

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**Case No. 09-cv-81046-Ryskamp/Vitunac**

INNOVATIVE BIOMETRIC  
TECHNOLOGY, LLC,

Plaintiff,

v.

LENOVO (UNITED STATES), INC.  
FUJITSU AMERICA, INC., ASUS  
COMPUTER INTERNATIONAL, MSI  
COMPUTER CORP. and TOSHIBA  
AMERICA INFORMATION SYSTEMS,  
INC.

Defendants.

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Innovative Biometric Technology, LLC sues Defendants Lenovo (United States) Inc., Fujitsu America, Inc., ASUS Computer International, MSI Computer Corp. and Toshiba America Information Systems, Inc. (collectively "Defendants") and states as follows:

**NATURE OF ACTION**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, including 35 U.S.C. §§ 271, 281 and 284.

**INNOVATIVE BIOMETRIC TECHNOLOGY AND THE PATENT-IN-SUIT**

2. Innovative Biometric Technology, LLC ("IBT") is a Florida limited liability company with offices in Delray Beach and Fort Lauderdale, Florida.

3. The patent-in-suit is United States Patent No. 7,134,016, entitled "Software System for Biometric Dongle Function" which issued on November 7, 2006 ("the '016 patent).

4. IBT owns all right, title and interest in and, thus, has standing to sue for infringement of the '016 patent.

## **DEFENDANTS**

5. Lenovo (United States) Inc. ("Lenovo") is a Delaware corporation with an office located at 1009 Think Place, Morrisville, North Carolina 27560. Lenovo designs, develops, offers for sale and sells products nationwide, as well as within this judicial district, that permit the practice of the method of claim 1 of the '016 patent.

6. Fujitsu America, Inc. ("Fujitsu") is a California corporation with an office located at 1250 E. Arques Ave, Sunnyvale, CA 94085. Fujitsu designs, develops, offers for sale and sells products nationwide, as well as in this judicial district, that permit the practice of the method of claim 1 of the '016 patent.

7. ASUS Computer International ("ASUS") is a California Company with a headquarters at 800 Corporate Way, Fremont, CA 94539. ASUS designs, develops, offers for sale and sells products nationwide, as well as in this judicial district, that permit the practice of the method of claim 1 of the '016 patent.

8. MSI Computer Corp. ("MSI") is a California Corporation with an office at 901 Canada Court, City of Industry, CA 91748. MSI designs, develops, offers for sale and sells products nationwide, as well as in this judicial district, that permit the practice of the method of claim 1 of the '016 patent.

9. Toshiba America Information Systems, Inc. ("Toshiba") is a California corporation with a principal place of business at 9740 Irvine Blvd, Irvine, California, 92618. Toshiba designs, develops, offers for sale and sells products nationwide, as well as in this judicial district, that permit the practice of the method of claim 1 of the '016 patent.

## **JURISDICTION AND VENUE**

10. This Court has exclusive jurisdiction over the subject matter of this case under 28 U.S.C. § 1338(a).

11. Each of the Defendants is subject to personal jurisdiction in this judicial district because each one has transacted business and has committed acts of infringement in this district.

12. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) because each of the Defendants is subject to personal jurisdiction, does business and has committed acts of infringement in this judicial district.

### **INFRINGEMENT**

13. Lenovo has infringed and continues to infringe the '016 Patent by, at least, knowingly and actively inducing, aiding and abetting others' use of its computer products with biometric capabilities, including but not limited to the U330 with VeriFace computer products. Lenovo is inducing acts of infringement of others by, among other activities, providing consumers with instructions on how to use Lenovo computer products as defined in claim 1 of the '016 patent. Lenovo had knowledge of the '016 patent at the time it acted and continues to act with the specific intent to induce infringement.

14. Fujitsu has infringed and continues to infringe the '016 Patent by, at least, knowingly and actively inducing, aiding and abetting others' use of its computer products with biometric capabilities, including but not limited to the Lifebook Series computer products. Fujitsu is inducing acts of infringement of others by, among other activities, providing consumers with instructions on how to use Fujitsu computer products as defined in claim 1 of the '016 patent. Fujitsu had knowledge of the '016 patent at the time it acted and continues to act with the specific intent to induce infringement.

