

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

PLASMA PHYSICS CORPORATION and  
SOLAR PHYSICS CORPORATION,

Plaintiffs,

v.

TOSHIBA CORPORATION, TOSHIBA AMERICA, INC.,  
and TOSHIBA AMERICA ELECTRONIC COMPONENTS,  
INC.,

Defendants.

4569  
WEXLER, J

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
AUG - 7 - 2000  
SI  
8/9/00  
14  
JURY TRIAL  
DEMANDED

WALL, M.J!

COMPLAINT

This complaint is filed to effectuate Judge Wexler's July 24, 2000 oral ruling with respect to Toshiba Corporation, Toshiba America, Inc., and Toshiba America Electronic Components, Inc., and Civil Action No. CV-99-8593. In accordance with Judge Wexler's ruling, the filing date of this complaint relates back to the December 28, 1999 filing date for Civil Action No. CV-99-8593 for all substantive issues in the original complaint, including damages pursuant to 35 U.S.C. § 286. Therefore, plaintiffs, Plasma Physics Corporation ("Plasma Physics") and Solar Physics Corporation ("Solar Physics"), for their separate complaint against defendants, Toshiba Corporation, Toshiba America, Inc., and Toshiba America Electronic Components, Inc., allege as follows:

JURISDICTION

1. This is an action for patent infringement under the laws of the United States, Title 35, United States Code. Jurisdiction and venue are based on

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Sections 1338(a), 1391(b), 1391(c), 1391(d), and/or 1400(b) of Title 28, United States Code.

PARTIES

2. Plaintiff Plasma Physics is a New York corporation with its principal place of business at 40 Overlook Road, Locust Valley, New York 11560, within this judicial district.

3. Plaintiff Solar Physics is a New York corporation with its principal place of business at 40 Overlook Road, Locust Valley, New York 11560, within this judicial district.

4. Upon information and belief, defendant Toshiba Corporation is a Japanese corporation having a place of business at 1-1, Shibaura 1-chome, Minato-ku Tokyo, 105-8001, Japan. Upon information and belief, in connection with the acts of infringement complained of herein, Toshiba Corporation has and is (a) transacting business within New York, (b) contracting to supply goods or services in New York, (c) committing tortious acts within New York, and/or (d) committing tortious acts without New York causing injury to persons and property within New York, and (i) regularly does or solicits business, or derives substantial revenue from goods used or consumed or services rendered, in New York or (ii) expects or should reasonably expect its tortious acts to have consequences in New York and derives substantial revenue from interstate or international commerce. In addition, upon information and belief, Toshiba Corporation has and is, in connection with the acts of infringement complained of herein, purposely directing into the stream of commerce semiconductor and flat panel display components

included in Toshiba electronic products or to be included in electronic products made by others with the expectation that such electronic products will be purchased and used in New York.

5. Upon information and belief, defendant Toshiba America, Inc., a wholly owned subsidiary of Toshiba Corporation, is a Delaware corporation with a place of business at 1251 Avenue of the Americas, Suite 4100, New York, New York 10020, is registered to do business and is doing business in New York and has a registered agent for service of process in New York.

6. Upon information and belief, defendant Toshiba America Electronic Components, Inc., a wholly owned subsidiary of Toshiba Corporation, is a California corporation with a place of business at 9775 Toledo Way, Irvine, California 92618-1811, is registered to and is doing business in New York and has a registered agent for service of process in New York.

#### THE PATENTS IN SUIT

7. United States Patent 4,226,897 (the “897 patent”), entitled “Method of Forming Semiconducting Materials and Barriers,” duly and legally issued to Plasma Physics on October 7, 1980, based on an application filed on December 5, 1977 by John H. Coleman. Plasma Physics is the owner of title to the ‘897 patent and has the right to recover for past infringement thereof with respect to the following subject matter areas: apparatus for performing plasma chemical vapor coating or plasma chemical vapor etching of disc-shaped wafers made of single crystal silicon, polycrystal silicon, single crystal III-V compounds or polycrystal III-V compounds; disc-shaped wafers made with such

apparatus by plasma chemical vapor coating or plasma chemical vapor etching; and processes in combination with such apparatus (the “Excluded Subject Matter”). Solar Physics is the exclusive licensee of the ‘897 patent and has the right to recover for past infringement thereof in all areas except the Excluded Subject Matter.

8. United States Patent 5,470,784 (the “‘784 patent”), entitled “Method of Forming Semiconducting Materials and Barriers Using A Multiple Chamber Arrangement,” duly and legally issued to Plasma Physics on November 28, 1995, based on an application filed on September 23, 1992 by John H. Coleman. Plasma Physics is the owner of title to the ‘784 patent and has the right to recover for past infringement thereof in the areas of the Excluded Subject Matter. Solar Physics is the exclusive licensee of the ‘784 patent and has the right to recover for past infringement thereof in all areas except the Excluded Subject Matter.

9. United States Patent 5,543,634 (the “‘634 patent”), entitled “Method of Forming Semiconductor Materials and Barriers,” duly and legally issued to Plasma Physics on August 6, 1996, based on an application filed on June 2, 1994 by John H. Coleman. Plasma Physics is the owner of title to the ‘634 patent and has the right to recover for past infringement thereof in the areas of the Excluded Subject Matter. Solar Physics is the exclusive licensee of the ‘634 patent and has the right to recover for past infringement thereof in all areas except the Excluded Subject Matter.

