

ORIGINAL

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U.S. DISTRICT COURT
DISTRICT OF WYOMING

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Stephan Harris, Clerk
Cheyenne

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

AFTG-TG, L.L.C., a Wyoming limited liability company, PHILLIP M. ADAMS & ASSOCIATES, L.L.C., a Utah limited liability company,

Plaintiffs,

vs.

GIGABYTE TECHNOLOGY CO. LTD., a Taiwan corporation, GIGABYTE GLOBAL BUSINESS CORPORATION, a California corporation, ELITEGROUP COMPUTER SYSTEM CO., LTD, a Taiwan corporation, ELITEGROUP COMPUTER SYSTEMS, INC., a California corporation, UNIVERSAL SCIENTIFIC INDUSTRIAL, a Taiwan corporation, JETWAY COMPUTER CORP., a California Corporation JETWAY INFORMATION CO., LTD, a Taiwan corporation, BIOSTAR MICROTECH INTERNATIONAL CORP., a Taiwan corporation, BIOSTAR MICROTECH (U.S.A.) CORP., a California corporation, AOPEN INC., a Taiwan corporation, AOPEN AMERICA INC., a California Corporation, AVALUE TECHNOLOGY, INC., a Taiwan

**COMPLAINT FOR PATENT
INFRINGEMENT**

Civil No. 10-CV-228-J

Judge: Johnson

corporation, AVALUE TECHNOLOGY INC., a New Jersey corporation, DFI INC., a Taiwan corporation, DFI SAN JOSE INC., a California corporation, DFI-ACP, a Taiwan corporation, ITOX LLC, a New Jersey limited liability company, DFI TECHNOLOGIES LLC, a California limited liability company, FIRST INTERNATIONAL COMPUTER, INC., a Taiwan corporation, FIC USA, a California corporation, MITAC INTERNATIONAL CORP., a Taiwan corporation, SHUTTLE INC., a Taiwan corporation, SHUTTLE INTERNATIONAL INC., a California corporation, WISTRON CORPORATION, a Taiwan corporation, WISTRON INFOCOMM (TEXAS) CORP., a Texas CORPORATION, WISTRON INFOCOMM (AMERICA) TECHNOLOGY CORP., a Texas corporation, HON HAI PRECISION INDUSTRIAL CO., LTD, a Taiwan corporation, FOXCONN TECHNOLOGY CO., LTD., a Taiwan corporation, SUPER MICRO COMPUTER, INC., a California corporation, RADISYS CORPORATION, an Oregon corporation, COMPAL ELECTRONICS, INC., a Taiwan corporation, BIZCOM ELECTRONICS, INC., a California corporation, ASROCK INCORPORATION, a Taiwan corporation, ASROCK AMERICA INC., a California corporation,

Defendants.

Plaintiffs AFTG-TG, L.L.C. ("AFTG") and Phillip M. Adams & Associates, L.L.C. ("Adams") brings this action for the infringement of multiple U.S. Patents. This is a claim

for patent infringement and arises under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive jurisdiction over the subject matter of this Complaint under 28 U.S.C. § 1338(a). Venue is proper in this District under 28 U.S.C. §§ 1391(c)-(d) and 1400(b).

PLAINTIFFS

1. Adams is a Utah limited liability company with its principle place of business now in Wyoming. Adams owns all right, title and interest in and has standing to sue for infringement of the United States patents identified below:

- 5,983,002 titled "Defective Floppy Diskette Controller Detection Apparatus and Method" ("the '002 patent");
- 6,401,222 titled "Defective Floppy Diskette Controller Detection Apparatus and Method" ("the '222 patent");
- 6,687,858 entitled "Software-Hardware Welding System" ("the '858 patent");
- 7,251,752 titled "Computerized Product Improvement Apparatus and Method" ("the '752 patent");
- 7,069,475 entitled "Software-Hardware Welding System" ("the '475 patent"); and
- 7,409,601 entitled "Read-Write Function Separation Apparatus and Method" ("the '601 patent");

(collectively, "Adams patents-in-suit").

