

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TEXAS MP3 TECHNOLOGIES, LTD.,	§	
	§	
Plaintiff,	§	CIVIL ACTION
	§	
vs.	§	2:07-cv-00052-TJW
	§	
SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., SANDISK CORPORATION, and APPLE COMPUTER, INC.	§	
	§	JURY TRIAL
	§	
Defendants.	§	

**PLAINTIFF’S AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND JURY DEMAND**

Plaintiff, Texas MP3 Technologies, Ltd. (“Texas MP3”), files this Amended Complaint for patent infringement against Defendants, Samsung Electronics Co., Ltd. (“Samsung Electronics”), Samsung Electronics America, Inc. (“Samsung Electronics America”), SanDisk Corporation (“SanDisk”), and Apple Computer, Inc. (“Apple”) (collectively, “Defendants”), and alleges as follows:

I. PARTIES

1. Texas MP3 is a limited partnership, organized under the laws of the State of Texas. Texas MP3 maintains its principal place of business at 104 E. Houston Street, Suite 135, Marshall, Texas 75670.

2. Upon information and belief, Samsung Electronics is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the country of Korea with its principal place of business at Samsung Main Building, 250, Taepyeongno 2-ga, Jung-gu, Seoul 100-742 Korea. Samsung Electronics manufactures portable digital audio players suitable for reproducing MPEG-encoded data, imports such products into the United States and sells and/or offers for sale its portable digital audio players throughout the United States, including within this District.

3. Upon information and belief, Samsung Electronics America is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 105 Challenger Road, Ridgefield Park, NJ 07660. Samsung Electronics America manufactures portable digital audio players suitable for reproducing MPEG-encoded data, imports such products into the United States and sells and/or offers for sale its portable digital audio players throughout the United States, including within this District.

4. Upon information and belief, SanDisk is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 601 McCarthy Boulevard, Milpitas, CA 95035. SanDisk manufactures portable digital audio players suitable for reproducing MPEG-encoded data, imports such products into the United States and sells and/or offers for sale its portable digital audio players throughout the United States, including within this District.

5. Upon information and belief, Apple is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of California, with its principal place of business at 1 Infinite Loop, Cupertino, CA 95014. Apple manufactures

portable digital audio players suitable for reproducing MPEG-encoded data, imports such products into the United States and sells and/or offers for sale its portable digital audio players throughout the United States, including within this District.

II. JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35, United States Code § 1, *et seq.* This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

7. Personal jurisdiction exists generally over the Defendants because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within the Eastern District of Texas. Each Defendant, directly or through subsidiaries or intermediaries, offers for sale, sells, imports, advertises, and markets products and services that infringe the patent-in-suit as described more particularly below. Personal jurisdiction also exists specifically over the Defendants because of their conduct in making, using, selling, offering to sell, and/or importing infringing products within the State of Texas, and more particularly, within the Eastern District of Texas.

8. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b)–(c) and 1400(b).

III. PATENT INFRINGEMENT

9. Texas MP3 repeats and re-alleges the allegations in Paragraphs 1–8 as though fully set forth in their entirety.

10. United States Patent No. 7,065,417 (“the ’417 Patent”) entitled “MPEG Portable Sound Reproducing System and A Reproducing Method Thereof,” was duly and legally issued

by the United States Patent and Trademark Office on June 20, 2006 after full and fair examination. On April 5, 2006, the United States Patent and Trademark Office (“PTO”) issued a notice of allowance, on which the applicant’s status was listed as small entity. On April 26, 2006, applicant forwarded to the PTO the Fees Transmittal form, indicating in Box 5(b) that “Applicant is no longer claiming SMALL ENTITY status[,]” and authorized the PTO to debit the required fees from its attorney’s deposit account. The PTO failed to note applicant was no longer claiming small entity status and, instead, on May 5, 2006, the PTO deducted the issue fee for a small entity. On June 25, 2007, pursuant to petition from Texas MP3, the PTO corrected its mistake by deducting the remaining amount of the issue fee due for a large entity. Texas MP3 is the assignee of all rights, title, and interest in and to the ’417 Patent, and possesses all rights of recovery under the ’417 Patent. A copy of the ’417 Patent is attached as exhibit A.

11. On information and belief, Samsung Electronics and Samsung Electronics America, each by making, using, selling, offering to sell, and/or importing in or into the United States, without authority, its portable audio products suitable for reproducing MPEG-encoded data, including, but not limited to, models YP-Z5AB, YP-Z5AP, YP-Z5AS, YP-Z5QB, YP-Z5QP, YP-Z5ZB, YP-K5JAB, YP-K5JQB, YP-K5JZB, YP-U2JZW, YP-U2JXB, YP-U2JQB, YP-T9JQU, YP-T9JAB, YP-T9JQB, SGH-i607, SGH-u740, SGH-u540, and SPH-a303, has infringed, contributorily infringed, and/or induced infringement of, and are continuing to infringe, contributorily infringe, and/or induce infringement of, one or more claims of the ’417 Patent under one or more of 35 U.S.C. § 271(a), (b), and (c).

