

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MARTIN KUSTER,

Plaintiff,

v.

WESTERN DIGITAL CORPORATION,

Defendant.

Civil Action No. 20-cv-1089

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Martin Kuster (“Mr. Kuster”) files this Complaint against Defendant Western Digital Corporation (“Defendant” or “Western Digital”) for infringement of U.S. Patent Nos. 8,705,243 and 8,693,206 (the “Asserted Patents”), and alleges as follows:

PARTIES

1. Plaintiff Martin Kuster is an individual inventor who resides in Walchwil, Switzerland. Mr. Kuster has been awarded patents for innovations in computer hardware including computer memory and connectors. He is the inventor of external data storage devices as claimed in the Asserted Patents.

2. On information and belief, Defendant Western Digital Corporation is a Delaware corporation having a place of business at 5080 Spectrum Drive, Suite 1050W, Addison, TX 75001. In its most recent annual report filed August 27, 2019, Western Digital describes itself as “a leading developer, manufacturer, and provider of data storage devices and solutions” and that its “USB flash drives are used in the computing and consumer markets and are designed for high-performance and reliability.” Western Digital markets its products under its Western Digital®, G-Technology™, SanDisk®, Upthere™, and WD® brands.

JURISDICTION AND VENUE

3. This is an action under the patent laws of the United States, 35 U.S.C. § 1, et seq., for patent infringement. This Court has jurisdiction over the subject matter of the claims presented herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant in this action on the grounds that Defendant maintains a regular and established place of business in the State of Texas and in this District, Defendant is registered to conduct business and maintains a registered agent in the State of Texas, Defendant regularly transacts business in this District, Defendant markets and sells USB external data storage devices in the State of Texas and in this District, Defendant delivers USB external data storage devices into the stream of commerce with the expectation that those devices will be purchased and used by consumers in the State of Texas and in this District, Defendant has engaged in infringing conduct within or directed at the State of Texas and this District, and the exercise of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b). Defendant has committed acts of infringement in this District and has a regular and established physical place of business in this District.

FACTS

THE ASSERTED PATENTS

6. Mr. Kuster is the named inventor and owner of U.S. Patent No. 8,705,243 (the “’243 Patent”), entitled “External Storage Device,” which the United States Patent and Trademark Office (“Patent Office”) duly and legally issued on April 22, 2014. The ’243 Patent is valid and enforceable, and a true and correct copy is attached hereto as **Exhibit A**.

7. Mr. Kuster is also the named inventor and owner of U.S. Patent No. 8,693,206 (the “’206 Patent”), entitled “External Storage Device,” which the Patent Office duly and legally issued on April 8, 2014. The ’206 Patent is valid and enforceable, and a true and correct copy is attached hereto as **Exhibit B**.

8. Collectively, the ’243 and ’206 Patents are referred to as the “Asserted Patents” throughout this Complaint.

9. The Asserted Patents relate to USB flash drive technology. USB, or Universal Serial Bus, refers to an industry standard defining the connection interface between computers (and other electronic computing devices) and peripheral electronics, such as digital cameras, printers, scanners, and portable data storage devices.

