



electronic ignition, fuel injection, and on-board computers called “engine control modules” or “ECMs.” Automakers set these engine electronics for “normal” driving conditions. Car owners could no longer efficiently adjust their engines for other driving conditions, such as towing, high performance, high economy, valet (limited speed), and security (non-ignition).

2. John Adrain is a car enthusiast. By 1990, he began inventing electronic devices and software that allowed car owners to choose the optimal electronic engine parameters for their varying driving conditions. Adrain patented his inventions. Since then, defendants have made and sold millions of dollars worth of products that infringe Adrain’s patent-in-suit.

### **PARTIES**

3. Adrain is an individual residing in San Francisco, California.

4. SuperChips, Inc. is a corporation organized and existing under the laws of the state of Florida. Its authorized officers, principal place of business and home office are at 2609 S. Sanford Ave., Sanford, Florida 32773 ([www.superchips.com](http://www.superchips.com)) and its registered agent is Michael P. Short, 14412 South Grant St., Longwood, Florida 32750. SuperChips’s infringing products include its Microtuner (Max and Supermax) programmer, and may supply others with private label infringing products.

5. DiabloSport, LLC is a limited liability corporation organized and existing under the laws of the state of Florida. Its authorized officers, principal place of business and home office are at 3500 N.W. Boca Raton Blvd., #501, Boca Raton, Florida 33431-5852 ([www.diablosport.com](http://www.diablosport.com)) and its registered agent is Kem Smith, 3500 N.W. Boca Raton Blvd., #504, Boca Raton, Florida 33431. DiabloSport’s infringing products include its Predator programmer, and may supply others with private label infringing products.

6. Edge Products Oldco, Inc. d/b/a Edge Products is a corporation organized and existing under the laws of the state of Utah. Its authorized officers, principal place of business

and home office are at 5875 South Adams Ave., Suite 100, Ogden, Utah 84405 ([www.edgeproductsinc.com](http://www.edgeproductsinc.com)) and its registered agent is Blain H. Johnson, 175 South West Temple, Suite 700, Salt Lake City, Utah 84101. Edge's infringing products include its Evolution programmer.

7. Street & Performance Electronics, Inc. is a corporation organized and existing under the laws of the state of Arkansas. Its authorized officers, principal place of business and home office are at 304 Smokey Lane, North Little Rock, AR 72117 ([www.streetandperformanceelectronics.com](http://www.streetandperformanceelectronics.com)) and its registered agent is John Boveia, 8819 Arch Pike, Little Rock, Arkansas 72206. Street & Performance Electronics's infringing products include its Proflash programmer, and may supply others with private label infringing products.

8. Crane Technologies Group, Inc. d/b/a Crane Cams is a corporation organized and existing under the laws of the state of Florida. Its authorized officers, principal place of business and home office are at 530 Fentress Blvd., Daytona Beach, Florida 32114 ([www.cranecams.com](http://www.cranecams.com)) and its registered agent is Palmetto Charter Services, Inc., 150 Magnolia Ave., Daytona Beach, Florida 32114. Crane's infringing products include its Power Max Performance Tuner and Crane Power Tuner programmers.

9. Bully Dog Technologies, LLC is a corporation organized and existing under the laws of the state of Idaho. Its authorized officers, principal place of business and home office are at 2854 W. 2200 South, Aberdeen, Idaho 83210 ([www.bullydog.com](http://www.bullydog.com)) and its registered agent is Reed W. Larsen, 151 North Third Ave., Suite 210, Pocatello, Idaho 83201. Bully Dog's infringing products include its Power Pup programmer, and may supply others with private label infringing products.

10. BD Diesel Performance d/b/a BD Power is a Canadian corporation. Its authorized officers, principal place of business and home office at 33733 King Road, Unit A10, Abbotsford, BC, Canada V2S 7M9 ([www.bd-power.com](http://www.bd-power.com)) and its US business address is at 446 Harrison Street, No. 88, Sumas Washington 98295. BD Power's infringing products include its Intimidator programmer.

11. Cobb Tuning, LLC is a corporation organized and existing under the laws of the state of Utah. Its authorized officers, principal place of business and home office are at 4673 S. Cherry Street, Murray, Utah 84123 ([www.cobbtuning.com](http://www.cobbtuning.com)) and its registered agent is Roland Cobb, III, 4673 S. Cherry Street, Murray, Utah 84123. Cobb's infringing products include its AccessPort programmer.

12. Competition Cams, Inc. d/b/a Comp Performance Group is a corporation organized and existing under the laws of the state of Tennessee. Its authorized officers, principal place of business and home office are at 3406 Democrat Road, Memphis, Tennessee 38118, ([www.compcams.com](http://www.compcams.com)) and its registered agent is Ronald L. Coleman, 3406 Democrat Road, D Memphis, Tennessee 38118. Competition Cams recently bought the business of infringing products from Street & Performance Electronics, Inc., including its business relating to its Proflash programmer.

13. WE Technologies, Inc. is a corporation organized and existing under the laws of the state of Idaho. Its authorized officers, principal place of business and home office are at 660 West Headwater Drive, Eagle, Idaho 83616 and its registered agent is Reed Larsen, 151 North 3<sup>rd</sup> Avenue, Pocatello, Idaho 83201. We Technologies supplies others with private label infringing programmers.

14. SuperChips Custom Tuning, LLC d/b/a SCT is a limited liability corporation organized and existing under the laws of the state of Florida. Its authorized officers, principal place of business and home office are at 2609 S. Sanford Ave., Sanford, Florida 32773 ([www.sctflash.com](http://www.sctflash.com)) and its registered agent is Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301-2525. SuperChips Custom Tuning, LLC's infringing products include its Extreme programmer, and may supply others with private label infringing products.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this claim arises under the United States patent laws (Title 35 of the United States Code).

16. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400. Defendants manufacturer or sell their respective infringing products in or into the United States with the full knowledge and expectation that they would be sold and used in Texas, including in this District. Texas is a major market for the infringing products. In addition, defendant BD Power is an alien and may be sued in any judicial district.

#### **FIRST CLAIM FOR RELIEF PATENT INFRINGEMENT**

17. Adrain is the named inventor and the owner by assignment of United States Patent No. 5,523,948 ("the '948 patent"), entitled "Apparatus and Method for Modifying Control of an Originally Manufactured Engine Control Module." The '948 patent was duly and legally issued by the United States Patent and Trademark Office on June 4, 1996, and is presently enforceable.

18. Pursuant to 35 U.S.C. § 282, the '948 patent is presumed valid.

19. Defendants' programmers or flash tuners, including SuperChip's Microtuner (Max and Supermax), DiabloSport's Predator, Edge's Evolution, Street & Performance Electronic's Proflash, Crane's Power Max Performance Tuner and Crane Power Tuner, Bully Dog's Power Pup, BD Power's Intimidator, Cobb Tuning's AccessPort, Competition Cam's Proflash, WE Technologies's private label programmers, and Superchip Customs Tuning's Extreme, infringe the '948 patent.

20. Defendants have been, and are now, directly infringing the '948 patent by making, using, selling and offering to sell their respective infringing products, in violation of 35 U.S.C. § 271. The offering for sale or promotion of the infringing products has occurred within the Southern District of Texas and elsewhere.

21. Defendants have been, and are now, committing acts of inducement of infringement of '948 patent by inducing others to make, use, sell or offer their respective infringing products, in violation of 35 U.S.C. § 271. The offering for sale or promotion of the infringing products has occurred within the Southern District of Texas and elsewhere.

22. Defendants have been, and are now, committing acts of contributory infringement by making, using, selling and offering for sale their respective infringing products for use in systems that infringe the '948 patent, in violation of 35 U.S.C. § 271. The offering for sale or promotion of infringing products has occurred within the Southern District of Texas and elsewhere.

23. All of the acts of defendants have been without right or license from Adrain.

24. Defendants' infringement of the patent-in-suit has been willful and deliberate.

25. Defendants literally infringe the claims of the patent-in-suit, or alternatively under the doctrine of equivalents.

26. Defendants' infringement will continue unless enjoined by this Court.

27. As a result of defendants' infringing activities, Adrain has been and continues to be damaged in an amount that will be proven at trial, and Adrain has suffered irreparable injury.

**REQUESTED RELIEF**

WHEREFORE, Adrain asks that this Court enter judgment in his favor against defendants granting the following relief:

A. That defendants, their agents, servants, employees, and other persons in active concert or participation with them, be temporarily enjoined: from directly or indirectly making or causing to be made, manufacturing, selling or causing to be sold, using, or in any way distributing any apparatus or device which embodies the inventions covered by the claims of the '948 patent, or which is designed, intended, or adapted for use in any apparatus or device which is covered by the claims of the '948 patent; from in any way directly or indirectly infringing upon or violating Adrain's rights in the '948 patent; and from contributing to, or inducing such infringement by others.

B. That this Court enter judgment that the '948 patent is valid and has been infringed by defendants.

C. That defendants, their agents, servants, employees, and other persons in active concert or participation with them, be permanently enjoined: from directly or indirectly making or causing to be made, manufacturing, selling or causing to be sold, using, or in any way distributing any apparatus or device which embodies the inventions covered by the claims of the '948 patent, or which is designed, intended, or adapted for use in any apparatus or device which is covered by the claims of the '948 patent; from in any way directly or indirectly infringing upon or violating Adrain's rights in the '948 patent; and from contributing to, or inducing such infringement by others.

D. That an accounting be made to determine damages for all forms of defendants' infringement.

E. That Adrain recover damages from defendants resulting from their patent infringement and that they account to Adrain by reason of such infringement.

F. That the damages so found be trebled for willful infringement.

G. That Adrain recover his interest and costs pursuant to 35 U.S.C. § 284.

H. That an assessment of prejudgment and postjudgment interest on the damages be determined.

I. That a finding be made that this is an exceptional case and that plaintiff be awarded his costs including his reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

J. That plaintiff have such other relief as the Court deems just and proper.

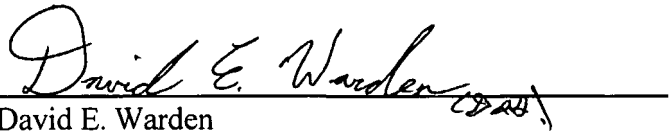
**JURY DEMAND**

Adrain demands a jury trial on all issues so triable.



Dated: November 12, 2004

Respectfully submitted,



David E. Warden

*Attorney-in-charge*

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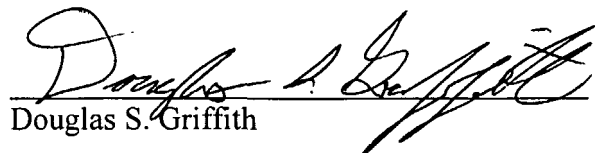
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*Attorneys for the Plaintiff, John B. Adrain*

### **Certificate of Service**

I certify that there are no other known counsel of record that have appeared in this lawsuit for which service is required at this time.



Douglas S. Griffith