed the general relationship between the parties to the LTPSA, Defendant Vertex and APC were to enter into separate contracts, purchase orders, for the individual displays.

Model No. 1000 Display and Model No. 1280 Display

18.

On August 18, 2005 APC and Defendant Vertex entered into a contract, Purchase Order 10691.

19.

Purchase Order 10691 was for the non-recurring engineering ("NRE") for the Model No. 1000 display and the NRE for the Model No. 1280 display. The NRE for these displays included the engineering of the product as well as working prototypes.

20.

APC ordered the NRE for the Model No. 1000 to be used in the B1-B and B-52 Programs.

21.

APC ordered the NRE for the Model No. 1280 to be used in the B-2 platform.

22.

Included in Purchase Order 10691 was the 10.0" Diagonal Enhanced Single Bank, Line on Glass (LOG), Amorphous Silicon Advanced Ultra Fringe Field Switching (AU-FFS) AMLCD with High Temperature Fluid, Patterned Column Spacers, Integral Heater & Thermal Sensor (APC PN 1000126-00-600) Technical

Specification (“Model No. 1000 Technical Specification”). Each page of the Model No. 1000 Technical Specification is marked “American Panel Corporation Company Proprietary.”

23.

Also included in Purchase Order 10691 was the 10.0” Diagonal LCD Assembly. This 10.0” Diagonal LCD Assembly provides that the “[d]ocument is confidential and proprietary and is the property of the American Panel Corporation. It is not to be disclosed to any party, reproduced or used in any manner without prior written consent of said company.”

24.

Included in Purchase Order 10691 was the 12.8” Diagonal Enhanced Single Bank, Line on Glass (LOG), Amorphous Silicon Advanced Ultra Fringe Field Switching (AU-FFS) AMLCD with High Temperature Fluid, Patterned Column Spacers, Integral Heater & Thermal Sensor (APC PN 1280126-00-600) Technical Specification (“Model No. 1280 Technical Specification”). Each page of the Model No. 1280 Technical Specification is marked “American Panel Corporation Company Proprietary.”

25.

Also included in Purchase Order 10691 was the 12.8” Diagonal LCD Assembly. This 12.8” Diagonal LCD Assembly provides that the “[d]ocument is

confidential and proprietary and is the property of the American Panel Corporation. It is not to be disclosed to any party, reproduced or used in any manner without prior written consent of said company.”

26.

Also included in Purchase Order 10691 were the American Panel Corporation General Terms and Conditions (“APC Terms and Conditions”).

27.

Section 12 of the APC Terms and Conditions, entitled Use of Buyer’s Data, states in part that “[s]eller shall not reproduce, use or disclose any data, designs or other information belonging to or supplied by or on behalf of Buyer, except as necessary in the performance of orders for Buyer. Upon Buyer’s request, such data, designs, or other information, and any copies thereof shall be returned to Buyer. Buyer shall be considered the “person for whom the work was prepared” for the purpose of authorship in any copy-rightable work created by Seller under this order...”

28.

Section 15 of the APC Terms and Conditions, entitled Tooling and Material, states in part that “[t]itle to, and the right of immediate possession of, all tooling and material furnished by Buyer to Seller shall remain in Buyer...”

29.

Section 29 of the APC Terms and Conditions, entitled Termination, provides that "Buyer may terminate work under this order in whole or in part by written or facsimile notice to Seller."

30.

On August 23, 2005 APC wire transferred \$750,000.00 to Vertex for 50% of the NRE production of Model No. 1280 and Model No. 1000.

31.

In February 2006, an additional \$375,000.00 was wired to Vertex, and an additional \$375,000.00 was paid to Vertex via check to satisfy Purchase Order 10691.

32.

Vertex failed to develop the Model No. 1280 and failed to deliver any prototypes of the Model No. 1280 to APC.

33.

Vertex represented to APC that it had finalized the NRE for the Model No. 1000.

34.