2. AFTG is a Wyoming limited liability company with its principal place of business in Wyoming. AFTG owns all right, title and interest in and has standing to sue for infringement of the United States patents identified below:

- 6,691,181 titled "Programmatic Time-Gap Defect Detection Apparatus and Method" ("the '181 patent");
- 7,249,203 titled "Programmatic Time-Gap Defect Detection Apparatus and Method" ("the '203 patent");
- 7,472,207 titled "Optimized-Incrementing, Time-Gap Defect Detection Apparatus and Method" ("the '207 patent");
- 6,842,802 titled "Programmatic Time-Gap Defect Correction Apparatus and Method" ("the '802 patent");
- 7,366,804 titled "Programmatic Time-Gap Defect Correction Apparatus and Method" ("the '804 patent"); and
- 7,653,766 titled "Time-Gap Defect Detection Apparatus and Method" ("the '766 patent");

(collectively the "AFTG patents-in-suit"). The Adams patents-in-suit and the AFTG patents-in-suit are collectively referred to hereinafter as the "Patents-in-Suit".

3. Dr. Phillip M. Adams heads plaintiff Adams and AFTG, and resides in Afton, Wyoming. He has a Ph.D. in applied computer science, a D.Sc. in engineering and over 30 years of experience in the computer industry. Dr. Adams has served on the faculty of major universities and holds numerous patents. In the late 1980s, Dr. Adams characterized a defect in the NEC 765A floppy disk controller (FDC) present in most personal computers at the time.

This defect caused the random destruction or corruption of data without proper notification to the user that data had been destroyed or corrupted.

4. The random destruction or corruption of data in computers is a serious, and potentially cataclysmic, problem. Computers are used throughout society and the data integrity of computers is the lifeblood of the information age. The public relies upon the integrity of data stored by computers and exchanged between them to support virtually all aspects of society, including the multitude of financial transactions, the accurate and effective diagnoses and treatment of illnesses and the proper design and construction of automobiles, aircraft, bridges, dams, office buildings and various other structures and devices.

5. The scope and seriousness of the FDC-related defects characterized by Dr. Adams were illustrated by the \$2.1 billion *Toshiba* class-action settlement in the Eastern District of Texas. In addition to the *Toshiba* class-action settlement, the United States Government settled False Claims Act claims against Toshiba for \$33.5 million. The State of California settled California State False Claims Act claims against Toshiba for \$33 million. Also, several billion-dollar class-action lawsuits are presently pending against different computer companies in various federal and state courts because of such defects built into various computers.

6. In the 20 plus years since Dr. Adams characterized the NEC 765A defect, Dr. Adams has discovered related data corruption defects and has devoted thousands of hours to developing solutions, alerting various federal and state governments,

computer companies and private purchasers to such defects and assisting computer manufacturers to acknowledge and remedy these defects. In addition, Dr. Adams has developed several patented computer technologies that address such defects. First, he developed patented computer technology (both hardware and software) that detect which computers are defective. Second, he developed patented solutions (both hardware and software) that resolve the defects found in such computers.

7. Hewlett Packard (one of the world's leaders in personal computers) obtained a license from Adams, and then placed Adams' solution on the Internet for all its customers throughout the world. Thus, any Hewlett Packard customer could go to this Internet website, download the solution and fully repair such defects in his or her computer. The website included notice of Adams' patent. Compaq (before it merged with Hewlett Packard) also obtained a license under Dr. Adams' patent.

8. In May of 2005, in compliance with the terms of the Hewlett Packard and Compaq license agreements, Adams was forced to file suit against numerous companies in the computer industry for the theft of his trade secrets and infringement of patented technology owned by Adams (the "Winbond Litigation"). Previously, Adams had been involved and occupied in litigation with Gateway Computer Company from 2002 until 2006 when Gateway settled on the first day of trial. Adams has been involved in litigation since at least 2002 against computer companies such as Gateway, Sony, Dell, IBM, Lenovo, Quanta, Fujitsu, and Dell.

9. Through the course of the Winbond Litigation it was discovered that Winbond's infringing chips had been distributed throughout the computer industry and had been knowingly incorporated into the Defendants products.

10. In May 2010 Adams retained the firm of Quinn Dumke LLC to approach each of the Defendants, under F.R.E. 408, with the hope of entering into a mutually acceptable agreement to address the suspected patent infringement without costly litigation.

11. Instead of entering into fruitful negotiations concerning what was then thought to be clear liability for infringement, Defendants instead determined that it would be more beneficial to either wait for the determination of infringement in the Winbond Litigation, or request that Adams supply claim charts and enter into a level of discovery more suited for Markman hearings during litigation.

