

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEMSCAP, S.A.)	
)	
Plaintiff,)	
)	C.A. No. _____
v.)	
)	
AGILTRON, INC.)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT

Plaintiffs MEMSCAP, S.A. (“MEMSCAP”), by their undersigned attorneys, for their Complaint against Defendant Agiltron, Inc. (“Agiltron”) herein allege:

NATURE OF THE ACTION

1. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 100 et seq., including 35 U.S.C. § 271, arising from Agiltron’s actions, including making, using, selling, and offering for sale one or more products in violation of U.S. Patent Nos. 5,909,078 (“the ’078 Patent”) and 6,262,512 (“the ’512 Patent”).

THE PARTIES

2. MEMSCAP is a French corporation, having its principal place of business at Parc Activillage des Fontaines, ZI Bernin, 38 926 Crolles Cedex, France, and manufacturing facilities in Research Triangle Park, Durham, NC 27709. MEMSCAP provides innovative products and solutions based on Micro-Electro-Mechanical Systems (“MEMS”).

3. On information and belief, Agiltron is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 15 Presidential Way, Woburn, MA 01801.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a).

5. This Court has personal jurisdiction over Agiltron because it is a Delaware corporation. Agiltron has purposefully conducted and continues to conduct business in this District, including by having availed itself of the rights, protections, and benefits of Delaware law, such that it should reasonably anticipate being haled into court in this District. On information and belief, Agiltron has contacts with the State of Delaware, by, among other things, offering infringing products for sale to residents of Delaware and to others with the intent that those products are distributed and used in Delaware.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

THE PATENTS-IN-SUIT

7. On June 1, 1999, the United States Patent and Trademark Office issued U.S. Patent No. 5,909,078, entitled “Thermal Arched Beam Microelectromechanical Actuators.” The ’078 Patent issued to Robert L. Wood and Vijayakumar R. Dhuler and was assigned to JDS Uniphase. JDS Uniphase subsequently assigned all right, title, and interest in the ’078 Patent to MEMSCAP. A copy of the ’078 Patent is attached as Exhibit A.

8. On July 17, 2001, the United States Patent and Trademark Office issued U.S. Patent No. 6,262,512, entitled “Thermally Actuated Microelectromechanical Systems Including Thermal Isolation Structures.” The ’512 Patent issued to Ramaswamy Mahadevan and was assigned to JDS Uniphase. JDS Uniphase subsequently assigned all right, title, and interest in the ’512 Patent to MEMSCAP. A copy of the ’512 Patent is attached as Exhibit B.

COUNT I - INFRINGEMENT OF U.S. 5,909,078

9. Plaintiffs re-allege the allegations in paragraphs 1–8 as though fully set forth herein.

10. Without license or authority, Agiltron has used the inventions claimed in at least claim 9 of the '078 Patent to make, use, sell, and offer for sale infringing products within the United States, such as the *etMEMS*TM series FS VOA products, including the 0.5mm and 0.7mm versions (collectively, “Agiltron’s Infringing Products”).

11. In doing so, Agiltron has directly infringed, and continues to directly infringe, the '078 Patent.

12. On information and belief, since at least May 26, 2015, Agiltron has known of the '078 Patent and has known that Agiltron’s Infringing Products infringe claims of the '078 Patent.

13. MEMSCAP, through its counsel, sent correspondence to Agiltron dated May 26, 2015, putting Agiltron on notice of the '078 Patent and specifically that Agiltron’s Infringing Products infringed claim 9 of the '078 Patent.

14. Upon information and belief, Agiltron has continued to make, use, sell, or offer for sale Agiltron’s Infringing Products since May 26, 2015.

15. Agiltron has indirectly infringed and continues to indirectly infringe at least claim 9 of the '078 Patent by actively and intentionally inducing direct infringement by its customers and others within the United States, and/or intentionally contributing to their direct infringement of the '078 Patent. Agiltron has accomplished this indirect infringement by instructing and encouraging those persons, by means of promotional and instructional literature, among other things, to use Agiltron’s Infringing Products in a manner that infringes the '078 Patent, and/or through its sale and offer for sale of Agiltron’s Infringing Products to such persons, where that product has no substantial, non-infringing use.

16. Agiltron's infringement of the '078 Patent has been willful.

COUNT II - INFRINGEMENT OF U.S. 6,262,512

17. Plaintiffs re-allege the allegations in paragraphs 1–16 as though fully set forth herein.

18. Without license or authority, Agiltron has used the inventions claimed in at least claim 14 of the '512 Patent to make, use, sell, and offer for sale Agiltron's Infringing Products within the United States.

19. In doing so, Agiltron has directly infringed, and continues to directly infringe, the '512 Patent.

20. On information and belief, since at least May 26, 2015, Agiltron has known of the '512 Patent and has known that Agiltron's Infringing Products infringe claims of the '512 Patent.

21. MEMSCAP, through its counsel, sent correspondence to Agiltron dated May 26, 2015, putting Agiltron on notice of the '512 Patent and specifically that Agiltron's Infringing Products infringed claim 14 of the '512 Patent.

22. Upon information and belief, Agiltron has continued to make, use, sell, or offer for sale Agiltron's Infringing Products since May 26, 2015.

23. Agiltron has indirectly infringed and continues to indirectly infringe at least claim 14 of the '512 Patent by actively and intentionally inducing direct infringement by its customers and others within the United States, and/or intentionally contributing to their direct infringement of the '512 Patent. Agiltron has accomplished this indirect infringement by instructing and encouraging those persons, by means of promotional and instructional literature, among other things, to use Agiltron's Infringing Products in a manner that infringes the '512 Patent, and/or through its sale and offer for sale of Agiltron's Infringing Products to such persons, where that product has no substantial, non-infringing use.

24. Agiltron's infringement of the '512 Patent has been willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- A. Judgment that the '078 and '512 Patents are valid, enforceable, and infringed by Agiltron;
- B. Preliminary and permanent injunctive relief prohibiting Agiltron, its officers, agents, servants, employees, subsidiaries and affiliated companies, and those persons acting in active concert or participation therewith, from engaging in the aforesaid unlawful acts of patent infringement;
- C. Judgment that Agiltron's acts of patent infringement are willful;
- D. An award of damages not less than a reasonable royalty arising out of Agiltron's acts of patent infringement, together with pre-judgment and post-judgment interest;
- E. Judgment that the damages so adjudged be trebled in accordance with 35 U.S.C. § 284;
- F. An award of MEMSCAP's attorneys' fees, costs, and expenses incurred in this action in accordance with 35 U.S.C. § 285; and
- G. Such further and other relief as this Court deems just and proper.

ASHBY & GEDDES, P.A

/s/ Andrew C. Mayo

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