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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.

STEPHEN GRIDER and BEVERLY
GRIDER, individually and on behalf of those
similarly situated, DEBORAH BARRETT,
individually and on behalf of those similarly
situated, MUZETTE ALVIS and CRAIG
PLOKHOOY, individually and on behalf of
those similarly situated, ALESIA BATISTE,
individually and on behalf of those similarly
situated, HAL LAPRAY, individually and on
behalf of those similarly situated, PENNY
SCHULTZ, individually and on behalf of
those similarly situated, WILLIS FREEMAN
MARTI, individually, THE REAUD LAW
FIRM, an entity organized under the laws of
Texas, WAYNE REAUD, an individual, L.
DEWAYNE LAYFIELD, an individual,
BENCKENSTAIN & OXFORD, a Texas
Limited Liability Partnership, and HUBERT
OXFORD, III, an individual, OLEN KEN
DODD, an individual, ORGAIN, BELL &
TUCKER, a Texas Limitedly Liability
Partnership, JACK P. CARROLL, an
individual, C. KEITH KEBODEAUX, an

COMPLAINT

Civil No. 2:08-cv-00103-TC

Judge: Tena Campbell

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| individual, GILBERT I. LOW, an individual, GARY NEAL REGER, an individual, HERUM CRABTREE BROWN, an individual, G. KIP EDWARDS, an individual, and JOHN AND JANE DOES I THROUGH XX, individuals and entities of unknown origin, | |
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| Defendants. | |
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Plaintiffs Phillip M. Adams (“Dr. Adams”) and Phillip M. Adams & Associates, L.L.C. (collectively “Adams”), file this Complaint and complain of the above-named defendants (collectively “Defendants”), and allege as follows:

SUBSTANCE OF THE ACTION

1. This lawsuit involves Defendants’ unlawful and knowing infringement and misappropriation of Adams’ detectors and test programs, and other technology and intellectual property. Adams’ detectors and test programs, and other technology and intellectual property were instrumental in exposing a serious data corruption defect in personal computers, and facilitated a \$2.1 billion class action settlement against Toshiba prosecuted by various of the Defendants referenced above. In addition to the \$2.1 billion class action settlement, various of the Defendants referenced above also received legal fees in excess of \$140 million. After the \$2.1 billion Toshiba settlement, Adams made written demands on various of the lead lawyers named as Defendants above to return Adams’ detectors and test programs, and warned Defendants that they did not have the right to use Adams’ detectors and test programs without a license from Adams. Defendants have refused to return the test programs and have refused to obtain a license from Adams. Rather than license Adams’ detectors and test programs, Defendants have misappropriated and unlawfully used Adams’ detectors and test programs, and derivatives thereof protected by both patent and trade secret laws to obtain a recently announced (December 2007) class-action settlement valued in excess of \$630 million against Compaq

Computer Corporation (“Compaq”) and Hewlett-Packard Company (“HP”). A copy of the Class Action Settlement Agreement and Release is attached hereto as Exhibit A.

2. In the Settlement Agreement and Release, Defendants acknowledge their infringement and misappropriation of Adams’ detectors and test programs. Adams has licensed his detectors and test programs, and other technology and intellectual property to both Compaq and HP in various license agreements. In the Settlement Agreement and Release attached hereto as Exhibit A, Defendants expressly sought a release from Compaq and HP relating to Compaq’s and HP’s rights obtained from Dr. Adams:

Further, upon this Settlement Agreement becoming Effective, Settling Defendants [i.e., Compaq and HP] agree to release Class Counsel and the named plaintiffs in the following lawsuits and their respective experts and consultants from any claims, actions or causes of action for infringing, on or before the date this Settlement Agreement becomes Effective, the intellectual property, patent and/or other rights acquired by Settling Defendants from Dr. Philip M. Adams.

Settlement Agreement at pp. 60-61, Exhibit A hereto (emphasis added). Thus, Defendants expressly acknowledge and admit that they have violated the intellectual property, patent, and/or other rights of Dr. Adams, and specifically seek a release from Compaq and HP who acquired non-assignable and non-sub-licenseable rights to Adams’ technology.

3. In this patent infringement and trade secret lawsuit, Adams seeks preliminary and permanent injunctive relief, a constructive trust on any monies or value conferred on any of the Defendants, damages, treble damages, punitive damages, and attorneys fees and costs in an amount to be demonstrated at trial.

GENERAL ALLEGATIONS

Dr. Adams’ Patented and Protected Computer Technology

4. Dr. Adams has a Ph.D. in applied computer science and a D.Sc. in engineering. He has over 30 years of experience in the computer industry, has served on the faculty of major universities, and holds numerous patents.

5. In the late 1980's, Dr. Adams discovered various defects in floppy disk controllers ("FDC's") of computers. The defects discovered by Dr. Adams (the "Defects") cause the random destruction or corruption of data without any way for the user to determine that data has been destroyed or corrupted.

