

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PHENIX, LLC,

Plaintiff,

vs.

**INTEGRATED MEMORY
LOGIC, LTD., INTEGRATED
MEMORY LOGIC, INC. and
EXAR CORPORATION,**

Defendants.

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Civil Action No. 6:15-cv-00436

JURY TRIAL DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Within the time period provided for by the Court's Docket Control Order, Plaintiff Phenix, LLC ("Phenix") files this Second Amended Complaint for Patent Infringement ("Complaint") against Defendants Integrated Memory Logic, Ltd., Integrated Memory Logic, Inc. (collectively "iML") and Exar Corporation ("Exar") (collectively with iML, the "Defendants") pursuant to 35 U.S.C. § 271 and in support thereof would respectfully show the Court the following:

THE PARTIES

1. Phenix is a limited liability company organized and existing under the laws of the State of California. Phenix maintains a California business address and is authorized to do business in the State of Texas. Phenix is registered to transact business in the State of Texas as Phenix Longhorn, LLC, with a registered agent and office in the Eastern District of Texas located at the Rowan Law Firm, P.C., 2325 Oak Alley, Tyler, Texas 75702.

2. Upon information and belief, Integrated Memory Logic, Ltd. is, and at all relevant times mentioned was, a limited liability company organized and existing under the laws of the Cayman Islands, and maintains a registered office at Cordon Trust Company (Cayman) Ltd., P.O. Box 2681, Cricket Square, Hutchins Drive, Cayman Islands. On information and belief, prior to the forgoing acquisition, Integrated Memory Logic, Ltd. was a publicly traded company on the Taiwan Stock Exchange from 2009 until 2014. On information and belief, between June and September 2014, Exar acquired all the stock of Integrated Memory Logic, Ltd. to become a wholly-owned subsidiary of Exar. On information and belief, Integrated Memory Logic, Ltd. has committed and continues to commit, tortious acts of infringement within and outside the State of Texas and within the Eastern District of Texas by placing into the stream of commerce infringing products it knows or should have known would be sold in the forum as components of consumer products, including, but not limited to, television sets, notebook computers, ultrabook computers and tablets.

3. Upon information and belief, Integrated Memory Logic, Inc., is and at all relevant times mentioned was, a corporation organized and existing under the laws of the State of California, with its principal place of business at 48720 Kato Road, Fremont, California 94538. On information and belief, Integrated Memory Logic, Inc. is a subsidiary of Integrated Memory Logic, Ltd. On information and belief, Integrated Memory Logic, Inc. has committed and continues to commit, tortious acts of infringement within and outside the State of Texas and within the Eastern District of Texas by making or having made, designing, testing and selling the infringing products.

4. Upon information and belief, Exar is, and at all relevant times mentioned was, a corporation organized and existing under the laws of the State of Delaware, with its principal place

of business at 48720 Kato Road, Fremont, California 94538. On information and belief, Exar regularly conducts and transacts business in the State of Texas, throughout the United States, and within the Eastern District of Texas, and as set forth below, has committed and continues to commit, tortious acts of infringement within and outside State of Texas and within the Eastern District of Texas.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Defendants. On information and belief, Defendants have conducted and do conduct business within the State of Texas, such business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in State of Texas and in the Eastern District of Texas. Thus, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and the Texas Long Arm Statute.

7. Defendants, directly or through subsidiaries or intermediaries (including customers, distributors, retailers, and others), offer for sale, sell, import, advertise, and market one or more products that infringe the patent-in-suit, as described particularly below. Personal jurisdiction also exists specifically over the Defendants because of their conduct in making or having made, using,

selling, offering to sell, and/or importing infringing products within the State of Texas, and more particularly, within the Eastern District of Texas.

8. Integrated Memory Logic, Ltd. has agreed to waive service in this matter. (Dkt. No. 10).

9. On information and belief, Integrated Memory Logic, Inc. has an agent for service of process in the State of California at 47820 Kato Road, Fremont, California 94538.

10. On information and belief, Exar has a registered agent for service of process located in the State of Texas at National Registered Agents, Inc., 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

11. On information and belief, from 2002 through 2007, according to documents filed with the State of Texas, Exar had an office in the Eastern District of Texas at 689 W. Renner Road, Richardson, Texas 75080. On information and belief, Exar has sold at least \$1.7 million in Texas over the time spanning the third quarter of 2014 through the second quarter of 2015 and an unknown amount before and after this period. On information and belief, Exar currently has an employee in Austin, Texas. Furthermore, on information and belief, Exar has filed taxes in Texas from 2002 through 2015 and admitted to having a domestic presence in the State of Texas in public filings with the Securities and Exchange Commission, specifically, Form 10-K for the fiscal year ended May 30, 2014.

