

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01257-PAB-MEH

BIAX CORPORATION,

Plaintiff,

v.

NVIDIA CORPORATION,
SONY COMPUTER ENTERTAINMENT AMERICA, INC.,
SONY COMPUTER ENTERTAINMENT, INC.,
SONY ELECTRONICS, INC.,
SONY CORPORATION OF AMERICA, and
SONY CORPORATION,

Defendants.

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff BIAx Corporation, for its Amended Complaint against defendants Nvidia Corporation, Sony Computer Entertainment America, Inc., Sony Computer Entertainment, Inc., Sony Electronics, Inc., Sony Corporation of America, and Sony Corporation, alleges the following:

INTRODUCTION

BIAX is a small Colorado corporation founded in the early 1980s to design, build, and market high performance computer systems. By the 1990s, it had applied for and received United States and several foreign patents relating to inventions its employees had developed. BIAx brings this action to obtain redress for infringement of two of those patents by Nvidia Corporation and the Sony Defendants.

THE PARTIES

1. BIAx is a corporation organized and existing under the laws of Colorado with its principal place of business at 1942 Broadway, Suite 404, Boulder, Colorado 80302.

2. Nvidia Corporation (“Nvidia”) is a corporation organized and existing under the laws of Delaware with its principal place of business at 2701 San Tomas Expressway, Santa Clara, California 95050. Nvidia has one or more offices or facilities within this judicial district, including one located at 1425 Pearl Street, Boulder, Colorado 80302, and another located at 300 East Boardwalk Drive, Building 3B, Fort Collins, Colorado 80525.

3. Nvidia designs graphics systems and sells and offers to sell graphics systems throughout the United States, including in this judicial district.

4. Sony Computer Entertainment America, Inc., (“SCEA”) is a corporation organized and existing under the laws of Delaware with its principal place of business at 919 East Hillsdale Boulevard, Foster City, California. SCEA incorporates Nvidia graphics systems into products which it manufactures, sells, and offers to sell throughout the United States, including in this judicial district.

5. Sony Computer Entertainment, Inc. (“SCE”) is a foreign corporation organized and existing under the laws of Japan, with its principal place of business at 2-6-21 Minami-Aoyama, Minato-ku, Tokyo, 107-0062, Japan. SCE incorporates Nvidia graphics systems into products which it manufactures, sells, and offers to sell throughout the United States, including in this judicial district.

6. Sony Electronics, Inc. (“SEI”) is a corporation organized and existing under the laws of Delaware with its principal place of business at 165 Via Esprillo, San Diego, California 92127, and one or more offices or facilities within this judicial district, including one located at 4845 Pearl East Circle, Boulder, Colorado 80301. SEI incorporates Nvidia graphics systems into products which it manufactures, sells, and offers to sell throughout the United States, including in this judicial district.

7. Sony Corporation of America (“SCA”) is a corporation organized and existing under the laws of New York with its principal place of business at 550 Madison Avenue, New York, New York 10022. SCA incorporates Nvidia graphics systems into products which it manufactures, sells, and offers to sell throughout the United States, including in this judicial district.

8. Sony Corporation (“SC”) is a foreign corporation organized and existing under the laws of Japan with its principal place of business located at 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan. SC incorporates Nvidia graphics systems into products which it manufactures, sells, and offers to sell throughout the United States, including in this judicial district.

9. SCEA, SCE, SEI, SCA, and SC will be referred to collectively as “Sony” or the “Sony Defendants.”

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

11. This Court has subject matter jurisdiction under 28 U.S.C sections 1331 and 1338.

12. This Court has personal jurisdiction over Nvidia and each of the Sony Defendants.

13. Venue is proper in this judicial district under 28 U.S.C. sections 1391 and 1400(b).

FIRST CLAIM FOR RELIEF INFRINGEMENT OF U.S. PATENT NO. 5,517,628

14. The allegations set forth in the foregoing paragraphs 1 through 13 are incorporated into this First Claim For Relief.

15. On May 14, 1996, U.S. Patent No. 5,517,628 (the “’628 Patent”), entitled “Computer With Instructions That Use An Address Field To Select Among Multiple Condition Code Registers,” was duly and legally issued by the United States Patent and Trademark Office to inventors Gordon E. Morrison, Christopher B. Brooks, and Fredrick G. Gluck, and has been duly and legally assigned to BIAX. A copy of the ‘628 Patent is attached as Exhibit A.

16. Nvidia has infringed and continues to infringe one or more claims of the ‘628 Patent in this judicial district and elsewhere by making, using, selling, offering for sale, and/or importing into the United States products (“Nvidia Accused Products”) that infringe one or more claims of the ‘628 Patent including, but not limited to, claims 1, 9, 10, 11, 12, 13, 14, 16, 17, 25, 26, and 29.

