

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

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EMS TECHNOLOGIES, LLC,	:	
	:	C.A. No. 2:14-cv-00900
Plaintiff,	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
MICRON TECHNOLOGY, INC.; and	:	
IM FLASH TECHNOLOGIES, LLC	:	
	:	
Defendants.	:	
	:	
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SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff EMS Technologies, LLC (“EMS”), as for its First Amended Complaint of patent infringement in this matter, hereby alleges as follows:

Nature of the Action

This is an action for patent infringement of United States Patent Nos. 5,568,424 (the “424 Patent”) and 5,592,420 (the “420 Patent”) (collectively, the “Patents in Suit”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, seeking damages and injunctive and other relief under 35 U.S.C. § 281, *et seq.*

The Parties

1. Plaintiff EMS is a Texas limited liability company with its principal place of business at 719 Front Street, Suite 242, Tyler, Texas 75702.

2. Defendant Micron Technology, Inc. (“Micron”) is a Delaware corporation with its principal place of business at 8000 South Federal Way, Boise, Idaho 83716. Micron and/or its

subsidiaries also maintain offices in Allen, Texas 75013, Round Rock, Texas 78681, and Houston, Texas 77377. Micron sells its products, including NAND Flash memory products accused of infringement in this Complaint, throughout the United States, including in the Eastern District of Texas, using established distribution networks.

3. Defendant IM Flash Technologies, LLC (“IM Flash”) is a Delaware limited liability company with its principle place of business at 4000 North Flash Drive, Lehi, Utah 84043.

4. IM Flash is a joint venture between Micron and Intel Corp. Micron controls and is the majority owner of IM Flash. IM Flash manufactures semiconductor memory products, including NAND Flash memory products accused of infringement in this Complaint, on Micron’s behalf and for Micron to use and sell. IM Flash sells its products, including NAND Flash memory products accused of infringement in this Complaint, only to Micron and Intel Corp. According to IM Flash, their devices are incorporated into mobile/smart phones, solid state drives, tablets and ultrabooks.¹

5. Upon information and belief, IM Flash provides its infringing products to Micron with the knowledge that its products will be incorporated into Micron’s infringing products and sold nationally, including into the State of Texas and this Judicial District, including through Micron’s sales facilities in Round Rock and Houston.

Jurisdiction and Venue

6. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns the infringement of a United States patent.

¹ See, e.g., imflash.com.

8. Upon information and belief, Micron and IM Flash (collectively “Defendants”) are subject to this Court’s specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due to at least their substantial business in this forum and Judicial District, directly and/or through intermediaries, including: (i) at least a portion of the infringements alleged herein, and (ii) regularly doing or soliciting business in the State of Texas and in this Judicial District, engaging in other persistent courses of conduct, maintaining continuous and systematic contacts in Texas and in this Judicial District, purposefully availing themselves of the privileges of doing business in Texas and in this Judicial District, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District. For example, Micron knowingly and intentionally sells its infringing products to Texas Instruments, a company with its principle executive offices in Dallas, Texas, for use in Texas Instruments’ TI OMAP products that are sold in the State of Texas and this Judicial District. Upon information and belief, IM Flash provides its infringing products to Micron with the knowledge that its products will be incorporated into Micron’s infringing products and sold nationally, including into the State of Texas and this Judicial District, through Micron’s sales facilities in Round Rock and Houston.

9. IM Flash is further subject to this Court’s jurisdiction because it knew or should have known that its infringing products would be delivered into this forum and Judicial District by Micron and/or Micron’s customers such as Texas Instruments, as a result of Micron’s established distribution networks, including but not limited to its alleged sales facilities in Round Rock and Houston. In fact, IM Flash touts itself as the “largest exporter (excluding metals) in Utah.”²

10. For example, upon information and belief, infringing Micron and IM Flash

² See, e.g., imflash.com/facts-figures.

NAND Flash products are included in solid state flash drives that are being sold in (or are shipped for pickup to) the Eastern District of Texas in Staples stores.³ Additionally, upon information and belief, infringing Crucial-branded solid state flash drives are sold at Office Depot stores in the EDTX.⁴

11. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Defendants are subject to personal jurisdiction in this District, and Defendants have committed and continue to commit acts of patent infringement in this District. For example, upon information and belief, Defendants have made, used, sold, offered for sale, and/or imported infringing products and services in this District.

The Patents-In-Suit

12. EMS is the owner by assignment of the '424 Patent, entitled "Programmable power generation circuit for flash EEPROM memory systems" which the United States Patent & Trademark Office duly issued on October 22, 1996. A true and correct copy of the '424 Patent is attached hereto as Exhibit A.

