

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

SEMCON IP INC.,

Plaintiff,

v.

ASUSTEK COMPUTER INC.

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**Case No. Case No. 2:18-cv-00193-JRG
(LEAD CASE)**

JURY TRIAL DEMANDED

SEMCON IP INC.,

Plaintiff,

v.

MICHAEL KORS HOLDINGS LIMITED,

Defendant.

**Case No. 2:18-cv-00198-JRG
(CONSOLIDATED CASE)**

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Semcon IP Inc. (“Semcon” or “Plaintiff”), for its First Amended Complaint against Defendants Michael Kors Holdings Limited (“Michael Kors Holdings”), Michael Kors (USA), Inc. (“Michael Kors (USA)”), and Michael Kors Retail, Inc. (“Michael Kors Retail”) (collectively “Michael Kors” or “Defendants”), alleges as follows:

THE PARTIES

1. Semcon is a corporation organized and existing under the laws of the State of Texas with its principal place of business located at 100 W. Houston Street, Marshall, Texas 75670.

2. Upon information and belief, Michael Kors Holdings Limited is a corporation organized and existing under the laws of the British Virgin Islands with its principal place of business located at 33 Kingsway, London, England, WC2B 6UF, United Kingdom and may be served pursuant to the provisions of the Hague Convention. Michael Kors Holdings is a leading manufacturer and seller of luxury fashion in the world and in the United States. Upon information and belief, Michael Kors Holdings does business in Texas, and in the Eastern District of Texas, directly or through intermediaries, including at a sales site at Michael Kors Outlet, 820 West Stacy Road, Suite 236, Allen, TX 75013. On information and belief, Michael Kors Holdings employs individuals in this Judicial District involved in the sales, distribution and marketing of its products including those accused of infringement below.

3. Upon information and belief, Michael Kors (USA) Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 11 West 42nd Street, New York, New York, 10036 and may be served through a registered agent, C T Corporation System, at 1999 Bryan St., STE. 900 Dallas, TX 75201. Upon information and belief, Michael Kors (USA) is a subsidiary of Michael Kors Holdings Limited. Upon information and belief, Michael Kors (USA) does business in Texas, and in the Eastern District of Texas, directly or through intermediaries, including at sales sites at Michael Kors Outlet, 820 West Stacy Road, Suite 236, Allen TX 75013 and Michael Kors Stonebriar, 2601 Preston Road #1074, Frisco, TX 75034. On information and belief, Michael Kors (USA) employs individuals in this Judicial District involved in the sales, distribution and marketing of its products including those accused of infringement below.

4. Upon information and belief, Michael Kors Retail, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located

at 11 West 42nd Street, New York, New York, 10036 and may be served through a registered agent, The Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801. Upon information and belief, Michael Kors Retail, Inc. is a subsidiary of Michael Kors Holdings Limited. Upon information and belief, Michael Kors Retail, Inc. does business in Texas, and in the Eastern District of Texas directly or through intermediaries, including at sales sites at Michael Kors Outlet, 820 West Stacy Road, Suite 236, Allen TX 75013 and 2601 Preston Road #1074, Frisco, TX 75034. On information and belief, Michael Kors (USA) employs individuals in this Judicial District involved in the sales, distribution and marketing of its products including those accused of infringement below.

JURISDICTION

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants. Defendants regularly conduct business and have committed acts of patent infringement and/or have induced acts of patent infringement by others in this Judicial District and/or have contributed to patent infringement by others in this Judicial District, the State of Texas, and elsewhere in the United States. For example, Defendants have placed and continue to place infringing products into the stream of commerce via an established distribution channel with the knowledge and/or understanding that such products are being and will continue to be sold in this Judicial District and the State of Texas.

7. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 because, among other things, Defendants are subject to personal jurisdiction in this Judicial District, have purposely transacted business involving the accused products in this Judicial District, including sales to one or more customers in Texas, and certain of the acts complained of herein occurred in this judicial district.

8. Venue is further proper as to Michael Kors Holdings because it is not resident in the United States, and thus may be sued in any Judicial District pursuant to 28 U.S.C. § 1391(c)(3).

9. Venue is further proper as to Michael Kors (USA) because it maintains a regular and established place of business in this Judicial District, including at Michael Kors Outlet, 820 West Stacy Road, Suite 236, Allen TX 75013. Upon information and belief, Michael Kors (USA) owns and has paid property taxes for at least two regular places of business in this Judicial District, including the location at 820 West Stacy Road, Suite 236, Allen TX 75013 and 2601 Preston Road #1074, Frisco, TX 75034.

10. Venue is further proper as to Michael Kors Retail because it maintains a regular and established place of business in this Judicial District, including at Michael Kors Outlet, 820 West Stacy Road, Suite 236, Allen TX 75013. Upon information and belief, Michael Kors Retail leases and has collected and paid sales taxes from at least two regular places of business in this Judicial District, including the locations at 820 West Stacy Road, Suite 236, Allen TX 75013 and 2601 Preston Road #1074, Frisco, TX 75034.

