

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.: 08-cv-1133-EWN-CBS

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COORSTEK, INC., a Delaware corporation,

Plaintiff,

v.

STEVEN F. REIBER and MARY L. REIBER, individuals;

Defendants.

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**FIRST AMENDED COMPLAINT**

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Plaintiff CoorsTek, Inc. (“CoorsTek”), through undersigned counsel, submits this First Amended Complaint for a declaratory judgment of non-infringement, invalidity, unenforceability, and non-misappropriation of trade secrets; and for its First Amended Complaint against Defendants Steven F. Reiber and Mary L. Reiber, states as follows:

**PARTIES**

1. Plaintiff CoorsTek, Inc. is a Delaware corporation, with its principal place of business at 16000 Table Mountain Parkway, Golden, Colorado 80403.
2. Defendants Steven F. and Mary L. Reiber (“Defendants”) are individuals residing in the state of California.

**JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction over this case pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202. The Court also has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338, because this case presents a well-pleaded

federal question under the Patent Act of 1952 (as amended), 35 U.S.C. §§ 1, et seq. The Court has supplemental jurisdiction over the state law claims in this case pursuant to 28 U.S.C. § 1367(a).

4. The exercise of *in personam* jurisdiction over the Defendants comports with the laws of the State of Colorado and the constitutional requirements of due process because, Defendants transact business and/or offer to transact business within the State of Colorado. Specifically, Defendants and/or their agents have purchased products from CoorsTek, entered into contracts with CoorsTek, and/or offered to license their Patents, as described below, to CoorsTek. Defendants have also conceded that they are subject to personal jurisdiction in Colorado.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c).

6. There are no current related actions in this District.

#### **NATURE OF THE ACTION**

7. This is an action for a Declaratory Judgment that CoorsTek has not infringed any claim of U.S. Patent Nos. 6,354,479 (“479 Patent”), 6,935,548 (“548 Patent”), 6,651,864 (“864 Patent”) or 7,032,802 (“802 Patent”) (collectively the “Patents-In-Suit”), related to “dissipative ceramic bonding tool tips” or a “bonding tool with resistance”; that each and every one of the claims of said Patents are invalid and/or unenforceable; and that CoorsTek has not misappropriated any trade secrets allegedly owned by Defendants.

#### **THE PATENTS IN SUIT**

8. On March 12, 2002, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,354,479 (“479 Patent”), claiming a method and

apparatus for “dissipative ceramic bonding tool tips.” A true and correct copy of the ’479 Patent is attached as **Exhibit A** and incorporated herein.

9. On November 25, 2003, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,935,548 (“’548 Patent”), also claiming a method and apparatus for “dissipative ceramic bonding tool tips.” A true and correct copy of the ’548 Patent is attached as **Exhibit B** and incorporated herein.

10. On August 30, 2005, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,651,864 (“’864 Patent”), also claiming a method and apparatus for “dissipative ceramic bonding tool tips.” A true and correct copy of the ’864 Patent is attached as **Exhibit C** and incorporated herein.

11. On April 26, 2006, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 7,032,802 (“’802 Patent”), claiming apparatus for “bonding tool with resistance.” A true and correct copy of the ’864 Patent is attached as **Exhibit D** and incorporated herein.

12. The Patents-In-Suit relate generally to bonding tips, either dissipative or resistive, i.e., insulative, used for wire bonding electrical connections on bonding pads on integrated circuit chips, and methods of using such tips in the wire bonding process. Defendants also claim to own trade secret rights in certain designs for the manufacture of dual-headed bonding tips.

### **COORSTEK’S PRODUCTS**

13. CoorsTek is a private company dedicated to the manufacturing of components for various high technology industries. On January 1, 2007, CoorsTek acquired the assets of Gaiser Tool Company (“Gaiser”) through its wholly-owned subsidiary Edwards Enterprises. Since the

1970's, Gaiser has supplied bonding tools to the semiconductor and microelectronics industries. Those bonding tools include, but are not limited to, bonding tools made of materials known as Silicon Carbide ("SiC"), alumina oxide ("AL<sub>2</sub>O<sub>3</sub>"), CZ1, CZ3, CZ6 and CZ8.

14. Gaiser brand precision bonding tools include capillaries and fine-pitch capillaries for gold and copper ball bonding, small and large wire wedges for gold and aluminum wire, ribbon wedges, ceramic/cermet wedges, die collets & vacuum pick-up tools, parallel gap electrodes, waffle tools for the disk drive industry, specialty nozzles, and a high-precision job shop.