6. 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.

7. The scope and seriousness of the Defects were illustrated by the \$2.1 billion *Toshiba* class-action settlement in the Eastern District of Texas in November 1999. In addition to the *Toshiba* class-action settlement, the United States Government settled False Claims Act claims against *Toshiba* for \$33.5 million. The State of California settled California State False Act Claims against *Toshiba* for \$33 million. The scope and seriousness of the Defects were

further illustrated by the December 2007 Class Action settlement against Compaq and HP valued at over \$630 million. Other billion dollar class-action lawsuits are presently pending against different computer companies in various Federal and State courts, including Gateway and ACER.

8. In the several years since Dr. Adams discovered the Defects, Dr. Adams has devoted thousands of hours to developing a solution to the Defects, alerting the Federal Government, State Governments, computer companies, and private purchasers about the Defects, and assisting computer manufacturers to acknowledge and remedy the Defects.

9. Adams has developed several patented and trade secret protected computer technologies that address the Defects. First, Adams has developed various detectors and computer software test programs that will detect which computers are defective (the "Detectors"). The Detectors are the subject of several United States Patents, including U.S. Patents numbers 5,379,414, 5,983,002, 6,195,767, 6,691,181, and 7,249,203 and have also contained various trade secrets pending further patents. The Detectors allow one to determine whether a computer is defective without taking the computer apart. The Detectors contained trade secrets of Adams, including, among other things, a specific method to allow the detection process to be performed on any byte in a sector. Adams maintained the Detectors in confidence, and when it licensed the programs, Adams required in writing that its licensees keep the programs confidential. Adams maintained the confidentiality of its Detector trade secrets until the aforementioned patents issued. Until that time, Adams' Detector trade secrets were valuable; for example; Compaq Computers licensed the Detectors, among other patented technology, for \$31.5 million.

10. The Detectors were clearly labeled as the property of Adams, and Defendants

understood them to be so. Defendants also knew or had reason to know that the Detectors were acquired by improper means.

11. Second, Adams has also developed patented solutions that fully resolve the Defects found in the computers (the “Solutions”) so that Data is not corrupted or lost. The Solutions are the subject of various patents, including but not limited to U.S. Patent number 5,379,414. Dr. Adams also has several other patents pending relating to the Defects, related defects, and various solutions. The various patents owned by Dr. Adams, including the `414 Patent, the `002 Patent, the `222 Patent, the `767 Patent, the `181 Patent, and the `203 Patent are collectively referred to hereafter as the “Adams Patents.”

12. Hewlett Packard (“HP”), one of the world’s leaders in personal computers, licensed both Dr. Adams’ Detectors and Solutions, and has placed Dr. Adams’ Solutions on the Internet for all HP customers throughout the world. Dr. Adams’ Solutions 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 Solutions, and fully repair the Defect in the customer’s computer.

13. Compaq also licensed both Dr. Adams’ Detectors and Solutions.

14. Adams has also successfully asserted patent infringement and misappropriation of trade secret claims against Gateway Computers, IBM, and Lenovo who have all settled patent infringement and trade secret claims asserted against them by Adams and have licensed Adams’ technology. Adams has various patent infringement and misappropriation of trade secret lawsuits and claims pending against other computer suppliers and makers.

15. On or about April 3, 2000, counsel for Adams sent a letter to defendants Wayne Reaud and the Reaud Law Firm, who are lead counsel in the Class Action, putting Defendants on

notice that they had no right to Adams' Detectors, and demanding "that all copies of any diskette using [Adams'] patented technology be returned to him immediately." The letter further made clear: "Please be advised that any attempt to use [Adams'] patented technology in any way violates Dr. Adams' patent or other rights." A true and correct copy of this April 3, 2000 letter is attached hereto as Exhibit B.

16. In another letter dated on or about May 12, 2003 sent to defendant DeWayne Layfield, another lead lawyer in the Class Actions, Adams further demanded the "return of all copies of the FDC detector that you and/or your experts have in your possession and under your control." Adams further wrote that "Dr. Adams would be pleased to discuss a licensing arrangement with you regarding his patented technology." A true and correct copy of this May 12, 2003 letter is attached hereto as Exhibit C.