15. ASUS has infringed and continues to infringe the '016 Patent by, at least, knowingly and actively inducing, aiding and abetting others' use of its computer products with biometric capabilities, including but not limited to the model U6E notebook computer products and the model UMPC computer products. ASUS is inducing acts of infringement of others by, among other activities, providing consumers with instructions on how to use ASUS computer

products as defined in claim 1 of the '016 patent. ASUS had knowledge of the '016 patent at the time it acted and continues to act with the specific intent to induce infringement.

16. MSI has infringed and continues to infringe the '016 Patent by, at least, knowingly and actively inducing, aiding and abetting others' use of its computer products with biometric capabilities, including but not limited to the model M675 and RR201 computer products. MSI is inducing acts of infringement of others by, among other activities, providing consumers with instructions on how to use MSI computer products as defined in claim 1 of the '016 patent. MSI had knowledge of the '016 patent at the time it acted and continues to act with the specific intent to induce infringement.

17. Toshiba has infringed and continues to infringe the '016 Patent by, at least, knowingly and actively inducing, aiding and abetting others' use of its computer products with biometric capabilities, including but not limited to the Satellite A100 and Satellite Pro A100 computer products. Toshiba is inducing acts of infringement of others by, among other activities, providing consumers with instructions on how to use Toshiba computer products as defined in claim 1 of the '016 patent. Toshiba had knowledge of the '016 patent at the time it acted and continues to act with the specific intent to induce infringement.

18. Accordingly, IBT is entitled to recover damages adequate to compensate it for each of the Defendant's infringement, but in no event less than a reasonable royalty.

19. Defendants' infringement has caused irreparable harm to IBT, who has no adequate remedy at law, and will continue to injure IBT, unless and until this Court enters an injunction prohibiting further infringement of the '016 patent.

20. IBT has complied with the requirements of 35 U.S.C. §287.

21. Defendants' infringement of the '016 patent has been willful, deliberate and objectively reckless.

### **NOTICE, KNOWLEDGE, WILLFULNESS**

22. Defendants' infringement has occurred with knowledge of the '016 Patent and willfully and deliberately in violation of 35 U.S.C. §271. Defendants each were given actual notice of the '016 Patent in letters which were sent at least as early as: February 17, 2009 to Lenovo; July 23, 2009 to ASUS; April 20, 2009 to Fujitsu; December 15, 2009 to MSI; and, February 17, 2009 to Toshiba. Each letter provided, among other things, a claim chart that compared the Defendant's products with the '016 Patent. The letters also gave each Defendant notice that it was inducing infringement of the '016 Patent, and also included a proposed license for the '016 Patent. Each Defendant has failed to adequately respond to IBT's allegations of infringement and, upon information and belief, has not taken necessary steps to avoid infringement. Instead, Defendants have continued to infringe the '016 Patent in an objectively reckless manner, with disregard of IBT's patent rights in the '016 Patent.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Innovative Biometric Technology, LLC, respectfully requests this Court enter judgment against each of the Defendants, and against their respective subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

- A. The entry of judgment in favor of IBT and against each of the Defendants;
- B. An award of damages adequate to compensate IBT for the infringement that has occurred (together with prejudgment interest from the date the infringement began), but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284;
- C. A finding that this case is exceptional and an award to IBT of its attorneys' fees and costs as provided by 35 U.S.C. § 285;

- D. A permanent injunction prohibiting further infringement and/or inducement of infringement of the '016 patent; and,
- E. Such other relief that IBT is entitled to under law and any other relief that this Court or a jury may deem just and proper.

**JURY DEMAND**

IBT demands a trial by jury on all issues presented in this Complaint.

Dated: October 13, 2010

Respectfully submitted,

/s/ Raymond P. Niro

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Attorneys for Plaintiff, Innovative Biometric  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record in the attached Service List via transmission of Notice of Electronic Filing generated by CM/ECF.

**SERVICE LIST**

Innovative Biometric Technology, LLC v. Lenovo (United States), Inc. and Fujitsu America, Inc.  
 Case No. 09-cv-81046-Ryskamp/Vitunac  
 United States District Court, Southern District of Florida

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