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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 O2 MICRO INTERNATIONAL LIMITED, a)
Cayman Islands corporation,)

12 Plaintiff,)

13 vs.)

14 MONOLITHIC POWER SYSTEMS, INC., a)
15 California corporation; ASUSTEK COMPUTER,)
INC., a Taiwanese corporation; MICHAEL)
16 HSING, an individual; COMPAL)
ELECTRONICS, INC., a Taiwanese corporation;)
17 COMPAL INFORMATION (KUNSHAN) CO.,)
LTD., a Chinese corporation; COMPAL)
18 ELECTRONICS TECHNOLOGY (KUNSHAN))
CO., LTD., a Chinese corporation; ASUSTEK)
19 COMPUTER (SUZHOU) CO., LTD., a Chinese)
corporation; ADVANCED SEMICONDUCTOR)
20 MANUFACTURING CORPORATION)
LIMITED a/k/a ADVANCED)
21 SEMICONDUCTOR MANUFACTURING)
COPORATION OF SHANGHAI, a Chinese)
22 corporation;)

23 Defendants.)

24)
25 AND RELATED COUNTERCLAIMS, CROSS-)
CLAIMS AND THIRD PARTY CLAIMS.)
26)

Case No. C 06-02929 CW

**[PROPOSED] THIRD AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT AND UNFAIR
COMPETITION; DEMAND FOR JURY
TRIAL**

1 Plaintiff, O2 Micro International Limited (“O2 Micro”), for its Third Amended Complaint
2 against Defendants, Monolithic Power Systems, Inc. (“MPS”), Compal Electronics, Inc. (“Compal”),
3 Compal Information (Kunshan) Co., Ltd. (“Compal Kunshan”), Compal Electronics Technology
4 (Kunshan) Co., Ltd. (“Compal Technology Kunshan”), Asustek Computer Inc. (“Asus”), Asustek
5 Computer (Suzhou) Co., Ltd. (“Asus Computer Suzhou”), Asustech (Suzhou) Co., Ltd. (“Asus
6 Suzhou”), Advanced Semiconductor Manufacturing Corporation Limited a/k/a Advanced
7 Semiconductor Manufacturing Corporation of Shanghai (“ASMC”) and Michael Hsing (“Hsing”)
8 alleges:

9 PARTIES

10 1. Plaintiff, O2 Micro, is a corporation duly organized and existing under the laws of the
11 Cayman Islands, having a principal place of business at Grand Pavilion Commercial Centre, West Bay
12 Road, P.O. Box 32331 SMB, George Town, Grand Cayman, Cayman Islands.

13 2. Defendant, MPS, is a corporation duly organized and existing under the laws of
14 Delaware, having a usual place of business at 983 University Avenue, Building A, Los Gatos,
15 California. Defendant Compal is a Taiwanese corporation, having a principal place of business in
16 Taipei, Taiwan. Defendant Compal Kunshan is a Chinese corporation, having a principal place of
17 business in Kunshan, China. Defendant Compal Technology Kunshan is a Chinese corporation,
18 having a principal place of business in Kunshan, China. Defendant Asus is a Taiwanese corporation,
19 having a principal place of business in Taipei, Taiwan. Defendant Asus Computer Suzhou is a Chinese
20 corporation, having a principal place of business in Suzhou, China. Defendant Asus Suzhou is a
21 Chinese corporation, having a principal place of business in Suzhou, China. Defendant ASMC is a
22 Chinese corporation, having a principal place of business in Shanghai, China. Defendant Hsing is an
23 individual residing in the State of California (hereinafter collectively referred to as “Defendants”).

24 JURISDICTION

25 3. This is an action arising under the patent laws of the United States. Accordingly, this
26 Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has
27 original and supplemental jurisdiction over O2 Micro’s unfair competition claim pursuant to 28 U.S.C.
28 §§ 1338(b) and 1367(a).

1 4. This Court has personal jurisdiction over Defendants in that each has established
2 minimum contacts with the forum. Defendants, and each of them, manufacture, or caused to be
3 manufactured and/or assemble electronic products that are and have been used, offered for sale, sold,
4 and purchased in California, including in this Judicial District. Therefore, the exercise of jurisdiction
5 over said Defendants would not offend traditional notions of fair play and substantial justice.

6 **VENUE**

7 5. Defendants do business in this District, including providing or causing to be provided
8 electronic products that are used, offered for sale, sold, and have been purchased in California,
9 including in this District. Venue is therefore proper in this District pursuant to 28 U.S.C. §§ 1391(b),
10 (c), and (d) and 1400(b).

11 **INTRA-DISTRICT ASSIGNMENT**

12 6. Pursuant to Civil Local Rule 3-2(c), this action falls under one of the excepted
13 categories and therefore would have been subject to assignment on a district-wide basis had it been
14 filed in this District originally. It has been assigned to the Oakland Division, however, based on its
15 relation to Case No. C 04-2000 CW (EDL), also pending in that Division.

