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 FUJITSU LIMITED and
 FUJITSU MICROELECTRONICS AMERICA, INC.

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **OAKLAND DIVISION**

19 FUJITSU LIMITED, a Japanese
 20 corporation, and FUJITSU
 MICROELECTRONICS AMERICA,
 21 INC., a California corporation,

22 Plaintiffs,

v.

23 NANYA TECHNOLOGY CORP., a
 24 Taiwanese corporation, and NANYA
 TECHNOLOGY CORP. U.S.A., a
 California corporation,

25 Defendants.

CASE NO. 4:06-cv-06613 (CW)

**FIRST AMENDED COMPLAINT
 FOR PATENT INFRINGEMENT
 AND DECLARATORY
 JUDGMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Fujitsu Limited (“Fujitsu”) and Fujitsu Microelectronics
2 America, Inc. (“Fujitsu America”) (collectively, “Plaintiffs”), for their first
3 amended complaint against Defendants Nanya Technology Corp. (“Nanya”) and
4 Nanya Technology Corp. U.S.A. (“Nanya USA”) (collectively, “Defendants”),
5 aver as follows:

6 **THE PARTIES**

7 1. Fujitsu is a corporation organized and existing under the laws
8 of Japan. Fujitsu is a leading researcher, designer, manufacturer, and provider of
9 information technology and communications products and services. As a result of
10 its innovation, Fujitsu has been awarded various patents relating to computer
11 memory products such as double-data-rate synchronous dynamic random access
12 memory (DDR SDRAM) chips and dynamic random access memory (DRAM)
13 chips.

14 2. Fujitsu America is a wholly owned subsidiary of Fujitsu, and is
15 a California corporation with headquarters and principal place of business at 1250
16 E. Arques Avenue, M/S 333, Sunnyvale, California 94088-3470.

17 3. Defendant Nanya is a corporation organized and existing under
18 the laws of Taiwan, having its principal place of business at Hwa-Ya Technology
19 Park 669, Fu Hsing 3rd Rd., Kueishan, Taoyuan, Taiwan, Republic of China.
20 Upon information and belief, Nanya manufactures products, including the memory
21 chips accused of infringement in this Complaint, for sale and importation into the
22 United States directly through its own actions and indirectly by Defendant Nanya
23 USA.

24 4. Defendant Nanya USA is a corporation organized and existing
25 under the laws of the State of California, having its principal place of business at
26 5104 Old Ironsides Dr., Suite 113, Santa Clara, CA 95054. Upon information and
27 belief, Nanya USA is a wholly-owned subsidiary of Defendant Nanya, and has
28 sold or sells products manufactured by Nanya or Nanya USA, including the

1 memory chips accused of infringement in this Complaint, to customers in the State
2 of California and elsewhere in the United States. Upon further information and
3 belief, the accused memory chips are incorporated by customers of Nanya or
4 Nanya USA, who are manufacturers of computers and other electronic devices,
5 into computers and other electronic devices sold in the State of California,
6 including customers located in this judicial district.

7 **JURISDICTION**

8 5. This is an action arising under the Patent Laws of the United
9 States, Title 35 of the United States Code, the Declaratory Relief Act, and the laws
10 of California. This Court has subject matter jurisdiction over this action under 28
11 U.S.C. § 1338(a), which confers jurisdiction over cases of patent infringement, 28
12 U.S.C. § 1331, which confers federal question jurisdiction and 28 U.S.C. §
13 2201(a), which confers jurisdiction over declaratory judgment actions. The Court
14 has supplemental jurisdiction over the California state law claims under 28 U.S.C.
15 § 1367.

16 6. This Court has general personal jurisdiction over Nanya USA
17 because Nanya USA is incorporated under the laws of the State of California and
18 has its principal place of business in Santa Clara, California.

19 7. This Court has personal jurisdiction over Nanya and Nanya
20 USA under California Code of Civil Procedure § 410.10, *inter alia*, on the basis
21 that upon information and belief, Nanya and Nanya USA have sold, and continue
22 to sell infringing memory chips to manufacturers of computers and other electronic
23 devices in this District and elsewhere in the United States, who in turn have sold
24 and continue to sell computers and other electronic devices containing the
25 infringing memory chips to customers in this District and elsewhere in the United
26 States. Upon further information and belief, Nanya, as 100% owner of Nanya
27 USA, has been directing Nanya USA's sales activities. Upon information and
28 belief, Nanya also knew that said manufacturers of computers and other electronic

1 devices reside in this District and elsewhere in the United States, and would sell
2 devices containing the infringing memory chips to customers in this District and
3 elsewhere in the United States, and Nanya derived and continues to derive
4 substantial revenue therefrom.

