

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

BY          D.C.  
2004 APR -1 PM 2:43

CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA - MIA

BLUE SPIKE, INC. and WISTARIA  
TRADING, INC.,

Plaintiffs,

v.

PANASONIC, INC., MATSUSHITA  
ELECTRIC CORPORATION OF  
AMERICA, MATSUSHITA ELECTRIC  
INDUSTRIAL COMPANY, LTD., JVC  
COMPANY OF AMERICA, INC., JVC  
AMERICAS CORPORATION, VICTOR  
COMPANY OF JAPAN, LTD., TOSHIBA  
AMERICA CONSUMER PRODUCTS,  
INC., TOSHIBA AMERICA, INC., and  
TOSHIBA CORPORATION,

Defendants.

**04-20773**

CASE NO. **CIV-CIV-LENARD**

MAGISTRATE JUDGE  
SIMONTON

**COMPLAINT FOR PATENT INFRINGEMENT  
AND DEMAND FOR JURY TRIAL**

Plaintiffs Blue Spike, Inc. and Wistaria Trading, Inc. ("Blue Spike" or "Plaintiffs") allege against defendants Panasonic, Inc., Matsushita Electric Corporation of America, Inc., Matsushita Electric Industrial Co., Ltd. (collectively "Panasonic"), JVC Company of America, Inc., JVC Americas Corporation and Victor Company of Japan, Ltd. (collectively "JVC"), Toshiba America Consumer Products, Inc., Toshiba America, Inc. and Toshiba Corporation (collectively "Toshiba") (all defendants hereinafter together referred to as the "Defendants") as follows:

### **JURISDICTION**

1. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 271 et seq. This Court has jurisdiction pursuant to 28 U.S.C., §§ 1331 and §1338(a).

### **VENUE**

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1400(b).

### **THE PARTIES**

3. Plaintiffs, Blue Spike, Inc. and Wistaria Trading, Inc. are both Florida corporations, and each having a principal place of business at 16711 Collins Avenue, No. 2505, Sunny Isles Beach, Florida 33160.

4. On information and belief, Panasonic, Inc. is a Foreign corporation having a principal place of business at One Panasonic Way, Secaucus, NJ 07094. Panasonic, Inc. is, on information and belief, a subsidiary of Matsushita Electric Corporation of America which in turn is a subsidiary of Matsushita Electric Industrial Co., Ltd. of Osaka, Japan.

5. On information and belief, Panasonic has committed a tortious act within this state and elsewhere as more fully described herein, and is therefore subject to the jurisdiction of this court under § 48.193(1)(b), Fla. Stat.

6. On information and belief, JVC Company of America, Inc. is a Foreign corporation having a principal place of business at 1700 Valley Road, Wayne, NJ. JVC Company of America, Inc. is, on information and belief, a subsidiary of JVC Americas

Corporation, which in turn is a subsidiary of Victor Company of Japan, Ltd., which itself is a subsidiary/affiliate of Matsushita Electric Industrial Co., Ltd. of Osaka, Japan.

7. On information and belief, JVC has committed a tortious act within this state and elsewhere as more fully described herein, and is therefore subject to the jurisdiction of this court under § 48.193(1)(b), Fla. Stat.

8. On information and belief, Toshiba America Consumer Products, Inc. is a Foreign corporation having a principal place of business at 82 Totowa Road, Wayne, NJ 07470. Toshiba America Consumer Products, Inc. is, on information and belief, a subsidiary operating company of Toshiba America, Inc., which in turn is a subsidiary of Toshiba Corporation of Japan.

9. On information and belief, Toshiba has committed a tortious act within this state and elsewhere as more fully described herein, and is therefore subject to the jurisdiction of this court under § 48.193(1)(b), Fla. Stat.

### COUNT I

#### (Infringement of United States Patent No. 5,889,868)

10. The allegations of paragraphs 1 – 9 above are incorporated herein by reference.

11. On March 30, 1999, United States Patent No. 5,889,868 (the '868 Patent), entitled "Optimization Methods For The Insertion, Protection, And Detection Of Digital Watermarks In Digitized Data", was duly and legally issued. Plaintiff Wistaria Trading, Inc. is the owner of the '868 Patent and it is exclusively licensed to Blue Spike, Inc.

12. On information and belief, Defendants have been and still are infringing, contributing to the infringement of, and/or inducing the infringement of the '868 Patent

by making, selling, using, and/or offering for sale digital audio and video players, *inter alia*, DVD-Audio players and portable music players, that practice the patented invention and will continue to do so unless enjoined by this Court.

13. On information and belief, Defendants' infringement of the '868 Patent has been and continues to be willful, entitling Plaintiffs to enhanced damages.

