

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

PANTAURUS LLC,

Plaintiff,

v.

**TOSHIBA AMERICA INFORMATION
SYSTEMS, INC., and TOSHIBA
AMERICA ELECTRONIC
COMPONENTS, INC.,**

Defendants.

Case No. 1:14-cv-240

PATENT CASE

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff PanTaurus LLC files this Second Amended Complaint against Toshiba America Information Systems, Inc., and Toshiba America Electronic Components, Inc., for infringement of United States Patent No. 6,272,533 (the “533 Patent”).

PARTIES AND JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff PanTaurus LLC (“Plaintiff” or “PanTaurus”) is a Texas limited liability company with its principal office located in the Eastern District of Texas, at 2305 North Street, Suite 205, Beaumont, Texas 77702.

4. Upon information and belief, Defendant Toshiba America Information Systems, Inc. (“TAIS”) is a California corporation with a principal office located at 9740 Irvine Boulevard, Irvine, California 92618.

5. Upon information and belief, Defendant Toshiba America Electronic Components, Inc. (“TAEC”) is a California corporation with a principal office located at 9740 Irvine Boulevard, Irvine, California 92618.

6. TAIS and TAEC are referred to collectively as “Defendants.”

7. This Court has personal jurisdiction over Defendants because they have committed, and continue to commit, acts of infringement in the state of Texas, have conducted business in the state of Texas, and/or have engaged in continuous and systematic activities in the state of Texas.

8. On information and belief, Defendants’ instrumentalities that are alleged herein to infringe were and/or continue to be made, used, imported, offered for sale, and/or sold in the Eastern District of Texas.

VENUE

9. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants are deemed to reside in this district. In addition, and in the alternative, Defendants have committed acts of infringement in this district.

COUNT I
(INFRINGEMENT OF UNITED STATES PATENT NO. 6,272,533)

10. Plaintiff incorporates paragraphs 1 through 9 herein by reference.

11. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

12. Plaintiff is the owner by assignment of the '533 Patent with sole rights to enforce the '533 Patent and sue infringers.

13. A copy of the '533 Patent, titled "Secure Computer System And Method Of Providing Secure Access To A Computer System Including A Stand Alone Switch Operable To Inhibit Data Corruption On A Storage Device," is attached hereto as Exhibit A.

14. The '533 Patent is valid and enforceable, and it was duly issued in full compliance with Title 35 of the United States Code.

15. The '533 Patent is a prominent, pioneering patent in the field of computer security. This is evidenced in part by the extent to which the '533 Patent has been forward-cited as prior art in connection with the examination of subsequently-issued U.S. patents. The '533 Patent has been forward-cited in more than 130 subsequently-issued U.S. patents to date, including patents originally assigned to such prominent companies as Intel (93 times), Dot Hill Systems (12 times), IBM, Nikon, Dell, Seagate, Lenovo, McAfee, Hewlett Packard, Lockheed Martin, and STMicroelectronics.

(Direct Infringement)

16. Upon information and belief, Defendants have infringed and continue to directly infringe one or more claims of the '533 Patent, including at least claims 29 and 31, by making, using, importing, selling and/or offering for sale secure computer systems covered by one or more claims of the '533 Patent, including without limitation (a) Toshiba self-encrypting hard disk drives (for example, the Toshiba HG6 series, MG03SCP series, MK01GRRR series, MKxx61GSYG series, MKxx61GYSD series, MQ01ABU series, PX02SM series, PX02SS series, and PX03SN series) (the "Accused Drives"); and (b) Toshiba laptops (or other Toshiba computing devices) that include Toshiba self-encrypting hard disk drives (the "Accused

Laptops”) (collectively, the Accused Drives and the Accused Laptops are the “Accused Instrumentalities”).

(Indirect Infringement – Inducement)

17. Upon information and belief, under 35 U.S.C. §271(b), Defendants have induced infringement and continue to induce infringement of one or more claims of the ‘533 Patent, including at least claims 29 and 31, by (a) entities that make, have made, sell, offer for sale, and/or import laptops and other computing devices that include Accused Drives, and (b) end users of the Accused Instrumentalities and end users of the laptops and other computing devices that include Accused Drives.