16 **FACTUAL ALLEGATIONS**

17 7. United States Patent No. 6,804,129 (“the ‘129 patent”), entitled *High-Efficiency*
18 *Adaptive DC/AC Converter*, was duly and lawfully issued October 12, 2004. O2 Micro is the current
19 owner of all rights, title, and interest in the ‘129 patent. A true and correct copy of the ‘129 patent is
20 attached hereto as Exhibit A.

21 8. United States Patent No. 6,396,722 (“the ‘722 patent”), entitled *High-Efficiency*
22 *Adaptive DC/AC Converter*, was duly and lawfully issued May 28, 2002. O2 Micro is the current
23 owner of all rights, title, and interest in the ‘722 patent. A true and correct copy of the ‘722 patent is
24 attached hereto as Exhibit B.

25 9. United States Patent No. 6,259,615 (“the ‘615 patent”), entitled *High-Efficiency*
26 *Adaptive DC/AC Converter*, was duly and lawfully issued July 10, 2001. O2 Micro is the current
27 owner of all rights, title, and interest in the ‘615 patent. A true and correct copy of the ‘615 patent is
28 attached hereto as Exhibit C.

1 10. O2 Micro is and has been engaged in the business of designing, manufacturing, and
2 selling hardware, including integrated circuits that efficiently convert direct current (“DC”) voltage to
3 alternating current (“AC”) voltage, which is and can be used to power an electronic device such as, for
4 example, a cold cathode fluorescent lamp in a liquid crystal display.

5 11. Defendants and each of them are also engaged in the business of designing,
6 manufacturing, and selling computer hardware, including integrated circuits that convert DC voltage to
7 AC voltage, such as DC-to-AC inverter controller circuits.

8 **FIRST COUNT**

9 **(Infringement of the ‘129 patent by all Defendants)**

10 12. O2 Micro incorporates by reference the allegations set forth in Paragraphs 1-11 of this
11 Complaint as though fully set forth herein.

12 13. Defendants and each of them, by designing, manufacturing, and/or selling computer
13 hardware, including DC-to-AC inverter controller circuits, liquid crystal displays, and notebook
14 computers which embody, or when used, practice one or more claims of the ‘129 patent, without
15 license or permission from O2 Micro, has directly infringed, induced infringement and/or contributed
16 to the infringement of the ‘129 patent. Accordingly, Defendants and each of them are liable for
17 infringement of the ‘129 patent pursuant to 35 U.S.C. § 271.

18 14. Defendants will continue to directly infringe, induce infringement and/or contribute to
19 the infringement of the ‘129 patent, continuing to damage O2 Micro’s business and causing irreparable
20 harm unless enjoined by this Court.

21 15. Defendants’ acts of infringement have caused damage to O2 Micro and O2 Micro is
22 entitled to recover from Defendants and each of them the damages sustained by O2 Micro as a result of
23 Defendants’ wrongful acts in an amount subject to proof at trial.

24 **SECOND COUNT**

25 **(Infringement of the ‘722 patent by Compal, Compal Kunshan, Compal Technology Kunshan,** 26 **Asus, Asus Computer Suzhou and Asus Suzhou)**

27 16. O2 Micro incorporates by reference the allegations set forth in Paragraphs 1-11 of this
28 Complaint as though fully set forth herein.

1 hardware, including DC-to-AC inverter controller circuits, liquid crystal displays, and notebook
2 computers which embody, or when used, practice one or more claims of the '615 patent, without
3 license or permission from O2 Micro, has directly infringed, induced infringement and/or contributed
4 to the infringement of the '615 patent. Accordingly, Compal, Compal Kunshan, Compal Technology
5 Kunshan, Asus, Asus Computer Suzhou and Asus Suzhou and each of them are liable for infringement
6 of the '615 patent pursuant to 35 U.S.C. § 271.

7 23. Compal, Compal Kunshan, Compal Technology Kunshan, Asus, Asus Computer
8 Suzhou and Asus Suzhou will continue to directly infringe, induce infringement and/or contribute to
9 the infringement of the '615 patent, continuing to damage O2 Micro's business and causing irreparable
10 harm unless enjoined by this Court.

11 24. Compal, Compal Kunshan, Compal Technology Kunshan, Asus, Asus Computer
12 Suzhou and Asus Suzhou's acts of infringement have caused damage to O2 Micro and O2 Micro is
13 entitled to recover from Compal, Compal Kunshan, Compal Technology Kunshan, Asus, Asus
14 Computer Suzhou and Asus Suzhou and each of them the damages sustained by O2 Micro as a result
15 of their wrongful acts in an amount subject to proof at trial.

16 25. Upon information and belief, infringement by Compal, Compal Kunshan, Compal
17 Technology Kunshan, Asus, Asus Computer Suzhou and Asus Suzhou of the '615 patent is willful and
18 deliberate, entitling O2 Micro to increased damages under 35 U.S.C. § 284 and to attorneys' fees and
19 costs incurred in prosecuting this action under 35 U.S.C. § 285.