The Model No. 1000 prototype delivered to APC did not meet the Model No. 1000 Technical Specification.

35.

Vertex represented to APC that it would fix the problems with the prototype, and accepted purchase orders for the Model No. 1000 Display.

36.

Purchase Order 12889 provides that "Vertex and BOE are liable for the M1000 being fully spec compliant & agree that placement of the P.O. does not constitute approval of the design." "M1000" refers to the Model No. 1000 and "P.O." refers to Purchase Order 12889.

37.

Purchase Order 12889 further provides that "Vertex & BOE agree to fix the design at no cost to APC if APC finds that the panel is non-compliant."

38.

On August 22, 2006 APC transferred \$100,000.00 to Vertex as a production prepayment for Model No. 1000 pursuant to Purchase Order 12889.

39.

Vertex did not provide any Model No. 1000 Displays to fill Purchase Order 12889. Despite numerous efforts to obtain corrected Model No. 1000 displays from Vertex or receive a refund of the \$100,000.00 paid for the displays, as of the date of this filing Vertex has failed to provide either.

Model No. 2150 Display

40.

Purchase Order 11863 was for the NRE of the Model No. 2150 display and was to include the development and delivery of 50 prototypes.

41.

APC ordered the NRE for the Model No. 2150 to be used in the Joint Strike Fighter Program.

42.

Purchase Order 11863 included "21.5" Diagonal Enhanced Single Bank, Line on Glass (LOG), Amorphous Silicon S-IPS AMLCD with High Temperature fluid, Patterned Column & Low Density Ball Spacers, Integral Heater, Thermal Sensor & EMI Shield (APC PN 21500126-00-600) Technical Specification ("Model No. 2150 Technical Specification"). Each page of the Model No. 1280 Technical Specification is marked "American Panel Corporation Company Proprietary.

43.

Also included in Purchase Order 11863 was the 21.5" Diagonal, Split Screen, 2560 X 1024 Display assembly. This assembly provides that the "[d]ocument is confidential and proprietary and is the property of the American

Panel Corporation. It is not to be disclosed to any party, reproduced or used in any manner without prior written consent of said company.”

44.

On February 28, 2006 APC transferred \$1,200,000.00 to Vertex for Purchase Order 11863.

45.

Vertex failed to develop the Model No. 2150 and failed to deliver any prototypes of the Model No. 2150 to APC.

46.

On September 8, 2006 the Defense Federal Acquisition Regulations were revised to limit a supplier that is part of the commercial base of the People's Republic of China from providing any item on the United States Munitions List.

47.

APC's Technical Assistance Agreement applications for products in purchase orders 10691, 12889 and 11863 were thus denied because BOE Hydys was at that time more than 50% owned by the People's Republic of China.

48.

Consequently, and prior to Defendant Vertex filling Purchase Orders 10691, 12889 and 11863 on February 7, 2007 APC cancelled these purchase orders in writing.

49.

On June 7, 2007 APC sent correspondence to Defendants Vertex and Huh requesting an accounting of the \$2.8 million sent to Vertex to develop and manufacture the products in Purchase Orders 10691, 12889 and 11863.

50.

Defendants did not provide an accounting to APC despite the request.

51.

On December 4, 2007 APC sent correspondence to Defendants Vertex and Huh demanding return of the \$2.8 million sent to Vertex to develop and manufacture the products in Purchase Orders 10691, 12889 and 11863.

52.

In response, on January 7, 2007 Defendant Huh met with William R. Dunn, President of APC, in person and informed him that Vertex had used some of the money APC had given to Vertex to purchase a large quantity of 10.4" displays from BOE Hydys, for resale.

53.

APC has learned that Defendant Vertex is selling the 10.4" displays purchased with APC's money to Innovative Solutions and Support, Inc.

54.

Innovative Solutions and Support, Inc. was a longtime customer of APC and one of the products APC sold to Innovative Solutions and Support, Inc. was the 10.4" display.

55.