5 **VENUE**

6 8. Venue is proper in this judicial district under 28 U.S.C.
7 §§ 1391(c) and 1400(b).

8 **FUJITSU'S PATENTS**

9 9. Fujitsu is the assignee and owner of the following United States
10 patents ("Fujitsu's Patents"):

- 11 a. U.S. Patent No. 4,801,989 ("the '989 patent", Exh. A hereto), entitled
12 "Dynamic Random Access Memory Having Trench Capacitor With
13 Polysilicon Lined Lower Electrode," which was duly and legally
14 issued on January 31, 1989 to Masao Taguchi;
- 15 b. U.S. Patent No. 6,104,486 ("the '486 patent", Exh. B hereto), entitled
16 "Fabrication Process of a Semiconductor Device Using Ellipsometry,"
17 which was duly and legally issued on August 15, 2000 to Hiroshi
18 Arimoto.
- 19 c. U.S. Patent No. 6,292,428 B1 ("the '428 patent", Exh. C hereto),
20 entitled "Semiconductor Device Reconciling Different Timing
21 Signals," which was duly and legally issued on September 18, 2001 to
22 Hiroyoshi Tomita and Tatsuya Kanda.
- 23 d. U.S. Patent No. 6,320,819 B2 ("the '819 patent", Exh. D hereto),
24 entitled "Semiconductor Device Reconciling Different Timing
25 Signals," which was duly and legally issued on November 20, 2001 to
26 Hiroyoshi Tomita and Tatsuya Kanda.

- 1 e. U.S. Patent No. 5,227,996 (“the ‘996 patent”, Exh. E hereto), entitled
2 “Semiconductor Memory Device Having Word Line Driver,” which
3 was duly and legally issued on July 13, 1993 to Toshiya Uchida.
4

5 **NANYA’S PATENTS**

6 10. In a complaint filed by Nanya against Plaintiffs in Guam on
7 September 13, 2006 (but never properly served), Civil Case No. 06-00025 (“the
8 Guam Complaint”), Nanya purported to be the owner of all rights, title, and
9 interest in and under the following United States patents (“Nanya’s Patents”):

- 10 a. U.S. Patent No. 6,790,765 (“the ‘765 patent”, Exh. F hereto), titled
11 “Method For Forming Contact”;
12 b. U.S. Patent No. 6,225,187 (“the ‘187 patent”, Exh. G hereto), entitled
13 “Method For STI-Top Rounding Control”;
14 c. U.S. Patent No. 6,426,271 (“the ‘271 patent”, Exh. H hereto), entitled
15 “Method Of Rounding The Corner Of A Shallow Trench Isolation
16 Region.”

17 11. The Guam Complaint asserts Nanya’s Patents against Plaintiffs.

18 12. By virtue of Nanya’s actions, Plaintiffs reasonably believed at
19 the time their original Complaint was filed that Nanya imminently intended to
20 pursue against them an infringement action involving Nanya’s Patents.

21 13. Plaintiffs deny that they infringe any valid claim of any of the
22 Nanya Patents.

23 14. An actual and justiciable controversy exists between Nanya and
24 Plaintiffs concerning whether Plaintiffs infringe any valid claim of the Nanya
25 Patents. Plaintiffs now seek a declaratory judgment that they do not infringe any
26 valid claim of the Nanya Patents, and that the claims of the Nanya Patents are
27 invalid.
28

THE CONFIDENTIALITY AGREEMENTS

1
2 15. Fujitsu and Nanya entered into a Confidentiality Agreement on
3 February 17, 2005 concerning the confidentiality of documents and information in
4 discussing a possible settlement of patent infringement claims (“Confidentiality
5 Agreement”).

6 16. Fujitsu and Nanya also entered into a Letter Agreement on July
7 12, 2006 concerning the confidentiality of documents and information relating to a
8 possible settlement of patent infringement claims (“Letter Agreement”).