15. In 1970, Gaiser Tool invented the first alumina ceramic capillary, revolutionizing wire bonding. Since that time, the ceramic capillary has become the industry standard. In 1985, Gaiser Tool developed, manufactured and offered for sale bonding tools made out of SiC. Beginning in 1996, Gaiser Tool began to develop capillaries made out of a zirconia toughened alumina ("ZTA"). Gaiser Tool offered for sale bonding tools made of the ZTA material to customers beginning in 1997. To differentiate these capillaries from the standard alumina capillary made by Gaiser since 1970, Gaiser added chromium to the materials. The ZTA material containing the chromium mixture became known as the CZ1 material. Gaiser Tool sold bonding tools made of the CZ1 material, as well as bonding tools made of the ZTA material, to customers beginning in 1997. Gaiser Tool subsequently developed a line of bonding tools out of similar materials that became known as the CZ3, CZ6, and CZ8 materials.

16. Since acquiring Gaiser Tool, CoorsTek has invested heavily in the Gaiser brand including new equipment, processes, and materials to provide customers with the highest quality products, competitive prices, and on-time deliveries. Today, CoorsTek, under the Gaiser Tool

brand, continues to manufacture and sell bonding tools made out of these materials, including but not limited to the  $AL_2O_3$ , CZ1, CZ3, CZ6 and CZ8 materials. CoorsTek's customers include some of the largest and well known companies in the electronics industry, including but not limited to one or more of the entities sued by Defendants in the proceedings described more fully below.

17. Defendants have at times been customers of both Gaiser Tool and CoorsTek, and had access to certain Gaiser Tool and CoorsTek materials, including but not limited to  $AL_2O_3$ , SiC, ESD Zirconia and Yttria-Stabilized Zirconia, prior to the time of filing the Patents-In-Suit.

#### **DEFENDANTS' PRIOR LAWSUITS**

18. On September 10, 2007, Defendants filed a patent infringement and trade secret misappropriation lawsuit against several of CoorsTek's customers, including Western Digital Corp., Seagate Technology, Toshiba America Information Systems, Inc., Hewlett-Packard Co. and Dell, Inc., captioned as *Reiber v. Western Digital Corp., et al.*, Case No. 2:07-cv-01874 (E.D. Cal.), and instituted an Investigation before the United States International Trade Commission ("ITC") with similar allegations (collectively the "Reiber Lawsuits"). The action in the Eastern District of California was stayed pending resolution of the ITC Investigation.

19. Defendants alleged that these companies, including CoorsTek's customers, infringed the Patents-In-Suit by, among other things, importing products produced by using bonding tools manufactured and provided by CoorsTek. In the ITC Proceeding, Defendants sought a permanent exclusion order, pursuant to 19 U.S.C. § 1337(d)(1), barring from entry into the United States all hard disk drives, components thereof, and products containing the same.

20. On December 21, 2007, the ITC issued a subpoena (“WDC ITC Subpoena”) to CoorsTek based on an Application filed by Respondent Western Digital Corporation (“WDC”). The WDC ITC Subpoena sought documents related to Gaiser Tool’s development, manufacture and sale of CZ1 material prior to January 1, 2000; CoorsTek’s public marketing materials regarding currently offered bonding tips made of CZ material; public statements by Defendants with respect to bonding tips prior to January 1, 2000; communications with Defendants; Defendants’ production of bonding tips; and Gaiser Tool’s work for Defendants or their companies related to bonding tips. In response to the WDC ITC Subpoena, CoorsTek served Objections and Responses and produced responsive, non-privileged documents subject to and limited by its objections.

21. On February 19, 2008, CoorsTek received a second ITC subpoena based on an Application filed by Defendants on February 12, 2008 (“Reiber ITC Subpoena”). This second subpoena was even broader than the WDC ITC Subpoena and sought both an extensive deposition of one or more corporate designees of CoorsTek and production of documents on twelve substantive topics related to CoorsTek’s provision of bonding tools to its customers, some of which included the named respondents in the Reiber Lawsuits. Nevertheless, CoorsTek found itself embroiled in extensive discovery, requiring significant human and financial resources, in an Investigation to which it was not a party.

22. Ultimately CoorsTek produced more than 3500 pages of documents in the ITC Investigation. Among these documents were documents that demonstrated that (1) CoorsTek’s bonding tools, including but not limited to tools made of the CZ1, CZ3, CZ6 and CZ8 materials,

did not infringe the Patents-In-Suit, and (2) CoorsTek's CZ1 material was manufactured, sold and in public use more than one year before Defendants applied for the Patents-In-Suit.

23. Pursuant to the above Subpoenas, parties in the ITC deposed eight current and/or former CoorsTek/Gaiser Tool employees regarding CoorsTek's development, manufacture, use, offer for sale, and sale of bonding tools made of the CZ1, CZ3, CZ6 and CZ8 materials, including sales to the parties in the Reiber Lawsuits.

