

1 MILBANK, TWEED, HADLEY & McCLOY LLP  
Gregory Evans (State Bar No. 147623)  
2 601 South Figueroa Street, 30th Floor  
Los Angeles, California 90017  
3 Telephone: (213) 892-4000  
Facsimile: (213) 629-5063  
4 gevens@milbank.com

5 MILBANK, TWEED, HADLEY & McCLOY LLP  
Christopher E. Chalsen (*Pro Hac Vice to be filed*)  
6 Michael M. Murray (*Pro Hac Vice to be filed*)  
Lawrence T. Kass (*Pro Hac Vice to be filed*)  
7 Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
8 New York, NY 10005  
Telephone: (212) 530-5000  
9 Facsimile: (212) 530-5219  
cchalsen@milbank.com  
10 mmurray@milbank.com  
lkass@milbank.com  
11 Attorneys for Plaintiffs,  
FUJITSU LIMITED and  
12 FUJITSU MICROELECTRONICS AMERICA, INC.

**ADR**  
**E-FILING**

**ORIGINAL  
FILED**

OCT 24 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **SAN JOSE DIVISION**

16 **C06 06613 EDL**

17 FUJITSU LIMITED, a Japanese  
corporation, and FUJITSU  
18 MICROELECTRONICS AMERICA,  
INC., a California corporation,

19 Plaintiffs,

20 v.

21 NANYA TECHNOLOGY CORP., a  
Taiwanese corporation, and NANYA  
TECHNOLOGY CORP. U.S.A., a  
22 California corporation,

23 Defendants.

CASE NO. CV-06-\_\_\_\_\_

**COMPLAINT FOR PATENT  
INFRINGEMENT AND  
DECLARATORY JUDGMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Fujitsu Limited (“Fujitsu”) and Fujitsu Microelectronics  
2 America, Inc. (“Fujitsu America”) (collectively, “Plaintiffs”), for their complaint  
3 against Defendants Nanya Technology Corp. (“Nanya”) and Nanya Technology  
4 Corp. U.S.A. (“Nanya USA”) (collectively, “Defendants”), aver as follows:

5 **THE PARTIES**

6 1. Fujitsu is a corporation organized and existing under the laws  
7 of Japan. Fujitsu is a leading researcher, designer, manufacturer, and provider of  
8 information technology and communications products and services. As a result of  
9 its innovation, Fujitsu has been awarded various patents relating to computer  
10 memory products such as double-data-rate synchronous dynamic random access  
11 memory (DDR SDRAM) chips.

12 2. Fujitsu America is a wholly owned subsidiary of Fujitsu, and is  
13 a California corporation with headquarters and principal place of business at 1250  
14 E. Arques Avenue, M/S 333, Sunnyvale, California 94088-3470.

15 3. Defendant Nanya is a corporation organized and existing under  
16 the laws of Taiwan, having its principal place of business at Hwa-Ya Technology  
17 Park 669, Fu Hsing 3rd Rd., Kueishan, Taoyuan, Taiwan, Republic of China.  
18 Upon information and belief, Nanya manufactures products, including the memory  
19 chips accused of infringement in this Complaint, for sale and importation into the  
20 United States directly through its own actions and indirectly by Defendant Nanya  
21 USA.

22 4. Defendant Nanya USA is a corporation organized and existing  
23 under the laws of the State of California, having its principal place of business at  
24 675 East Brokaw Road, San Jose, CA 95112. Upon information and belief, Nanya  
25 USA is a wholly-owned subsidiary of Defendant Nanya, and has sold or sells  
26 products manufactured by Nanya or Nanya USA, including the memory chips  
27 accused of infringement in this Complaint, to customers in the State of California  
28 and elsewhere in the United States. Upon further information and belief, the

1 accused memory chips are incorporated by customers of Nanya or Nanya USA,  
2 who are manufacturers of computers and other electronic devices, into computers  
3 and other electronic devices sold in the State of California, including customers  
4 located in this judicial district.

### 5 JURISDICTION

6 5. This is an action arising under the Patent Laws of the United  
7 States, Title 35 of the United States Code and the Declaratory Relief Act. This  
8 Court has subject matter jurisdiction over this action under 28 U.S.C. § 1338(a),  
9 which confers jurisdiction over cases of patent infringement, 28 U.S.C. § 1331,  
10 which confers federal question jurisdiction and 28 U.S.C. § 2201(a), which confers  
11 jurisdiction over declaratory judgment actions.

12 6. This Court has general personal jurisdiction over Nanya USA  
13 because Nanya USA is incorporated under the laws of the State of California and  
14 has its principal place of business in San Jose, California.

