

FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH

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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

PHILLIP M. ADAMS, an individual, and
PHILLIP M. ADAMS & ASSOCIATES,
L.L.C., a Utah Limited Liability Company,

Plaintiffs,

vs.

**GATEWAY, INC., formerly known as
GATEWAY 2000, INC.,** a Delaware
corporation,

Defendant.

SECOND AMENDED COMPLAINT

Civil No. 2:02-cv-00106ST

Honorable Ted Stewart

Magistrate Judge Nuffer

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, and pursuant to the Court's Order on April 16, 2003 to file this Second Amended Complaint (adding Patent No. 6,401,222, issued on June 4, 2002 after this lawsuit was filed, and correctly naming the defendant) on or before April 18, 2003, Plaintiffs Phillip M. Adams ("Dr. Adams") and Phillip M. Adams & Associates, L.L.C. (collectively "Adams"), file this Second Amended Complaint. For the convenience of the Court and the parties, all changes to this Second Amended

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Complaint are set forth in bold. Plaintiffs complain of defendant **Gateway, Inc., formerly known as Gateway 2000, Inc.** (“Gateway”), and allege as follows:

SUBSTANCE OF THE ACTION

1. This lawsuit involves Gateway’s unlawful and wrongful pirating and infringement of Adam’s patented computer technology that repairs a most serious data corruption defect in computers. Adams has licensed his patented computer technology to some of the world’s leading computer companies such as Hewlett Packard, and is in the process of licensing his patented computer technology to other leading computer companies. Adams’ patented computer technology was instrumental in exposing a serious data corruption defect in personal computers, and recently facilitated a \$2.1 billion class action settlement against Toshiba. Adams’ patented computer technology is worth hundreds of millions of dollars. Rather than license his patented technology and pay Dr. Adams’ royalties and compensation, Gateway has consciously and deliberately decided to pirate and infringe Adams’ patented technology. In this patent infringement lawsuit, Adams seeks injunctive relief, damages, treble damages, punitive damages, and attorneys fees and costs in an amount to be demonstrated at trial, but reasonably estimated to exceed \$100 million.

GENERAL ALLEGATIONS

Dr. Adams’ Patented Computer Technology

2. Dr. Adams has a Ph.D. in applied computer science and a D.Sc. in engineering. He has 28 years of experience in the computer industry, has served on the faculty of major universities, and holds numerous patents.

3. In the late 1980’s, Dr. Adams discovered a defect in floppy disk controllers (“FDC’s”) of computers. The defect discovered by Dr. Adams (the “Defect”) causes the random destruction or corruption of data without any way for the user to determine that data has been destroyed or corrupted.

4. The random destruction or corruption of data in computers is a most serious problem, and is potentially cataclysmic. Computers are used throughout society, and the data integrity of computers is the lifeblood of the information age. Society relies upon the integrity of data stored by and exchanged between computers to support virtually all aspects of society including financial transactions; accurate and effective medical diagnoses and treatment; the proper design and construction of automobiles, aircraft, bridges, dams, office buildings and other devices and structures vital to public safety, etc. Society also depends on the integrity of data stored in and used by government computers. For example, if data in Department of Defense computers pinpointing enemy targets is corrupted, and the weapons aimed at those targets badly miss the targets, the targets will not be hit and innocent civilians will be killed. If data in our civil air system computers is destroyed or corrupted, then the civil air system may fail. Indeed, Dr. Adams understands that the recent shut down in the air traffic system that occurred in the Western United States in October 2000 was most likely the result of the Defect in FAA computers.

5. The scope and seriousness of the Defect were recently illustrated by the \$2.1 billion *Toshiba* class-action settlement in the Eastern District of Texas. In addition to the *Toshiba* class-action settlement, the United States Government recently settled False Claims Act claims against *Toshiba* for \$33.5 million. The State of California recently settled California State False Act Claims against *Toshiba* for \$33 million. Several billion dollar class-action lawsuits are presently pending against different computer companies in various Federal and State courts.

6. In the 14 years since Dr. Adams discovered the Defect, Dr. Adams has devoted

thousands of hours to developing a solution to the Defect, alerting the Federal Government, State Governments, computer companies, and private purchasers to the Defect, and assisting computer manufacturers to acknowledge and remedy the Defect.

