

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
AVAGO TECHNOLOGIES GENERAL)	
IP PTE. LTD., and)	
AVAGO TECHNOLOGIES FIBER IP)	
PTE. LTD.,)	Civil Action No. _____
)	
Plaintiffs,)	<u>JURY TRIAL DEMANDED</u>
)	
v.)	
)	
FINISAR CORPORATION,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiffs Avago Technologies General IP Pte. Ltd and Avago Technologies Fiber IP Pte. Ltd., demand a trial by jury on all issues so triable and for their complaint allege as follows:

PARTIES

1. Plaintiff Avago Technologies General IP Pte. Ltd. is a Singapore Corporation having a principal place of business at 1 Yishun Avenue 7, Singapore. Plaintiff Avago Technologies Fiber IP Pte. Ltd. is a Singapore Corporation having a principal place of business at 1 Yishun Avenue 7, Singapore (collectively “Avago”).

2. Defendant Finisar Corporation (“Finisar”) is a Delaware corporation having a principal place of business at 1308 Moffett Park Drive, Sunnyvale, California, and does business in this judicial district.

JURISDICTION

3. This is an action seeking relief for patent infringement. The claims arise under the patent laws of the United States, Title 35 of the United States Code. Jurisdiction over the subject matter of these claims is based on 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Finisar is a Delaware corporation and has committed acts of patent infringement during the course of its business in this District.

THE ASSERTED PATENTS

5. On October 25, 1994, United States Patent No. 5,359,447 (“the ‘447 patent”) was duly and legally issued by the United States Patent and Trademark Office to Kenneth H. Hahn, Michael R.T. Tan and Shih-Yuan Wang for an invention entitled “Optical Communication with Vertical-Cavity Surface-Emitting Laser Operating in Multiple Transverse Modes.” A true and correct copy of the ‘447 patent is attached as Exhibit A.

6. On June 2, 1998, United States Patent No. 5,761,229 (“the ‘229 patent”) was duly and legally issued by the United States Patent and Trademark Office to Richard R. Baldwin, Scott W. Corzine, John P. Ertel, William D. Holland, Leif Eric Larson, David M. Sears, Michael R.T. Tan, Shih-Yuan Wang, Albert Yuen and Tao Zhang for an invention entitled “Integrated Controlled Intensity Laser-Based Light Source.” A true and correct copy of the ‘229 patent is attached as Exhibit B.

7. Avago Technologies General IP Pte. Ltd. is the assignee and owner of the rights, title and interest in, to and under, the ‘447 patent. Avago Technologies Fiber IP Pte. Ltd. is the assignee and owner of the rights, title and interest in, to and under, the ‘229 patent.

FINISAR'S USE OF AVAGO'S PATENTED TECHNOLOGY

8. Finisar manufactures, imports, markets, sells or offers for sale short wavelength optoelectronic transceivers to distributors, customers and potential customers within the United States. Upon information and belief, these short wavelength optoelectronic transceivers infringe one or more claims of the '447 and '229 patents.

9. The short wavelength optoelectronic transceivers manufactured, imported, marketed, sold and offered for sale by Finisar are especially adapted for use in optoelectronic networks in a manner that infringes one or more claims of the '447 patent. Finisar's short wavelength optoelectronic transceivers have no substantial use other than as a component in optoelectronic networks that infringe one or more claims of the '447 patent.

10. On information and belief, Finisar intentionally induces its customers or potential customers to use short wavelength optoelectronic transceivers in optoelectronic networks that infringe one or more claims of the '447 patent.

COUNT ONE

(Infringement of U.S. Patent No. 5,359,447)

11. Avago realleges and incorporates herein the allegations of paragraphs 1 through 10 as if fully set forth herein.

12. On information and belief, Finisar has infringed, and continues to infringe, directly, contributorily, and/or by actively inducing others to infringe the '447 patent by making, using, offering to sell or selling within the United States, optoelectronic transceivers within the scope of one or more claims of the '447 patent, *e.g.*, at least Finisar's Short-Wavelength Multimode SFP transceivers.

13. Finisar's infringement of the '447 patent has been and is willful and has been carried out with full knowledge of the '447 patent.

14. Finisar's continued infringement of the '447 patent has damaged and continues to damage Avago.

15. Finisar's infringement of the '447 patent has caused and will continue to cause Avago irreparable harm unless enjoined by this Court.

COUNT TWO

(Infringement of U.S. Patent No. 5,761,229)

16. Avago realleges and incorporates herein the allegations of paragraphs 1 through 10 as if fully set forth herein.

17. On information and belief, Finisar has infringed, and continues to infringe, directly, contributorily, and/or by actively inducing others to infringe the '229 patent by making, using, offering to sell or selling within the United States, optoelectronic transceivers within the scope of one or more claims of the '229 patent, *e.g.*, at least Finisar's Short-Wavelength Multimode SFP transceivers.

18. Finisar's infringement of the '229 patent has been and is willful and has been carried out with full knowledge of the '229 patent.

19. Finisar's continued infringement of the '229 patent has damaged and continues to damage Avago.

20. Finisar's infringement of the '229 patent has caused and will continue to cause Avago irreparable harm unless enjoined by this Court.

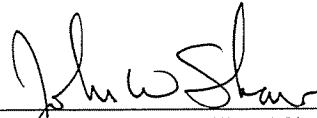
PRAYER FOR RELIEF

WHEREFORE, Avago prays that judgment be entered in its favor, including the following relief:

- a) Adjudging that Finisar has been and is infringing one or more claims of United States Patent Nos. 5,359,447 and 5,761,229;

- b) Pursuant to 35 U.S.C. § 283, permanently enjoining Finisar and all persons in active concert or participation with them, from any further acts of infringement, contributory infringement, or inducement of infringement of the '447 and '229 patents;
- c) Pursuant to 35 U.S.C. § 284, awarding to Avago damages adequate to compensate Avago for Finisar's infringement, but in no event less than a reasonable royalty;
- d) Pursuant to 35 U.S.C. § 284, awarding to Avago interest on the damages awarded and its costs incurred in this action;
- e) Pursuant to 35 U.S.C. § 284, trebling all damages awarded to Avago because of Finisar's willful infringement;
- f) Pursuant to 35 U.S.C. § 285, finding this is an exceptional case and awarding to Avago its reasonable attorneys' fees incurred in this action; and
- g) Awarding such other relief as this Court may deem just and proper.

YOUNG, CONAWAY, STARGATT
& TAYLOR, LLP



Josy W. Ingersoll (#1088)
John W. Shaw (#3362)
1000 West Street, 17th Floor
Wilmington, DE 19899-0391
(302) 571-6600
jshaw@ycst.com

Of Counsel

Jesse J. Jenner
ROPES & GRAY LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 596-9000

Sasha G. Rao
ROPES & GRAY LLP
525 University Avenue
Palo Alto, CA 94301
(650) 617-4000

Dated: February 22, 2006