15 7. This Court has personal jurisdiction over Nanya and Nanya  
16 USA under California Code of Civil Procedure § 410.10, *inter alia*, on the basis  
17 that upon information and belief, Nanya and Nanya USA have sold, and continue  
18 to sell infringing memory chips to manufacturers of computers and other electronic  
19 devices in this District and elsewhere in the United States, who in turn have sold  
20 and continue to sell computers and other electronic devices containing the  
21 infringing memory chips to customers in this District and elsewhere in the United  
22 States. Upon further information and belief, Nanya, as 100% owner of Nanya  
23 USA, has been directing Nanya USA's sales activities. Upon information and  
24 belief, Nanya also knew that said manufacturers of computers and other electronic  
25 devices reside in this District and elsewhere in the United States, and would sell  
26 devices containing the infringing memory chips to customers in this District and  
27 elsewhere in the United States, and Nanya derived and continues to derive  
28 substantial revenue therefrom.

**VENUE**

1  
2 8. Venue is proper in this judicial district under 28 U.S.C.  
3 §§ 1391(c) and 1400(b).

4 **INTRADISTRICT ASSIGNMENT**

5 9. Pursuant to Civil L.R. 3-2(c) and (e), the San Jose Division is  
6 the proper division to be assigned this action, based on Nanya USA's residence in  
7 Santa Clara County as well as Nanya and Nanya USA's infringing activities in  
8 Santa Clara County.

9 **FUJITSU'S PATENTS**

10 10. Fujitsu is the assignee and owner of the following United States  
11 patents ("Fujitsu's Patents"):

- 12 a. U.S. Patent No. 4,801,989 ("the '989 patent", Exh. A hereto), entitled  
13 "Dynamic Random Access Memory Having Trench Capacitor With  
14 Polysilicon Lined Lower Electrode," which was duly and legally  
15 issued on January 31, 1989 to Masao Taguchi;
- 16 b. U.S. Patent No. 6,104,486 ("the '486 patent", Exh. B hereto), entitled  
17 "Fabrication Process of a Semiconductor Device Using Ellipsometry,"  
18 which was duly and legally issued on August 15, 2000 to Hiroshi  
19 Arimoto.
- 20 c. U.S. Patent No. 6,292,428 B1 ("the '428 patent", Exh. C hereto),  
21 entitled "Semiconductor Device Reconciling Different Timing  
22 Signals," which was duly and legally issued on September 18, 2001 to  
23 Hiroshi Tomita and Tatsuya Kanda.
- 24 d. U.S. Patent No. 6,320,819 B2 ("the '819 patent", Exh. D hereto),  
25 entitled "Semiconductor Device Reconciling Different Timing  
26 Signals," which was duly and legally issued on November 20, 2001 to  
27 Hiroshi Tomita and Tatsuya Kanda.
- 28

**NANYA’S PATENTS**

1  
2 11. In a complaint filed by Nanya against Plaintiffs in Guam on  
3 September 13, 2006 (but not yet served), Civil Case No. 06-00025 (“the Guam  
4 Complaint”), Nanya purported to be the owner of all rights, title, and interest in  
5 and under the following United States patents (“Nanya’s Patents”):

- 6 a. U.S. Patent No. 6,790,765 (“the ‘765 patent”, Exh. E hereto), titled  
7 “Method For Forming Contact”;
- 8 b. U.S. Patent No. 6,225,187 (“the ‘187 patent”, Exh. F hereto), entitled  
9 “Method For STI-Top Rounding Control”;
- 10 c. U.S. Patent No. 6,426,271 (“the ‘271 patent”, Exh. G hereto), entitled  
11 “Method Of Rounding The Comer Of A Shallow Trench Isolation  
12 Region.”

13 12. The Guam Complaint asserts Nanya’s Patents against Plaintiffs.

14 13. By virtue of Nanya’s actions, Plaintiffs reasonably believe that  
15 Nanya imminently intends to pursue against them an infringement action involving  
16 Nanya’s Patents.

17 14. Plaintiffs deny that they infringe any valid claim of any of the  
18 Nanya Patents.

19 15. An actual and justiciable controversy exists between Nanya and  
20 Plaintiffs concerning whether Plaintiffs infringe any valid claim of the Nanya  
21 Patents. Plaintiffs now seek a declaratory judgment that they do not infringe any  
22 valid claim of the Nanya Patents, and that the claims of the Nanya Patents are  
23 invalid.

24 **FIRST CLAIM FOR RELIEF**

25 **(Infringement of the ‘989 Patent)**

26 16. Plaintiffs re-allege and incorporate by reference herein each of  
27 the averments set forth in paragraphs 1-10 of this Complaint.  
28





1 512M DDR SDRAM; 512M DDR2 SDRAM; 256M DDR2 SDRAM; 1G DDR2  
2 SDRAM; and SDRAM memory module products equipped with one or more of  
3 the 512M DDR SDRAM; 512M DDR2 SDRAM; 256M DDR2 SDRAM; and 1G  
4 DDR2 SDRAM .