APC has also learned that Defendant Vertex is in discussions with General Dynamics Land Systems, Inc. ("GDLS"), also a longtime customer of APC, to sell the 10.4" displays purchased with APC's money.

56.

Defendant Vertex has misappropriated the monies APC gave to it for development and production of certain products, and used it for the purchase of goods it has sold and intends to sell to APC's customers to make a windfall profit.

5.0" Display

57.

On July 5, 2005 Plaintiff and Defendant entered into a contract, Purchase Order 10452.

58.

Purchase Order 10452 was for the NRE of the Model No. 500-120-52-700 display ("5.0" Display") and was to include the development and delivery of 10 prototypes.

59.

Purchase Order 10452 was also for the tooling to accompany the 5.0" Display, including the "5" VGA Metal case, injection molded internal plastic tray, light guide, optical films/diffuser(s)/reflector(s), white LED backlight providing > or equal to 600 nit white luminance through the LCD, LED FPC."

60.

Purchase Order 10452 included "5.0" Transmissive Micro-Reflector (TMR) VGA (640 x RGB x 480) AMLCD with Patterned Column Spacers (APC PN 500-120-00-700TMR-FFS) Technical Specification, Revision 6, 9 August 2005" ("5.0" Technical Specification"). Each page of the 5.0" Technical Specification is marked "American Panel Corporation Company Proprietary.

61.

Also included in Purchase Order 10452 was the 5" LCD ASSY, TMR VGA, which provides that the "[d]ocument is confidential and proprietary and is the property of the American Panel Corporation. It is not to be disclosed to any party, reproduced or used in any manner without prior written consent of said company."

62.

Also included in Purchase Order 10452 was the 5.0" DIAGONAL CHIP ON GLASS (COG) AMLCD, which provides that the "[d]ocument is confidential and proprietary and is the property of the American Panel Corporation. It is not to be

disclosed to any party, reproduced or used in any manner without prior written consent of said company.”

63.

Also included in Purchase Order 10452 was the APC Terms and Conditions.

64.

Section 15 of the APC Terms and Conditions provides that “[i]f this order is for tooling, interest in and title to such tooling shall be governed by the special J and K series conditions...All such tooling ordered and such tooling and material furnished by Buyer shall be used solely in the performance of work ordered by Buyer.”

65.

Section J provides that [t]itle to tooling shall vest in the Buyer upon completion and acceptance by Buyer. Buyer’s name shall be added to the permanent identification.”

66.

Section K does not apply to the tooling at issue in this case.

67.

On July 20, 2005 APC transferred \$50,000.00 to Defendant Vertex for Purchase Order 10452, and on November 10, 2005 APC transferred \$50,000.00 to Defendant Vertex for Purchase Order 10452.

68.

The tooling, specifications and assembly are required to produce the 5.0" Display. Only APC is entitled to the tooling, specifications and assembly for the 5.0" Display, and therefore is the only company which can produce or order production of the 5.0" Display.

69.

On or around October 4, 2007 William R. Dunn, President of APC met with representatives of BOE Hydys in Korea, who informed Mr. Dunn that they were continuing to fill orders for the 5.0" Display for Defendant Vertex, despite APC having placed no orders for the 5.0" Display with Defendant Vertex.

70.

Defendant Vertex, without APC's permission, has been selling the 5.0" Display to GDLS.

71.

On December 4, 2007, counsel for APC demanded that Defendant Vertex return the tooling for the 5.0" display and cease and desist selling the 5.0" Display. As of the filing of this Verified Complaint, Defendant Vertex has refused to do so.

BREACHES OF CONTRACTS

72.

APC incorporates by reference the allegations contained in paragraphs 1 through 72 of this Verified Complaint as if set forth fully herein.

73.

On or about August 18, 2005, APC and Defendant Vertex entered into a contract designated Purchase Order 10691. This contract was for the development and manufacture of the Model 1000 display and the Model 1280 display.

74.