9 17. Nanya, Nanya USA and Nanya Technology Corporation Japan,
10 were represented by Mr. Hiroyuki Morisaki (“Mr. Morisaki”), who signed the
11 Letter Agreement.

12 18. Mr. Morisaki sent Fujitsu a letter dated August 10, 2006
13 requesting that Fujitsu provide additional information relating to the possible
14 settlement of patent infringement claims.

15 19. Fujitsu sent Mr. Morisaki a responsive letter dated August 11,
16 2006 that provided additional information relating to the possible settlement of
17 patent infringement claims.

18 20. The Confidentiality Agreement and the Letter Agreement each
19 state that confidential documents and information provided by Fujitsu concerning a
20 possible settlement of patent infringement claims shall not be disclosed to any third
21 party.

22 21. After Nanya entered into Confidentiality Agreement and the
23 Letter Agreement, Fujitsu provided confidential documents and information
24 concerning a possible settlement of patent infringement claims on July 12, 2006
25 and August 11, 2006.

26 22. Defendants disclosed confidential information concerning a
27 possible settlement of patent infringement claims in public record documents
28 asserting *inter alia* declaratory judgment and antitrust claims.

SECOND CLAIM FOR RELIEF

(Infringement of the '486 Patent)

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3 30. Plaintiffs re-allege and incorporate by reference herein each of
4 the averments set forth in paragraphs 1-9 of this Complaint.

5 31. Nanya and Nanya USA have been and still are infringing one or
6 more claims of the '486 patent by making, using, offering for sale, selling and/or
7 importing into the United States memory chips and by causing use, offer for sale
8 and sale of computers and other electronic devices containing memory chips.
9 Upon information and belief, infringing memory chips made, used, sold, offered
10 for sale or imported by Nanya and Nanya USA include at least the following:
11 512M DDR SDRAM; 512M DDR2 SDRAM; 256M DDR2 SDRAM; 1G DDR2
12 SDRAM; and SDRAM memory module products equipped with one or more of
13 the 512M DDR SDRAM; 512M DDR2 SDRAM; 256M DDR2 SDRAM; and 1G
14 DDR2 SDRAM .

15 32. Nanya and Nanya USA's actions constitute infringement, active
16 inducement of infringement, and/or contributory infringement of the '486 patent in
17 violation of 35 U.S.C. § 271.

18 33. Fujitsu has sustained damages and will continue to sustain
19 damages as a result of the aforesaid acts of infringement.

20 34. Nanya and Nanya USA's continued infringement of the '486
21 patent has caused and will continue to cause Fujitsu irreparable harm unless
22 enjoined by the Court.

23 35. On information and belief, Nanya and Nanya USA's
24 infringements of the '486 patent have been willful.

THIRD CLAIM FOR RELIEF

(Infringement of the '428 Patent)

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27 36. Plaintiffs re-allege and incorporate by reference herein each of
28 the averments set forth in paragraphs 1-9 of this Complaint.