7. Adams has developed several patented computer technologies that address the Defect. First, Adams has developed a patented computer software program that will detect which computers are defective (the "Detector"). The Detector is the subject of several United States Patents, including U.S. Patents numbers 5,379, 414 and 5,983,002, **and 6,401,222**. The software Detector allows one to determine whether a computer is defective without taking the computer apart. Second, Adams has also developed a patented solution that fully resolves the Defect found in the computers (the "Solution") so that Data is not corrupted or lost. The Solution is the subject of U.S. Patent number 5,379,414. True and correct copies of Dr. Adams' Patents for the Detector and Solution are attached hereto as Exhibits A and B, **and C**. Dr. Adams also has several other patents pending relating to the Defect, related defects, and various solutions. The various patents owned by Dr. Adams, including the 414 Patent and the 002 Patent, **and the 222 Patent**, are collectively referred to hereafter as the Adams Patents.

8. Hewlett Packard ("HP"), one of the world's leaders in personal computers, recently licensed both Dr. Adams' Detector and Solution, and has placed Dr. Adams' Solution on the Internet for all HP customers throughout the world. Dr. Adams' Solution can be found at WWW.HP.COM/GO/FDCPATCH. The page for the hp-ux workstations states that "This software patch was developed by HP under license from and in conjunction with Dr. Phillip M. Adams." Thus, any HP customer can go to this Internet website, download the Solution, and fully repair the Defect in the customer's computer.

9. In addition to licensing his patented computer technology to HP, Dr. Adams has licensed his patented technology to, and/or is in discussions with other leading manufacturers of computers to license his patented technology.

10. In the Summer of 2000, Adams entered into negotiations with Gateway for Gateway to license Adam's patented technology. These negotiations took place in Salt Lake City. During the course of those negotiations, Adams disclosed to Gateway confidential and proprietary information relating to the Defect found in Gateway computers and how Gateway could remedy the Defect. During such negotiations, Gateway determined that it would unlawfully pirate and infringe Adams' patented computer technology, rather than lawfully license Adams' patented technology and pay Dr. Adams the required royalties and compensation.

11. Gateway has actual and constructive notice of the Adams Patents.

12. Gateway has acted without a license to make, import, sell or offer for sale, use, and/or induced others to manufacture, import, use, sell and offer for sale technology that infringes upon the Adams' patents. For purposes of example only, Gateway has made, imported, sold or offered for sale, used, and/or induced others to manufacture, import, use, sell and offer for sale a modified Floppy Diskette Controller Core, including but not limited to the Winbond W83627HF Super I/O Device, Version "G."

13. Gateway has deliberately and willfully infringed upon the Adams Patents.

PARTIES AND JURISDICTION

14. Plaintiff Phillip M. Adams (referred to herein as "Dr. Adams") is a principal of Phillips M. Adams & Associates, L.L.C.

15. Plaintiff Phillip M. Adams & Associates, L.L.C. is a Utah Limited Liability Company.

16. **Gateway, Inc., formerly known as** Gateway 2000, Inc. is a Delaware corporation with its principal place of business in No. Sioux City, South Dakota.

17. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that all of Adams' claims arise under federal law or are properly before this Court pursuant to 28 U.S.C. § 1367(a).

18. Venue is proper pursuant to 28 U.S.C. 1391(c) and 1400 (b). Gateway has committed acts of infringement in this judicial district, and Gateway has a regular place in this judicial district. Moreover, venue is proper in this judicial district relating to Gateway's theft of Adams' trade secrets.

COUNT I

(Patent Infringement)

19. Adams incorporates by this reference the allegations set forth above.

20. Without authority or license, Gateway has imported, manufactured, used, sold or offered for sale products that infringe one or more of the patent claims of the Adams Patents, literally or by equivalents, and thus has directly infringed those claims.

21. By reason of Gateway's acts complained of herein, Gateway has infringed and is continuing to infringe the Adams Patents by manufacturing, importing, selling and offering for sale, by using, and by inducing others to manufacture, import, use, sell and offer for sale, products that incorporate the inventions, processes, and technology claimed in the Adams Patents without authorization, license or other permission from Adams.

22. Because of Gateway's conduct, Adams has been actually and irreparably harmed and suffered impairment of the value of Adams' patent rights. Moreover, unless Gateway is

restrained from infringing the Adams' Patents, Adams will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law.

