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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 20 2005
DAVID J. MALAND, CLERK
BY DEPUTY

AMBERWAVE SYSTEMS
CORPORATION,

Plaintiff,

vs.

INTEL CORPORATION

Defendant.



Civil Action No. 2-05 CV-449

JURY

TJW

**AMBERWAVE'S COMPLAINT FOR PATENT INFRINGEMENT
AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff AmberWave Systems Corporation ("AmberWave"), for its complaint against Defendant Intel Corporation ("Intel"), alleges as follows:

INTRODUCTION

1. AmberWave is a small technology and engineering firm founded by a university professor and his former students. AmberWave develops innovative technology for the production of microprocessors and other semiconductor devices. For years, Intel has been improving the performance of its microprocessors by shrinking the size of their fundamental components. Intel now finds itself unable to continue its historical pace of performance enhancement using its own technological developments. In order to defend its market position against inroads by competitors, Intel is using AmberWave's patented inventions to enable the production of faster and more efficient microprocessors—without obtaining a license from AmberWave. This action seeks redress for Intel's infringing activities

THE PATENT IN SUIT

2. United States Patent No. 6,946,371 (the “’371 patent”), entitled “Method of fabricating semiconductor structures having epitaxially grown source and drain elements,” was duly and legally issued on September 20, 2005. AmberWave is the owner by assignment of all right, title and interest in and to the ’371 patent

PARTIES AND JURISDICTION

3. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. § 101 *et seq.* This is also an action for declaratory judgment of patent infringement under the United States Patent Act, 35 U.S.C. § 101 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

4. AmberWave is a Delaware corporation with its principal place of business in Salem, New Hampshire.

5. AmberWave is informed and believes, and thereon alleges, that Intel is a Delaware corporation with business locations throughout the United States.

6. AmberWave is informed and believes, and thereon alleges, that Intel has done and continues to do business in this District. AmberWave is informed and believes, and thereon alleges, that Intel has harmed and continues to harm AmberWave in this District. AmberWave is informed and believes, and thereon alleges, that Intel products have been sold in this District. AmberWave is informed and believes, and thereon alleges, that these products include 90nm Pentium processors. AmberWave is informed and believes, and thereon alleges, that Intel maintains a website accessible to the residents of this District. AmberWave is informed and believes, and thereon alleges, that Intel’s website allows users in this District to submit information to Intel, and to download information from the website. AmberWave is informed and believes, and thereon alleges, that Intel’s website allows users in this District to locate companies who will sell Intel products to users in this District, including 90 nm Pentium processors. AmberWave is informed and believes, and thereon alleges, that Intel has at least two authorized distributors with facilities located in the Eastern District of Texas. AmberWave is

informed and believes, and thereon alleges, that these distributors sell Intel products, including 90 nm microprocessors

7. AmberWave is informed and believes, and thereon alleges, that Intel has voluntarily availed itself of the courts in this District. AmberWave is informed and believes, and thereon alleges, that Intel has filed complaints in this District as both a plaintiff and as an intervenor. AmberWave is informed and believes, and thereon alleges, that Intel has appeared as a defendant and a counterclaim plaintiff in this District, without contesting that venue is proper in the District

8. AmberWave is informed and believes, and thereon alleges, that Intel has sought and received authorization to do business in the State of Texas. AmberWave is informed and believes, and thereon alleges, that Intel has a registered agent in the State of Texas. AmberWave is informed and believes, and thereon alleges, that Intel maintains multiple business offices in State of Texas. AmberWave is informed and believes, and thereon alleges, that Intel has at least approximately 600 employees in the State of Texas.

9. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202, and venue in this District is proper under 28 U.S.C. §§ 1391 and 1400(b).

CLAIMS FOR RELIEF

COUNT I

(Patent Infringement by Intel)

10. AmberWave incorporates by reference paragraphs 1 through 9 as if set forth here in full.

11. AmberWave is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271, Intel has and is currently directly infringing, contributorily infringing, and/or inducing infringement of, the '371 patent by, among other things, making, using, offering to sell, selling and/or importing, without authority or license from AmberWave, certain computer processor products, including 90 nm Pentium processors

12. AmberWave is informed and believes, and thereon alleges, that Intel's infringement of the '371 patent has been and continues to be willful.

13. Unless enjoined, Intel will continue to infringe the '371 patent, and AmberWave will suffer irreparable injury as a direct and proximate result of Intel's conduct.

14. AmberWave has been damaged by Intel's conduct, and until an injunction issues will continue to be damaged in an amount yet to be determined.

COUNT II

(Declaratory Judgment of Patent Infringement by Intel)

15. AmberWave incorporates by reference paragraphs 1 through 14 as if set forth here in full.

16. AmberWave is informed and believes, and thereon alleges, that to the extent Intel has not already infringed the '371 patent, it is engaged in activity directed toward the imminent infringement of the '371 patent by, among other things, preparing to make, use, offer to sell, sell and/or import certain computer processor products, including 90 nm Pentium processors.

17. The '371 patent issued from United States Application No. 10/458,544 (the "'544 application"). Prior to the issuance of the '371 patent, AmberWave gave written notice to Intel of the '544 application and informed Intel that it would be infringing allowed claims in the '544 application once they issued. Those allowed claims have now issued in the '371 patent.

18. AmberWave is informed and believes, and thereon alleges that, to the extent actual infringement of the '371 patent has not already occurred, Intel has refused to take any steps to avoid infringement of claims in the '371 patent.

19. In light of the foregoing, Intel has a reasonable apprehension of suit for infringement by AmberWave on the '371 patent.

20. An actual and justiciable controversy exists between AmberWave and Intel regarding whether Intel's imminent conduct will directly infringe, contributorily infringe, and/or induce infringement of, the '371 patent by, among other things, making, using, offering to sell,

selling and/or importing, without authority or license from AmberWave, certain computer processor products, including 90 nm Pentium processors

21. AmberWave is informed and believes, and thereon alleges, that Intel's infringement will be willful.

22. Unless enjoined, Intel will infringe the '371 patent, and AmberWave will suffer irreparable injury as a direct and proximate result of Intel's conduct.

23. AmberWave will be damaged by Intel's conduct and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

PRAYER FOR RELIEF

WHEREFORE, AmberWave prays for relief as follows:

- A. For a determination that the '371 patent is valid and enforceable;
- B. For a determination that Intel infringes the '371 patent, and that Intel's infringement is willful;
- C. For a declaratory judgment that the '371 patent is valid and enforceable;
- D. For a declaratory judgment that Intel will infringe the '371 patent, and that Intel's infringement of the '371 patent will be willful;
- E. For an order preliminarily and permanently enjoining Intel, and its directors, officers, employees, attorneys, agents and all persons in active concert or participation with any of the foregoing from acts of infringement of the '371 patent;
- F. For damages resulting from infringement of the '371 patent in an amount to be determined at trial, and the trebling of such damages due to the willful nature of their infringement;
- G. For an award of interest on damages;
- H. For a declaration that this case is exceptional pursuant to 35 U.S.C. § 285 and an award of attorneys' fees and costs; and

I. For an award of such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

AmberWave hereby demands a trial by jury on any issue triable of right by a jury.

Respectfully submitted,

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