

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

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Stephan Harris, Clerk
Cheyenne

Randall B. Reed, Wyo. Bar No. 5-2863
DRAY THOMSON AND DYEKMAN, PC
204 E. 22nd St.
Cheyenne, WY 82001
Telephone: (307) 634-8891
Facsimile: (307) 634-8902

Attorneys for Plaintiffs

**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.

WINBOND ELECTRONICS CORPORATION, a Taiwan corporation, WINBOND ELECTRONICS CORPORATION AMERICA, a California corporation, ASUSTEK COMPUTER, INC., a Taiwan corporation, ASUS COMPUTER INTERNATIONAL, a California corporation, MICRO-STAR INTERNATIONAL CORPORATION, LTD., a Taiwan corporation, MSI COMPUTER CORPORATION, a California corporation.

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT**

Civil No. 10-CV-229-F

Judge: Freudenthal

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:

- 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 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' patents.

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. Subsequent to the initiation of the Winbond Litigation, additional patents concerning the defects in FDC's and other I/O controllers were issued to Adams and Adams has determined that Defendants are infringing these patents.

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

10. Winbond Electronics Corporation is a company organized under the laws of Taiwan, with a place of business at No. 4, Creation Rd. 3, Science-Based Industrial Park, Hsinchu, 300, Taiwan, R.O.C.; and all U.S. subsidiaries. (Winbond Electronics Corporation, Winbond Electronics Corporation America, Nuvoton Technology Corp. and Nuvoton Technology Corporation America collectively referred to as "Winbond")

11. Winbond Electronics Corporation America is a California corporation with a place of business at 2727 N. 1st Street, San Jose, California 95134, U.S.A.

12. ASUSTeK Computer, Inc. is a Taiwanese corporation with its principal place of business at No. 150 Le-Te Road, Peitou, Taipei Taiwan, R.O.C.

13. ASUS Computer International is a California corporation with its principal place of business at 44370 Nobel Drive, Fremont, California 94538. (ASUSTeK Computer, Inc. and ASUS Computer International collectively referred to as "ASUS").

14. Micro-Star International Corporation, Ltd. is a company organized under the laws of Taiwan, with a place of business at 69 Li-De St., Jung-He City, Taiwan, R.O.C.; and all U.S. subsidiaries. (Micro-Star International Corporation, Ltd. and MSI Computer Corporation are collectively referred to as "MSI").

15. MSI Computer Corporation is a California corporation with a place of business at 901 Canada Ct., City of Industry, California 91748, U.S.A. (All defendant parties are collectively referred to as “Defendants”).

COUNT I
ACTS OF PATENT INFRINGEMENT

16. 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
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

17. 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.

18. On information and belief, all Defendants' infringement has been willful and deliberate as to the patents-in-suit and has occurred with knowledge of, at a minimum, the '002 patent the Winbond chips and cores have infringed, 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 may deem proper and/or just.

DATED: October 18, 2010

DRAY, THOMSON AND DYEKMAN, PC

By: 

Randall B. Reed, Wyo. Bar No. 5-2863
DRAY, THOMSON AND DYEKMAN, PC
204 E. 22nd St.
Cheyenne, WY 82001
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