1 37. Nanya and Nanya USA have been and still are infringing one or
2 more claims of the '428 patent by making, using, offering for sale, selling and/or
3 importing into the United States memory chips and causing use, offer for sale and
4 sale of computers and other electronic devices containing memory chips.
5 Infringing memory chips made, used, sold, offered for sale or imported by Nanya
6 and Nanya USA include at least the 256M DDR SDRAM (e.g., part no.
7 NT5D64M4AT). On information and belief, Defendants' additional infringing
8 memory chips include at least the following: 128M DDR SDRAM; 512M DDR
9 SDRAM; 512M DDR2 SDRAM; 1G DDR2 SDRAM; 128M DDR SDRAM
10 Graphic (Elixir); 512M DDR SDRAM Graphic (Elixir); 256M DDR2 SDRAM
11 Graphic (Elixir); 512M DDR2 SDRAM Graphic (Elixir); 512M DDR UDIMM;
12 1G DDR UDIMM; 512M DDR SODIMM; 1G DDR SODIMM; 512M DDR
13 RDIMM; 1G DDR RDIMM; 2G DDR RDIMM; 256M DDR2 UDIMM; 512M
14 DDR2 UDIMM; 1G DDR2 UDIMM; 2G DDR2 UDIMM; 256M DDR2
15 SODIMM; 512M DDR2 SODIMM; 1G DDR2 SODIMM; 512M DDR2 RDIMM;
16 1G DDR2 RDIMM; 2G DDR2 RDIMM; 512M DDR2 FBDIMM; 1G DDR2
17 FBDIMM; 2G DDR2 FBDIMM; 512M DDR SDRAM SODIMM (Elixir); 128M
18 DDR SDRAM Unbuffered DIMM (Elixir); 512M DDR SDRAM Unbuffered
19 DIMM (Elixir); 1G DDR SDRAM Unbuffered DIMM (Elixir); 256M DDR2
20 SDRAM SO DIMM (Elixir); 512M DDR2 SDRAM SO DIMM (Elixir); 1G DDR2
21 SDRAM SO DIMM (Elixir); 256M DDR2 SDRAM Unbuffered DIMM (Elixir);
22 512M DDR2 SDRAM Unbuffered DIMM (Elixir); 1G DDR2 SDRAM
23 Unbuffered DIMM (Elixir); 512M DDR SDRAM SO DIMM (Super Elixir); 1G
24 DDR SDRAM SO DIMM (Super Elixir); 128M DDR SDRAM Unbuffered DIMM
25 (Super Elixir); 512M DDR SDRAM Unbuffered DIMM (Super Elixir); 1G DDR
26 SDRAM Unbuffered DIMM (Super Elixir); 256M DDR2 SDRAM SO DIMM
27 (Super Elixir); 512M DDR2 SDRAM SO DIMM (Super Elixir); 1G DDR2
28 SDRAM SO DIMM (Super Elixir); 256M DDR2 SDRAM Unbuffered DIMM

1 (Super Elixir); 512M DDR2 SDRAM Unbuffered DIMM (Super Elixir); and 1G
2 DDR2 SDRAM Unbuffered DIMM (Super Elixir).

3 38. Nanya and Nanya USA's actions constitute infringement, active
4 inducement of infringement, and/or contributory infringement of the '428 patent in
5 violation of 35 U.S.C. § 271.

6 39. Fujitsu has sustained damages and will continue to sustain
7 damages as a result of the aforesaid acts of infringement.

8 40. Nanya and Nanya USA's continued infringement of the '428
9 patent has caused and will continue to cause Fujitsu irreparable harm unless
10 enjoined by the Court.

11 41. On information and belief, Nanya and Nanya USA's
12 infringements of the '428 patent have been willful.

13 **FOURTH CLAIM FOR RELIEF**

14 **(Infringement of the '819 Patent)**

15 42. Plaintiffs re-allege and incorporate by reference herein each of
16 the averments set forth in paragraphs 1-9 of this Complaint.

17 43. Nanya and Nanya USA have been and still are infringing one or
18 more claims of the '819 patent by making, using, offering for sale, selling and/or
19 importing into the United States memory chips and causing use, offer for sale and
20 sale of computers and other electronic devices containing memory chips.

21 Infringing memory chips made, used, sold, offered for sale or imported by Nanya
22 and Nanya USA include at least the 256M DDR SDRAM (e.g., part no.

23 NT5D64M4AT). On information and belief, Defendants' additional infringing
24 memory chips include at least the following: 128M DDR SDRAM; 512M DDR
25 SDRAM; 512M DDR2 SDRAM; 1G DDR2 SDRAM; 128M DDR SDRAM
26 Graphic (Elixir); 512M DDR SDRAM Graphic (Elixir); 256M DDR2 SDRAM
27 Graphic (Elixir); 512M DDR2 SDRAM Graphic (Elixir); 512M DDR UDIMM;
28 1G DDR UDIMM; 512M DDR SODIMM; 1G DDR SODIMM; 512M DDR