12. On information and belief, according to Exar's website, Exar has distributors in Texas, including at least two distributors in the Eastern District of Texas: Future Electronics, 2301 West Plano Parkway, Suite 215, Plano, Texas 75075; and Newark, 1200 Placid Avenue, Suite 300, Plano, Texas 75074. On information and belief, according to Exar's website, Exar has

at least one manufacturing representative in the Eastern District of Texas: BP Sales, 700 Central Expressway South, Suite 360, Allen, Texas 75013.

13. On information and belief, Defendants, directly and/or through subsidiaries or intermediaries (including distributors, retailers, and others), have transacted business in the Eastern District of Texas and have committed acts of patent infringement in the Eastern District of Texas. Thus, venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

THE ASSERTED PATENT

14. On June 19, 2007, United States Patent No. 7,233,305 (“the ‘305 patent”) entitled “Gamma Reference Voltage Generator” was duly and legally issued with Richard Orlando and Trevor Blyth as the named inventors, after full and fair examination by the U.S. Patent and Trademark Office. Phenix is the owner, by assignment, of all rights, title, and interest in and to the ‘305 patent. A copy of the ‘305 patent is attached as Exhibit A.

BACKGROUND FACTS

15. Mr. Orlando is the co-inventor of the ‘305 patent and President of Phenix. Prior to Mr. Orlando forming Phenix, he was President of Alta Analog, Inc., (“Alta”) a company incorporated in March 2002 to design and manufacture integrated circuits. The Alta products were designed to improve the color fidelity of liquid crystal display (“LCD”) screens for computer products using a technology known as programmable gamma (“PGamma”) correction, the subject matter of the ‘305 patent. Alta was the original owner of the ‘305 patent.

16. On or about February 2008, Mr. Orlando first approached iML to discuss a partnership for providing integrated circuits to the computer notebook market. On or about July 24, 2008, Mr. Orlando and Mr. Yong Park, then Chief Executive Officer of Integrated Memory Logic, Inc., met to discuss the business proposal. Mr. Orlando introduced Mr. Park to the PGamma

market, the business potential of the market, and how the Alta technology was the best solution. At the meeting, however, Mr. Park declined to work with Alta and expressed serious doubts as to the PGamma, purportedly preferring instead to compete in established markets with a standardized solution.

17. On or about December 2010, Apple, Inc. (“Apple”) approached Mr. Orlando to determine if Alta could use its expertise to assist Apple with solving color fidelity issues with its iPad product line. After numerous conversations and communications between Apple and Alta, a meeting at Apple was held on or about November 15, 2011, where Alta made a proposal and started the design and development of the Alta 1114 integrated circuit for the Apple iPad product line. On or about February 2012, Alta delivered samples of the Alta 1114 part to Apple. On or about March 2012, Apple tested the part and confirmed that the Alta 1114 was satisfactorily working and operational.

18. On or about November 27, 2011, at around the same time the discussions with Apple were occurring, Mr. Orlando met with Mr. Gi Young Lee, Vice-President of Marketing for Integrated Memory Logic, Inc., to revisit the partnership proposal. On or about March 6, 2012, a high-level meeting was held between Mr. Orlando and Integrated Memory Logic, Inc. that was attended by Mr. Lee, Mr. Shuen Chin Chang, and Mr. Alex Ju. Mr. Chang and Mr. Ju, Chief Executive Officer (replacing Mr. Park) and Chief Technology Officer, respectively. Discussions between the parties included technical details regarding the Alta 1114 part, among other things, including a proposal to dual source the Alta 1114 part to Apple. On or about May 24, 2012, Mr. Orlando sent to Mr. Lee a written technical specification of the Alta 1114 part that listed the ‘305 patent as covering the part.

19. On or about May 30, 2012, Apple informed Alta that Apple would not be using Alta, purportedly because of concerns regarding its small company size and limited resources. On or about July 2012, in the hopes of addressing Apple's concerns regarding Alta's resources, Mr. Orlando again contacted iML for a partnership arrangement. On or about July 20, 2012, Mr. Orlando sent an email to Mr. Lee, again providing clear notice to iML of the '305 patent. No dual-source arrangement was ever concluded with iML. As alleged below, iML went on to supply Apple with the infringing iML 7990 and iML 7991 parts. On February 5, 2014, partially because of the failure to secure a contract with Apple, Alta filed for protection under Chapter 7 in the U.S. Bankruptcy Court in the Northern District of California.