11. Defendants are subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to their substantial business in this State and Judicial District, including: (a) at least part of their past infringing activities, (b) regularly doing or

soliciting business in Texas, and/or (c) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas.

PATENTS-IN-SUIT

12. On August 29, 2006, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,100,061 (the “’061 Patent”) entitled “Adaptive Power Control.” A true and correct copy of the ’061 Patent is attached hereto as Exhibit A.

13. On September 29, 2009, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,596,708 (the “’708 Patent”) entitled “Adaptive Power Control.” A true and correct copy of the ’708 Patent is attached hereto as Exhibit B.

14. On October 22, 2013, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,566,627 (the “’627 Patent”) entitled “Adaptive Power Control.” A true and correct copy of the ’627 Patent is attached hereto as Exhibit C.

15. On August 12, 2014, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,806,247 (the “’247 Patent”) entitled “Adaptive Power Control.” A true and correct copy of the ’247 Patent is attached hereto as Exhibit D.

16. Semcon is the sole and exclusive owner of all right, title and interest in the ’061 Patent, ’708 Patent, ’627 Patent and ’247 Patent (collectively, the “Patents-in-Suit”), and holds the exclusive right to take all actions necessary to enforce its rights to the Patents-in-Suit, including the filing of this patent infringement lawsuit. Semcon also has the right to recover all damages for past, present, and future infringement of the Patents-in-Suit and to seek injunctive relief as appropriate under the law.

17. Semcon has at all times complied with the marking provisions of 35 U.S.C. § 287 with respect to the Patents-in-Suit. On information and belief, prior assignees and licensees have also complied with the marking provisions of 35 U.S.C. § 287.

FACTUAL ALLEGATIONS

18. The Patents-in-Suit generally cover methods and apparatuses for controlling the power used by a computer; and specifically, the adjustment of the clock frequency and voltage supply to a processor and other components to conserve processor power and extend battery life. The claims of the Patents-in-Suit generally call for the frequency generator and power management logic to be located on the processor itself, rather than in a separate component that would consume power.

19. Non-party Qualcomm Inc. (“Qualcomm”) sells Snapdragon System-on-a-Chips (“SoCs”) which can perform Dynamic Clock and Voltage Scaling (DCVS)¹. According to Qualcomm, this “is a technique used to adjust the frequency and voltage of the power equation to deliver the needed performance at the ideal power level.”² Additionally, the “CPU cores of Snapdragon processors lie on separate voltage and frequency planes. This allows each CPU core to hit independent frequencies and voltages, delivering scalable performance and power levels.”³

20. Michael Kors has infringed and is continuing to infringe the Patents-in-Suit by making, using, selling, offering to sell, and/or importing, and by actively inducing others to make, use, sell, offer to sell and/or importing, products that utilize SoCs and associated software that performs DCVS or DVFS for power management, including Qualcomm Snapdragon SoCs including at least the Snapdragon Wear 2100 SoC. Such products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches.

¹ DCVS may alternately be referred to as Dynamic Frequency and Voltage Scaling (“DVFS”).

² <https://www.qualcomm.com/news/onq/2013/10/25/power-vs-performance-management-cpu>

³ *Id.*

COUNT I
(Infringement of the '061 Patent)

21. Paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.

22. Semcon has not licensed or otherwise authorized Defendants to make, use, offer for sale, sell, or import any products that embody the inventions of the '061 Patent.

23. Defendants have and continue to directly infringe the '061 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '061 Patent. Such products include smart watches that utilize SoCs and associated software that performs DCVS or DVFS for power management, including at least the Qualcomm Snapdragon Wear 2100. Such products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches. These products infringe at least claim 56 of the '061 Patent.

24. Defendants have and continue to indirectly infringe one or more claims of the '061 Patent by knowingly and intentionally inducing others, including Michael Kors' customers and end-users, to directly infringe to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States products that include infringing technology, such as Qualcomm Snapdragon SoCs and associated software that use DCVS for power management. Upon information and belief, these products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches.

25. Defendants, with knowledge that these products, or the use thereof, infringes the '061 Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continue to knowingly and intentionally induce, direct infringement of the '061 Patent by supplying these products to end users for use in an infringing manner.

26. Defendants induced infringement by others, including end users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users, infringe the '061 Patent, but while remaining willfully blind to the infringement.

27. Semcon has suffered damages as a result of Defendants' direct and indirect infringement of the '061 Patent in an amount to be proved at trial.

28. Semcon has suffered, and will continue to suffer, irreparable harm as a result of Defendants' infringement of the '061 Patent for which there is no adequate remedy at law, unless Defendants' infringement is enjoined by this Court.

COUNT II
(Infringement of the '708 Patent)

29. Paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.

30. Semcon has not licensed or otherwise authorized Defendants to make, use, offer for sale, sell, or import any products that embody the inventions of the '708 Patent.

31. Defendants have and continue to directly infringe the '708 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '708 Patent. Such products include smart watches that utilize SoCs and associated software that performs DCVS or DVFS for power management, including at least the Qualcomm Snapdragon Wear 2100. Such products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches. These products infringe at least claim 7 of the '708 Patent.