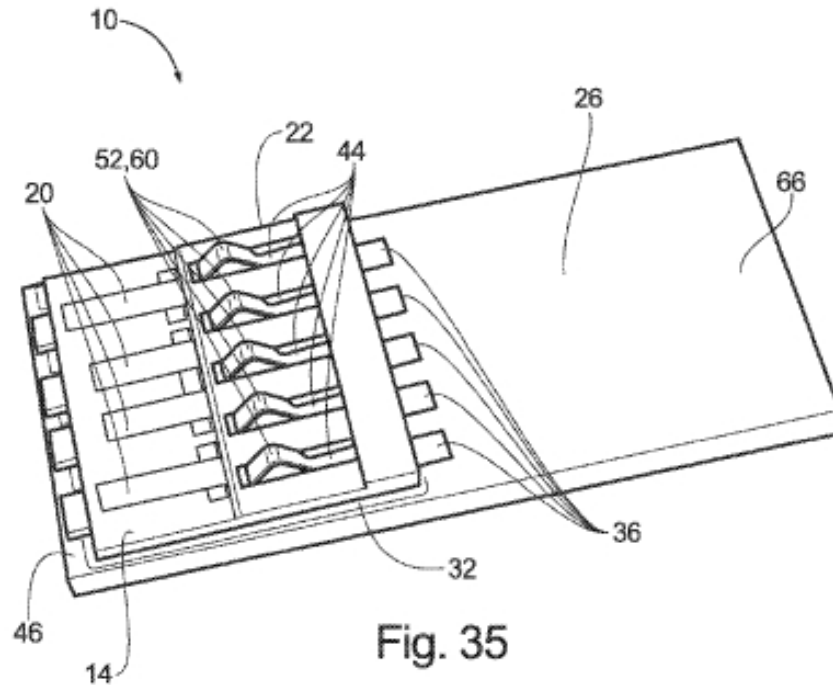
10. USB flash drives—also colloquially referred to as USB sticks, USB keys, jump drives, or thumb drives—are external data storage devices that include memory and a USB interface. Exhibit A, 1:22-23. The USB flash drive market is segmented between conventional flash drives and chip-on-board (“COB”) flash drives. Conventional flash drives are produced by soldering memory and a controller on a printed circuit board and then attaching a separately-assembled USB interface. COB flash drives instead combine a USB controller and flash memory into one structure embedded into a substrate. *Id.* at 1:16-32. COB flash drives have many advantages over conventional flash drives. For example, COB flash drives are significantly smaller, more reliable, more durable, more resistant to dust and moisture, and less expensive to manufacture than comparable conventional flash drives.

11. The USB standards have undergone numerous revisions. The USB 3.0 standard was announced in 2008 and allowed for increased data rates over USB 2.0 devices by requiring additional wires for carrying data. However, the USB 3.0 standard did not set forth a way to

position and integrate contacts for the additional wires within a COB flash drive and to enable the COB flash drive to remain backward compatible with earlier USB standards.

12. Mr. Kuster conceived of and invented an original and previously unknown solution to the technical challenges posed by integrating contacts for the new USB 3.0 standard within the small form-factor of a COB flash drive. Those technical challenges included, without limitation, establishing proper spacing between contacts, ease of manufacture, establishing proper electrical contacts, mechanical stability, and durability. In certain embodiments, Mr. Kuster's invention includes "a contact bar mounted on the connection surface of the substrate, the contact bar comprising a cover and a plurality of springs" and "a plurality of connection fingers embedded to be exposed upon the cover of the contact bar." The contact bar of Mr. Kuster's invention is dimensioned to integrate contacts at the required spacing within a COB flash drive and to achieve increased data rates. The contact bar of Mr. Kuster's invention also enabled COB flash drives to maintain backward compatibility with USB 2.0 ports, thereby facilitating the transition from USB 2.0 to USB 3.0. The contact bar of Mr. Kuster's invention also improved the manufacturing process by enabling the contact bar to be manufactured as a separate component and later joined with other components in the finished COB device. Mr. Kuster's external storage devices further enable strong mechanical retention of the contacts, thereby improving the stability and durability of the device. The contact bar, which includes the USB contacts, is mounted on the connection surface of the substrate, thereby forming a strong mechanical and electrical connection with the substrate.

13. Figure 35 of the Asserted Patents shows an external storage device according to an embodiment of Mr. Kuster's invention. *See* Exhibits A and B, Fig. 35.