20. On information and belief, the iML 7990 and iML 7991 integrated circuits are components of various computer products made by or for Apple. On information and belief, the iML 7990 is a component of the Apple MacBook Pro 15 inch with Retina Display and the Apple iPad 4 LTE Model A1459. On information and belief, the iML 7991 is a component of the Apple iPad 3 Model A1416. On information and belief, the foregoing Apple products are consumer products that are or were available and sold throughout the United States, including in the Eastern District of Texas.

21. On information and belief, the iML 7991 integrated circuit is a component of various television products made by or for Sceptre, Inc. On information and belief, the iML 7991 is a component of the Sceptre E555BV-FMQR 55" 1080p 60Hz Class LED HDTV. The foregoing television set is available at Walmart and sold throughout the United States, including in the Eastern District of Texas.

22. On information and belief, the iML 7991 integrated circuit is a component of one or more display panel printed circuit boards made by BOE Technology Group Co., Ltd, a Chinese

supplier of display boards to numerous LED HDTV televisions sold in the United States, including in the Eastern District of Texas. On information and belief, the iML 7991 is found on BOE display panel HV550 found in the Sceptre E555BV-FMQR 55" 1080p 60Hz Class LED HDTV.

23. On information and belief, a remarked version of the iML 7991 integrated circuit is a component of one or more display panel printed circuit boards made by AU Optronics Corporation (AUO), a Taiwanese supplier of display boards to numerous LED HDTV televisions sold in the United States, including in the Eastern District of Texas.

24. On information and belief, the iML 7991 integrated circuit is a component of one or more display panel printed circuit boards made by Hisense International Co., Ltd., a Taiwanese supplier of display boards for Hisense LED HDTV televisions sold in the United States, including in the Eastern District of Texas.

COUNT 1
DEFENDANTS' DIRECT INFRINGEMENT OF U. S. PATENT NO. 7,233,305

25. Phenix restates and incorporates by reference its allegations in paragraphs 1 through 24 of this Complaint as if fully set forth herein and says, as more fully described below, that iML and later Exar, by way of its acquisition of iML and iML's products, have infringed and/or continue to infringe the '305 patent.

26. Defendants have been and are now designing, marketing, testing, making or having made, using, selling, distributing, importing, and/or offering for sale in the United States certain integrated circuits that infringe one or more claims of the '305 patent. On information and belief, Defendants' products that infringe at least claims 1, 2, 4 and 5 of the '305 patent ("Infringing Products") include, but are not limited to, the iML7990, iML7991, iML1991, iML7920, iML7921, iML7999, iML9921 integrated circuits, the custom-marked integrated circuits listed in Exhibit B,

and all reasonably similar products and variants thereof known to Defendants and any Power Management Integrated Circuits (PMICs) that are combined with the functionality or features of the foregoing integrated circuits.

27. On information and belief, the foregoing listed integrated circuits infringe the asserted claims because they include at least the following salient features: a plurality of non-volatile storage cells; circuits for programming coupled to a multiplexer for addressing and programming said storage cells, wherein the addressing is based on a plurality of inputs; drivers connected to said storage cells and to the plurality of outputs; and the plurality of inputs connected to said multiplexer for addressing said storage cells; wherein said voltage signals are gamma reference voltage signals for determining actual driving voltages of columns of a display, wherein said non-volatile storage cells are organized into two or more banks of cells wherein each bank contains a predetermined gamma reference voltage signal display condition; and means to switch between the banks based on one or more external signals.

28. Defendants have been and are now directly infringing the '305 patent by making or having made, designing, testing, using, selling, offering for sale, and/or importing into the United States the Infringing Products.

29. Defendants, directly and/or through subsidiaries or intermediaries, have infringed and continue to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '305 patent by making or having made, designing, testing, using, making available for another's use, selling or offering to sell, and/or importing the Infringing Products. Defendants' infringing activities include importing, offering for sale, and selling the Infringing Products in the United States. Defendants also infringe the '305 patent by selling and offering to sell the Infringing Products directly and via sales representatives, distributors, and resellers to consumers, businesses,

distributors, and resellers. Defendants' infringement of the '305 patent has caused damage to Phenix. Defendant's infringing activities violate 35 U.S.C. § 271.