12. Throughout the course of the Winbond Litigation many companies that were party to the suit entered into settlement agreements with Adams, but the defendants Winbond Electronics Corporation ("Winbond"), ASUSTek Computer, Inc., ASUS Computer International, Micro-Star International, and Micro-Star USA obstinately maintained a position of non-infringement.

13. Defendant ITE Tech, Inc. ("ITE") has had a default judgment of patent infringement and misappropriation of trade secrets entered and is awaiting the Court's determination of jurisdiction prior to providing enforcement.

14. On October 5, 2010 a jury of 12 unanimously determined that Winbond had infringed all asserted claims of Adams '002 patent.

15. As a result of the verdict and default judgment it is clear that all Winbond, Nuvoton (Winbond's wholly owned I/O chip subsidiary), or ITE super I/O chips with an Opus International based FDC core ("Infringing Chips") infringe the patent in suit. Additionally, it is believed that chips from VIA Technologies, Inc. ("VIA"), Silicon Integrated Systems Corporation ("SIS"), and Standard Microsystems Corp. ("SMSC") use the same infringing architecture in their chips ("Dependent Chips"), which have been incorporated into the defendants' products.

16. The Defendants' knowing and intentional use, manufacture and/or importation of infringing methods, articles of manufacture, and products subject them to, at a minimum, liability under 35 U.S.C § 271 (a), (b), (c) and (g).

DEFENDANTS

17. Giga-Byte Technology Co. Ltd. is a company organized under the laws of Taiwan, with a place of business at No.6, Bau Chiang Road, Hsin-Tien, Taipei 231, Taiwan, R.O.C.; including all U.S. subsidiaries.

18. Gigabyte Global Business Corporation is a California corporation with a place of business at 17358 Railroad St., City Of Industry, California 91748, U.S.A. (Giga-Byte Technology Co. Ltd. and Gigabyte Global Business Corporation collectively referred to as "Gigabyte").

19. Elitegroup Computer Systems Co., Ltd. is a company organized under the laws of Taiwan, with a place of business at No.239, SEC2, Ti Ding Blvd., Taipei 1149, Taiwan, R.O.C.; including all U.S. subsidiaries.

20. Elitegroup Computer Systems, Inc. is a California corporation with a place of business of 45401 Research Avenue Fremont, California 94539, U.S.A. (Elitegroup Computer Systems Co., Ltd. and Elitegroup Computer Systems, Inc. collectively referred as "ECS").

21. Universal Scientific Industrial ("USI") is a company organized under the laws of Taiwan, with a place of business at 141, Lane 351, Taiping RD., SEC.1, Taso Tuen, Nan-Tou, Taiwan, R.O.C.; including all U.S. subsidiaries, if any.

22. Jetway Information Co. Ltd. is a company organized under the laws of Taiwan, with a place of business at 4F, No.168. Li Teh St, Chung Ho City, 235, Taipei, R.O.C.; including all U.S. subsidiaries.

23. Jetway Computer Corp. is a California corporation with its principal place of business at 38507 Cherry St. Suite #E, Newark California, 94560 U.S.A. (Jetway Computer Corp. and Jetway Information Co., Ltd collectively referred to as "Jetway")

24. Biostar Microtech Int'l Corp. is a company organized under the laws of Taiwan, with a place of business at 3FL. No. 108-2 Min Chuan Road. Hsin Tien City, Taipei Hsien, 231 Taiwan, R.O.C.; including all U.S. subsidiaries.

25. Biostar Microtech (U.S.A.) Corp. is a California corporation with a place of business at 18551-18553 Z Gale Ave., City of Industry, California 91748, U.S.A. (Biostar Microtech Int'l Corp. and Biostar Microtech (U.S.A.) Corp. collectively referred to as "Biostar").

26. Avalue Technology Inc. is a company organized under the laws of Taiwan, with a place of business at 7F, 228, Lian-cheng Road, Chung Ho City, Taipei, Taiwan, R.O.C.; including all U.S. subsidiaries.

27. Avalue Technology Inc. (US) is a New Jersey corporation with a place of business at 200 Tomillo Way, 2nd Floor, Tinton Falls, NJ 07712, U.S.A. (Avalue Technology Inc. and Avalue Technology Inc. (US) are collectively referred to as "AValue").

28. DFI Inc. is a company organized under the laws of Taiwan, with a place of business at 100, Huan-Ho St., Hsi-Chih City, Taipei Hsien, Taiwan, R.O.C.; including all U.S. subsidiaries.