13. EMS is the owner by assignment of the '420 Patent, entitled "Programmable power generation circuit for flash EEPROM memory systems" which the United States Patent & Trademark Office duly issued on January 7, 1997. A true and correct copy of the '420 Patent is attached hereto as Exhibit B.

14. The inventions of the '424 and '420 Patents are applicable to, among other things, controlling via a programmable power source the on-chip boosting of voltages to create a number of high voltages for programming and erasing NAND Flash semiconductor memories.

Defendants' Infringing Products and Methods

³ See, e.g., http://www.staples.com/VisionTek-120GB-2-1-2-mSATA-DLX-6Gb-s-Micron-Onfi-Asynchronous-MLC-Internal-Solid-State-Drive-SSD-/product_IM1XN4408

⁴ See, <http://www.officedepot.com/a/products/852356/Crucial-M500-Solid-State-Drive-For/>

15. Defendants make, use, sell, offer for sale and/or import into the United States NAND Flash memory products, including NAND Flash memory products that generate a number of high voltages by boosting a lower voltage using programmable power sources (“Accused Products”). By way of example, and without limitation, Defendants sell such Accused Products under brand names that include Micron, IM Flash, Lexar, Crucial, and SpecTek, in packaged form, unpackaged form, die form and wafer form, and as solid state drives, memory modules, managed NAND, multi-chip packages, memory cards and USB devices. Defendants know that these are commodity products that they place into the stream of commerce.

COUNT I: INFRINGEMENT OF THE '420 PATENT

16. Plaintiff incorporates Paragraphs 1 through 15 herein by reference as if set forth here in full.

17. Upon information and belief, Micron has been and is currently directly infringing, literally or under the doctrine of equivalents, claim 13 of the '420 Patent by making, using, testing, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the aforementioned Accused Products. For example, and without limitation, Micron directly infringes and continues to directly infringe the '420 Patent in this Judicial District and elsewhere in the United States. Micron's direct infringement includes, without limitation, practicing the method of claim 13.

18. Micron also directly infringes claim 13 of the '420 Patent by directing and/or controlling its employees, executives, users, agents, affiliates, suppliers and/or customers to use the aforementioned Accused Products and to practice the method of claim 13 within the United States.

19. By using the method claimed in the '420 Patent and by making, selling,

importing, offering for sale, testing and/or using the aforementioned Accused Products, Micron has been and is now directly infringing under 35 U.S.C. § 271 claim 13 of the '420 Patent, either literally or under the doctrine of equivalents.

20. By importing into the United States the aforementioned Accused Products that were manufactured according to the method of claim 13 of the '420 Patent, Micron has been and is now infringing under 35 U.S.C. § 271(g), either literally or under the doctrine of equivalents.

21. Micron has been aware of the '420 Patent since at least the filing date of this Complaint. Upon Micron's gaining knowledge of the '420 Patent, it was, or became, apparent to Micron that the manufacture, sale, importing, offer for sale, testing and use of its Accused Products resulted in infringement of the '420 Patent. Upon information and belief, Micron has continued to engage in activities constituting inducement of infringement, notwithstanding its knowledge (or willful blindness thereto) that the activities it was inducing result in infringement of the '420 Patent.

22. The direct infringement induced and contributed by Micron includes at least the manufacture, testing, operation and use of the aforementioned Accused Products by manufacturers, assemblers, testers, customers, suppliers, users, agents and affiliates. These persons directly infringe claim 13 of the '420 Patent at least by practicing the method of claim 13 of the '420 Patent via the manufacture, assembly, testing and use of the Accused Products.

23. Micron knows that these persons are infringing the '420 Patent and Micron has specific intent to encourage these persons to infringe the '420 Patent. Micron induces these persons to manufacture, assemble, test and use Micron's Accused Products, knowing that these acts constitute infringement of the '420 Patent and with specific intent to encourage those acts and encourage infringement. Micron encourages direct infringement of the '420 Patent by

providing its Accused Products to these persons, by requiring these persons to operate the Accused Products in an infringing manner, by specifically designing its Accused Products to only operate in an infringing manner, and by instructing its manufacturers, assemblers and testers to make and use the Accused Products in an infringing manner.

24. Upon knowledge of the '420 Patent (at least since the filing date of this Complaint), Micron is inducing infringement of the '420 Patent by, among other things, knowingly and with intent, actively encouraging its manufacturers, assemblers, testers, customers, suppliers, users, agents and affiliates to make, use, sell, test and/or offer for sale Micron's aforementioned Accused Products in a manner that constitutes infringement of claim 13 of the '420 Patent, knowing that such activities infringe the '420 Patent.

