

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE**

S.O.I.TEC SILICON ON INSULATOR
TECHNOLOGIES, S.A. and
COMMISSARIAT À L'ÉNERGIE
ATOMIQUE,

Plaintiffs,

v.

MEMC ELECTRONIC MATERIALS, INC.

Defendant.

Civil Action No.: 1:08-292 SLR

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, S.O.I.TEC Silicon On Insulator Technologies, S.A. (“SOITEC”) and Commissariat à L’Énergie Atomique (“CEA”), for their complaint against Defendant, MEMC Electronic Materials, Inc. (“MEMC”), allege that MEMC has been and is infringing United States Reissue Patent No. 39,484 and United States Patents Nos. 6,809,009, 7,067,396, and 7,498,234.

THE PARTIES

1. SOITEC, established in 1992, is the leading technology developer and manufacturer of silicon-on-insulator (“SOI”) semiconductor wafers and other engineered substrates used in the electronics industry. SOITEC’s unique proprietary technologies include its patented Smart Cut™ and UNIBOND™ processes. SOITEC’s technological innovations have resulted in awards of approximately 1000 patents worldwide.

2. SOITEC is organized as a Société Anonyme under the laws of France and has a principle place of business in Bernin, France.

3. CEA is the French Atomic Energy Commission. The CEA operates a research facility known as the Laboratory of Electronics and Information Technologies (“LETI”), located in Grenoble, France. LETI is one of the largest European centers in applied electronics research.

4. Inventors at LETI discovered certain technology as disclosed and claimed in United States Reissue Patent No. 39484 (the “Bruel Patent”) and United States Patents Nos. 6,809,009, 7,067,396, and 7,498,234 (“the ‘009 Patent”, “the ‘396 Patent”, and “the ‘234 Patent; collectively, the “Aspar Patents”). United States Reissue Patent No. 39484 is attached hereto as Exhibit 1; United States Patent No. 6,809,009 is attached hereto as Exhibit 2; United States Patent No. 7,067,396 is attached hereto as Exhibit 3; and United States Patent No. 7,498,234 is attached hereto as Exhibit 4.

5. The Bruel Patent and the Aspar Patents are owned by CEA and exclusively licensed to SOITEC.

6. MEMC is a corporation organized and existing under the laws of the State of Delaware and has a principle place of business in St. Peters, Missouri.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the Patent Laws of the United States. 35 U.S.C. §1 et seq.

8. This Court has jurisdiction over the subject matter of these claims under 28 U.S.C. §§1331 and 1338(a).

9. Venue is proper in this judicial district under 28 U.S.C. §§1391(b) and 1391(c).

BACKGROUND

10. The Bruel Patent is titled “Process for the production of thin semiconductor material films.” The Bruel Patent originally issued as United States Patent 5,374,564. It was duly and legally reissued on February 6, 2007 as United States Reissue Patent No. 39484 and

claims priority to a French patent application filed on September 18, 1991. The Bruel Patent is valid, subsisting, and enforceable.

11. The Aspar Patents are titled “Method for producing a thin layer of semiconductor material.” The ‘009 Patent was duly and legally issued on October 26, 2004. The ‘396 Patent was duly and legally issued on June 27, 2006. The ‘234 Patent was duly and legally issued on March 3, 2009. All of the Aspar Patents claim priority to a French patent application filed on May 15, 1996. The Aspar Patents are valid, subsisting and enforceable.

12. On information and belief, MEMC makes, sells, and/or offers for sale silicon on insulator (“SOI”) wafers and other engineered semiconductor substrates (the “MEMC Products”) in the United States.

COUNT I

INFRINGEMENT OF U.S. REISSUE PATENT NO. 39484

13. Plaintiffs reallege and incorporate herein by reference the allegations set forth in paragraphs 1-12.

14. On information and belief, MEMC manufactures MEMC Products using a method which infringes one or more claims of the Bruel Patent in violation of one or more of the provisions of 35 U.S.C. §271.