17. Defendants have thus had actual and constructive notice of the Adams Patents.

18. In addition, Defendants and their experts and agents have used and misappropriated Adams' Detectors, trade secrets, patents, and other intellectual property to develop test programs, including a so-called "Marti Tester" pirated from Adams' protected technology by defendant Willis Freeman Marti. In addition to the Release set forth above, Defendants further sought a release from HP and Compaq, who licensed Adams' technology, for the Marti Tester as follows:

Further, upon this Settlement Agreement becoming Effective, Settling Defendants agree to release Class Counsel and the named plaintiffs in the following lawsuits and their respective experts and consultants from any claims, actions or causes of action for infringing, on or before the date this Settlement Agreement becomes Effective, the intellectual property, patent and/or other rights acquired by Settling Defendants from Dr. Philip M. Adams. Settling Defendants also agree not to assert or sue on a patent infringement claim or similar claim implicating or sounding in intellectual property, patent or other similar rights against Class Counsel (or class counsel in the following lawsuits) and their respective agents, experts and consultants for their use at any time (including but not limited to in the future) of the Marti Tester in the following lawsuits: Cause

No. E-165,336, David Packard, et al., Plaintiffs on behalf of themselves and all others similarly situated vs. eMachines, Inc., et al., in the 172nd Judicial District County of Jefferson County, Texas; Cause No. CJ-03-968- L, Kiley Stroud, Plaintiff, individually and on behalf of those similarly situated vs. eMachines, Inc., In the District Court of Cleveland County, State of Oklahoma; and Case No. CV 025760, Tammy Collins, et al, v. eMachines, Inc., et al, San Joaquin County Superior Court, State of California; Case No. SA 05- 13972-RA, Trigem America Corporation, Debtor, United States Bankruptcy Court, Central District of California Santa Ana Division; and any other future action against eMachines or Trigem (or their respective affiliates, including but not limited to Averatec) in which allegations are made that are similar to those made in any of the foregoing actions (collectively the "eMachines Actions") concerning computers manufactured on or before December 31, 2002 by Trigem for eMachines. Class Counsel, on behalf of themselves, their respective experts and consultants, and their respective clients agree that settling Defendants' agreement not to assert a patent infringement claim in connection with the use of the Marti Tester in the eMachines Actions is not and shall not be deemed to be a waiver of Settling Defendants' intellectual property, patent or other rights generally, or serve as a defense to a patent infringement claim asserted by Settling Defendants should Class Counsel and/or their experts use the Marti Tester for any purpose other than the eMachines Actions. By accepting this release and agreeing to the forgoing, Class Counsel do not believe and do not admit that they, class counsel in the eMachines Actions, the said named plaintiffs in the eMachines Actions, and Certified Class Representatives, or their experts or consultants or the Marti Tester infringed, but require the foregoing release only to avoid and resolve all controversies concerning any such claim.

19. As set forth in the attached Settlement Agreement and Release, Defendants have settled various class action lawsuits and the parties have agreed that the Settlement has a value of over \$630 million. Exhibit A at p. 73. In addition, the Settlement Agreement provides that various Defendants who acted as counsel will receive attorneys' fees of \$40 million. Exhibit A at p. 42.

20. Defendants have deliberately and willfully infringed upon the Adams Patents.

PARTIES AND JURISDICTION

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

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

23. Defendants Stephen Grider and Beverly Grider are class representatives of a nationwide class certified on September 23, 2005 in Case No. CJ-2003-969-L, *Stephen Grider and Beverly Grider, individually and on behalf of those similarly situated vs. Compaq Computer Corp.*, pending in the District Court of Cleveland County, State of Oklahoma.

24. Defendant Debbie Barrett is a class representative of a class action consolidated into the *Grider* class in Case No. CJ-2003-967-L, *Deborah Barrett individually and on behalf of those similarly situated vs. Hewlett-Packard Company*, pending in the District Court of Cleveland County, State of Oklahoma.

25. Defendants Muzette Alvis and Craig Plokhooy are class representatives of a class action that is being settled as part of the Settlement Agreement and Release attached hereto as Exhibit A, and captioned Cause No. A-164,880, *Muzette Alvis and Craig Plokhooy, Plaintiffs on behalf of themselves and all others similarly situated vs. Hewlett-Packard*, pending in the 58th Judicial District Court of Jefferson County, Texas.

26. Defendant Alesia Batiste is a class representative of a class action that is being settled as part of the Settlement Agreement and Release attached hereto as Exhibit A, and captioned Case No. CV 025101, *Alesia Batiste, on behalf of herself and all persons similarly situated v. Hewlett-Packard Company, a Corporation, as successor in interest by merger to Compaq Computer Corporation, an inactive Delaware Corp., and Does 1 through 10, inclusive*, in the Superior Court of the State of California, in and for the County of San Joaquin.

27. Defendant Hal La Pray is a class representative of a class action that is being settled as part of the Settlement Agreement and Release attached hereto as Exhibit A, and captioned Cause No. .4-162,152, *Hal LaPray, et. al., Plaintiffs on behalf of themselves and all*

others similarly situated vs. Compaq Computer Corporation, pending in the 6th Judicial District of Jefferson County, Texas.