5 24. Nanya and Nanya USA's actions constitute infringement, active  
6 inducement of infringement, and/or contributory infringement of the '486 patent in  
7 violation of 35 U.S.C. § 271.

8 25. Fujitsu has sustained damages and will continue to sustain  
9 damages as a result of the aforesaid acts of infringement.

10 26. Nanya and Nanya USA's continued infringement of the '486  
11 patent has caused and will continue to cause Fujitsu irreparable harm unless  
12 enjoined by the Court.

13 27. On information and belief, Nanya and Nanya USA's  
14 infringements of the '486 patent have been willful.

15 **THIRD CLAIM FOR RELIEF**

16 **(Infringement of the '428 Patent)**

17 28. Plaintiffs re-allege and incorporate by reference herein each of  
18 the averments set forth in paragraphs 1-10 of this Complaint.

19 29. Nanya and Nanya USA have been and still are infringing one or  
20 more claims of the '428 patent by making, using, offering for sale, selling and/or  
21 importing into the United States memory chips and causing use, offer for sale and  
22 sale of computers and other electronic devices containing memory chips.

23 Infringing memory chips made, used, sold, offered for sale or imported by Nanya  
24 and Nanya USA include at least the 256M DDR SDRAM (e.g., part no.  
25 NT5D64M4AT). On information and belief, Defendants' additional infringing  
26 memory chips include at least the following: 128M DDR SDRAM; 512M DDR  
27 SDRAM; 512M DDR2 SDRAM; 1G DDR2 SDRAM; 128M DDR SDRAM  
28 Graphic (Elixir); 512M DDR SDRAM Graphic (Elixir); 256M DDR2 SDRAM

1 Graphic (Elixir); 512M DDR2 SDRAM Graphic (Elixir); 512M DDR UDIMM;  
2 1G DDR UDIMM; 512M DDR SODIMM; 1G DDR SODIMM; 512M DDR  
3 RDIMM; 1G DDR RDIMM; 2G DDR RDIMM; 256M DDR2 UDIMM; 512M  
4 DDR2 UDIMM; 1G DDR2 UDIMM; 2G DDR2 UDIMM; 256M DDR2  
5 SODIMM; 512M DDR2 SODIMM; 1G DDR2 SODIMM; 512M DDR2 RDIMM;  
6 1G DDR2 RDIMM; 2G DDR2 RDIMM; 512M DDR2 FBDIMM; 1G DDR2  
7 FBDIMM; 2G DDR2 FBDIMM; 512M DDR SDRAM SODIMM (Elixir); 128M  
8 DDR SDRAM Unbuffered DIMM (Elixir); 512M DDR SDRAM Unbuffered  
9 DIMM (Elixir); 1G DDR SDRAM Unbuffered DIMM (Elixir); 256M DDR2  
10 SDRAM SO DIMM (Elixir); 512M DDR2 SDRAM SO DIMM (Elixir); 1G DDR2  
11 SDRAM SO DIMM (Elixir); 256M DDR2 SDRAM Unbuffered DIMM (Elixir);  
12 512M DDR2 SDRAM Unbuffered DIMM (Elixir); 1G DDR2 SDRAM  
13 Unbuffered DIMM (Elixir); 512M DDR SDRAM SO DIMM (Super Elixir); 1G  
14 DDR SDRAM SO DIMM (Super Elixir); 128M DDR SDRAM Unbuffered DIMM  
15 (Super Elixir); 512M DDR SDRAM Unbuffered DIMM (Super Elixir); 1G DDR  
16 SDRAM Unbuffered DIMM (Super Elixir); 256M DDR2 SDRAM SO DIMM  
17 (Super Elixir); 512M DDR2 SDRAM SO DIMM (Super Elixir); 1G DDR2  
18 SDRAM SO DIMM (Super Elixir); 256M DDR2 SDRAM Unbuffered DIMM  
19 (Super Elixir); 512M DDR2 SDRAM Unbuffered DIMM (Super Elixir); and 1G  
20 DDR2 SDRAM Unbuffered DIMM (Super Elixir).

21           30. Nanya and Nanya USA's actions constitute infringement, active  
22 inducement of infringement, and/or contributory infringement of the '428 patent in  
23 violation of 35 U.S.C. § 271.

24           31. Fujitsu has sustained damages and will continue to sustain  
25 damages as a result of the aforesaid acts of infringement.

26           32. Nanya and Nanya USA's continued infringement of the '428  
27 patent has caused and will continue to cause Fujitsu irreparable harm unless  
28 enjoined by the Court.