All conditions precedent to APC's enforcement of Purchase Order 10691 have been satisfied or performed.

75.

Defendant Vertex breached Purchase Order 10691 by failing to deliver a Model No. 1000 Display prototype that complied with the Model No. 1000 Technical Specification.

76.

Defendant Vertex breached Purchase Order 10691 by failing to develop the Model No. 1280 and failing to deliver any prototypes of the Model No. 1280.

77.

On or about August 22, 2006 APC and Defendant Vertex entered into a contract designated Purchase Order 12889. This contract was for the production of the Model No. 1000 Display.

78.

All conditions precedent to APC's enforcement of Purchase Order 12889 have been satisfied or performed.

79.

Defendant Vertex breached Purchase Order 12889 by failing to deliver the Model No. 1000 Displays ordered.

80.

On or about March 7, 2006 APC and Defendant Vertex entered into a contract designated Purchase Order 11863. This contract was for the production of the Model No. 2150 Display.

81.

All conditions precedent to APC's enforcement of Purchase Order 11863 have been satisfied or performed.

82.

Defendant Vertex breached Purchase Order 11863 by failing to develop the Model No. 2150 Display and by failing to deliver any prototypes of the Model No. 2150 Display to APC.

83.

On or about July 5, 2005 APC and Defendant Vertex entered into a contract, designated Purchase Order 10452. This contract was for the production of the 5.0" Display.

84.

All conditions precedent to APC's enforcement of Purchase Order 10452 have been satisfied or performed.

85.

Defendant Vertex breached Purchase Order 10452 by using 5.0" DIAGONAL CHIP ON GLASS (COG) AMLCD, in a manner without prior written consent of APC.

86.

Defendant Vertex breached Purchase Order 10452 by using the tooling for the 5.0" Display in the performance of work not ordered by APC.

87.

As a result of these breaches, APC has suffered substantial damages in an amount yet to be ascertained, but greater than \$75,000.

WHEREFORE, APC demands judgment against Defendant Vertex for damages in an amount to be proven at trial for defendants' breach of the contract, but greater than \$75,000, plus interest, all costs of this action, attorneys' fees, and for such other and further relief as this Court deems just and proper.

FALSE REPRESENTATIONS AND FALSE DESIGNATIONS OF ORIGIN

88.

Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 88 of this Verified Complaint as if set forth fully herein.

89.

The wrongful acts of Defendants have caused, and continue to cause, confusion, mistake and deception among customers of APC and Defendant Vertex as to the propriety of the products sold by Defendant Vertex, by reason of the fact that customers are likely to believe that Defendant Vertex's products are in some way properly connected with, approved by, sponsored by, or endorsed by APC.

90.

The confusion, mistake or deception referred to herein arises out of the acts of Defendants which constitute false designations of origin, false representations

and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

91.

The wrongful acts were undertaken willfully and with the intention of causing confusion, mistake and deception.

92.

The wrongful acts were made in commerce because APC is engaged in interstate commerce through its interstate purchase of displays for resale from vendors and services provided to interstate customers.

93.

By reason of the acts of Defendants alleged herein, APC has suffered, is suffering and will continue to suffer irreparable damage and, unless said Defendants are restrained from continuing these wrongful acts, the damage to Plaintiff will increase. APC has no adequate remedy at law.

WHEREFORE, APC prays that:

- (i) Defendants, their agents, representatives and all persons acting or claiming to act on their behalf or under their direction or authority, and all persons acting in concert or in participation with them be enjoined and restrained from further sale of the 5.0" Display and the 10.4" Display;

- (ii) Issue a rule nisi requiring Defendants to show cause why an interlocutory injunction should not be granted;
- (iii) The interlocutory injunction be made permanent upon the final disposition of this case;
- (iv) Damages in an amount to be proven at trial, representing profits earned by Defendants through their false representations;
- (v) Damages in an amount to be proven at trial for APC's lost profits;
- (vi) Damages in an amount to be proven at trial for expenses incurred by APC in counteracting the effects of Defendants' false representations;
- (vii) Treble the amount of damages sustained by Plaintiff, as provided by 15 U.S.C. §1117;
- (viii) Exemplary and punitive damages for acts of unfair competition in an amount to be proven at trial; and
- (ix) Costs, attorneys' fees, and other such relief as this Court may deem proper.