14. Claim 1 from the '243 Patent recites the following elements:

An external storage device comprising:

a substrate that includes a connection surface and a component surface, the connection surface opposite the component surface;

at least one memory die stack mounted on one of the connection surface and the component surface;

a controller configured to access the at least one memory die stack, the controller mounted on one of the connection surface and the component surface of the substrate;

a contact bar mounted on the connection surface of the substrate, the contact bar comprising a cover and a plurality of springs, each of the plurality of springs including a portion that is located at a first distance relative to the connection surface of the substrate;

a plurality of connection fingers embedded to be exposed upon the cover of the contact bar, wherein the plurality of connection fingers are located at a second distance relative to the connection surface of the substrate, the second distance being less than the first distance; and

wherein a first interface comprises the plurality of connection fingers, and a second interface comprises the plurality of springs.

15. Claim 11 from the '206 Patent recites the following elements:

An external storage device comprising:

a substrate that includes a connection surface and a component surface, the connection surface opposite the component surface;

at least one memory die stack mounted on one of the connection surface and the component surface of the substrate;

a controller configured to access the at least one memory die stack, the controller mounted on one of the connection surface and the component surface of the substrate;

a contact bar mounted on the connection surface of the substrate, the contact bar including a plurality of portions that are electrically coupled with the substrate and located at a first distance relative to the connection surface of the substrate;

a plurality of connection fingers electrically coupled with the substrate, the plurality of connection fingers located at a second distance relative to the connection surface of the substrate, the second distance being less than the first distance; and

wherein a first interface comprises the plurality of connection fingers, and a second interface comprises the plurality of portions of the contact bar.


Defendant Markets USB 3.0 Compatible COB Flash Drives

16. USB flash drives in accordance with Mr. Kuster's invention have been widely adopted, used, and sold in the market.

17. On information and belief, Defendant has made, used, sold, and/or offered for sale within the United States, and/or imported into the United States, USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards (the "Accused Devices"). For example, and without limitation, Defendant has made, used, sold, and/or offered for sale within the United States, and/or imported into the United States at least the following USB flash drives that are known to Mr. Kuster as of the date of this Complaint.

Product	Memory capacity (8, 16, 32, 64, 128, 256 GB)	Image
iXpand	32-256GB	
Ultra Flair	16-128GB	
Ultra Loop	32-128GB	
Ultra Fit	16-256GB	
Ultra Dual Drive 3.0	16-256GB	

Product	Memory capacity (8, 16, 32, 64, 128, 256 GB)	Image
Ultra Dual Drive m3.0	16-128GB	
Ultra Luxe	16-256GB	
iXpand Mini Flash Drive	32-256GB	
Ultra Dual Drive Go	32-256GB	
iXpand Flash Drive Go	128-256GB	

Product	Memory capacity (8, 16, 32, 64, 128, 256 GB)	Image
Ultra Dual Drive Luxe	32GB-1TB	

18. Defendant's USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards, are not staple articles or commodities of commerce, and they have no suitable and substantial non-infringing use.

COUNT 1

(Infringement of the '243 Patent)

19. Mr. Kuster incorporates the preceding paragraphs as if fully set forth herein.

20. Mr. Kuster is the owner of the entire right, title and interest in and to the '243 Patent. Mr. Kuster owns and possesses the exclusive right to enforce the '243 Patent.

21. On information and belief, Defendant knows of and has known of the '243 Patent. Counsel for Mr. Kuster sent a letter to Defendant by email and Federal Express dated September 21, 2018 that identified the '243 Patent. Defendant has known of the '243 Patent at least as of September 21, 2018.

22. Defendant has been, and is currently, directly infringing the '243 Patent, including without limitation claims 1, 2, 3, 4, 9, 10, 11, 12, 13, and 18, in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by making, using, offering for sale, selling, and/or importing within this judicial district and elsewhere in the United States, without license

or authority, USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards, falling within the scope of one or more claims of the '243 Patent.

23. **Exhibit C** to this complaint includes charts that provide examples of Defendant's infringement with respect to claim 1 of the '243 Patent. This chart is exemplary and provided without prejudice to identifying additional asserted claims and accused products during the course of discovery. Mr. Kuster will provide infringement contentions with respect to each asserted claim in accordance with the Court's schedule and rules.