29. DFI San Jose Inc. is a California corporation, with a place of business at 48008 Fremont Blvd, Fremont, California 94538, U.S.A. (DFI Inc. and DFI San Jose Inc. collectively as "DFI").

30. DFI-ACP is a company organized under the laws of Taiwan, with a place of business at No.100, Huanhe St, Sijhih City, Taipei County 22154, Taiwan, R.O.C.; including all U.S. subsidiaries.

31. DFI Technologies, LLC is a California limited liability company with a place of business at 1065 National Drive, Suite 1, Sacramento, California 95834, U.S.A.

32. ITOX LLC is a New Jersey limited liability company with a place of business at 8 Elkins Road, East Brunswick, NJ 08816, U.S.A. (DFI-ACP, DFI Technologies, LLC and ITOX LLC collectively referred to as ACP).

33. First International Computer, Inc. is a company organized under the laws of Taiwan, with a place of business at 19F, No.300, Yang Guang St., NeiHu, Taipei, Taiwan, R.O.C.; including all U.S. subsidiaries.

34. FIC USA is a California corporation with a place of business of 5070 Brandin Court, Fremont, California 94538, U.S.A. (First International Computer, Inc and FIC USA collectively referred to as "FIC").

35. Mitac International Corp. is a company organized under the laws of Taiwan, with a place of business at No. 1, R&D 2nd Rd. Hsin-Chu Science Industrial Park, Hsin-Chu Hsien, Taiwan, R.O.C.; including all U.S. subsidiaries.

36. Tyan Computer Corporation is a California corporation with a place of business at 47436 Fremont Boulevard, Fremont, California 94538, U.S.A. (Mitac International Corp. and Tyan Computer Corporation collectively referred to as "Tyan").

37. Shuttle Inc. is a company organized under the laws of Taiwan, with a place of business at NO. 30, Lane 76, Rei Kuang Rd., Nei-Hu Dist., Taipei, Taiwan, R.O.C.; including all U.S. subsidiaries.

38. Shuttle International, Inc. is a California Corporation with its principal place of business at 48389 Fremont Boulevard, Fremont, California 94538, U.S.A. (Shuttle Inc. and Shuttle International, Inc. collectively referred to as "Shuttle").

39. Wistron Corporation is a company organized under the laws of Taiwan, with a place of business at 21F, 88, Sec. 1, Hsin Tai Wu Road, Hsichih, Taipei Hsien 221, Taiwan, R.O.C.; including all U.S. subsidiaries.

40. Wistron InfoComm (Texas) Corporation is a Texas corporation with a place of business at 4051 Freport Parkway # 200, Grapevine, TX 76051, U.S.A.

41. Wistron InfoComm Technology (America) Corporation is a Texas corporation with a place of business at 800 Parker Square # 285a, Flower Mound, TX 75028, U.S.A.

42. AOpen Inc. is a company organized under the laws of Taiwan, with a place of business at No.68, Ruiguang Rd., Neihu District, Taipei, Taiwan, R.O.C.; including all U.S. subsidiaries. (AOpen Inc. and AOpen America collectively referred to as "AOpen").

43. AOpen America is a California corporation with its principal place of business at 2890 Zanker Road, Suite 101 San Jose, California 95134, U.S.A. (Wistron Corporation, Wistron InfoComm (Texas) Corporation, Wistron InfoComm Technology (America) Corporation, AOpen Inc. and AOpen America are collectively referred to as "Wistron").

44. Hon Hai Precision Industrial Co., Ltd. is a company organized under the laws of Taiwan, with a place of business at 2 Tzu Yu St., Tu-Cheng City, Taiwan, R.O.C.

45. Foxconn Technology Co., Ltd. is a company organized under the laws of Taiwan, with a place of business at NO.3-2 Chung-Shan Rd., Tu-Cheng City, Taipei, Co. 236, Taiwan, R.O.C.; including all U.S. subsidiaries, if any. (Hon Hai Precision Industrial Co., Ltd. and Foxconn Technology Co., Ltd. collectively referred to as "Foxconn").

46. Super Micro Computer, Inc. ("Supermicro") is a California corporation with a place of business at 48350 Fremont Blvd., Fremont, California 94538, U.S.A.