17. Nvidia Accused Products include, but are not limited to, products which employ a plurality of condition code registers, including the RSX graphics system incorporated into the Playstation 3 manufactured and sold by the Sony defendants, the GeForce 7 series of graphics

systems, the GeForce 8 series of graphics systems, the GeForce 9 series of graphics systems, and the GeForce 10 series of graphics systems.

18. Nvidia has induced and continues to induce others to infringe one or more claims of the '628 Patent by, among other things, actively and knowingly aiding and abetting others to infringe, including, but not limited to, the Sony Defendants and others who have incorporated one or more NVIDIA Accused Products in their own products.

19. Nvidia has committed and continues to commit acts of contributory infringement of one or more of the claims of the '628 Patent in that Nvidia has sold or supplied products, including but not limited to Nvidia Accused Products, which have no substantial non-infringing uses, to its customers, including but not limited to the Sony Defendants and others who have incorporated one or more of such products into their products, whose use of such products constitutes direct infringement of one or more claims of the '628 Patent.

20. As a result of Nvidia's infringement, inducement of infringement, and contributory infringement of the '628 Patent, BIAX has suffered damages and will continue to suffer damages in the future.

21. Nvidia's infringement, inducement of infringement, and contributory infringement of the '628 Patent will continue into the future unless Nvidia's acts of patent infringement, inducement of infringement, and contributory infringement are enjoined by this Court.

22. Each of the Sony Defendants has infringed and continues to infringe one or more claims of the '628 Patent in this judicial district and elsewhere by making, using, selling, offering for sale, and/or importing into the United States products ("Sony Accused Products") that

infringe one or more claims of the '628 Patent including, but not limited to, claims 1, 9, 10, 11, 12, 13, 14, 16, 17, 25, 26, and 29.

23. Sony Accused Products include, but are not limited to, products which employ a plurality of condition code registers, including the Playstation 3 manufactured and sold by the Sony defendants which incorporates the RSX graphics system, Sony personal computers, including those which incorporate Nvidia Accused Products, and other products manufactured and sold by the Sony Defendants.

24. Sony has induced and continues to induce others to infringe one or more claims of the '628 Patent by, among other things, actively and knowingly aiding and abetting others to infringe, including, but not limited to, Nvidia and those who manufacture and sell video games for the Playstation 3.

25. Sony has committed and continues to commit acts of contributory infringement of one or more of the claims of the '628 Patent in that Sony has sold or supplied products, including but not limited to Sony Accused Products, which have no substantial non-infringing uses, to its customers, including but not limited to consumers whose use of such products constitutes direct infringement of one or more claims of the '628 Patent.

26. As a result of Sony's infringement, inducement of infringement, and contributory infringement of the '628 Patent, BIAX has suffered damages and will continue to suffer damages in the future.

27. Sony's infringement, inducement of infringement, and contributory infringement of the '628 Patent will continue into the future unless Sony's acts of patent infringement, inducement of infringement, and contributory infringement are enjoined by this Court.

28. Sony's acts of patent infringement, inducement of infringement, and contributory infringement were and continue to be willful and deliberate.

**SECOND CLAIM FOR RELIEF
INFRINGEMENT OF U.S. PATENT NO. 6,253,313**

29. The allegations set forth in the foregoing paragraphs 1 through 28 are incorporated into this Second Claim For Relief.

30. On June 26, 2001, U.S. Patent No. 6,253,313 (the "'313 Patent"), entitled "Parallel Processor System For Processing Natural Concurrencies And Method Therefor," was duly and legally issued by the United States Patent and Trademark Office to inventors Gordon Edward Morrison, Christopher Bancroft Brooks, and Fredrick George Gluck, and has been duly and legally assigned to BIAx. A copy of the '313 Patent is attached as Exhibit B.

31. Nvidia has infringed and continues to infringe one or more claims of the '313 Patent in this judicial district and elsewhere by making, using, selling, offering for sale, and/or importing into the United States Nvidia Accused Products that infringe one or more claims of the '313 Patent including, but not limited to, one or more of claims 3, 4, 5, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 24, and 25.

32. Nvidia has induced and continues to induce others to infringe one or more claims of the '313 Patent by, among other things, actively and knowingly aiding and abetting others to infringe, including, but not limited to, the Sony Defendants and others who have incorporated one or more of Nvidia Accused Products in their own products.

33. Nvidia has committed and continues to commit acts of contributory infringement of one or more of the claims of the '313 Patent in that Nvidia has sold or supplied products, including but not limited to Nvidia Accused Products, which have no substantial non-infringing

uses, to its customers, including but not limited to the Sony Defendants and others who have incorporated one or more of such products into their products, whose use of such products constitutes direct infringement of one or more claims of the '313 Patent.

34. As a result of Nvidia's infringement, inducement of infringement, and contributory infringement of the '313 Patent, BIAx has suffered damages and will continue to suffer damages in the future.