1 RDIMM; 1G DDR RDIMM; 2G DDR RDIMM; 256M DDR2 UDIMM; 512M
2 DDR2 UDIMM; 1G DDR2 UDIMM; 2G DDR2 UDIMM; 256M DDR2
3 SODIMM; 512M DDR2 SODIMM; 1G DDR2 SODIMM; 512M DDR2 RDIMM;
4 1G DDR2 RDIMM; 2G DDR2 RDIMM; 512M DDR2 FBDIMM; 1G DDR2
5 FBDIMM; 2G DDR2 FBDIMM; 512M DDR SDRAM SODIMM (Elixir); 128M
6 DDR SDRAM Unbuffered DIMM (Elixir); 512M DDR SDRAM Unbuffered
7 DIMM (Elixir); 1G DDR SDRAM Unbuffered DIMM (Elixir); 256M DDR2
8 SDRAM SO DIMM (Elixir); 512M DDR2 SDRAM SO DIMM (Elixir); 1G DDR2
9 SDRAM SO DIMM (Elixir); 256M DDR2 SDRAM Unbuffered DIMM (Elixir);
10 512M DDR2 SDRAM Unbuffered DIMM (Elixir); 1G DDR2 SDRAM
11 Unbuffered DIMM (Elixir); 512M DDR SDRAM SO DIMM (Super Elixir); 1G
12 DDR SDRAM SO DIMM (Super Elixir); 128M DDR SDRAM Unbuffered DIMM
13 (Super Elixir); 512M DDR SDRAM Unbuffered DIMM (Super Elixir); 1G DDR
14 SDRAM Unbuffered DIMM (Super Elixir); 256M DDR2 SDRAM SO DIMM
15 (Super Elixir); 512M DDR2 SDRAM SO DIMM (Super Elixir); 1G DDR2
16 SDRAM SO DIMM (Super Elixir); 256M DDR2 SDRAM Unbuffered DIMM
17 (Super Elixir); 512M DDR2 SDRAM Unbuffered DIMM (Super Elixir); and 1G
18 DDR2 SDRAM Unbuffered DIMM (Super Elixir).

19 44. Nanya and Nanya USA's actions constitute infringement, active
20 inducement of infringement, and/or contributory infringement of the '819 patent in
21 violation of 35 U.S.C. § 271.

22 45. Fujitsu has sustained damages and will continue to sustain
23 damages as a result of the aforesaid acts of infringement.

24 46. Nanya and Nanya USA's continued infringement of the '819
25 patent has caused and will continue to cause Fujitsu irreparable harm unless
26 enjoined by the Court.

27 47. On information and belief, Nanya and Nanya USA's
28 infringements of the '819 patent have been willful.

FIFTH CLAIM FOR RELIEF

(Infringement of the '996 Patent)

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3 48. Plaintiffs re-allege and incorporate by reference herein each of
4 the averments set forth in paragraphs 1-9 of this Complaint.

5 49. Nanya and Nanya USA have been and still are infringing one or
6 more claims of the '996 patent by making, using, offering for sale, selling and/or
7 importing into the United States memory chips and by causing use, offer for sale
8 and sale of computers and other electronic devices containing memory chips.
9 Infringing memory chips made, used, sold, offered for sale or imported by Nanya
10 and Nanya USA include at least Nanya's 512M DDR2 SDRAM (e.g., part no
11 N2TU51280AF (Elixir brand)). On information and belief, there are additional
12 infringing memory chips.

13 50. Nanya and Nanya USA's actions constitute infringement, active
14 inducement of infringement, and/or contributory infringement of the '996 patent in
15 violation of 35 U.S.C. § 271.

16 51. Fujitsu has sustained damages and will continue to sustain
17 damages as a result of the aforesaid acts of infringement.

18 52. Nanya and Nanya USA's continued infringement of the '996
19 patent has cause and will continue to cause Fujitsu irreparable harm unless
20 enjoined by the Court.

21 53. On information and belief, Nanya and Nanya USA's
22 infringements of the '996 patent have been willful.

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment of Noninfringement regarding the '765 Patent)

24 54. Plaintiffs re-allege and incorporate by reference herein each of
25 the averments set forth in paragraphs 1-14 of this Complaint.
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1 55. Plaintiffs are not directly infringing, contributorily infringing,
2 or actively inducing others to infringe any valid claim of the '765 patent as
3 properly construed.

4 **SEVENTH CLAIM FOR RELIEF**

5 **(Declaratory Judgment of Invalidity regarding the '765 Patent)**

6 56. Plaintiffs re-allege and incorporate by reference herein each of
7 the averments set forth in paragraphs 1-14 of this Complaint.

8 57. The '765 patent is invalid for failing to satisfy the conditions
9 for patentability set forth in Title 35 of the United States Code, including but not
10 limited to sections 102, 103, and/or 112.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Declaratory Judgment of Noninfringement regarding the '187 patent)**

13 58. Plaintiffs re-allege and incorporate by reference herein each of
14 the averments set forth in paragraphs 1-14 of this Complaint.