**DEFENDANTS' THREATS OF INFRINGEMENT AGAINST COORSTEK**

24. As described above, Defendants filed suit against several of CoorsTek's customers and alleged that CoorsTek's customers infringed the Patents-In-Suit by using bonding tools manufactured and provided by CoorsTek in one or more of the methods claimed in the Patents-In-Suit.

25. In connection with the Reiber Lawsuits, Defendants and/or their representatives have claimed that CoorsTek's manufacture and offering for sale and selling of CoorsTek's bonding tools, including but not limited to those bonding tools made out of materials known as CZ1, CZ3, CZ6 and CZ8, constitute infringement and/or contributory infringement of the Patents-In-Suit and all claims thereof.

26. Defendants have also alleged that CoorsTek was involved in the use of certain trade secrets allegedly owned by Defendants. In the prior federal court action in the Eastern District of California, Defendants specifically alleged that "Western Digital disclosed Mr. Reiber's confidential dual-tip design to Gaiser Tool Company ("Gaiser"), a competitor of Mr. Reiber, sometime between January 22, 2006 and April 6, 2006." Defendants additionally alleged that "Gaiser used this proprietary information to develop for Western Digital dual-headed

bonding tips,” and that “Mr. Reiber suffered damages by virtue of Gaiser obtaining a head start in its design and manufacture of the dual-headed bonding tip.”

27. After CoorsTek had produced documents and made witnesses available for deposition pursuant to the WDC and Reiber ITC Subpoenas, Defendant Steven Reiber contacted representatives of CoorsTek and offered CoorsTek a license to the Patents-In-Suit based on CoorsTek’s ongoing activity of supplying bonding tips used in the manufacture of products in the electronics industry.

28. Immediately after offering a license to CoorsTek, Defendants (1) voluntarily dismissed the federal court action, without prejudice, that was pending in the Eastern District of California pursuant to Fed. R. Civ. P. 41(a)(1); and (2) filed a motion to terminate the ITC Proceeding, also without prejudice to Defendants right to bring further proceedings.

29. By claiming that CoorsTek and/or its customers infringed the Patents-In-Suit and used Defendants’ alleged trade secrets, Defendants have asserted rights under both patents and trade secrets based on certain identified ongoing or planned activity of CoorsTek. CoorsTek alleges that it has the right to engage in each of the accused activities without license, giving rise to declaratory judgment jurisdiction.

30. By asserting that CoorsTek infringed the Patents-In-Suit and used Defendants’ alleged trade secrets, Defendants have put CoorsTek in the position of either pursuing allegedly illegal behavior or abandoning its manufacture of bonding tools for the electronics industry, which it has engaged in since 1970 and which it claims a right to do.



31. During discovery in this action, Defendants produced a letter (previously unknown to CoorsTek) in which Defendants accused Gaiser Tool Company of infringing the '802 Patent, which appears to claim certain resistive bonding tools.

32. Therefore, a substantial and continuing justiciable controversy exists between CoorsTek and Defendants as to the validity and scope of the Patents-In-Suit; as to whether any of CoorsTek's bonding tools, including but not limited to bonding tools made out of the CZ1, CZ3, CZ6 or CZ8 materials, infringe any valid claim thereof; and as to CoorsTek's involvement in using trade secrets allegedly owned by Defendants.

**FIRST CLAIM FOR RELIEF**  
**Declaratory Judgment of Non-Infringement of the '479, '548, '864 and '802 Patents**  
**28 U.S.C. § 2201**

33. CoorsTek hereby incorporates by reference Paragraphs 1 through 32 of this Complaint, as if fully set forth herein.

34. CoorsTek has not infringed in any manner under 35 U.S.C. § 271 any claims of the Patents-In-Suit by making, using, selling, offering for sale, exporting and/or importing any product, including but not limited to bonding tools made out of the CZ1, CZ3, CZ6 or CZ8 materials, or by practicing any process, either literally or under the doctrine of equivalents, or contributorily by inducement, or otherwise. CoorsTek seeks a judgment declaring that CoorsTek does not infringe any valid and enforceable claim of the Patents-In-Suit, either literally or under the doctrine of equivalents, or contributorily, by inducement or otherwise.

35. Defendants' assertions of infringement of the Patents-In-Suit with full knowledge of CoorsTek's non-infringement of the Patents-In-Suit makes this an exceptional case warranting an award of CoorsTek's reasonable attorney's fees and costs under 35 U.S.C. § 285.