32. Defendants have and continue to indirectly infringe one or more claims of the '708 Patent by knowingly and intentionally inducing others, including Michael Kors' customers

and end-users to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States products that include infringing technology, such as Qualcomm Snapdragon SoCs and associated software that use DCVS for power management. Upon information and belief, these products include at least Michael Kors Access Bradshaw and Access Dylan smartwatches.

33. Defendants, with knowledge that these products, or the use thereof, infringes the '708 Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continue to knowingly and intentionally induce, direct infringement of the '708 Patent by supplying these products to end users for use in an infringing manner.

34. Defendants induced infringement by others, including end users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users, infringe the '708 Patent, but while remaining willfully blind to the infringement.

35. Semcon has suffered damages as a result of Defendants' direct and indirect infringement of the '708 Patent in an amount to be proved at trial.

36. Semcon has suffered, and will continue to suffer, irreparable harm as a result of Defendants' infringement of the '708 Patent for which there is no adequate remedy at law, unless Defendants' infringement is enjoined by this Court.

COUNT III
(Infringement of the '627 Patent)

37. Paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.

38. Semcon has not licensed or otherwise authorized Defendants to make, use, offer for sale, sell, or import any products that embody the inventions of the '627 Patent.

39. Defendants have and continue to directly infringe the '627 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '627 Patent. Such products include smart watches that utilize SoCs and associated software that performs DCVS or DVFS for power management, including at least the Qualcomm Snapdragon Wear 2100. Such products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches. These products infringe at least claim 1 of the '627 Patent.

40. Defendants have and continue to indirectly infringe one or more claims of the '627 Patent by knowingly and intentionally inducing others, including Michael Kors' customers and end-users, to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States products that include infringing technology, such as Qualcomm Snapdragon SoCs and associated software that use DCVS for power management. Upon information and belief, these products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches.

41. Defendants, with knowledge that these products, or the use thereof, infringe the '627 Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continue to knowingly and intentionally induce, direct infringement of the '627 Patent by supplying these products to end users for use in an infringing manner.

42. Defendants induced infringement by others, including end users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users, infringe the '627 Patent, but while remaining willfully blind to the infringement.

43. Semcon has suffered damages as a result of Defendants' direct and indirect infringement of the '627 Patent in an amount to be proved at trial.

44. Semcon has suffered, and will continue to suffer, irreparable harm as a result of Defendants' infringement of the '627 Patent for which there is no adequate remedy at law, unless Defendants' infringement is enjoined by this Court.

COUNT IV
(Infringement of the '247 Patent)

45. Paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.

46. Semcon has not licensed or otherwise authorized Defendants to make, use, offer for sale, sell, or import any products that embody the inventions of the '247 Patent.

47. Defendants have and continue to directly infringe the '247 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '247 Patent. Such products include smart watches that utilize SoCs and associated software that performs DCVS or DVFS for power management, including at least the Qualcomm Snapdragon Wear 2100. Such products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches. These products infringe at least claim 17 of the '247 Patent.

48. Defendants have and continue to indirectly infringe one or more claims of the '247 Patent by knowingly and intentionally inducing others, including Michael Kors' customers and end-users, to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States products that include infringing technology, such as Qualcomm Snapdragon SoCs and associated software that

use DCVS for power management. Upon information and belief, these products include at least the Michael Kors Access Bradshaw and Access Dylan smartwatches.

49. Defendants, with knowledge that these products, or the use thereof, infringe the '247 Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continue to knowingly and intentionally induce, direct infringement of the '247 Patent by supplying these products to end users for use in an infringing manner.

50. Defendants induced infringement by others, including end users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end users, infringe the '247 Patent, but while remaining willfully blind to the infringement.

51. Semcon has suffered damages as a result of Defendants' direct and indirect infringement of the '247 Patent in an amount to be proved at trial.

52. Semcon has suffered, and will continue to suffer, irreparable harm as a result of Defendants' infringement of the '247 Patent, for which there is no adequate remedy at law, unless Defendants' infringement is enjoined by this Court.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Semcon prays for relief against Defendants as follows:

a. Entry of judgment declaring that Defendants have directly and/or indirectly infringed one or more claims of each of the Patents-in-Suit;

b. An order pursuant to 35 U.S.C. § 283 permanently enjoining Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or

participation with it, from further acts of infringement of the Patents-in-Suit;

c. An order awarding damages sufficient to compensate Semcon for Defendants' infringement of the Patents-in-Suit, but in no event less than a reasonable royalty, together with interest and costs;

d. Entry of judgment declaring that this case is exceptional and awarding Semcon its costs and reasonable attorney fees under 35 U.S.C. § 285; and,

e. Such other and further relief as the Court deems just and proper.

Dated: November 13, 2018

Respectfully submitted,

/s/ Alfred R. Fabricant

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**ATTORNEYS FOR PLAINTIFF,
SEMCON IP INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on November 13, 2018, all 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 per Local Rule CV-5(a)(3).

/s/ Alfred R. Fabricant _____

Alfred R. Fabricant