VIOLATION OF GEORGIA TRADE SECRETS ACT OF 1990

94.

Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 94 of this Verified Complaint as if set forth fully herein.

95.

Defendants' continued use of APC's confidential and proprietary tooling for manufacturing the 5.0" Display and technologies regarding but not limited to the optical films, metal, plastic light guides, injection dyes and all other dyes is a misappropriation of those trade secrets in violation of the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 through 10-1-767.

96.

APC is entitled to injunctive relief, as well as monetary damages, for the misappropriation of its trade secret by Defendants.

Defendants' continued use of APC's confidential and proprietary specifications, assembly and tooling for the 5.0" Display constitutes a violation of the Georgia Trade Secrets Act.

97.

Pursuant to O.C.G.A. § 10-1-764 and 13-6-11, Defendants are liable to APC for its expenses of litigation, including attorneys' fees, in an amount to be proven

at trial, because Defendants have acted in bad faith, has been stubbornly litigious and has caused APC unnecessary trouble and expense.

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

98.

Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 98 of this Verified Complaint as if set forth fully herein.

99.

Defendants have tortiously interfered with APC's customers despite having no legal right to do so.

100.

Defendants have acted purposely and with malice and intent to injure APC by taking away APC's customers with its unwarranted, unauthorized, and wrongful conduct.

101.

APC suffered injury because Defendants' wrongful actions have resulted in Defendants stealing APC's customers.

102.

Defendants' actions in maliciously and intentionally interfering with APC's customer relations constituted willful misconduct so as to authorize an award of punitive damages. Accordingly, APC seeks punitive damages in an amount to be

determined by the enlightened conscience of an impartial jury to punish, penalize and deter Defendants from such wrongful conduct in the future.

WHEREFORE, APC demands judgment against Defendants in an amount to be determined at trial for Defendants' tortious interference with APC's customers, punitive damages in an amount to be determined by the enlightened conscience of an impartial jury, plus interest, all costs of this action, attorneys' fees and for such other and further relief as this Court deems just and proper.

UNFAIR COMPETITION

103.

APC incorporates by reference the allegations contained in paragraphs 1 through 103 of this Verified Complaint as if set forth fully herein.

104.

Defendants Vertex and Huh have infringed upon and continue to misappropriate all rights to the 5.0" Display in order to further their own business and interfere with the business of APC despite having no rights to the manufacturing of the 5.0" Display.

105.

Defendants' conduct constitutes unfair competition and entitles APC to injunctive relief.

106.

Defendants' unfair competition constitutes willful misconduct so as to authorize an award of punitive damages. Accordingly, APC seeks punitive damages in an amount to be determined by the enlightened conscience of an impartial jury to punish, penalize and deter Defendants from such wrongful conduct in the future.

WHEREFORE, APC demands that Defendant Vertex, its agents, representatives and all persons acting or claiming to act on its behalf or under its direction or authority, and all persons acting in concert or in participation with them, and Defendant Huh be enjoined and restrained from all further unfair competition and judgment be entered in favor of APC in an amount to be determined at trial for Defendants Vertex and Huh's unfair competition, punitive damages in an amount to be determined by the enlightened conscience of an impartial jury, plus interest, all costs of this action, attorneys' fees, and for such other and further relief as this Court deems just and proper.

CONVERSION

107.

APC realleges and incorporates by reference herein as if set forth in full paragraphs 1 through 107 of the Verified Complaint as if set forth fully herein.

108.

APC paid Vertex \$2.8 million for the NRE, development, and manufacture of the Model No. 1000, Model No. 1280, and Model No. 2150 Displays.