15. On information and belief, MEMC’s infringement of the Bruel Patent is and has been willful.

16. On information and belief, MEMC will continue to infringe the Bruel Patent unless enjoined by this Court.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 6,809,009

17. Plaintiffs reallege and incorporate herein by reference the allegations set forth in paragraphs 1-12.

18. On information and belief, MEMC manufactures MEMC Products using a method which infringes one or more claims of the '009 Patent in violation of one or more of the provisions of 35 U.S.C. §271.

19. On information and belief, MEMC's infringement of the '009 Patent is and has been willful.

20. On information and belief, MEMC will continue to infringe the '009 Patent unless enjoined by this Court.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 7,067,396

21. Plaintiffs reallege and incorporate herein by reference the allegations set forth in paragraphs 1-12.

22. On information and belief, MEMC manufactures MEMC Products using a method which infringes one or more claims of the '396 Patent in violation of one or more of the provisions of 35 U.S.C. §271.

23. On information and belief, MEMC's infringement of the '396 Patent is and has been willful.

24. On information and belief, MEMC will continue to infringe the '396 Patent unless enjoined by this Court.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 7,498,234

25. Plaintiffs reallege and incorporate herein by reference the allegations set forth in paragraphs 1-12.

26. On information and belief, MEMC manufactures MEMC Products using a method which infringes one or more claims of the '234 Patent in violation of one or more of the provisions of 35 U.S.C. §271.

27. On information and belief, MEMC's infringement of the '234 Patent is and has been willful.

28. On information and belief, MEMC will continue to infringe the '234 Patent unless enjoined by this Court.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs request judgment against MEMC and respectfully pray that this Court enter orders:

- (a) Finding that MEMC has infringed and is infringing United States Reissue Patent No. 39,484;
- (b) Finding that MEMC has infringed and is infringing United States Patent No. 6,809,009;
- (c) Finding that MEMC has infringed and is infringing United States Patent No. 7,067,396;
- (d) Finding that MEMC has infringed and is infringing United States Patent No. 7,498,234;
- (e) Finding that MEMC's infringement of the Bruel Patent has been willful;
- (f) Finding that MEMC's infringement of the Aspar Patents has been willful;

- (g) Enjoining MEMC, its agents, servants, employees and attorneys, and all those in active participation or privity with any of them, from infringing any of United States Patents No. RE 39,484, 6,809,009, 7,067,396, or 7,498,234;
- (h) Awarding compensatory damages to Plaintiffs pursuant to 35 U.S.C. § 284;
- (i) Finding that this is an exceptional case, pursuant to 35 U.S.C. § 285 and trebling its damage award and awarding Plaintiffs their reasonable attorney's fees, expenses and costs in this action; and
- (j) Granting Plaintiffs such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand a trial by jury on all issues so triable.

Dated: July 21, 2009

EDWARDS ANGELL PALMER & DODGE LLP

/s/ Denise Seastone Kraft
John L. Reed (DE No. 3023)
Denise Seastone Kraft (DE No. 2778)
919 North Market Street, 15th Floor
Wilmington, DE 19801
(302) 777-7770
jreed@eapdlaw.com
dkraft@eapdlaw.com

*Attorneys for S. O.I. TEC Silicon On Insulator
Technologies S.A., Commissariat À l'Énergie Atomique
and Soitec U.S.A., Inc*

OF COUNSEL:

George W. Neuner (Pro Hac Vice)
Alan M. Spiro (Pro Hac Vice)
Brian M. Gaff (Pro Hac Vice)
Carolyn Gouges d'Agincourt (Pro Hac Vice)
EDWARDS ANGELL PALMER & DODGE LLP
111 Huntington Avenue
Boston, MA 02110-7613
(617) 239-0100
(617) 227-4420 (fax)

Michael Brody (Pro Hac Vice)
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

Gail Standish (Pro Hac Vice)
WINSTON & STRAWN LLP
333 South Grand Avenue
Los Angeles, California 90071 (213) 615-1700

Marcus Hall
WINSTON & STRAWN
101 California Street
San Francisco, California 94111
(414)591-1000

Jason Charkow
WINSTON & STRAWN
200 Park Avenue
New York, NY 10166
(212)294-6700