35. Nvidia's infringement, inducement of infringement, and contributory infringement of the '313 Patent will continue into the future unless Nvidia's acts of patent infringement, inducement of infringement, and contributory infringement are enjoined by this Court.

36. Each of the Sony Defendants has infringed and continues to infringe one or more claims of the '313 Patent in this judicial district and elsewhere by making, using, selling, offering for sale, and/or importing into the United States Sony Accused Products that infringe one or more claims of the '313 Patent including, but not limited to, one or more of claims 3, 4, 5, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 24, and 25.

37. Sony has induced and continues to induce others to infringe one or more claims of the '313 Patent by, among other things, actively and knowingly aiding and abetting others to infringe, including, but not limited to, Nvidia and those who manufacture and sell video games for the Playstation 3.

38. Sony has committed and continues to commit acts of contributory infringement of one or more of the claims of the '313 Patent in that Sony has sold or supplied products, including but not limited to Sony Accused Products, which have no substantial non-infringing uses, to its

customers, including but not limited to consumers whose use of such products constitutes direct infringement of one or more claims of the '313 Patent.

39. As a result of Sony's infringement, inducement of infringement, and contributory infringement of the '313 Patent, BIAx has suffered damages and will continue to suffer damages in the future.

40. Sony's infringement, inducement of infringement, and contributory infringement of the '313 Patent will continue into the future unless Sony's acts of patent infringement, inducement of infringement, and contributory infringement are enjoined by this Court.

41. Sony's acts of patent infringement, inducement of infringement, and contributory infringement were and continue to be willful and deliberate.

PRAYER FOR RELIEF

WHEREFORE, BIAx asks this Court to enter judgment against Nvidia and Sony and against their respective subsidiaries, affiliates, agents, servants, employees, licensees, and all persons acting or attempting to act in active concert or participation with them or acting on their behalf, granting the following relief:

A. An award of damages adequate to compensate BIAx for the infringement, inducement of infringement, and contributory infringement, together with pre- and post-judgment interest;

B. Increased damages pursuant to 35 U.S.C. section 284;

C. A finding that this case is exceptional and an award to BIAx of its attorneys fees, expenses and costs pursuant to 35 U.S.C. section 285;

D. A permanent injunction prohibiting further infringement, inducement of infringement, and contributory infringement of the '628 and the '313 Patents; and

E. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

BIAX demands a trial by jury.

Dated this 14th day of July, 2009.

s/ Steven J. Merker

Tucker K. Trautman

Steven J. Merker

Evan M. Rothstein

Robert M. Tuttle

DORSEY & WHITNEY LLP

370 17th Street, Suite 4700

Denver, CO 80202-5647

Telephone: 303.629.3400

Facsimile: 303.629.3450

E-mail: trautman.tucker@dorsey.com

E-mail: merker.steve@dorsey.com

E-mail: rothstein.evan@dorsey.com

E-mail: tuttle.rob@dorsey.com

Attorneys for Plaintiff BIAx Corporation

Address of Plaintiff:

1942 Broadway, Suite 404

Boulder, Colorado 80302

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on July 14, 2009, I caused the foregoing document, titled **AMENDED COMPLAINT FOR PATENT INFRINGEMENT**, to be electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

thomasch@ballardspahr.com
bernhardt@ballardspahr.com
Roger P. Thomasch
Jon Bernhardt
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1225 Seventeenth Street, Suite 2300
Denver, CO 80202-5596
Attorneys for Defendant NVIDIA Corporation

bfeatherstone@featherstonelaw.com
apetrie@featherstonelaw.com
Bruce A. Featherstone
Andrew J. Petrie
FEATHERSTONE PETRIE DESISTO LLP
600 17th Street, Suite 2400 South
Denver, CO 80202-5424
Attorneys for Sony Computer Entertainment America Inc.; Sony Computer Entertainment, Inc.; Sony Electronics Inc.; Sony Corporation of America; and Sony Corporation

and I hereby certify that on July 14, 2009, I caused the foregoing document to be served via e-mail on the ECF non-participants as listed below:

achackes@orrick.com
Alex V. Chachkes
ORRICK, HERRINGTON & SUTCLIFFE LLP
666 Fifth Avenue
New York, New York 10103-0001
Attorneys for NVIDIA Corporation

laura.hepburn@kirkland.com
Laura A. Hepburn
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Attorneys for Sony Computer Entertainment America Inc.; Sony Computer Entertainment, Inc.; Sony Electronics Inc.; Sony Corporation of America; and Sony Corporation

s/ Steven J. Merker
Steven J. Merker
DORSEY & WHITNEY LLP
Attorneys for Plaintiff
370 17th Street, Suite 4700
Denver, CO 80202-5647
Telephone: 303.629.3400
Facsimile: 303.629.3450
E-mail: merker.steve@dorsey.com