#### CLAIMS FOR PATENT INFRINGEMENT

10. Upon information and belief, defendants Toshiba Corporation, Toshiba America, Inc., and Toshiba America Electronic Components, Inc. have infringed

one or more claims of the '897 and '784 patents, and are continuing to infringe one or more claims of the '784 patent, in violation of 35 U.S.C. §§ 271 (a), (b) and/or (g) by making, using, offering to sell, selling and/or importing into the United States semiconductor wafer products made by processes claimed in one or more claims of the '897 and '784 patents and/or by actively inducing infringement of one or more claims of the '897 and '784 patents. Upon information and belief, defendants Toshiba Corporation, Toshiba America, Inc., and Toshiba America Electronic Components, Inc. also have infringed and are continuing to infringe one or more claims of '634 patent in violation of 35 U.S.C. §§ 271 (a) and/or (b) by making, using, offering to sell, selling and/or importing into the United States flat panel display cells and/or modules and/or products therefrom and/or by actively inducing infringement of one or more claims of the '634 patent.

11. Notice of infringement has been given to Toshiba Corporation, and thereby also to its wholly owned subsidiaries, Toshiba America, Inc., and Toshiba America Electronic Components, Inc.

12. Upon information and belief, Toshiba Corporation's, Toshiba America, Inc.'s, and Toshiba America Electronic Components, Inc.'s infringement has been willful and deliberate.

WHEREFORE, plaintiffs Plasma Physics Corporation and Solar Physics Corporation pray for judgment and relief against defendants, including:

A. Adjudging each of the '897, '784 and '634 patents to be not invalid and to be enforceable;

B. Adjudging that each of the defendants has infringed and induced infringement of said patents;

C. Permanently enjoining Toshiba Corporation, Toshiba America, Inc., and Toshiba America Electronic Components, Inc., and their officers, agents, servants, employees, attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons in active concert or participation with any of them who receive notice of the injunction, including distributors and customers, from continuing acts of infringement of the '784 patent;

D. Permanently enjoining Toshiba Corporation, Toshiba America, Inc., and Toshiba America Electronic Components, Inc., their officers, agents, servants, employees, attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons in active concert or participation with any of them who receive notice of the injunction, including distributors and customers, from continuing acts of infringement of the '634 patent;

E. Adjudging that an accounting be had for damages caused by the defendants' infringement, together with pre-judgment and post-judgment interest;


F. Adjudging that defendants are willful infringers and trebling the aforesaid damages pursuant to 35 U.S.C. § 284;

G. Adjudging that this case is an exceptional case and awarding Plasma Physics Corporation and Solar Physics Corporation their costs, expenses and reasonable attorney's fees pursuant to 35 U.S.C. § 285; and

H. Such other and further relief as this Court may deem just and proper.

Trial by Jury is hereby demanded.

Dated: August 4, 2000

  
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Attorneys for Plaintiffs,  
Plasma Physics Corporation and  
Solar Physics Corporation

<b>Defendant</b>	<b>County of Residence</b>
Toshiba Corporation	1-1, Shibaura 1-chome Minato-ku, Tokyo, 105-8001 JAPAN
Toshiba America, Inc.	1251 Avenue of the Americas Suite 4100 New York, NY 10020 (New York County)
Toshiba America Electronic Components, Inc.	9775 Toledo Way Irvine, CA 92618-1811



CV 00 4569

JS 44 (Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PLASMA PHYSICS CORPORATION AND SOLAR PHYSICS CORPORATION

DEFENDANTS

TOSHIBA CORPORATION TOSHIBA AMERICA, INC. TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Nassau (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT SEE ATTACHED (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Fish & Neave 1251 Avenue of the Americas New York, NY 10020 (212) 596-9000

ATTORNEYS (IF KNOWN) Congdon, Flaherty, O'Callaghan, Reid, Travis & Fishlinger 377 Oak Street Garden City, NY 11530 (516-542-5900) WEXLER WALL, M.J.

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

VI. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, LABOR/MGMT. RELATIONS, LABOR/MGMT. REPORTING & DISCLOSURE ACT, RAILWAY LABOR ACT, OTHER LABOR LITIGATION, EMP. RET. INC. SECURITY ACT, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL UNLESS DIVERSITY.)

This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, and more particularly under Sections 271, 281, 284 and 285 of that Title

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Wexler DOCKET NUMBER 99-8593, 00-2199, 00-3146

DATE August 4, 2000 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**ARBITRATION CERTIFICATION**

I, Herbert F. Schwartz, counsel for Plasma Physics Corporation and Solar Physics Corporation do hereby certify pursuant to the Local Civil Rule 83.10, at (d) (3), that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.

Injunctive Relief other than monetary damages is sought.

**DISCLOSURE OF INTERESTED PARTIES - LOCAL CIVIL RULE 1. 9**

Identify any corporate parents, subsidiaries or affiliates of named corporate parties:

See separate statement

Did the cause arise in Nassau or Suffolk County? Yes

If you answered yes, please indicate which county. Nassau

County of residence of plaintiff(s) (1) Nassau  
(2) Nassau  
(3) \_\_\_\_\_

County of residence of defendant(s) (1) SEE ATTACHED  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes X No \_\_\_\_\_

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes \_\_\_\_\_ (If yes, please explain) No X

Please provide your E-MAIL Address and bar code below. Your bar code consist of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the local civil rules) **ATTORNEY**

**BAR CODE** HS2599

**E-MAIL ADDRESS** HSCHWARTZ@FISHNEAVE.COM