

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

2010 JUN 29 P 1:43

THE FOX GROUP, INC.,)

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Plaintiff,)

v.)

C.A. No.: 2:10cv314
(RBS|FBS)

CREE, INC., and DOW CORNING)
CORPORATION,)

JURY TRIAL DEMANDED

Defendants.)

VERIFIED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, The Fox Group, Inc. ("Fox"), through counsel, alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking redress for patent infringement under the patent laws of the United States, Title 35, United States Code.

THE PARTIES

2. Plaintiff, The Fox Group, Inc. ("Fox"), is a California corporation, having its sole place of business at 39 Garrett Street, Suite 226, Warrenton, VA 20186. Fox has ceased operations in California and is currently in the process of re-domesticating to the Commonwealth of Virginia.

3. On information and belief, Defendant, Cree, Inc. ("Cree"), is a North Carolina corporation having a principal place of business at 4600 Silicon Drive, Durham, NC 27703.

4. Defendant, Dow Corning Corporation (“Dow Corning”), is a Michigan corporation having a principal place of business at 2200 W. Salzburg Road, P.O. Box 994, Midland, Michigan 48686.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), as well as 28 U.S.C. § 2201.

6. This Court has personal jurisdiction over Cree, as Cree regularly does business and derives substantial revenues, and has done so with respect to the subject matter of this dispute, in the Commonwealth of Virginia.

7. This Court has personal jurisdiction over Dow Corning, as Dow Corning regularly does business and derives substantial revenues, and has done so with respect to the subject matter of this dispute, in the Commonwealth of Virginia.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Cree has maintained a regular and established place of business until recently and has committed acts of infringement arising out of its contacts in this judicial district. On April 21, 2010, Dow Corning filed a declaratory judgment complaint in the Southern District of New York. A copy of Dow Corning’s complaint is attached hereto as Exhibit A. That complaint could have and should have been filed in this Court. Fox is moving to dismiss Dow Corning’s declaratory judgment action for lack of personal jurisdiction or, in the alternative, to transfer Dow Corning’s declaratory judgment action to this Court. The sole issues in Dow Corning’s declaratory judgment action are the infringement and validity of the same two U.S. patents-in-suit in this action. Dow Corning’s declaratory judgment claims are compulsory counterclaims to Fox’s infringement

claims in this action. This court has personal jurisdiction over both Cree and Dow Corning, and venue is proper in this Court.

FACTUAL BACKGROUND

9. One of Fox's predecessors-in-interest began working on the development of silicon carbide substrates in the late 1980s. Fox's predecessor-in-interest achieved low levels of defects, namely micropipes, dislocations, and secondary phase inclusions, in its silicon carbide substrates. As early as 1997, Fox's predecessor-in-interest filed a patent application that matured into one of the patents-in-suit that discloses and claims lower defect density levels than achieved by others in the field, namely: dislocations of less than 10,000 per square centimeter; micropipes of less than 10 per square centimeter; and secondary phase inclusions of less than 10 per cubic centimeter.

10. Other companies, including Cree and Dow Corning, were not able to attain these claimed low defect density levels until years later. These low defect density levels are now "state of the art" defect densities, and silicon carbide substrates that have these defect density levels infringe Fox's patents-in-suit.

11. Cree makes and uses silicon carbide substrates and products incorporating silicon carbide, and offers to sell and sells these substrates and products throughout the United States.

12. In 2006, Cree acquired IntrinSiC Semiconductor Corporation ("IntrinSiC"), located in Dulles, Virginia, in the Eastern District of Virginia. Cree maintained IntrinSiC's lease on administrative and manufacturing space in Dulles through 2009 ("Cree Dulles"). *See* Cree 2007 Annual Report, attached hereto as Exhibit. B.

13. During the acquisition of IntrinSiC, Cree recognized IntrinSiC as "a leader in research and development of low defect density SiC substrates" as well as

the developer of “the first commercially available, zero micropipe SiC substrates using their ZMP™ technology.” Cree further stated that the “[i]ntegration of INTRINSIC’s technology into Cree’s materials product line should accelerate development of larger-diameter, high-quality SiC wafers.” *See* Press Release, attached hereto as Exhibit C, found at http://www.cree.com/press/press_detail.asp?i=1151324931798. These high-quality silicon carbide wafers infringe the patents-in-suit.