**SECOND CLAIM FOR RELIEF**

**Declaratory Judgment of Invalidity of the ‘479, ‘548, ‘864, and ‘802 Patents  
28 U.S.C. § 2201**

36. CoorsTek hereby incorporates by reference Paragraphs 1 through 35 of this Complaint, as if fully set forth herein.

37. The Patents-In-Suit, and each and every respective claim thereof, are invalid and unenforceable for failure to comply with one or more provisions of Title 35 of the United States Code, including without limitation, Sections 101, 102, 103, 112, and/or 121. For example, the specification alone fails to disclose the best mode contemplated by Defendants for carrying out the invention, and does not allow one skilled in the art, without undue experimentation, to develop a commercially viable product. CoorsTek seeks a judgment declaring that Patents-In-Suit, and each and every respective claim thereof are invalid.

38. Defendants’ charges of infringement of the Patents-In-Suit with full knowledge of the invalidity of the Patents-In-Suit makes this an exceptional case warranting an award of CoorsTek’s reasonable attorney’s fees and costs under 35 U.S.C. § 285.

**THIRD CLAIM FOR RELIEF**

**Declaratory Judgment of Unenforceability of the ‘479, ‘548, ‘864 and ‘802 Patents  
28 U.S.C. § 2201**

39. CoorsTek hereby incorporates by reference Paragraphs 1 through 38 of this Complaint, as if fully set forth herein.

40. The Patents-In-Suit are unenforceable because Defendants engaged in inequitable and other impermissible conduct before the United States Patent and Trademark Office during the prosecution of the Patents-In-Suit. Defendants and others substantively involved in the prosecution of the Patents-In-Suit failed to disclose material information, including but not

limited to, information pertaining to certain materials offered for sale by CoorsTek; information related to testing and material properties; and information related to the contributions to the alleged inventions by third parties, with an intent to deceive the United States Patent and Trademark Office. CoorsTek seeks a judgment declaring that the Patents-In-Suit Patents are unenforceable.

41. Defendants' charges of infringement of the Patents-In-Suit with full knowledge of the unenforceability of the Patents-In-Suit makes this an exceptional case warranting an award of CoorsTek's reasonable attorney's fees and costs under 35 U.S.C. § 285.

42. Defendants' counterclaims of infringement of the Patents-in-Suit, with full knowledge of that testing and analysis demonstrate that CoorsTek's products do not infringe the Patents-in-Suit, makes this an exceptional case warranting an award of CoorsTek's reasonable attorney's fees and costs under 35 U.S.C. § 285.

43. Defendants' counterclaims of infringement of the Patents-in-Suit, with full knowledge that the claims of the Patents-in-Suit are invalid, makes this an exceptional case warranting an award of CoorsTek's reasonable attorney's fees and costs under 35 U.S.C. § 285.

**FOURTH CLAIM FOR RELIEF**  
**Declaratory Judgment of Non-Misappropriation of Trade Secrets**  
**28 U.S.C. § 2201**

44. CoorsTek hereby incorporates by reference Paragraphs 1 through 43 of this Complaint, as if fully set forth herein.

45. CoorsTek has not in any manner misappropriated trade secrets or other proprietary information allegedly owned by Defendants, including but not limited to the "dual-headed bonding tip design," by developing for Western Digital or any other customer dual-

headed bonding tips. The dual-headed bonding tip design does not constitute a “trade secret” under California Civil Code § 3426 et seq.

46. CoorsTek seeks a judgment declaring that CoorsTek has not misappropriated any trade secret owned by Defendants, and that the dual-headed bonding tip design does not meet the requirements for trade secret protection under California Civil Code § 3426 et seq.

### **PRAYER FOR RELIEF**

WHEREFORE, CoorsTek prays that this Court enter judgment in favor of CoorsTek and against Defendants as follows:

A. A declaration that Defendants are without right or authority to threaten or to maintain suit against CoorsTek or its customers for alleged infringement of U.S. Patent Nos. 6,354,479 (“479 Patent”), 6,935,548 (“548 Patent”), 6,651,864 (“864 Patent”), and 7,032,802 (“802 Patent”) and that:

1. United States Patent No. 6,354,479 is invalid, unenforceable, and not infringed by CoorsTek;
2. United States Patent No. 6,935,548 is invalid, unenforceable, and not infringed by CoorsTek;
3. United States Patent No. 6,651,864 is invalid, unenforceable, and not infringed by CoorsTek; and
4. United States Patent No. 7,032,802 is invalid, unenforceable, and not infringed by CoorsTek.

B. A declaration that CoorsTek has not misappropriated any trade secrets allegedly owned by Defendants.

C. An award of reasonable attorney's fees and costs incurred by CoorsTek in the litigation of this matter in compensation for the exceptional circumstances of this case, pursuant to 35 U.S.C. § 285.

D. Such other relief as the Court may deem just and proper to award.

**JURY DEMAND**

CoorsTek hereby demands a trial by jury on all issue so triable.

Respectfully submitted this 24th day of October, 2008.

s/ Nina Y. Wang  
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