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11 Attorneys for Plaintiffs  
TOSHIBA AMERICA, INC.; TOSHIBA CORPORATION;  
12 TOSHIBA AMERICA INFORMATION SYSTEMS, INC.;  
TOSHIBA AMERICA CONSUMER PRODUCTS, L.L.C.; and  
13 TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

18 TOSHIBA AMERICA, INC.; TOSHIBA  
CORPORATION; TOSHIBA AMERICA  
19 INFORMATION SYSTEMS, INC.;  
TOSHIBA AMERICA CONSUMER  
20 PRODUCTS, L.L.C.; and TOSHIBA  
AMERICA ELECTRONIC COMPONENTS,  
21 INC.,

22 Plaintiffs,

23 v.

24 PATRIOT SCIENTIFIC CORPORATION,  
CHARLES H. MOORE, and  
25 TECHNOLOGY PROPERTIES LTD.

26 Defendants.  
27  
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Case No. C-05-04838 MHP

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY JUDGMENT  
DEMAND FOR JURY TRIAL**

1 Plaintiffs Toshiba America, Inc., Toshiba Corporation, Toshiba America  
2 Information Systems, Inc., Toshiba America Consumer Products, L.L.C. and Toshiba America  
3 Electronic Components, Inc. (collectively, the “Toshiba Plaintiffs”), by and through their  
4 attorneys, allege as follows:

5 1. This is a civil action arising under the Patent Laws of the United States, 35  
6 U.S.C. §§101, et seq., seeking a declaratory judgment that no valid and enforceable claim of  
7 United States Patent Numbers 5,809,336 (‘336 patent); 5,784,584 (‘584 patent); and 6,598,148  
8 (‘148 patent) (collectively, patents-in-suit) is infringed by the Toshiba Plaintiffs.

9 **PARTIES**

10 2. Plaintiff Toshiba America, Inc. is a Delaware corporation with its principal  
11 place of business in New York, New York.

12 3. Plaintiff Toshiba Corporation is a Japanese corporation with its principal  
13 place of business in Tokyo, Japan.

14 4. Plaintiff Toshiba America Information Systems, Inc. is a California  
15 corporation with its principal place of business in Irvine, California.

16 5. Plaintiff Toshiba America Consumer Products, L.L.C., is a New Jersey  
17 limited liability corporation with its principal place of business in Wayne, New Jersey.

18 6. Plaintiff Toshiba America Electronic Components, Inc. is a California  
19 corporation with its principal place of business in Irvine, California.

20 7. Defendant Patriot Scientific Corporation (Patriot) is incorporated under the  
21 laws of the State of Delaware, maintains its principal place of business in San Diego, California,  
22 and has an ownership interest in the patents-in-suit.

23 8. Defendant Charles Moore is an individual who, on information and belief,  
24 resides at 40 Cedar Lane, Sierra City, California, is a named inventor of the patents-in-suit, and  
25 has asserted a claim of at least partial ownership of at least the ‘336 patent.

26 9. Defendant Technology Properties Ltd. (“TPL”) is, on information and  
27 belief, a California corporation with its principal place of business in San Jose, California.  
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1 **JURISDICTION AND VENUE**

2 10. The Toshiba Plaintiffs file this complaint against defendants pursuant to  
3 the patent laws of the United States, Title 35 of the United States Code, with a specific remedy  
4 sought based upon the laws authorizing actions for declaratory judgment in the federal courts of  
5 the United States, 28 U.S.C. §§ 2201 and 2202.

6 11. This Court has subject matter jurisdiction over this action, which arises  
7 under the patent laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201.

8 12. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c) and  
9 1400(b) because, on information and belief, Patriot and TPL are corporations subject to personal  
10 jurisdiction in this District and because TPL maintains a business office in this District from  
11 which it regularly and systematically conducts its business.

12 **INTRADISTRICT ASSIGNMENT**

13 13. This action is properly filed in the Oakland Division of the Northern  
14 District of California because defendants reside in, or do business in, this district and defendant  
15 Patriot previously filed a complaint in this district against Toshiba America, Inc. for infringement  
16 of the '336 patent.

17 **EXISTENCE OF AN ACTUAL CONTROVERSY**

18 14. There is an actual controversy within the jurisdiction of this Court under 28  
19 U.S.C. §§ 2201 and 2202.

20 15. On December 23, 2003, Patriot filed a complaint in this district against  
21 Fujitsu Microelectronics America, Inc., alleging infringement of the '336 patent (*Patriot*  
22 *Scientific Corp. v. Fujitsu Microelectronics, Inc.*, Case No. 03-5787 (SBA)) ("California Case").