109.

Defendant Vertex failed to deliver the products ordered.

110.

APC demanded an accounting of the money in a written request to Defendants Vertex and Huh on June 7, 2007.

111.

APC demanded the return of this money in a written request to Defendants Vertex and Huh dated December 4, 2007.

112.

Upon admission by Defendant Huh, Defendants Vertex and Huh misappropriated the \$2.7 million and purchased a large supply of 10.4" displays from BOE Hydys for its own resale.

113.

Defendants Vertex and Huh's failure and refusal to return APC's money and admitted use of the money to purchase goods for its own consumption and/or sale constitutes unlawful conversion of APC's property.

114.

Defendants Vertex and Huh have acted in bad faith, have been stubbornly litigious, and have caused APC unnecessary trouble and expense so as to allow APC to recover its reasonable attorney's fees incurred in bringing this action.

115.

Defendant Vertex and Huh's actions in the commission of the intentional tort of conversion and theft of personal property constituted willful misconduct so as to authorize an award of punitive damages in order to deter such willful misconduct in the future.

WHEREFORE, APC respectfully demands judgment against Defendants Vertex and Huh for damages for the conversion of APC's property in the amount of \$2.7 million, pre-judgment interest at the legal rate, plus APC's expenses of litigation pursuant to O.C.G.A. § 9-15-14, punitive damages, all costs of this action, and such other and further relief as this Court deems just and proper.

PATENT INFRINGEMENT

116.

APC realleges and incorporates by reference herein as if set forth in full paragraphs 1 through 116 of the Verified Complaint as if set forth fully herein.

117.

APC is the owner of all right, title, and interest in and to United States Letters Patent No. 7,292,291 to Dunn et al., entitled "Flat Panel Display Having Integral Heater, EMI Shield, and Thermal Sensors" (hereinafter referred to as "the '291 patent"), which duly and legally issued to American Panel Corporation, the assignee, on November 6, 2007. A copy of APC's patent is attached hereto as **Exhibit "A"**.

118.

Flat panel liquid crystal displays (LCD) of the type embodying inventions claimed in the '291 contain integral thermal sensors to assist in the thermoregulation of the device. The thermal sensors are placed on the inside portion of the LCD glass plates. The sensors detect the heat being inputted into the liquid crystal layer so as to provide timely feedback to the system. The integral thermal sensor devices patented by applicant provide an efficient, low cost solution as there are no separate thermal sensor components that must be purchased. Furthermore, there is no process time or labor required to attach a separate thermal

sensor to the LCD or to attach thermal sensor wires to a circuit. The intimate contact between sensor and LCD fluid provides higher accuracy and reduced time lag between actual fluid temperature and thermal sensor readings. The '291 patent and the flat panel displays covered thereby have been and are now of great value to APC. Flat panel displays incorporating the technology of the '291 patent are commercially successful.

119.

Upon information and belief, Defendant Vertex has been and is now infringing the '291 patent: (1) by selling within this judicial district and by making, using, and selling elsewhere in the United States, flat panel devices which embody inventions claimed in the '291 patent; (2) by actively inducing others to infringe the '291 patent; and (3) by contributing to the infringement of the '291 patent. All of Defendant Vertex's activities are without authority or license from APC.

120.

As of the date of this Verified Complaint, APC and Defendant Vertex have been unable to reach any agreement with respect to Defendant Vertex's use of the patented technology.

121.

Upon information and belief, Defendant Vertex's infringement, contributory infringement, and active inducement of infringement of the '291 patent have been

willful and deliberate, and Defendant Vertex will continue its activities, to APC's injury, unless enjoined by this Court. As a result of Defendant Vertex's willful and deliberate infringement, this is an "exceptional case" within the meaning of 35 U.S.C. §285.

122.

As a result of said infringement by Defendant Vertex, APC has been damaged and will continue to be damaged in an amount to be determined at trial. APC has also suffered and will continue to suffer irreparable injury unless Defendant Vertex's activities are enjoined by this Court.