30. As a result of Defendants' infringement of the '305 patent, Phenix has suffered monetary losses for which Phenix is entitled to an award of damages that are adequate to compensate Phenix for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty on any infringing product made, used, sold, or offered for sale in the United States or elsewhere.

COUNT 2
DEFENDANTS' INDUCEMENT OF INFRINGEMENT

31. Phenix restates and incorporates by reference its allegations in paragraphs 1 through 30 of this Complaint as if fully set forth herein and says that Defendants, directly and/or through subsidiaries or intermediaries, have induced and continue to induce infringement (literally and/or under the doctrine of equivalents) of one or more claims of the '305 patent. Defendants' deliberate and/or willfully blind actions include, but are not limited to, actively marketing to, supplying, causing the supply to, encouraging, recruiting, and instructing others such as consumers, businesses, distributors, agents, channel partners, resellers, sales representatives, end users, and customers, to use, make available for another's use, promote, market, distribute, import, sell and/or offer to sell the Infringing Products. These actions, individually and collectively, have induced and continue to induce the direct infringement of the '305 patent by others such as consumers, businesses, distributors, resellers, sales representatives, agents, channel partners, end users, and customers. Defendants knew and/or were willfully blind to the fact that the induced parties' use, testing, making available for another's use, promotion, marketing, distributing, importing, selling and/or offering to sell the Infringing Products would infringe one or more claims of the '305 patent.

32. As a consequence of Defendants' past dealings with Alta that pre-dated the filing and service of this Complaint as described above, Defendants had knowledge of, or were willfully blind to knowledge of, the '305 patent and their infringement of the '305 patent before the filing of this lawsuit. Alternatively, at least by the time of filing and serving this Phenix's Original Complaint, Phenix has given Defendants written notice of the infringement. Defendants' infringing activities violate 35 U.S.C. § 271.

COUNT 3
DEFENDANTS' WILLFUL INFRINGEMENT

33. Phenix restates and incorporates by reference its allegations in paragraphs 1 through 32 of this Complaint as if fully set forth herein and says that Defendants' infringement of the '305 patent is willful to the extent that Defendants' past dealings with Alta that pre-dated the filing and service of this Complaint, as described above, gave Defendants actual notice of the '305 patent and the infringement thereof prior to filing this lawsuit or, alternatively, at least by the time of filing and service of this Complaint, Phenix has given Defendants actual notice of the '305 patent and the infringement thereof, and Defendants continue to make or have made, use, make available for another's use, sell or offer to sell, and/or import the Infringing Products, and/or continue to induce others such as consumers, businesses, distributors, agents, channel partners, resellers, sales representatives, end users, and customers to infringe the '305 patent.

DEMAND FOR JURY TRIAL

33. Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38(a), Phenix hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Phenix prays for the following relief:

- a) A judgment that iML and Exar have directly infringed the '305 patent and/or induced the infringement of the '305 patent;
- b) A judgment and order preliminarily and permanently enjoining iML and Exar, their respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns and any other person(s) in active concert or participation with them from directly infringing and/or inducing the infringement of the '305 patent;
- c) A judgment that the infringement of the '305 patent by iML and Exar has been willful;
- d) A judgment and order requiring iML and Exar to pay Phenix past and future damages under 35 U.S.C. § 284, adequate to compensate Phenix, but in no event less than a reasonable royalty, including enhanced damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final Judgment with an accounting, as needed;
- e) A judgment that this case be found an exceptional case pursuant to 35 U.S.C. § 285, entitling Phenix to an award of all costs of this action, including attorneys' fees and interest;
- f) A judgment and order requiring iML and Exar to pay Phenix the costs of this action;
- g) A judgment and order requiring iML and Exar to pay Phenix pre-judgment and post-judgment interest on the damages award;
- h) A judgment and order requiring that Phenix be awarded a compulsory ongoing licensing fee as to iML and Exar; and
- i) Such other and further relief as the Court deems just and equitable.

Dated: December 3, 2015

Respectfully submitted,

By: /s/ Nicolas S. Gikkas

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CERTIFICATE OF SERVICE

I certify that on December 3, 2015, I filed the foregoing **PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT** with the Clerk of the Court using the CM/ECF system, which automatically sends an email notification of such filing to the following attorneys of record and to all registered participants identified on the Notice of Electronic Filing (NEF).

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