18. Defendants specifically intended for the entities and end users described in paragraph 17 above to infringe the ‘533 Patent and knew that such entities’ and end users’ acts constituted infringement.

19. Defendants had knowledge of the ‘533 Patent or acted with willful blindness to the ‘533 Patent, and Defendants had the specific intent to cause infringement.

20. At least from the time of service of the First Amended Complaint, Defendant TAIS has had knowledge of the ‘533 Patent. At least from the time of service of this Second Amended Complaint, Defendant TAEC has had knowledge of the ‘533 Patent.

21. Upon information and belief, since Defendants have been on notice of the ‘533 Patent, Defendants have continued to encourage, instruct, enable, and otherwise cause the entities and end users described in paragraph 17 above to use the Accused Instrumentalities in a manner that infringes one or more claims of the ‘533 Patent, including at least claims 29 and 31.

22. Defendants’ specific intent to cause infringement can be inferred from, without limitation, the facts that Defendants make, use, sell, offer for sale and/or import the Accused

Instrumentalities comprising or containing the infringing secure computer system, that Defendants market certain infringing security and performance features of the Accused Instrumentalities in their promotional materials, that and Defendants differentiate in their promotional materials certain infringing security and performance features of the Accused Instrumentalities from other systems that do not contain such infringing features. In addition, Plaintiff is not aware of any evidence showing any investigation or design around by Defendants, or that Defendants have taken any remedial action with respect to the '533 Patent.

23. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support for its claims of induced infringement after a reasonable opportunity for discovery on this issue.

(Indirect Infringement – Contributory Infringement)

24. Upon information and belief, under 35 U.S.C. §271(c), Defendants have committed contributory infringement and continue to commit contributory infringement of one or more claims of the '533 Patent, including at least claims 29 and 31, by (a) entities that make, have made, sell, offer for sale, and/or import laptops and other computing devices that include Accused Drives, and (b) end users of the Accused Instrumentalities and end users of the laptops and other computing devices that include Accused Drives.

25. Defendants have committed contributory infringement and continue to commit contributory infringement by selling, offering to sell and/or importing into the United States a component of a patented system that constitutes a material part of the invention, knowing the same to be especially made or especially adapted for use in infringement of the '533 Patent and that it has no substantial noninfringing use. Examples of such material components sold, offered

for sale and/or imported by Toshiba are the Accused Drives, to the extent the Accused Drives are included in a laptop or other computing device.

26. At least from the time of service of the First Amended Complaint, Defendant TAIS has had knowledge of the '533 Patent. At least from the time of service of this Second Amended Complaint, Defendant TAEC has had knowledge of the '533 Patent.

27. Upon information and belief, since Defendants have known of the '533 Patent, Defendants have known that their activity causes infringement of one or more claims of the '533 Patent, including at least claims 29 and 31, by the entities and end users described in paragraph 24 above.

28. The fact that the Accused Drives have no substantial noninfringing use is shown or can be inferred from, without limitation, the fact that the Accused Drives are secure, encrypted storage drives that have as their express function and purpose exactly the matter that is disclosed and covered by the '533 Patent, whose title begins, "Secure Computer System." The security features of the Accused Drives are described and emphasized in Toshiba's product literature discussing the Accused Drives.

29. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support for its claims of contributory infringement after a reasonable opportunity for discovery on this issue.

(Additional Allegations Related to Count One)

30. Defendants' actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

31. Plaintiff is in compliance with 35 U.S.C. § 287.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;
- b) Enjoin Defendants, their agents, officers, servants, employees, attorneys and all persons in active concert or participation with Defendants who receive notice of the order from further infringement of United States Patent No. 6,272,533 (or, in the alternative, awarding Plaintiff a running royalty from the time of judgment going forward);
- c) Award Plaintiff damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- d) Award Plaintiff pre-judgment and post-judgment interest and costs;
- e) Enter judgment and an order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and
- f) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Dated: January 12, 2015

Respectfully submitted,

/s/ Craig Tadlock
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on all parties who have appeared in this case on January 12, 2015, via the Court's CM/ECF system. I further certify that Defendant TAEC will be served with this Second Amended Complaint will be served in accordance with Fed. R. Civ. P. 4, or otherwise by agreement of the parties.

/s/ Craig Tadlock
Craig Tadlock