24. Defendant's USB chip-on-board flash drives meet every limitation of claims of the '243 Patent, including without limitation exemplary claims 1. For example, Defendant's products are "external storage devices" that include: (1) a substrate that includes a connection surface and a component surface, the connection surface opposite the component surface; (2) at least one memory die stack mounted on one of the connection surface and the component surface; (3) a controller configured to access the at least one memory die stack, where the controller is mounted on one of the connection surface and the component surface of the substrate; (4) a contact bar mounted on the connection surface of the substrate, the contact bar comprising a cover and a plurality of springs, where each of the plurality of springs includes a portion that is located at a first distance relative to the connection surface of the substrate; (5) a plurality of connection fingers embedded to be exposed upon the cover of the contact bar, wherein the plurality of connection fingers are located at a second distance relative to the connection surface of the substrate, and the second distance being less than the first distance; and (6) wherein a first interface comprises the plurality of connection fingers, and a second interface comprises the plurality of springs. Further, wherein the first distance comprises a first height

above the connection surface and the second distance comprises a second height above the connection surface, the second height of Defendant's products is less than the first height.

25. Defendant has infringed and continues to infringe the '243 Patent, including without limitation claims 1, 2, 3, 4, 9, 10, 11, 12, 13, and 18, in violation of 35 U.S.C. § 271(b) by actively inducing infringement of the '243 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '243 Patent and knowledge that it was inducing the infringement of the '243 Patent, by, among other things, actively and knowingly aiding and abetting, assisting and encouraging others, including customers, downstream sellers, distributors, and end users of Defendant's products, to directly infringe the '243 Patent with respect to the making, using, offering for sale, selling, and/or importing within this judicial district and elsewhere in the United States, without license or authority, USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards, falling within the scope of one or more claims of the '243 Patent.

26. Defendant has infringed and continues to infringe the '243 Patent, including without limitation claims 1, 2, 3, 4, 9, 10, 11, 12, 13, and 18, in violation of 35 U.S.C. § 271(c) by contributing to infringement of the '243 Patent, literally and/or under the doctrine of equivalents, by, among other things, selling, offering for sale, and/or importing within this judicial district and elsewhere in the United States, without license or authority, USB flash drives and/or components of USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards, that fall within the scope of one or more claims of the '243 Patent, with knowledge of the '243 Patent and knowing that such products and/or components are especially made or especially adapted for use

in the infringement of the '243 Patent, are a material part of the invention, and are not staple or commodities of commerce suitable for substantial noninfringing use.

27. Mr. Kuster is informed and believes, and on that basis alleges, that Defendant's infringement of the '243 Patent has been and continues to be willful and deliberate. Defendant, with knowledge of the '243 Patent and its infringement since at least September 21, 2018, engaged and continues to engage in intentional and reckless conduct by selling and continuing to sell infringing products despite its knowledge and intent of its ongoing infringement and in the face of a high risk that Defendant was and is infringing Mr. Kuster's valid '243 Patent. Defendant's continued infringement of Mr. Kuster's '243 patent, despite its knowledge of the patent and knowledge of its infringement constitutes egregious and willful misconduct, including, for example, because it acted with subjective knowledge and intent of its ongoing infringement.

28. Defendant's infringement of the '243 Patent has, and continues to, injure and damage Mr. Kuster. As a consequence of Defendant's infringement, Mr. Kuster is entitled to recover damages sustained as a result of the wrongful acts in an amount to be determined at trial.

29. Defendant's infringement of the '243 Patent was and continues to be willful and deliberate, entitling Mr. Kuster to enhanced damages.