25. By inducing its customers', suppliers', users', agents' and affiliates' use of the method claimed in the '420 Patent and their making and/or using the aforementioned Accused Products, Micron has been and is now indirectly infringing under 35 U.S.C. § 271(b) claim 13 of the '420 Patent, either literally or under the doctrine of equivalents.

26. Upon information and belief, upon knowledge of the '420 Patent (at least since the filing date of this Complaint) Micron is contributing to the infringement of the '420 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, test, sell and/or offer for sale Micron's aforementioned Accused Products in a manner that constitutes infringement of claim 13 of the '420 Patent. For example, and without limitation, the Accused Products are used in end products, including solid state drives, thumb drives, computers, laptops and mobile telephones. The Accused Products are not staple articles or commodities of commerce suitable for non-infringing use and are especially made for or adapted for use in infringing the '420 Patent. There are no substantial uses of the

aforementioned Accused Products that do not infringe claim 13 of the '420 Patent.

27. By contributing to its customers', suppliers', agents', users' and affiliates' use of the method claimed in the '420 Patent and their making and/or using the Accused Products, Micron has been and is now indirectly infringing under 35 U.S.C. § 271(c) claim 13 of the '420 Patent, either literally or under the doctrine of equivalents.

28. Upon information and belief, IM Flash has been and is currently directly infringing, literally or under the doctrine of equivalents, claim 13 of the '420 Patent by making, using, testing, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the aforementioned Accused Products. IM Flash's direct infringement includes, without limitation, practicing the method of claim 13.

29. IM Flash also directly infringes claim 13 of the '420 Patent by directing and/or controlling its employees, executives, users, agents, affiliates, suppliers and/or customers to use the aforementioned Accused Products and to practice the method of claim 13 within the United States.

30. By using the method claimed in the '420 Patent and by making, selling, importing, testing, offering for sale and/or using the aforementioned Accused Products, IM Flash has been and is now directly infringing under 35 U.S.C. § 271 claim 13 of the '420 Patent, either literally or under the doctrine of equivalents.

31. By importing into the United States the aforementioned Accused Products that were manufactured according to the method of claim 13 of the '420 Patent, IM Flash has been and is now infringing under 35 U.S.C. § 271(g), either literally or under the doctrine of equivalents.

32. IM Flash has been aware of the '420 Patent since at least the filing date of this Complaint. Upon IM Flash's gaining knowledge of the '420 Patent, it was, or became, apparent to IM Flash that the manufacture, sale, importing, offer for sale, testing and use of its Accused Products resulted in infringement of the '420 Patent. Upon information and belief, IM Flash has continued to engage in activities constituting inducement of infringement, notwithstanding its knowledge (or willful blindness thereto) that the activities it was inducing result in infringement of the '420 Patent.

33. The direct infringement induced and contributed to by IM Flash includes at least the manufacture, testing, operation and use of the aforementioned Accused Products by manufacturers, assemblers, testers, customers, suppliers, users, agents and affiliates. These persons directly infringe claim 13 of the '420 Patent at least by practicing the method of claim 13 of the '420 Patent via the manufacture, assembly, testing and use of the Accused Products.

34. IM Flash knows that these persons are infringing the '420 Patent and IM Flash has specific intent to encourage these persons to infringe the '420 Patent. IM Flash induces these persons to manufacture, assemble, test and use IM Flash's Accused Products, knowing that these acts constitute infringement of the '420 Patent and with specific intent to encourage those acts and encourage infringement. IM Flash encourages direct infringement of the '420 Patent by providing its Accused Products to these persons, by requiring these persons to operate the Accused Products in an infringing manner, by specifically designing its Accused Products to only operate in an infringing manner, and by instructing its manufacturers, assemblers and testers to make and use the Accused Products in an infringing manner.

35. Upon knowledge of the '420 Patent (at least since the filing date of this Complaint), IM Flash is inducing infringement of the '420 Patent by, among other things,

knowingly and with intent, actively encouraging its manufacturers, assemblers, testers, customers, suppliers, users, agents and affiliates to make, use, sell, test and/or offer for sale IM Flash's aforementioned Accused Products in a manner that constitutes infringement of claim 13 of the '420 Patent, knowing that such activities infringe the '420 Patent.

36. By inducing its customers', suppliers', users', agents' and affiliates' use of the method claimed in the '420 Patent and their making and/or using the aforementioned Accused Products, IM Flash has been and is now indirectly infringing under 35 U.S.C. § 271(b) claim 13 of the '420 Patent, either literally or under the doctrine of equivalents.