123.

Upon information and belief, Defendant Vertex employs tooling and specifications designed by APC which are known to produce an article covered by one or more claims of the '291 patent, therefore it is likely that APC will likely succeed on the merits of the infringement count. Because Defendant Vertex is believed to be manufacturing the infringing devices on tooling owned and provided by APC, the balance of hardships from a potential injunction clearly favors APC.

WHEREFORE, APC demands judgment against Defendant Vertex as follows:

(a) That Defendant Vertex has been and is infringing, contributing to the infringement of, and/or actively inducing infringement of, the '291 patent in violation of 35 U.S.C. 271;

(b) That the infringement, contributory infringement, and/or active inducement of infringement by Defendant Vertex has been willful and deliberate;

(c) That this is an "exceptional case" under 35 U.S.C. §285;

(d) That Defendant Vertex, its officers, directors, agents, assigns, and employees, and all others acting in concert or participation with them or under their authority be preliminarily and permanently enjoined from making, using, and selling infringing devices, and from otherwise infringing, contributing to infringement, and actively inducing infringement of, the '291 patent;

(e) For an accounting of damages to APC arising from Defendant Vertex's acts of infringement, contributory infringement, and active inducement of infringement, including profits made by Defendant Vertex and lost by APC as a result of Defendant Vertex's infringing activities;

(f) For an award to APC of three times the actual damages and profits so determined by the accounting, together with interest and costs as provided for under 35 U.S.C. §284;

(g) For the costs of this action together with APC's attorneys' fees under 35 U.S.C. §285; and

(h) such other and further relief as the Court deems just and proper.

INJUNCTION

124.

Plaintiff realleges and incorporates by reference herein as if set forth in full paragraphs 1 through 124 of the Verified Complaint as if set forth fully herein..

125.

APC has been and will be irreparably injured by Defendant Vertex's breach of Purchase Order 10452 including Defendants Vertex and Huh's misappropriation of APC's trade secrets.

126.

APC has been and will be irreparably injured by Defendant Vertex's infringement of the 291 patent.

127.

APC has been and will be irreparably injured by Defendants Vertex and Huh's tortious interference with business relationships. As to these breaches, APC lacks an adequate remedy at law.

128.

APC seeks and is entitled to permanent injunctive relief to restrain and enjoin Defendants Vertex and Huh

- a) from further torious interference with business relationships, including selling the 5.0" Display;
- b) from further breach of the Georgia Trade Secrets Act, for so long as the information retains its trade secrets status, including using, reproducing, distributing, disclosing or otherwise disseminating the trade secrets or any physical embodiments thereof; and

129.

The likelihood of success on the merits, the balance of hardships, and the public interest each favors the grant of equitable relief to APC.

130.

APC has been and will be irreparably injured by Defendants Vertex and Huh's misconduct, an APC lacks an adequate remedy at law.

131.

Defendants Vertex and Huh have acted in bad faith, have been stubbornly litigious, and have caused APC unnecessary trouble and expense so as to allow APC to recover its reasonable attorney's fees incurred in bringing this action.

132.

WHEREFORE, APC respectfully demands the Court

- (a) enter a permanent injunction restraining and enjoining:
 - (1) Defendants Vertex and Huh
 - (ii) from further torious interference with business relationships, including selling the 5.0" Display; and

(iii) from further breach of the Georgia Trade Secrets Act, for so long as the information retains its trade secrets status, including using, reproducing, distributing, disclosing or otherwise disseminating the trade secrets or any physical embodiments thereof;

(b) enter judgment for its, its reasonable attorneys' fees and costs of this action pursuant to O.C.G.A. § 13-6-11, and such other and further relief as this Court deems just and proper.

CONSTRUCTIVE TRUST

133.

Plaintiff realleges and incorporates by reference herein as if set forth in full paragraphs 1 through 133 of the Verified Complaint with the same force and effect as if they had been restated herein.