23. This is an exceptional case under 35 U.S.C. §285.

24. Adams is entitled to damages, treble damages, exemplary damages, attorneys' fees and costs in an amount to be proven at trial.

COUNT II

(Theft of Trade Secrets and Breach of Non-Disclosure and Confidentiality Agreement)

25. Adams incorporates by this reference the allegations set forth above.

25. Adams and Gateway entered into a Non-Disclosure and Confidentiality Agreement on or about July 12, 2000. A copy of the Non-Disclosure Agreement is attached hereto as Exhibit **D**.

26. During the course of discussions and meetings with Gateway, Adams disclosed certain proprietary and confidential information and trade secrets (hereinafter "Trade Secrets"). The Trade Secrets constitute information that derives independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from disclosure of the information, and the information is the subject of efforts by Adams, that are reasonable under the circumstances, to maintain its secrecy.

26. Based upon information and belief, Gateway has used and intends to use and have used the Trade Secrets without the express or implied consent of Adams.

27. Gateway has used and is using the Trade Secrets with knowledge that they were wrongfully acquired.

28. Because of Gateway's conduct, Adams has been actually and irreparably harmed and suffered impairment of the value of his Trade Secrets. Moreover, unless Gateway is restrained from misappropriating Adams' Trade Secrets, Adams will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law.

29. In addition, Adams is entitled to damages and punitive damages in an amount to be demonstrated at trial.

WHEREFORE, Adams prays for judgment against Gateway as follows:

1. A judgment that Gateway has infringed one or more claims of the Adams Patents.
2. A judgment that Gateway has induced infringement of one or more claims of the Adams Patents.
3. A judgment that Gateway has engaged in contributory infringement of one or more claims of the Adams Patents.
4. Pursuant to 35 U.S.C. § 283, a preliminary and permanent injunction restraining Gateway and its agents, servants, employees, attorneys, directors, successors, assigns, and all those in active concert or participation with Gateway, from committing further acts of infringement during the pendency of this action and permanently afterward, and requiring Gateway to notify its customers of Gateway's infringement and retrieve all infringing computers that Gateway has sold.
5. A preliminary and permanent injunction restraining Gateway and its agents, servants, employees, attorneys, directors, successors, assigns, and all those in active concert or participation with Gateway from misappropriating Adams' Trade Secrets.
6. An order that Gateway provide to Adams for destruction all infringing products in its custody, possession, or control that infringe the Adams Patents, and that Gateway file with

this Court a written report, under oath, setting forth in detail the manner and form in which Gateway has complied with that order and with this Court's injunction.

7. Pursuant to 35 U.S.C. § 284, an award to Adams of all compensable damages based upon lost profits, reduced profits, lost royalties, pre-judgment and post-judgment interest, costs, and/or any other available form of relief based on any form of recoverable economic injury sustained by Adams as a result of Gateway's patent infringement, and that those damages be trebled as a result of Gateway's willful and deliberate infringement.

8. Pursuant to 35 U.S.C. §284, that the damages Adams is awarded as a result of Gateway's infringement of the Adams Patents be trebled based on Defendant Gateway's willful infringement of the Adams' Patents.

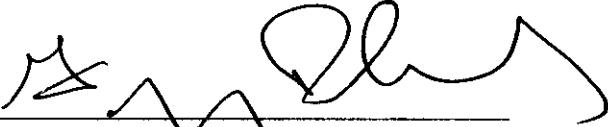
9. Pursuant to 35 U.S.C. § 285, an award of Adams' costs and attorneys' fees incurred in this action.

10. Compensatory and punitive damage in an amount to determined at trial.

11. An order granting such other and further relief as this Court deems just and proper.

DATED this 17th day of **April 2003**.

HOWARD, PHILLIPS & ANDERSEN


By: Gregory D. Phillips
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following via regular mail on this 17 day of April, 2003.

David M. Connors
Joseph M.R. Covery
Le Boeuf, Lamb, Greene & MacRae, L.L.P.
1000 Kearns Building
136 South Main Street
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John R. Posthumous
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633 Seventeenth Street
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Denver, CO 80202

Attorneys for Gateway, Inc.

A handwritten signature in cursive script that reads "Aimee Ballard". The signature is written in black ink and is positioned to the right of the text of the certificate.

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.