23 16. On December 23, 2003, Patriot filed a complaint in the United States  
24 District Court for the Southern District of New York against Toshiba America, Inc., alleging  
25 infringement of the '336 patent (*Patriot Scientific Corp. v. Toshiba America, Inc.*, Case No.  
26 1:03-cv-10180-DAB) ("New York Case").

27 17. On March 11, 2004, Patriot amended its complaint in the California Case  
28 to add Toshiba America, Inc. as a defendant and accuse nine of its products of infringing the '336

1 patent.

2 18. On October 14, 2004, the New York Case was dismissed pursuant to Fed.  
3 R. Civ. P. 41(a)(1) and by stipulation of the parties.

4 19. On June 29, 2005, TPL represented in a joint case management conference  
5 statement in the California Case that it had been “placed in charge of the infringement litigation”  
6 and that “TPL will file a supplemental and/or amended pleading substituting itself for Patriot.”

7 20. On October 24, 2005, Judge Armstrong entered an order in the California  
8 Case setting a scheduling conference for December 1, 2005.

9 21. On October 24, 2005, Patriot voluntarily dismissed all of its claims in the  
10 California Case.

11 22. On October 24, 2005, TPL filed suit in Marshall, Texas against the Toshiba  
12 Plaintiffs and others, *Technology Properties Limited, Inc. v. Fujitsu Limited et. al.*,  
13 2:05-cv-00494-TJW (the “Texas Case”). In the Texas Case, TPL asserted infringement by all  
14 defendants of the ‘336, ‘584, and ‘148 patents (*i.e.*, the patents-in-suit).

15 23. As of the date of this filing, the undersigned counsel are not aware that any  
16 of the Toshiba Plaintiffs have been served with the complaint in the Texas Case.

17 **FIRST CLAIM**

18 **DECLARATORY JUDGMENTS REGARDING THE ‘336 PATENT**

19 24. The Toshiba Plaintiffs hereby restate and reallege the allegations set forth  
20 in paragraphs 1 through 23 and incorporate them by reference.

21 25. No valid and enforceable claim of the ‘336 patent is infringed by the  
22 Toshiba Plaintiffs.

23 26. As to the Toshiba Plaintiffs, any claim for infringement of the ‘336 patent  
24 is barred under Fed. R. Civ. P. 41(a)(1) and the doctrine of res judicata, on account of Patriot’s  
25 having twice dismissed against Toshiba America, Inc., a claim for infringement of that patent.

26 **SECOND CLAIM**

27 **DECLARATORY JUDGMENT REGARDING THE ‘584 PATENT**

28 27. The Toshiba Plaintiffs hereby restate and reallege the allegations set forth

1 in paragraphs 1 through 23 and incorporate them by reference.

2 28. No valid and enforceable claim of the '584 patent is infringed by the  
3 Toshiba Plaintiffs.

4 **THIRD CLAIM**

5 **DECLARATORY JUDGMENT REGARDING THE '148 PATENT**

6 29. The Toshiba Plaintiffs hereby restate and reallege the allegations set forth  
7 in paragraphs 1 through 23 and incorporate them by reference.

8 30. No valid and enforceable claim of the '148 patent is infringed by the  
9 Toshiba Plaintiffs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the Toshiba Plaintiffs prays for judgment as follows:

12 1. Declaring that no valid and enforceable claim of the patents-in-suit is  
13 infringed by the Toshiba Plaintiffs;

14 2. Declaring the '336 patent unenforceable against the Toshiba Plaintiffs  
15 under the "double dismissal" bar of Fed. R. Civ. P. 41(a)(1);

16 3. Declaring that defendants and each of their officers, employees, agents,  
17 alter egos, attorneys, and any persons in active concert or participation with them be restrained  
18 and enjoined from further prosecuting or instituting any action against the Toshiba Plaintiffs  
19 claiming that the patents-in-suit are valid, enforceable, or infringed, or from representing that the  
20 products or services of the Toshiba Plaintiffs infringe the patents-in-suit;

21 4. A judgment declaring this case exceptional under 35 U.S.C. § 285 and  
22 awarding the Toshiba Plaintiffs their attorneys' fees and costs in connection with this case;

23 5. Awarding the Toshiba Plaintiffs such other and further relief as the Court  
24 deems just and proper.

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**DEMAND FOR JURY TRIAL**

The Toshiba Plaintiffs demand trial by jury for all claims triable by jury pursuant to Fed. R. Civ. P. 38 and Civil L.R. 3-6(a).

Dated: December 7, 2005

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\_\_\_\_\_/s/\_\_\_\_\_  
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