

1 MARK A. SAMUELS (S.B. #107026)
2 BRIAN M. BERLINER (S.B. #156732)
3 MARK C. SCARSI (S.B. #183926)
4 RYAN K. YAGURA (S.B. #197619)
5 O'MELVENY & MYERS LLP
6 400 South Hope Street
7 Los Angeles, CA 90071-2899
8 Telephone: (213) 430-6000
9 Facsimile: (213) 430-6407

10 Attorneys for Plaintiffs

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 TOP VICTORY ELECTRONICS
15 (TAIWAN) CO., LTD., a Taiwanese
16 limited liability company;
17 ENVISION PERIPHERALS INC., a
18 California corporation,

19 Plaintiffs,

20 v.

21 HITACHI, LTD., a Japanese
22 corporation; ELONEX UK PLC, a
23 UK corporation,

24 Defendants.

Case No. C03-5792 MEJ

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT AND/OR
INVALIDITY AND
UNENFORCEABILITY OF U.S.
PATENT NOS. 6,247,090, 6,513,088 AND
6,549,970**

DEMAND FOR JURY TRIAL

1 Plaintiffs TOP VICTORY ELECTRONICS (TAIWAN) CO., LTD.
2 and ENVISION PERIPHERALS INC. (collectively, "Plaintiffs"), for their claims
3 for relief herein against defendants HITACHI, LTD. and ELONEX UK PLC, aver
4 as follows:

5
6 **JURISDICTION AND VENUE**

7 1. This is an action under 28 U.S.C. §§ 2201 and 2202 for
8 declaratory relief and further relief based upon a declaratory judgment or decree. In
9 the Claim for Relief, Plaintiffs seek a judicial declaration that they do not infringe
10 United States Patent Nos. 6,247,090, 6,513,088 and 6,549,970 (the "PATENTS-IN-
11 SUIT") and/or that the PATENTS-IN-SUIT are invalid or unenforceable. This
12 Court has original jurisdiction over the Claim for Relief under 28 U.S.C. §§ 1331
13 and 1338(a).

14 2. Venue is proper in this district under 28 U.S.C. §1391(b) and
15 (d).

16
17 **INTRADISTRICT ASSIGNMENT**

18 3. This is an Intellectual Property Action and shall therefore be
19 assigned on a district-wide basis in accordance with Local Rule 3-2(c).

20
21 **PARTIES**

22 4. Plaintiff TOP VICTORY ELECTRONICS (TAIWAN) CO.,
23 LTD. is, and at all times material hereto was, a limited liability company organized
24 and existing under the laws of Taiwan with its principal place of business in Taipei
25 Hsien, Taiwan.

26
27 5. Plaintiff ENVISION PERIPHERALS INC. is, and at all times
28 material hereto was, a corporation organized and existing under the laws of the

1 State of California with its principal place of business in Fremont, California.

2
3 6. On information and belief, defendant Hitachi, Ltd.
4 (“HITACHI”) is, and at all times material hereto was, a corporation organized and
5 existing under the laws of Japan.

6
7 7. On information and belief, defendant Elonex UK PLC
8 (“ELONEX”) is, and at all times material hereto was, a corporation organized and
9 existing under the laws of the United Kingdom.

10
11 **CLAIM FOR RELIEF**

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13 8. Plaintiffs repeat and incorporate here the allegations of
14 paragraphs 1 through 7 of this complaint.

15 9. On information and belief, HITACHI is the owner of the
16 PATENTS-IN-SUIT:

17 U.S. Patent No. 6,247,090, issued June 12, 2001 and titled “Display
18 Apparatus Enabled to Control Communicatability With an External Computer
19 Using Identification Information,” a true and correct copy of which is attached
20 hereto as Exhibit A;

21 U.S. Patent No. 6,513,088, issued January 28, 2003 and titled “Display
22 Unit and Method Enabling Bi-Directional Communication With Video Source,” a
23 true and correct copy of which is attached hereto as Exhibit B; and

24 U.S. Patent No. 6,549,970, issued April 15, 2003 and titled “Display
25 Unit With Controller Enabling Bi-Directional Communication With Computer,” a
26 true and correct copy of which is attached hereto as Exhibit C.

27 10. On information and belief, ELONEX is a co-owner, exclusive
28 licensee, or licensing agent with respect to the PATENTS-IN-SUIT, or otherwise

1 claims an interest therein.

2 11. Defendants have accused Plaintiffs of infringing the PATENTS-
3 IN-SUIT and therefore have created a reasonable apprehension on the part of the
4 Plaintiffs that Defendants will bring an action against Plaintiffs under 35 U.S.C. §§
5 271(a), (b) and (c) alleging that Plaintiffs have infringed or have contributed to or
6 actively induced infringement of the PATENTS-IN-SUIT.

7 12. Plaintiffs deny that they have infringed, or have contributed to
8 or actively induced infringement of any valid and enforceable claim of any of the
9 PATENTS-IN-SUIT. Therefore, an actual and justiciable controversy exists
10 between Plaintiffs and Defendants regarding infringement, validity and
11 enforceability of the PATENTS-IN-SUIT. This actual and justiciable controversy
12 arises under federal patent law.

13 13. Plaintiffs seek a declaratory judgment that they have not
14 infringed, contributed to or actively induced such infringement of the PATENTS-
15 IN-SUIT by any of their actions and/or a declaratory judgment that the PATENTS-
16 IN-SUIT are invalid and/or unenforceable.

17 14. A judicial declaration is necessary and appropriate at this time
18 pursuant to 28 U.S.C. § 2201, so that Plaintiffs may ascertain their rights and
19 duties with respect to the PATENTS-IN-SUIT.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment in their favor as follows:

23
24 1. For a judicial declaration that the PATENTS-IN-SUIT, and each
25 of them, are not and have not been infringed by Plaintiffs, and that the same are
26 invalid and/or unenforceable;

27 2. That the Court determine that this is an extraordinary case and
28 award Plaintiffs their attorneys' fees and litigation expenses under 28 U.S.C. §

1 1927, 35 U.S.C. § 285, and any other applicable statute or rule; and

2 3. That the Court award plaintiffs such other and further relief as
3 the Court deems just and proper.

4
5 Dated: December 23, 2003

6
7 MARK A. SAMUELS
8 BRIAN M. BERLINER
9 MARK C. SCARSI
10 RYAN K. YAGURA
11 O'MELVENY & MYERS LLP

12 By: //s// Mark A. Samuels
13 Mark A. Samuels
14 Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs, and each of them, hereby demand trial by jury of all issues so triable under the law.

Dated: December 23, 2003

MARK A. SAMUELS
BRIAN M. BERLINER
MARK C. SCARSI
RYAN K. YAGURA
O'MELVENY & MYERS LLP

By: //s// Mark A. Samuels
Mark A. Samuels
Attorneys for Plaintiffs

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CERTIFICATION OF INTERESTED ENTITIES OR PARTIES

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

Dated: December 23, 2003

MARK A. SAMUELS
BRIAN M. BERLINER
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O'MELVENY & MYERS LLP

By: //s// Mark A. Samuels
Mark A. Samuels
Attorneys for Plaintiffs