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Applied Materials, Inc. and
Applied Materials Israel, Ltd.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

APPLIED MATERIALS, INC. and APPLIED
MATERIALS ISRAEL, LTD.,

Plaintiffs,

v.

NEGEVTECH LTD. and NEGEVTECH, INC.,
Defendants.

Case No. C04-03656 SI

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

**CERTIFICATION OF INTERESTED
PARTIES**

DEMAND FOR JURY TRIAL

Plaintiffs Applied Materials, Inc. ("Applied Materials") and Applied Materials Israel, Ltd.
("AMIL") allege as follows:

THE PARTIES

1. Plaintiff Applied Materials is a Delaware corporation with its principal place of
business in Santa Clara, California.

2. Plaintiff AMIL is an Israeli corporation with its principal place of business in
Rehovot, Israel. Plaintiff AMIL is a wholly-owned subsidiary of Applied Materials.

3. On information and belief, defendant Negevtech Ltd. is an Israeli company with a
place of business at 12 Hamada Street, Rehovot, 76703 Israel.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the patent laws of the United States (35 U.S.C. §§ 1 et seq.).

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

7. On November 9, 1999, United States Patent No. 5,982,921, entitled “Optical Inspection Method and Apparatus” was duly and lawfully issued by the United States Patent and Trademark Office (hereinafter “the ‘921 patent”). A true and correct copy of the ‘921 patent is attached as Exhibit A to this Second Amended Complaint.

8. The '921 patent issued from application serial number 08/984,558 ("the '558 application") filed on December 3, 1997. The '558 application was a continuation of application serial number 07/790,871 ("the '871 application") filed on November 12, 1991.

9. The named inventors on the '871 application were Mr. David Alumot, Mr. Gad Neumann, Ms. Rivka Sherman, and Mr. Ehud Tirosh.

10. In 1991, the named inventors of the '871 application executed an assignment in favor of Orbot Instruments Ltd. and Orbot Instruments Ltd.'s successors and assigns. In particular, the named inventors of the '871 application sold, assigned and transferred to Orbot Instruments Ltd. their "entire rights, title and interest in and to the invention titled: OPTICAL INSPECTION METHOD AND APPARATUS described and claimed in the following Patent Application: US Patent Application S/N 07,790,871 filed November 12, 1991 and in and to said Patent Application, and all original and reissued Patents granted therefore, and all divisions and continuations thereof, including the right to apply and obtain Patents in all other countries, the priority rights under International Conventions, and the Letters Patent which may be granted thereon."

1 11. The named inventors of the '871 application covenanted that they had the full right
2 to convey the entire interest to the '871 application to Orbot Instruments Ltd.

3 12. As part of the assignment and transfer, the named inventors of the '871 application
4 agreed that they would "sign all lawful papers, make all rightful oaths, do all lawful acts requisite
5 for such Patent Applications, and do everything possible to aid said Assignee to apply for, obtain
6 and enforce Patent protection for said invention."

7 13. A true and correct copy of the 1991 assignment from the named inventors of the
8 '871 application to Orbot Instruments, Ltd. is attached as Exhibit B.

9 14. Applied Materials acquired the shares of Orbot Instruments Ltd. in 1997.

10 15. Applied Materials acquired the shares of Opal, Inc., a parent company of Opal
11 Technologies Ltd. ("Opal") in 1997.

12 16. After the acquisition of Orbot Instruments Ltd. and Opal by Applied Materials,
13 Orbot Instruments Ltd. merged into Opal in 1998.

14 17. After the merger of Orbot Instruments Ltd. into Opal, Opal subsequently changed
15 its name to Applied Materials Israel, Ltd., plaintiff in this action.

16 18. Plaintiff AMIL is the owner of the '921 patent.

17 19. Mr. David Alumot is a named inventor of the '921 patent. On information and
18 belief, Mr. Alumot is a co-founder and Managing Director of Negevtech Ltd. Prior to joining
19 Negevtech, Mr. Alumot co-founded Orbot Instruments Ltd. He later joined Opal. In 1997,
20 plaintiff Applied Materials acquired both Orbot Instruments Ltd. and Opal. Mr. Alumot left
21 Applied Materials in 1999, the same year he co-founded Negevtech Ltd.