47. Radisys Corporation ("Radisys") is an Oregon corporation with a place of business at 5545 N.E. Dawson Creek Drive, Hillsboro, OR 97124.

48. Compal Electronics, Inc. is a company organized under the laws of Taiwan, with a place of business at No.581, Ruiguang Rd., Neihu District, Taipei City 11492, Taiwan, R.O.C.; including all U.S. subsidiaries.

49. Bizcom Electronics, Inc. is a California corporation with a place of business at 1171 Montague Expressway, Milpitas, California 95035, U.S.A. (Compal Electronics, Inc., Bizcom Electronics, Inc. collectively referred to as "Compal").

50. ASRock Incorporation is a company organized under the laws of Taiwan, with a place of business at 2F., No.37, Sec. 2, Jhongyang S. Rd., Beitou District, Taipei City 112, Taiwan, R.O.C.; and all U.S. subsidiaries.

51. ASRock America, Inc. is a California corporation with a place of business at 13848 Magnolia Avenue, Chino, California 91710, U.S.A. (ASRock Incorporated and ASRock America, Inc. are collectively referred to as "ASRock"). (All defendant parties are collectively referred to as "Defendants").

COUNT I
ACTS OF PATENT INFRINGEMENT

52. Defendants have infringed various claims of each of the patents-in-suit in violation of 35 U.S.C. § 271 through, among other activities, the manufacture, use, importation, sale and/or offer for sale of computer chips, motherboards, computers and other products, as well as using infringing methods including but not limited to testing of Defendants' products as a part of the manufacturing process. In addition to their direct infringement, Defendants have also knowingly and intentionally induced others to infringe under 35 U.S.C. § 271(b) (such as its customers and end-users in this judicial district and throughout the United States) by intentionally aiding, assisting and encouraging their infringement, and defendants have knowingly contributed to the infringement of others under 35 U.S.C. § 271(c) (such as its customers and end-users in this judicial district and throughout the United States) by supplying their technical know-how and infringing computer chips and motherboards (which are non-staple articles of commerce having no substantial non-infringing use). The infringement that has occurred is at least of the following claims of the following patents:

Patent Number	Claims
5,983,002	1-6; 8-15
6,401,222	1-7; 9-16; 18-20
6,687,858	1; 3-4
7,251,752	1; 3;
6,691,181	1-3; 10-11; 12-14
7,249,203	1; 10-11; 12-14
7,472,207	1; 10-12
7,069,475	6; 14-17; 21; 23
7,409,601	1-4; 6-7; 9-12; 14-15
6,842,802	1-29
7,366,804	1-30
7,653,766	1-19

NOTICE AND WILLFULNESS

53. On information and belief, all Defendants have had actual and/or constructive notice of their infringement of the patents-in-suit, including actual pre-complaint notice.

54. On information and belief, all Defendants' infringement has been willful and deliberate as to the patents-in-suit and has occurred with the knowledge that chips and cores of Winbond and ITE design have at a minimum infringed Adams' '002 patent in violation of 35 U.S.C. § 284. Defendants' infringement has injured and will continue to injure Adams, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, importation, offers for sale and/or sale of Defendants' products and/or services that contain infringing technology; including but not limited to Winbond's and/or ITE's core; or fall within the scope of any claim of any of the patents-in-suit.

PRAYER FOR RELIEF

WHEREFORE, Adams respectfully requests this Court enter judgment against Defendants and against their subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them granting the following relief:

A) An award of damages adequate to compensate Adams for the patent infringement by Defendants that has occurred, together with prejudgment interest from the date infringement of each respective patents-in-suit began together with costs, said damages to be no less than a reasonable royalty;

B) An award to Adams of all damages so determined for willful infringement, including an increase of the compensatory damages by up to three times, in accordance with 35 U.S.C. § 284;

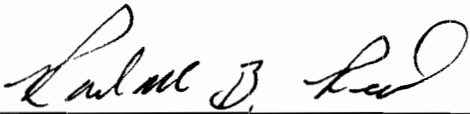
C) A finding that this case is exceptional and an award to Adams of all remedies available under 35 U.S.C. § 285, including the costs of this action and reasonable attorney's fees;

D) A permanent injunction prohibiting further infringement, inducement and contributory infringement of the patents-in-suit;

E) Such other and further relief as this Court or a jury may deem proper and/or just.

DATED: October 18, 2010

DRAY, THOMSON AND DYEKMAN, PC

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