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U.S. DISTRICT COURT OF FLORIDA
ORLANDO, FLORIDA

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

Sawtek Inc., a Florida Corporation,

Plaintiff,

vs.

CIVIL ACTION NO. 6:02-CV-1048-ORL-22KRS

Fujitsu Limited, an alien corporation;
and **Fujitsu Media Devices Limited**,
an alien corporation,

AMENDED COMPLAINT

Defendants.

**ACTION UNDER 28 U.S.C. §2201(A) FOR DECLARATORY
JUDGMENT OF INVALIDITY AND/OR NON-INFRINGEMENT
OF U.S. PATENTS 5,559,481; RE37,375; 5,631,612; AND RE37,790;
AND FOR UNFAIR COMPETITION UNDER FLORIDA LAW.
JURY TRIAL AND INJUNCTIVE RELIEF REQUESTED**

COMES NOW Plaintiff Sawtek Inc. ("Plaintiff") and for its complaint against Defendants Fujitsu Limited and Fujitsu Media Devices Limited (collectively "Defendants"), states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a Florida corporation with its principal place of business in Orlando, Florida.

2. Upon information and belief, Defendants are alien corporations organized under the laws of Japan.

3. Upon further information and belief, Defendants regularly conduct business throughout the United States, including within this judicial district and division.

4. As set out in greater detail below, Plaintiff seeks in Count One of this action a declaration under 28 U.S.C. §2201(a) that certain United States patents owned and/or licensed to Defendants are invalid, unenforceable and/or have not been infringed by Plaintiff; and, under Count Two, damages and injunctive relief for Defendants' unfair competition arising from Defendants' attempted enforcement of patents which Defendants knew or should reasonably have known were invalid, unenforceable, or not infringed by Plaintiff.

5. This court has subject matter jurisdiction over this action under 28 U.S.C. §1338(a) and (b). Venue properly lies in this judicial district and division pursuant to 28 U.S.C. §1391(c) and/or (d).

COUNT ONE

Action for Declaratory Judgment of Patent Invalidity, Unenforceability and/or Non- Infringement

6. This Count One is an action by Plaintiff against Defendants seeking a declaratory judgment that the patents in suit are invalid, unenforceable or not infringed by Plaintiff.

7. Plaintiff here restates and incorporates by reference into this Count One the allegations of ¶¶1-5 above, inclusive.

8. U.S. Patent 5,559,481 ("the '481 patent") issued on September 24, 1996 and U.S. Reissue Patent 37,375 ("the '375 patent") issued on September 18, 2001. Upon information and belief, both the '481 patent and the '375 patent are owned by Defendant Fujitsu Limited and exclusively licensed to Defendant Fujitsu Media Devices Limited.

9. U.S. Patent 5,631,612 ("the '612 patent") issued on May 20, 1997 and U.S. Reissue Patent 37,790 ("the '790 patent") issued on July 16, 2002. Upon information and belief, the '612 patent and the '790 patent are owned by Defendant Fujitsu Limited and are exclusively licensed to Defendant Fujitsu Media Devices Limited.

10. Representatives of Defendants have had numerous communications with Plaintiff regarding all four of the above-referenced patents (herein "the patents in suit"). In connection with those communications, the representatives for Defendants have expressed the view that Sawtek has infringed the patents in suit.

11. Upon information and belief, one or both Defendants have filed two previous infringement actions on the patents in suit against foreign manufacturers. Upon further information and belief, both of these lawsuits have been terminated.

12. The communications from Defendants' representatives referenced above include specific assertions that products of Plaintiff's customers have been purchased by Defendants in the jurisdiction of the United States District Court for the Eastern District of Virginia, indicating that if Plaintiff Sawtek does not take a license under the patents in suit then Sawtek will be sued in that Virginia District Court.

13. In relation to Defendants, Plaintiff is a relatively small company with limited resources. The U.S. District Court for the Eastern District of Virginia is an extremely inconvenient forum for Plaintiff, especially since all of Plaintiff's manufacturing, engineering and business records are located in Orlando, as are substantially all of Plaintiff's key personnel. Plaintiff has no direct contacts in the Eastern District of Virginia.

14. The conduct of Defendants have presented a real and present controversy as to whether Plaintiff has liability to Defendants for the alleged infringements of the patents in suit, or whether those patents are valid or unenforceable.

15. Upon information and belief, Plaintiff does not infringe any independent claim of the patents in suit, either literally or under the Doctrine of Equivalents.

16. Further, upon information and belief, any one or all of the claims in the patents in suit which may cover one or more products of Plaintiff are invalid or

unenforceable under one or more applicable provisions of Title 35, United States Code, or applicable authorities.

COUNT TWO

**Action for Unfair Competition
in Violation of Florida Common Law**

17. This Count Two is an action by Plaintiff against Defendants under the common law of Florida for unfair competition arising from Defendants' conduct during attempted enforcements of the patents in suit.

18. Plaintiff here restates and incorporates by reference into this Count Two the allegations of ¶¶1-16 above, inclusive.

19. Plaintiff and Defendants are direct competitors in the sale and distribution of surface acoustic wave ("SAW") devices of the types which are the subject of the patents in suit.

20. Upon information and belief, prior to attempts to enforce the patents in suit against Plaintiff and other SAW device manufacturers, Defendants knew that the claims in the patents in suit were invalid or unenforceable under the relevant provisions of Title 35, United States Code §101 et seq., and/or were not infringed by Plaintiff.

21. Upon further information and belief, despite Defendants' knowledge as asserted in ¶20 above, Defendants used the patents in suit together with other tactics

to unfairly compete in the market for SAW devices of the types which are the subject of the patents in suit.

22. Plaintiff has suffered a compensable injury as a result of Defendants' unfair competition outlined in this Count Two, and is likely to continue to suffer an irreparable injury unless Defendants' acts of unfair competition are preliminarily and then permanently enjoined.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury.

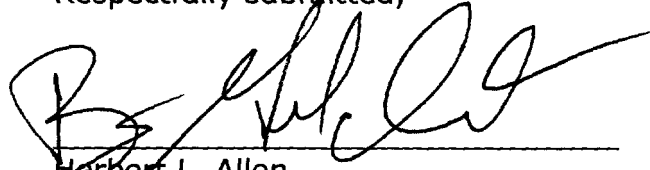
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter such preliminary and then final orders and judgment as are necessary to provide the following relief:

- a. An Order and Final Judgment under Count One that U.S. Patents 5,559,481 and RE37,375 are invalid and/or are not infringed by any products of Plaintiff;

- b. An Order and Final Judgment under Count One that U.S. Patents 5,631,612 and RE37,790 are invalid, unenforceable and/or not infringed by any products of Plaintiff;
- c. An Order and Final Judgment under Count Two that Defendants have engaged in unfair competition under the common law of Florida;
- d. An award of attorney's fees and/or costs; and
- e. Such other relief as the Court deems appropriate.

Respectfully submitted,



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9.16.02

Date