22 20. Mr. Gadi Neumann is a named inventor of the '921 patent. On information and
23 belief, Mr. Neumann is a co-founder and Managing Director of Negevtech Ltd. On information
24 and belief, Mr. Neumann is the President of defendant Negevtech, Inc. Prior to joining
25 Negevtech, Mr. Neumann co-founded Orbot Instruments Ltd. In and around 1996, Mr. Neumann
26 founded Negevtech Consulting. In and around 1997 and 1998, Mr. Neumann provided consulting
27 services to Applied Materials and its subsidiaries.

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1 **21.** Ms. Rivka Sherman is a named inventor on the '921 patent. On information and
2 belief, Ms. Sherman is a Vice President of Business Development of defendant Negevtech, Inc.
3 Prior to joining Negevtech, Ms. Sherman worked for both Orbot Instruments Ltd. and Applied
4 Materials.

5 **22.** On information and belief, Negevtech Ltd. makes, uses and sells semiconductor
6 wafer inspection tools under the trade names Negevtech 302 and Negevtech 3100.

7 **23.** On information and belief, Negevtech, Inc. uses and sells semiconductor wafer
8 inspection tools under the trade names Negevtech 302 and Negevtech 3100.

9 **24.** The Negevtech 302 and 3100 systems can perform both bright field and dark field
10 inspection of patterned semiconductor wafers used in the manufacture of semiconductor devices.
11 The Negevtech 302 and 3100 systems can be operated to inspect patterned semiconductor wafers
12 for defects.

13 **25.** On information and belief, the Negevtech 302 and the Negevtech 3100 embody
14 one or more of the optical systems claimed in United States Patent No. 6,892,013 entitled "Fiber
15 Optical Illumination System" issued on May 10, 2005.

16 **26.** Plaintiffs Applied Materials, Inc. and AMIL compete with defendants Negevtech
17 Ltd. and Negevtech, Inc. for sales of semiconductor wafer defect inspection systems.

18 **27.** On information and belief, Negevtech Ltd. and Negevtech, Inc. were aware of the
19 '921 patent before the commencement of this lawsuit.

20 **28.** On information and belief, Negevtech Ltd. and Negevtech, Inc. were aware of the
21 disclosure of United States Patent No. 6,369,888 ("the '888 patent") in or before January 2003.

22 **29.** The '888 patent is in the same patent family as United States Patent No. 6,924,891
23 ("the '891 patent").

24 **30.** On information and belief, Negevtech Ltd. and Negevtech, Inc. were aware of the
25 '891 patent prior to the filing of this Second Amended Complaint.

26 **31.** On information and belief, Negevtech Ltd. and Negevtech, Inc. were aware of
27 United States Patent No. 6,256,093 ("the '093 patent") prior to the filing of this Second Amended
28 Complaint.

FIRST CAUSE OF ACTION

(Patent Infringement – ‘921 Patent)

32. Plaintiffs Applied Materials and AMIL incorporate by reference the allegations set forth in paragraphs 1 through 31 of this Complaint as though set forth in full herein.

33. On information and belief, defendant Negevtech Ltd. has directly and contributorily infringed, and has induced others to infringe, at least one claim of the ‘921 patent by using, selling, and/or offering to sell within the United States the Negevtech 302 and Negevtech 3100 wafer inspection tools.

34. On information and belief, defendant Negevtech, Inc. has directly and contributorily infringed, and has induced others to infringe, at least one claim of the ‘921 patent by using, selling and/or offering to sell within the United States the Negevtech 302 and the Negevtech 3100 wafer inspection tools.

35. On information and belief, the infringement of the ‘921 patent by the defendants has been willful.

36. Plaintiffs Applied Materials and AMIL have been and will continue to be damaged and irreparably harmed by the defendants’ infringement, which will continue unless the defendants are enjoined from further acts of infringement by this Court.

SECOND CAUSE OF ACTION

(Patent Infringement – ‘891 Patent)

37. Plaintiffs Applied Materials and AMIL incorporate by reference the allegations set forth in paragraphs 1 through 31 of this Complaint as though set forth in full herein.