15 59. Plaintiffs are not directly infringing, contributorily infringing,
16 or actively inducing others to infringe any valid claim of the '187 patent as
17 properly construed.

18 **NINTH CLAIM FOR RELIEF**

19 **(Declaratory Judgment of Invalidity regarding the '187 patent)**

20 60. Plaintiffs re-allege and incorporate by reference herein each of
21 the averments set forth in paragraphs 1-14 of this Complaint.

22 61. The '187 patent is invalid for failing to satisfy the conditions
23 for patentability set forth in Title 35 of the United States Code, including but not
24 limited to sections 102, 103, and/or 112.

25 **TENTH CLAIM FOR RELIEF**

26 **(Declaratory Judgment of Noninfringement regarding the '271 patent)**

27 62. Plaintiffs re-allege and incorporate by reference herein each of
28 the averments set forth in paragraphs 1-14 of this Complaint.

1 63. Plaintiffs are not directly infringing, contributorily infringing,
2 or actively inducing others to infringe any valid claim of the '271 patent as
3 properly construed.

4 **ELEVENTH CLAIM FOR RELIEF**

5 **(Declaratory Judgment of Invalidity regarding the '271 patent)**

6 64. Plaintiffs re-allege and incorporate by reference herein each of
7 the averments set forth in paragraphs 1-14 of this Complaint.

8 65. The '271 patent is invalid for failing to satisfy the conditions
9 for patentability set forth in Title 35 of the United States Code, including but not
10 limited to sections 102, 103, and/or 112.

11 **TWELFTH CLAIM FOR RELIEF**

12 **(Breach of Contract)**

13 66. Plaintiffs re-allege and incorporate by reference herein each of
14 the averments set forth in paragraphs 1-23 of this Complaint.

15 67. The information concerning a possible settlement of patent
16 infringement claims provided by Fujitsu on July 12, 2006 and the additional
17 information provided by Fujitsu on August 11, 2006 are included within the
18 confidential documents and information protected under the Confidentiality
19 Agreement and/or Letter Agreement and the disclosure of this information by
20 Defendants and those in concert with them ("Defendants") in asserting *inter alia*
21 declaratory judgment and antitrust claims constitutes a material breach of the
22 Confidentiality Agreement and/or Letter Agreement.

23 68. The information disclosed by Defendants in asserting *inter alia*
24 declaratory judgment and antitrust claims had not entered the public domain prior
25 to the breach of the Confidentiality Agreement and Letter Agreement.

26 69. Defendants disclosed confidential documents and information
27 and breached the Confidentiality Agreement and/or Letter Agreement in bad faith.
28

1 70. As a direct and proximate result of this breach, Fujitsu has
2 sustained damages and will continue to sustain damages in an amount to be
3 determined.

4 **THIRTEENTH CLAIM FOR RELIEF**

5 **(Breach of Confidentiality)**

6 71. Plaintiffs re-allege and incorporate by reference herein each of
7 the averments set forth in paragraphs 1-23 of this Complaint.

8 72. On July 12, 2006, Fujitsu disclosed confidential information to
9 Defendants concerning a possible settlement of patent infringement claims.

10 73. On August 11, 2006, Fujitsu disclosed additional confidential
11 information to Defendants concerning a possible settlement of patent infringement
12 claims.

13 74. On information and belief, Defendants knew that the disclosed
14 information was confidential and was being disclosed in confidence.

15 75. Defendants were obligated to maintain the confidentiality of the
16 disclosed information.

17 76. On information and belief, Defendants knew that they were
18 obligated to maintain the confidentiality of the disclosed information.

19 77. Defendants breached their obligation of confidentiality by
20 disclosing the confidential information in public record documents asserting *inter*
21 *alia* declaratory judgment and antitrust claims.

22 78. On information and belief, Defendants knew they were
23 breaching their obligation of confidentiality by disclosing the confidential
24 information in public record documents.

25 79. On information and belief, Defendants breached their obligation
26 of confidentiality in bad faith.

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1 80. As a direct and proximate result of this breach, Fujitsu has
2 sustained damages and will continue to sustain damages in an amount to be
3 determined.