28. Defendant Penny Schultz is a class representative of a class action that is being settled as part of the Settlement Agreement and Release attached hereto as Exhibit A, and captioned Case No. CV 025620, *Penny Schultz, on behalf of herself and all others similarly situated vs. Hewlett-Packard Company, a Delaware Corp., and Does I through 100, inclusive*, pending in the Superior Court of the State of California, in and for the County of San Joaquin.

29. Defendant Willis Freeman Marti is an expert working on behalf of the various classes and their counsel who has had copies of Adams' Detectors and misappropriated Adams' intellectual property to create a write-read-compare tool (detector) to detect the alleged 512th byte error (a/k/a "XFDC"). Defendant Willis Freeman Marti has created other derivatives of Adams' technology that Class Counsel (e.g., The Reaud Law Firm, et al.) agree that they "will provide Settling Defendants with a copy of any Marti Tester or derivative not heretofore produced." Exhibit A, Settlement Agreement at page 11.

30. Defendant The Reaud Law Firm is an entity organized under the laws of the State of Texas and is one of the lead counsel ("Class Counsel" as defined on page 4 of the Settlement Agreement, Exhibit A) in the above-referenced class actions, and has offices located in Beaumont, Texas.

31. Defendant Wayne Reaud is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

32. Defendant L. DeWayne Layfield is one of the lead lawyers in the above-reference class actions and has offices located in Beaumont, Texas.

33. Defendant Benckenstain & Oxford is a Texas Limited Partnership and is one of the lead lawyers in the above-referenced class actions, and has offices located in Beaumont, Texas.

34. Defendant Hubert Oxford, III is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

35. Defendant Olen Ken Dodd, is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

36. Defendant Orgain, Bell & Tucker is a Texas Limited Partnership and is one of the lead lawyers in the above-referenced class actions, and has offices located in Beaumont, Texas.

37. Defendant Jack P. Carroll, is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

38. Defendant C. Keith Kebodeaux, is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

39. Defendant Gilbert I. Low, is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

40. Defendant Gary Neal Reger, is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

41. Defendant Herum Crabtree Brown, is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

42. Defendant G. Kip Edwards is one of the lead lawyers in the above-referenced class actions and has offices located in Beaumont, Texas.

43. Adams does not know the true names and capacities of the defendants named as John and Jane Does I through XX, inclusive, and therefore sues such defendants by such fictitious names. Adams is informed and believes, and on that basis alleges, that they are the are in some way responsible for the damages suffered by Adams and described in this Complaint.

44. 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).

45. Venue is proper pursuant to 28 U.S.C. 1391(c) and 1400 (b). Moreover, venue is proper in this judicial district relating to Defendants' theft of Adams' trade secrets.

COUNT I

(Patent Infringement)

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

47. Without authority or license, Defendants have 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.

48. By reason of Defendants' acts complained of herein, Defendants have infringed and are 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.

49. Because of Defendants' conduct, Adams has been actually and irreparably harmed and suffered impairment of the value of Adams' patent rights. Moreover, unless Defendants are restrained from infringing the Adams' Patents, Adams will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law.

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

51. 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)

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

53. Defendants obtained copies of Adams' Detectors that contained 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.

54. Defendants have used and intend to use and have used the Trade Secrets without the express or implied consent of Adams.

55. Defendants have used and are using the Trade Secrets with knowledge that they were wrongfully acquired.

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

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

COUNT III

(Constructive Trust)

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

59. Based upon the facts set forth above, Adams is entitled to a constructive trust on any and all monies and value received or to be received by Defendants.

WHEREFORE, Adams prays for judgment against Defendants as follows:

1. A judgment that Defendants have infringed one or more claims of the Adams Patents.
2. A judgment that Defendants have induced infringement of one or more claims of the Adams Patents.
3. A judgment that Defendants have 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 Defendants and their agents, servants, employees, attorneys, directors, successors, assigns, and all those in active concert or participation with them, from committing further acts of infringement during the pendency of this action and permanently afterward.
5. A preliminary and permanent injunction restraining Defendants and their agents, servants, employees, attorneys, directors, successors, assigns, and all those in active concert or participation with Defendants from misappropriating Adams' Trade Secrets.
6. An order that Defendants provide to Adams for destruction all infringing products in its custody, possession, or control that infringe the Adams Patents, and that Defendants file with this Court a written report, under oath, setting forth in detail the manner and form in which Defendants have 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 Defendants' patent infringement, and that those damages be trebled as a result of Defendants' willful and deliberate infringement.

8. Pursuant to 35 U.S.C. §284, that the damages Adams is awarded as a result of Defendants' infringement of the Adams Patents be trebled based on Defendants' 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. A constructive trust on any and all monies and value received or to be received by Defendants.

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

DATED this 6 day of February 2008.

HOWARD, PHILLIPS & ANDERSEN

s/Gregory D. Phillips

By: Gregory D. Phillips
Attorneys for Plaintiffs