38. United States Patent No. 6,924,891 (“the ‘891 patent”) entitled “Method And Apparatus For Article Inspection Including Speckle Reduction” issued on August 2, 2005. The ‘891 patent is assigned to plaintiff Applied Materials, Inc. A true and correct copy of the ‘891 patent is attached as Exhibit C to this Complaint.

39. On information and belief, defendant Negevtech Ltd. has directly and contributorily infringed, and has induced others to infringe, at least one claim of the ‘891 patent

1 by using, selling, and/or offering to sell within the United States the Negevtech 302 and the
2 Negevtech 3100 wafer inspection tools.

3 40. On information and belief, defendant Negevtech, Inc. has directly and
4 contributorily infringed, and has induced others to infringe, at least one claim of the '891 patent
5 by using, selling and/or offering to sell within the United States the Negevtech 302 and the
6 Negevtech 3100 wafer inspection tools.

7 41. On information and belief, the infringement of the '891 patent by the defendants
8 has been willful.

9 42. Plaintiffs Applied Materials and AMIL have been and will continue to be damaged
10 and irreparably harmed by the defendants' infringement, which will continue unless the
11 defendants are enjoined from further acts of infringement by this Court.

12 **THIRD CAUSE OF ACTION**

13 **(Patent Infringement – '093 Patent)**

14 43. Plaintiffs Applied Materials and AMIL incorporate by reference the allegations set
15 forth in paragraphs 1 through 31 of this Complaint as though set forth in full herein.

16 44. United States Patent No. 6,256,093 ("the '093 patent") entitled "On-The-Fly
17 Automatic Defect Classification For Substrates Using Signal Attributes" issued on July 3, 2001.
18 The '093 patent is assigned to plaintiff Applied Materials, Inc. A true and correct copy of the
19 '093 patent is attached as Exhibit D to this Complaint.

20 45. On information and belief, defendant Negevtech Ltd. has directly and
21 contributorily infringed, and has induced others to infringe, at least one claim of the '093 patent
22 by using, selling, and/or offering to sell within the United States the Negevtech 302 and the
23 Negevtech 3100 wafer inspection tools.

24 46. On information and belief, defendant Negevtech, Inc. has directly and
25 contributorily infringed, and has induced others to infringe, at least one claim of the '093 patent
26 by using, selling and/or offering to sell within the United States the Negevtech 302 and the
27 Negevtech 3100 wafer inspection tools.

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1 47. On information and belief, the infringement of the '093 patent by the defendants
2 has been willful.

3 48. Plaintiffs Applied Materials and AMIL have been and will continue to be damaged
4 and irreparably harmed by the defendants' infringement, which will continue unless the
5 defendants are enjoined from further acts of infringement by this Court.

6 WHEREFORE, plaintiffs Applied Materials and AMIL pray that this Court:

- 7 (a) enter an order preliminarily and permanently enjoining the defendants, their
8 officers, agents, servants, employees, attorneys and affiliated companies, their
9 assigns and successors in interest, and those persons in active concert or
10 participation with them, from continued acts of infringement of the '921, '891 and
11 '093 patents;
- 12 (b) enter a judgment holding the defendants liable for infringement of the '921, '891
13 and '093 patents;
- 14 (c) enter an order awarding Applied Materials and AMIL damages according to proof
15 resulting from the defendants' infringement of the '921, '891 and '093 patents,
16 together with pre-judgment and post-judgment interest;
- 17 (d) enter a judgment holding that the defendants' infringement of the '921, '891 and
18 '093 patents was willful and trebling the damages for such infringement pursuant
19 to 35 U.S.C. § 284;
- 20 (e) award Applied Materials and AMIL their attorneys' fees as a result of this being
21 an exceptional case pursuant to 35 U.S.C. § 285;
- 22 (f) award Applied Materials and AMIL their costs in connection with this action; and
23 (g) enter orders for such other and further relief as the Court deems just and proper.

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25 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

26 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
27 named parties, there is no known interest to report.

DEMAND FOR JURY TRIAL

Applied Materials and AMIL demand a trial by jury of all issues triable by right by a jury.

Dated: October 24, 2005

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/S/ Chuck P. Ebertin

Chuck P. Ebertin

Attorneys for Plaintiffs

Applied Materials, Inc. and

Applied Materials Israel, Ltd.