12. On information and belief, SanDisk, by making, using, selling, offering to sell, and/or importing in or into the United States, without authority, its Sansa series of portable audio devices suitable for reproducing MPEG-encoded data, including, but not limited to, the Sansa

models e130, e140, m260, m250, m240, m230, c140, c150, c250, c240, e280R, e270R, e260R, and e250R, has infringed, contributorily infringed, and/or induced infringement of, and is continuing to infringe, contributorily infringe, and/or induce infringement of, one or more claims of the '417 Patent under one or more of 35 U.S.C. § 271(a), (b), and (c).

13. On information and belief, Apple, by making, using, selling, offering to sell, and/or importing in or into the United States, without authority, its portable digital audio player products suitable for reproducing MPEG-encoded data, including, but not limited to, the Apple iPod, the Apple iPod nano, the Apple iPod with color display, the Apple iPod photo, and the Apple iPhone, has infringed, contributorily infringed, and/or induced infringement of, and is continuing to infringe, contributorily infringe, and/or induce infringement of, one or more claims of the '417 Patent under one or more of 35 U.S.C. § 271(a), (b), and (c).

14. Each Defendant is also infringing one or more claims of the '417 Patent under 35 U.S.C. § 271(f) by supplying or causing to be supplied in or from the United States all or a substantial portion of the components of the patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside the United States in a manner that would infringe the '417 Patent if such combination occurred within the United States.

15. Each Defendant has knowledge of the '417 Patent, and has not ceased its infringing activities. Each Defendant's infringement of the '417 Patent has been and continues to be willful and deliberate.

16. As a direct and proximate consequence of the acts and practices of each Defendant in infringing one or more claims of the '417 Patent, Texas MP3 has been, is being,

and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights.

17. As a direct and proximate consequence of the acts and practices of each Defendant in infringing one or more claims of the '417 Patent, Texas MP3 has suffered, is suffering, and will continue to suffer injury and damages, for which Texas MP3 is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

18. By reason of the acts and practices of each Defendant, each Defendant has also caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Texas MP3 for which there is no adequate remedy at law, and for which Texas MP3 is entitled to injunctive relief under 35 U.S.C. § 283.

IV. PRAYER FOR RELIEF

Texas MP3 prays for the following relief:

A. A judgment that each Defendant has infringed, contributorily infringed, and/or induced infringement of the '417 Patent;

B. A judgment and order preliminarily and permanently enjoining each Defendant, its employees and agents, and any other person(s) in active concert or participation with it from infringing, contributorily infringing, and/or inducing infringement of the '417 Patent;

C. A judgment and order requiring each Defendant to pay Texas MP3 damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final Judgment with an accounting as needed;

D. An award of all costs of this action, including attorneys' fees and interest; and

E. Such other and further relief as the Court deems just and equitable.

V. DEMAND FOR JURY TRIAL

Texas MP3 hereby demands that all issues be determined by jury.

DATED: July 31, 2007

Respectfully submitted,

McKool Smith P.C.

/s/ Mike McKool

Mike McKool, Jr.

Lead Attorney

Texas State Bar No. 13732100

mmckool@mckoolsmith.com

Scott R. Jacobs

Texas State Bar No. 10521550

sjacobs@mckoolsmith.com

McKool Smith P.C.

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Telephone: (214) 978-4000

Telecopier: (214) 978-4044

Sam F. Baxter

Texas State Bar No. 01938000

sbaxter@mckoolsmith.com

McKool Smith P.C.

505 E. Travis, Suite 105

P.O. Box O

Marshall, Texas 75670

Telephone: (903) 927-2111

Telecopier: (903) 927-2622

T. Gordon White

Texas State Bar No. 21333000

gwhite@mckoolsmith.com

Gretchen K. Milne

Texas State Bar No. 24055979

gmilne@mckoolsmith.com

McKool Smith P.C.

300 West Sixth Street, Suite 1700

Austin, Texas 78701

Telephone: (512) 692-8700

Telecopier: (512) 692-8744

Robert M. Parker
Texas State Bar No. 15498000
rmparker@pbatyler.com
Parker, Bunt & Ainsworth, P.C.
100 E. Ferguson, Suite 1114
Tyler, Texas 75702
Telephone: (903) 531-3535
Telecopier: (903) 533-9687

**ATTORNEYS FOR PLAINTIFF
TEXAS MP3 TECHNOLOGIES, LTD.**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service on this the 31st day of July, 2007. Local Rule CV-5(a)(3)(A).

/s/ Gretchen K. Milne
Gretchen K. Milne