1 Unbuffered DIMM (Elixir); 512M DDR SDRAM SO DIMM (Super Elixir); 1G  
2 DDR SDRAM SO DIMM (Super Elixir); 128M DDR SDRAM Unbuffered DIMM  
3 (Super Elixir); 512M DDR SDRAM Unbuffered DIMM (Super Elixir); 1G DDR  
4 SDRAM Unbuffered DIMM (Super Elixir); 256M DDR2 SDRAM SO DIMM  
5 (Super Elixir); 512M DDR2 SDRAM SO DIMM (Super Elixir); 1G DDR2  
6 SDRAM SO DIMM (Super Elixir); 256M DDR2 SDRAM Unbuffered DIMM  
7 (Super Elixir); 512M DDR2 SDRAM Unbuffered DIMM (Super Elixir); and 1G  
8 DDR2 SDRAM Unbuffered DIMM (Super Elixir).

9           36. Nanya and Nanya USA's actions constitute infringement, active  
10 inducement of infringement, and/or contributory infringement of the '819 patent in  
11 violation of 35 U.S.C. § 271.

12           37. Fujitsu has sustained damages and will continue to sustain  
13 damages as a result of the aforesaid acts of infringement.

14           38. Nanya and Nanya USA's continued infringement of the '819  
15 patent has caused and will continue to cause Fujitsu irreparable harm unless  
16 enjoined by the Court.

17           39. On information and belief, Nanya and Nanya USA's  
18 infringements of the '819 patent have been willful.

19                           **FIFTH CLAIM FOR RELIEF**

20                   **(Declaratory Judgment of Noninfringement regarding the '765 Patent)**

21           40. Plaintiffs re-allege and incorporate by reference herein each of  
22 the averments set forth in paragraphs 1-15 of this Complaint.

23           41. Plaintiffs are not directly infringing, contributorily infringing,  
24 or actively inducing others to infringe any valid claim of the '765 patent as  
25 properly construed.  
26  
27  
28

**SIXTH CLAIM FOR RELIEF**

**(Declaratory Judgment of Invalidity regarding the '765 Patent)**

42. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

43. The '765 patent is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

**SEVENTH CLAIM FOR RELIEF**

**(Declaratory Judgment of Noninfringement regarding the '187 patent)**

44. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

45. Plaintiffs are not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '187 patent as properly construed.

**EIGHTH CLAIM FOR RELIEF**

**(Declaratory Judgment of Invalidity regarding the '187 patent)**

46. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

47. The '187 patent is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

**NINTH CLAIM FOR RELIEF**

**(Declaratory Judgment of Noninfringement regarding the '271 patent)**

48. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

49. Plaintiffs are not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '271 patent as properly construed.

**TENTH CLAIM FOR RELIEF**

**(Declaratory Judgment of Invalidity regarding the '271 patent)**

50. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

51. The '271 patent is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs prays that this Court enter judgment in its favor and against Defendants and grant the following relief:

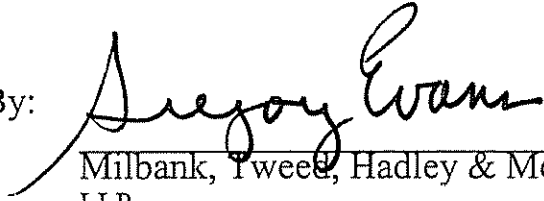
- A. A preliminary and permanent injunction preventing further infringement, contributory infringement and inducement of infringement of Fujitsu's Patents;
- B. An accounting to determine damages for infringement;
- C. An award of damages for infringement;
- D. An assessment and award of interest, including pre-judgment interest, on the damages determined;
- E. A trebling of those damages pursuant to 35 U.S.C. § 284;
- F. A declaration that Plaintiffs do not infringe any valid claim of any of the Nanya Patents.
- G. A declaration that the claims of the Nanya Patents asserted against Plaintiffs are invalid.
- H. A finding that this is an exceptional case and an award of Plaintiffs' costs and attorney fees; and
- I. Such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiffs hereby demand a trial by jury as to all claims and all issues  
3 properly triable thereby.

4 Respectfully submitted,

5  
6 Dated: October 23, 2006

7 By:   
8 Milbank, Tweed, Hadley & McCloy  
9 LLP  
10 Gregory Evans (State Bar No.  
11 147623)  
12 601 South Figueroa Street, 30th Floor  
13 Los Angeles, California 90017  
14 Telephone: (213) 892-4000  
15 Facsimile: (213) 629-5063

16 Milbank, Tweed, Hadley & McCloy  
17 LLP  
18 Christopher E. Chalsen  
19 Michael M. Murray  
20 Lawrence T. Kass  
21 Frank A. Bruno  
22 1 Chase Manhattan Plaza  
23 New York, NY 10005  
24 Telephone: (212) 530-5000  
25 Facsimile: (212) 530-5219

26 Attorneys for Plaintiffs  
27 FUJITSU LIMITED and  
28 FUJITSU MICROELECTRONICS  
AMERICA, INC.

LA1:#6334633