4 **FOURTEENTH CLAIM FOR RELIEF**

5 **(Fraud)**

6 81. Plaintiffs re-allege and incorporate by reference herein each of
7 the averments set forth in paragraphs 1-23 of this Complaint.

8 82. Through the Letter Agreement dated July 12, 2006 and the
9 letter dated August 10, 2006, Defendants induced Fujitsu to provide confidential
10 information concerning a possible settlement of patent infringement claims by
11 making representations that the information was being requested for purposes of
12 settlement.

13 83. Upon information and belief, Defendants in fact were planning
14 to use the information for purposes of preparing declaratory judgment and antitrust
15 claims against Plaintiffs.

16 84. The misrepresentations by Defendants were material.

17 85. Fujitsu justifiably relied on the misrepresentations when
18 disclosing its confidential information concerning a possible settlement of patent
19 infringement claims.

20 86. Defendants improperly used the information in preparing and
21 filing declaratory judgment and antitrust claims against Plaintiffs.

22 87. Upon information and belief, the misrepresentations by
23 Defendants were fraudulent.

24 88. As a direct and proximate result of the fraudulent
25 misrepresentations by Defendants, Fujitsu has been subjected to unjustified claims
26 for alleged antitrust violations and declaratory judgment, has lost confidentiality
27 concerning a possible settlement of patent infringement claims, has sustained
28 damages, and will continue to sustain damages in an amount to be determined.

FIFTEENTH CLAIM FOR RELIEF

(Negligent Misrepresentation)

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3 89. Plaintiffs re-allege and incorporate by reference herein each of
4 the averments set forth in paragraphs 1-23 and 81-88 of this Complaint.

5 90. Upon information and belief, the misrepresentations by
6 Defendants were negligent.

7 91. As a direct and proximate result of the negligent
8 misrepresentations by Defendants, Fujitsu has been subjected to unjustified claims
9 for alleged antitrust violations and declaratory judgment, has lost confidentiality
10 concerning a possible settlement of patent infringement claims, has sustained
11 damages, and will continue to sustain damages in an amount to be determined.

SIXTEENTH CLAIM FOR RELIEF

(Unfair Competition Under California Law)

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14 92. Plaintiffs re-allege and incorporate by reference herein each of
15 the averments set forth in paragraphs 1-23 of this Complaint.

16 93. Defendants engaged in unlawful, unfair and/or deceptive
17 practices in making material misrepresentations to Plaintiffs concerning a possible
18 settlement of patent infringement claims.

19 94. Defendants have unfairly competed with Plaintiffs in violation
20 of Cal. Bus. & Prof. Code § 17200 et seq. and have damaged Plaintiffs by doing
21 so.

PRAYER FOR RELIEF

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23 WHEREFORE, Plaintiffs prays that this Court enter judgment in its
24 favor and against Defendants and grant the following relief:

25 A. A preliminary and permanent injunction preventing further
26 infringement, contributory infringement and inducement of infringement of
27 Fujitsu's Patents;

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1 B. An accounting to determine damages for infringement, breach
2 of contract, breach of confidentiality, fraud, negligent misrepresentation and
3 unfair competition;

4 C. An award of damages for infringement, breach of contract,
5 breach of confidentiality, fraud, negligent misrepresentation and unfair
6 competition;

7 D. An assessment and award of interest, including pre-judgment
8 interest, on the damages determined;

9 E. An award of punitive damages;

10 F. A trebling of damages pursuant to 35 U.S.C. § 284;

11 G. A declaration that Plaintiffs do not infringe any valid claim of
12 any of the Nanya Patents.

13 H. A declaration that the claims of the Nanya Patents asserted
14 against Plaintiffs are invalid.

15 I. A finding that this is an exceptional case and an award of
16 Plaintiffs' costs and attorney fees in this action and in *Nanya Tech. Corp. et al. v.*
17 *Fujitsu Ltd. et al.*, 06-CV-00025 in the U.S. District Court for the District of
18 Guam; and

19 J. Such other and further relief as this Court deems just and
20 proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs hereby demand a trial by jury as to all claims and all issues
23 properly triable thereby.

24 Respectfully submitted,

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26 Dated: June 11, 2007

By:



27 Milbank, Tweed, Hadley & McCloy LLP
28 Gregory Evans (State Bar No. 147623)
Chris L. Holm (*Pro Hac Vice*)

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