20 **FOURTH COUNT**

21 **(Unfair Competition by MPS and Hsing)**

22 26. O2 Micro incorporates by reference the allegations set forth in Paragraphs 1-11 of this
23 Complaint as though fully set forth herein.

24 27. Upon information and belief, in addition to and in furtherance of their acts of patent
25 infringement, MPS and Hsing unfairly compete against O2 Micro by engaging in unlawful, unfair, and
26 fraudulent practices in soliciting and maintaining customers for electronics devices and computer
27 hardware, including integrated circuits that convert DC voltage to AC voltage used in products such as
28 flat panel displays and notebook computers.

1 28. Upon information and belief, in addition to and in furtherance of their acts of patent
2 infringement, MPS and Hsing have made agreements with certain employees of MPS's customers to
3 grant MPS stock options to those individuals, so as to entice them to enter into and/or maintain a
4 customer relationship with MPS.

5 29. Upon information and belief, in addition to and in furtherance of their acts of patent
6 infringement, MPS and Hsing have sold or caused to be sold MP1011A and MP1015 products in
7 Taiwan in violation of court injunctions in Taiwan, knowing that said products would be used in
8 electronic devices and computer hardware made, used, offered for sale or sold in the United States.

9 30. Upon information and belief, in addition to and in furtherance of their acts of patent
10 infringement, MPS and Hsing have solicited, and conspired and colluded with, one or more companies
11 to serve as second source suppliers of MPS integrated circuits for converting DC voltage to AC
12 voltage, knowing and intending that said products would be used in electronic devices and computer
13 hardware made, used, offered for sale or sold in the United States.

14 31. Upon information and belief, MPS and Hsing's wrongful conduct has caused O2 Micro
15 injury by competition and restraining trade in the manufacture and sale of integrated circuits for
16 efficiently converting DC voltage to AC voltage, diverting business from O2 Micro through the
17 marketing, distribution and sale of infringing products, and interfering with O2 Micro's prospective
18 business relationships.

19 32. MPS and Hsing's actions constitute unlawful, unfair, and fraudulent practices in
20 violation of the Cal. Bus. & Prof. Code § 17200, *et seq.* Such unlawful practices offend the policy and
21 spirit of antitrust and unfair competition laws.

22 33. Accordingly, O2 Micro is entitled to restitution and disgorgement of profits unlawfully
23 obtained by MPS and Hsing. Further, the harm caused by MPS and Hsing to O2 Micro cannot be fully
24 remedied by restitution alone and thus constitutes irreparable harm. MPS and Hsing's unlawful, unfair
25 and fraudulent conduct will continue unless enjoined by the Court.

26 **DEMAND FOR JURY TRIAL**

27 34. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Civil Local Rule 3-
28 6(a), plaintiff demands a trial by jury of this action.

PRAYER FOR RELIEF

WHEREFORE, O2 Micro prays for judgment and seeks relief against Defendants as follows:

(a) For judgment that the ‘129, ‘722 and ‘615 patents has been and/or continue to be infringed by Defendants;

(b) For an accounting of all damages sustained by O2 Micro as the result of Defendants’ acts of infringement;

(c) For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by Defendants, their officers, agents, servants, employees, subsidiaries, successors, assigns, and all other persons acting in concert or participation with Defendants, including related individuals and entities, customers, representatives, dealers, distributors, and importers;

(d) For actual damages together with prejudgment interest;

(e) For enhanced damages against MPS, Hsing, Compal, Compal Kunshan, Compal Technology Kunshan, Asus, Asus Computer Suzhou and Asus Suzhou pursuant to 35 U.S.C. § 284;

(f) For an award of attorneys’ fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

(g) For an award of restitution and an order compelling disgorgement of profits based on MPS’s and Hsing’s wrongful conduct against O2 Micro in violation of unfair competition and antitrust laws;

(h) For preliminary and permanent injunctions enjoining the aforesaid acts of unfair competition by MPS, Hsing, and MPS’s officers, agents, servants, employees, subsidiaries, successors, assigns, and all other persons acting in concert or participation with MPS;

(i) For all costs of suit; and

(j) For such other and further relief as the Court may deem just and proper.

Dated: July 26, 2006

HOWREY LLP

By: /s/ Henry C. Su

Henry C. Su
Attorneys for Plaintiff
O2 Micro International Limited

CERTIFICATE OF SERVICE

As required by Civil Local Rule 5-6(a)(2), the undersigned hereby certifies that on July 26, 2006, a true and correct copy of:

[PROPOSED] THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND UNFAIR COMPETITION; DEMAND FOR JURY TRIAL

was served on the following counsel of record for Defendants electronically through this Court's Electronic Case Filing System, in accordance with Civil Local Rule 5-5(b):

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