14. Plaintiffs have been damaged by Defendants' infringement, which will continue unless enjoined by this Court.

## COUNT II

### (Infringement of United States Patent No. 6,522,787)

15. The allegations of paragraphs 1 – 9 above are incorporated herein by reference.

16. On February 18, 2003, United States Patent No. 6,522,787 (the '787 Patent), entitled "Optimization Methods For The Insertion, Protection, And Detection Of Digital Watermarks In Digitized Data ", was duly and legally issued. Plaintiff Wistaria Trading, Inc. is the owner of the '787 Patent and it is exclusively licensed to Blue Spike, Inc.

17. On information and belief, Defendants have been and still are infringing, contributing to the infringement of, and/or inducing the infringement of the '787 Patent by making, selling, using, and/or offering for sale digital audio and video players, *inter alia*, DVD-Audio players and portable music players, that practice the patented invention and will continue to do so unless enjoined by this Court.

18. On information and belief, Defendants' infringement of the '787 Patent has been and continues to be willful, entitling Plaintiffs to enhanced damages.

19. Plaintiffs have been damaged by Defendants' infringement, which will continue unless enjoined by this Court.

**COUNT III**

(Infringement of United States Patent No. 5,905,800)

20. The allegations of paragraphs 1 – 9 above are incorporated herein by reference.

21. On May 18, 1999, United States Patent No. 5,905,800 (the '800 Patent), entitled "Method and System for Digital Watermarking" was duly and legally issued. Plaintiff Wistaria Trading, Inc. is the owner of the '800 Patent and it is exclusively licensed to Blue Spike, Inc.

22. On information and belief, Defendants have been and still are infringing, contributing to the infringement of, and/or inducing the infringement of the '800 Patent by making, selling, using, and/or offering for sale digital audio and video players, *inter alia*, DVD-Audio players and portable music players, that practice the patented invention and will continue to do so unless enjoined by this Court.

23. On information and belief, Defendants' infringement of the '800 Patent has been and continues to be willful, entitling Plaintiffs to enhanced damages.

24. Plaintiffs have been damaged by Defendants' infringement, which will continue unless enjoined by this Court.

**WHEREFORE**, Plaintiffs pray for judgment and relief as follows:

- A. Enter judgment that the Defendants have infringed U.S. Patent Nos. 5,889,868, 6,522,787 and 5,905,800.
- B. Enter judgment that the Defendants' acts of patent infringement are willful;
- C. Temporarily, preliminarily and permanently enjoin the Defendants, their parents, subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives, and all parties in active concert and/or participation with it, from engaging in the aforesaid unlawful acts of infringement;
- D. Order Defendants to account for and pay to Plaintiffs all damages caused to Plaintiffs by Defendants' unlawful acts;
- E. Award Plaintiffs increased damages and attorney fees pursuant to 35 U.S.C. §§ 284 and 285;
- F. Award Plaintiffs their interest and costs incurred in this action; and
- G. Grant Plaintiffs such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted

BLUE SPIKE, INC. and WISTARIA  
TRADING, INC.

By:



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Dated: April 1, 2004

JS 44  
(Rev. 12/96)

# CIVIL COVER SHEET

# 04-20773

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating a civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

### I. (a) PLAINTIFFS

BLUE SPIKE, INC. and  
WISTARIA TRADING, INC.

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### DEFENDANTS

# CIV-LENARD

PANASONIC, INC., et al.,  
MAGISTRATE JUDGE  
SIMONTON

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Jude/04-20773-CV-Lenard/Simonton

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
BERMAN RENNERT VOGEL & MANDLER, P.A.  
100 S.E. 2nd Street, Suite 2900  
Miami, FL 33131-2130

ATTORNEYS (IF KNOWN)

(d) DADE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

### II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- |   |                            |                            |   |                                       |                                       |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
|   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

### IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

### V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans - Excl. Veterans; <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> 620 Copyrights <input checked="" type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark  <b>B SOCIAL SECURITY</b> <input type="checkbox"/> 661 HIA (1395ff) <input type="checkbox"/> 662 Black Lung (923) <input type="checkbox"/> 663 DIWC/DIWW (405(g)) <input type="checkbox"/> 664 SSID Title XVI <input type="checkbox"/> 665 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 630 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions A OR B
<b>A REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>A CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

### VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

LENGTH OF TRIAL

via 5 days estimated (for both sides to try entire case)

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  YES  NO

### VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/1/04

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RECEIPT #

AMOUNT

APPLYING FFF

JUDGE

MAG. JUDGE

15000

899163

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