30. Defendant's infringement of the '243 Patent is exceptional and entitles Mr. Kuster to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

31. Mr. Kuster has suffered and continues to suffer irreparable injury as a direct and proximate result of Defendant's infringement of the '243 Patent for which there is no adequate remedy at law. Unless enjoined by this Court, Defendant's acts of infringement will continue to irreparably damage Mr. Kuster.

COUNT 2

(Infringement of the '206 Patent)

32. Mr. Kuster incorporates the preceding paragraphs as if fully set forth herein.

33. Mr. Kuster is the owner of the entire right, title and interest in and to the '206 Patent. Mr. Kuster owns and possesses the exclusive right to enforce the '206 Patent.

34. On information and belief, Defendant knows of and has known of the '206 Patent. Counsel for Mr. Kuster sent a letter to Defendant by email and Federal Express dated September 21, 2018 that identified the '206 Patent. Defendant has known of the '206 Patent at least as of September 21, 2018.

35. Defendant has been, and is currently, directly infringing the '206 Patent, including without limitation claims 11, 12, 18, and 19, in violation of 35 U.S.C. § 271(a), literally and/or under the doctrine of equivalents, by making, using, offering for sale, selling, and/or importing within this judicial district and elsewhere in the United States, without license or authority, USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards, falling within the scope of one or more claims of the '206 Patent.

36. **Exhibit D** to this complaint includes charts that provide examples of Defendant's infringement with respect to claim 11 of the '206 Patent. This chart is exemplary and provided without prejudice to identifying additional asserted claims and accused products during the course of discovery. Mr. Kuster will provide infringement contentions with respect to each asserted claim in accordance with the Court's schedule and rules.

37. Defendant's USB chip-on-board flash drives meet every limitation of several claims of the '206 Patent, including without limitation claim 11. For example, Defendant's

products are “external storage devices” that include: (1) a substrate with a connection surface and a component surface, the connection surface opposite the component surface; (2) at least one memory die stack mounted on one of the connection surface and the component surface of the substrate; (3) a controller that is configured to access the at least one memory die stack, where the controller is mounted on one of the connection surface and the component surface of the substrate; (4) a contact bar mounted on the connection surface of the substrate, where the contact bar has a plurality of portions that are electrically coupled with the substrate and located at a first distance relative to the connection surface of the substrate; (5) a plurality of connection fingers electrically coupled with the substrate, where the plurality of connection fingers are located at a second distance relative to the connection surface of the substrate, and the second distance is less than the first distance; and (6) wherein a first interface comprises the plurality of connection fingers, and a second interface comprises the plurality of portions of the contact bar. Further, wherein the first distance comprises a first height above the connection surface and the second distance comprises a second height above the connection surface, the second height of Defendant’s products is less than the first height.

38. Defendant has infringed and continues to infringe the ’206 Patent, including without limitation claims 11, 12, 18, and 19, in violation of 35 U.S.C. § 271(b) by actively inducing infringement of the ’206 Patent, literally and/or under the doctrine of equivalents, with knowledge of the ’206 Patent and knowledge that it was inducing the infringement of the ’206 Patent, by, among other things, actively and knowingly aiding and abetting, assisting and encouraging others, including customers, downstream sellers, distributors, and end users of Defendant’s products, to directly infringe the ’206 Patent with respect to the making, using, offering for sale, selling, and/or importing within this judicial district and elsewhere in the

United States, without license or authority, USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards, falling within the scope of one or more claims of the '206 Patent.

39. Defendant has infringed and continues to infringe the '206 Patent, including without limitation claims 11, 12, 18, and 19, in violation of 35 U.S.C. § 271(c) by contributing to infringement of the '206 Patent, literally and/or under the doctrine of equivalents, by, among other things, selling, offering for sale, and/or importing within this judicial district and elsewhere in the United States, without license or authority, USB flash drives and/or components of USB flash drives, including without limitation USB chip-on-board flash drives that are compatible with USB 3.0 and/or subsequent or related standards, that fall within the scope of one or more claims of the '206 Patent, with knowledge of the '206 Patent and knowing that such products and/or components are especially made or especially adapted for use in the infringement of the '206 Patent, are a material part of the invention, and are not staple or commodities of commerce suitable for substantial noninfringing use.