37. Upon information and belief, upon knowledge of the '420 Patent (at least since the filing date of this Complaint) IM Flash is contributing to the infringement of the '420 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, test, sell and/or offer for sale IM Flash's aforementioned Accused Products in a manner that constitutes infringement of claim 13 of the '420 Patent. For example, and without limitation, the Accused Products are used in downstream products, including solid state drives, thumb drives, computers, laptops and mobile telephones. The Accused Products are not staple articles or commodities of commerce suitable for non-infringing use and are especially made for or adapted for use in infringing the '420 Patent. There are no substantial uses of the aforementioned Accused Products that do not infringe claim 13 of the '420 Patent.

38. By contributing to its customers', suppliers', agents', users' and affiliates' use of the method claimed in the '420 Patent and their making and/or using the Accused Products, IM Flash has been and is now indirectly infringing under 35 U.S.C. § 271(c) claim 13 of the '420 Patent, either literally or under the doctrine of equivalents.

39. As a result of Defendants' unlawful infringement of the '420 Patent, EMS has suffered and will continue to suffer damage. EMS is entitled to recover from Defendants the damages adequate to compensate for such infringement, which have yet to be determined.

40. Defendants, by way of their infringing activities, have caused and continue to cause EMS to suffer damages in an amount to be determined at trial.

COUNT II: INFRINGEMENT OF THE '424 PATENT

41. Plaintiff incorporates Paragraphs 1 through 40 herein by reference as if set forth here in full.

42. Upon information and belief, Micron has been and is currently directly infringing, literally or under the doctrine of equivalents, at least claim 1 of the '424 Patent and/or one or more of its dependent claims by making, using, testing, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the aforementioned Accused Products. For example, and without limitation, Micron directly infringes and continues to directly infringe the '424 Patent in this Judicial District and elsewhere in the United States. Micron's direct infringement includes, without limitation, making, using, testing, selling, offering for sale and/or importing into the United States the apparatus of at least claim 1 of the '424 Patent and one or more of its dependent claims.

43. Micron also directly infringes one or more claims of the '424 Patent by directing and/or controlling its employees, executives, users, agents, affiliates, suppliers and/or customers to make, use, test, sell, offer for sale and/or import into the United States the apparatus of at least claim 1 of the '424 Patent and one or more of its dependent claims.

44. By making, selling, importing, testing, offering for sale and/or using the aforementioned Accused Products, Micron has been and is now directly infringing under 35

U.S.C. § 271 one or more claims of the '424 Patent, either literally or under the doctrine of equivalents.

45. Upon information and belief, IM Flash has been and is currently directly infringing, literally or under the doctrine of equivalents, at least claim 1 of the '424 Patent and/or one or more of its dependent claims by making, using, testing, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the aforementioned Accused Products. IM Flash's direct infringement includes, without limitation, making, using, testing, selling, offering for sale and/or importing into the United States the apparatus of at least claim 1 of the '424 Patent and one or more of its dependent claims.

46. IM Flash also directly infringes one or more claims of the '424 Patent by directing and/or controlling its employees, executives, users, agents, affiliates, suppliers and/or customers to make, use, test, sell, offer for sale and/or import into the United States the apparatus of at least claim 1 of the '424 Patent and one or more of its dependent claims.

47. By making, selling, importing, testing, offering for sale and/or using the aforementioned Accused Products, IM Flash has been and is now directly infringing under 35 U.S.C. § 271 one or more claims of the '424 Patent, either literally or under the doctrine of equivalents.

48. As a result of Defendants' unlawful infringement of the '424 Patent, EMS has suffered and will continue to suffer damage. EMS is entitled to recover from Defendants the damages adequate to compensate for such infringement, which have yet to be determined.

49. Defendants, by way of their infringing activities, have caused and continue to cause EMS to suffer damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, EMS respectfully requests that this Court enter judgment in its favor as follows:

- A. Holding that Defendants have directly infringed, literally and/or under the doctrine of equivalents, claim 13 of the '420 Patent;
- B. Holding that Defendants have indirectly infringed, literally and/or under the doctrine of equivalents, claim 13 of the '420 Patent;
- C. Holding that Defendants have directly infringed, literally and/or under the doctrine of equivalents, one or more claims of the '424 Patent;
- D. Awarding to EMS the damages to which it is entitled under 35 U.S.C. § 284 for Defendants' past infringement.
- E. Declaring this to be an exceptional case and awarding EMS attorneys' fees under 35 U.S.C. § 285;
- F. Awarding EMS costs and expenses in this action;
- G. Awarding EMS pre- and post-judgment interest on its damages; and
- H. Awarding EMS such other and further relief in law or in equity as this Court deems just and proper.

JURY DEMAND

EMS, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any and all issues so triable by right.

Dated: February 6, 2015

By: /s/ Andrew W. Spangler
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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the court's CM/ECF system, on this the 6th day of February, 2015.

/s/ Andrew W. Spangler
Andrew W. Spangler