134.

Defendant Huh is an employee and owner of Defendant Vertex.

135.

The business relationships between APC and its customers constitute valuable property of APC.

136.

Defendant Huh and Defendant Vertex, by and through Defendant Huh, have usurped and diverted the business opportunities of APC.

137.

Defendant Vertex has been and continues to be unjustly enriched by profits unlawfully received from the usurpation of business opportunities and misappropriation of trade secrets and confidential information, and the profits obtained thereby must be restored to their rightful owner.

138.

As a direct and proximate result of Defendant Vertex's acquisition of trade secrets and confidential information, as well as the usurpation of business opportunities, the assets, business opportunities and profits enjoyed by it from such activities are the property of APC and belong to it.

139.

A constructive trust should be imposed on the assets and profits of Defendant Vertex as a result of the usurpation of the business opportunities of Defendant Vertex and the misappropriation of trade secrets and confidential information by Defendant Vertex by and through Defendant Huh.

140.

Pursuant to O.C.G.A. § 9-8-1, Defendant Vertex is entitled to the appointment of a receiver to preserve and protect assets and profits received by Defendant Vertex as a result of the misappropriation of trade secrets and

confidential information by Defendant Vertex by and through Defendant Huh to preserve them for the benefit of APC.

WHEREFORE, APC respectfully demands the Court impose a constructive trust be impressed on the assets, profits and property of Defendant Vertex for the benefit of Plaintiff, that a receiver be appointed to take immediate custody and control of the assets of Defendant Vertex to preserve and protect them for the benefit of APC during the pendency of this litigation, and that it be awarded such other and further relief as this Court deems just and proper.

PUNITIVE AND EXEMPLARY DAMAGES

141.

Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 141 of this Complaint as if set forth fully herein.

142.

The willful misconduct and malice in misappropriating APC's confidential and proprietary trade secret tooling for the 5.0" Display by Defendant Vertex for its own commercial gain should be punished pursuant to O.C.G.A. § 51-12-5.1.

143.

Defendant Vertex's failure and refusal to return the \$2.8 million to Plaintiff exhibits willful misconduct, wantonness, and that entire want of care raising the

presumption of conscious indifference to consequences, thus requiring an award of punitive damages against Defendant Vertex pursuant to O.C.G.A. § 51-12-5.1.

144.

Defendants Vertex and Huh's purchase of the 10.4" displays from BOE Hydys with APC's money exhibits willful misconduct, wantonness, and that entire want of care raising the presumption of conscious indifference to consequences, thus requiring an award of punitive damages against Defendants Vertex and Huh pursuant to O.C.G.A. § 51-12-5.1.

145.

The willful and malicious misappropriation of APC's confidential and proprietary trade secret tooling for the 5.0" Display by Defendant Vertex for its own commercial gain is punishable by exemplary damages pursuant to O.C.G.A. § 10-1-763(b).

WHEREFORE, Plaintiff demands judgment against Defendant Vertex for punitive and exemplary damages and for such other and further relief as this Court deems just and proper.

ATTORNEYS' FEES AND EXPENSES

146.

Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 146 of this Complaint as if set forth fully herein.

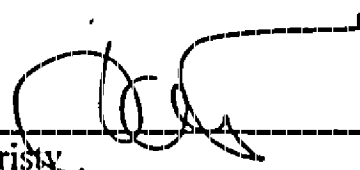
147.

For all of the foregoing reasons, Defendant Vertex has acted in bad faith, has been stubbornly litigious, and has caused APC unnecessary trouble and expense so as to allow APC to recover its reasonable attorneys' fees and expenses incurred in bringing this action pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, APC demands judgment against Defendant Vertex for APC's reasonable attorneys' fees and expense pursuant to O.C.G.A. § 13-6-11, all costs of this action, and for such other and further relief as this Court deems just and proper.

JURY DEMAND

APC demands a trial by jury on all counts to which a jury trial is permitted by law.



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