40. Mr. Kuster is informed and believes, and on that basis alleges, that Defendant's infringement of the '206 Patent has been and continues to be willful and deliberate. Defendant, with knowledge of the '206 Patent and its infringement since at least September 21, 2018, engaged and continues to engage in intentional and reckless conduct by selling and continuing to sell infringing products despite its knowledge and intent of its ongoing infringement and in the face of a high risk that Defendant was and is infringing Mr. Kuster's valid '206 Patent. Defendant's continued infringement of Mr. Kuster's '206 patent, despite its knowledge of the patent and knowledge of its infringement constitutes egregious and willful misconduct,

including, for example, because it acted with subjective knowledge and intent of its ongoing infringement.

41. Defendant's infringement of the '206 Patent has, and continues to, injure and damage Mr. Kuster. As a consequence of Defendant's infringement, Mr. Kuster is entitled to recover damages sustained as a result of the wrongful acts in an amount to be determined at trial.

42. Defendant's infringement of the '206 Patent was and continues to be willful and deliberate, entitling Mr. Kuster to enhanced damages.

43. Defendant's infringement of the '206 Patent is exceptional and entitles Mr. Kuster to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

44. Mr. Kuster has suffered and continues to suffer irreparable injury as a direct and proximate result of Defendant's infringement of the '206 Patent for which there is no adequate remedy at law. Unless enjoined by this Court, Defendant's acts of infringement will continue to irreparably damage Mr. Kuster.

REQUEST FOR RELIEF

WHEREFORE, Mr. Kuster requests that the Court find in his favor and against SanDisk, and that the Court grant him the following relief:

- a. A judgment that Defendant has infringed, directly and/or indirectly, the '243 Patent in violation of 35 U.S.C. § 271;
- b. A judgment that Defendant has infringed, directly and/or indirectly, the '206 Patent in violation of 35 U.S.C. § 271;
- c. Damages in an amount to compensate for Defendant's infringement of the '243 Patent and/or the '206 Patent, together with costs, pre-judgment interest, and post-judgment interest;

- d. Treble damages for willful infringement as provided by 35 U.S.C. § 284;
- e. A judgment declaring this an exceptional case under 35 U.S.C. § 285 and an award of Mr. Kuster's attorneys' fees and costs in this action;
- f. An order enjoining Defendant, its officers, agents, subsidiaries and employees, and those in privity or in active concert with them, as well as all successors or assigns, from further activities that constitute infringement of the '243 Patent and/or the '206 Patent;
- g. Any and all such further necessary or proper relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Mr. Kuster hereby demands a trial by jury on all issues so triable.

Dated: April 30, 2020

Respectfully submitted,

By: /s/ Cole B. Ramey

Cole B. Ramey
Texas Bar No. 16494980

KILPATRICK TOWNSEND & STOCKTON LLP
2001 Ross Avenue, Suite 4400
Dallas, TX 75201
Telephone: (214) 922-7126
Facsimile: (214) 292-9419
Email: cramey@kilpatricktownsend.com

Frederick L Whitmer (*pro hac vice* to follow)
The Grace Building
1114 Avenue of the Americas
New York, NY 10036
Telephone: (212)-775-8700
Facsimile: (212) 775-8800
Email: fwhitmer@kilpatricktownsend.com

Russell A. Korn (*pro hac vice* to follow)
David A. Reed (*pro hac vice* to follow)
1100 Peachtree Street NE, Suite 2800
Atlanta, GA 30309
Telephone: (404) 815-6500
Facsimile: (404) 815-6555
Email: rkorn@kilpatricktownsend.com
dreed@kilpatricktownsend.com

**ATTORNEYS FOR PLAINTIFF
MARTIN KUSTER**