14. Cree offers for sale and sells infringing silicon carbide substrates, silicon carbide wafers, and/or products made from them within the Eastern District of Virginia. On information and belief, among Cree’s customers for infringing products in this judicial district include: GeneSiC Semiconductor, Inc., located in Dulles, Virginia; Virginia Commonwealth University; Dominion Electric Supply Company, Inc., in Chantilly, Virginia, among other Virginia locations; GreenEco Savers LLC, in Herndon, Virginia; Renaissance Lighting in Herndon, Virginia; and Block Lighting, in Newport News, Virginia.

15. Dow Corning manufactures and uses and offers for sale and sells silicon carbide substrates and epitaxial wafers.

16. On September 15, 2009, Dow Corning announced that it was producing and shipping in volume quantities its newest silicon carbide substrates and epitaxial wafers with “state-of-the-art defect densities” and that Dow Corning was “seeing an improvement in defect densities as the diameter increased.” *See* Dow Corning Press Release, attached as Exhibit D, found at http://www.dowcorning.com/content/news/DCCSC_Final_Press_Release_9-09_with_claims.aspx). These substrates and wafers infringe the patents-in-suit.

17. At the time of Dow Corning’s press release, the “state-of-the-art” defect densities satisfy the low defect density levels of Fox’s patents. For example, at the 2008 European Conference on Silicon Carbide and Related Materials

(ECSCRM), Dow Corning “reported that it had significantly improved micropipe densities, to about 10 such defects per square centimeter of material.” *See* press release, attached as Exhibit E, found at http://www.semiconductor-today.com/news_items/2009/SEPT/DOWCORNING_150909.htm.

**COUNT ONE:
INFRINGEMENT OF U.S. PATENT NO. 6,534,026**

18. Fox realleges and incorporates by reference each of paragraphs 1-17 above, as if fully set forth herein.

19. On March 18, 2003, the United States Patent and Trademark Office (“PTO”) duly and lawfully issued U.S. Patent No. 6,534,026 (“the ‘026 patent”), entitled “Low Defect Density Silicon Carbide.” A true and correct copy of the ‘026 patent is attached hereto as Exhibit F.

20. Fox is the owner by assignment of the ‘026 patent and has the exclusive right to make, use, import, offer for sale, and sell in the United States products covered by the ‘026 patent.

21. Cree has been making, using, selling, and/or offering for sale silicon carbide substrates and products that use silicon carbide that practice the invention of the ‘026 patent and, thus, infringe one or more claims of the ‘026 patent. Such silicon carbide products include, but are not limited to: Schottky diodes; metal semiconductor field effect transistors (“MESFET”); high electron mobility transistors (“HEMT”); and light emitting diodes (“LED”).

22. Cree has been infringing the ‘026 patent and will continue to do so unless and until enjoined by this Court.

23. Cree's acts of infringement of the '026 patent have caused Fox irreparable injury and damages in an as-yet-undetermined amount and, unless and until enjoined by this Court, will continue to do so.

24. Fox gave Cree notice of Cree's infringement on April 18, 2007, and Cree has continued to infringe in spite of this notice. At that time, Cree was committing acts of infringement at its Cree Dulles facility. Cree's acts of infringement of the '026 patent have been and continue to be willful and deliberate.

25. Attached hereto as Exhibit G is a claim chart depicting that Cree is infringing at least claim 1 of the '026 patent.

26. On information and belief, Dow Corning has been making, using, selling, and/or offering for sale silicon carbide wafers or substrates that infringe one or more claims of the '026 patent.

27. Dow Corning has been infringing the '026 patent and will continue to do so unless and until enjoined by this Court.

28. Dow Corning's acts of infringement of the '026 patent have caused Fox irreparable injury and damages, in an as-yet-undetermined amount and, unless and until enjoined by this Court, will continue to do so.

29. Fox gave Dow Corning notice of the infringement on February 23, 2007, and Dow Corning has continued to infringe in spite of this notice. Dow Corning's acts of infringement of the '026 patent have been and continue to be willful and deliberate.

30. Attached hereto as Exhibit H is a claim chart depicting that Dow Corning is infringing at least claim 1 of the '026 patent.

**COUNT TWO:
INFRINGEMENT OF U.S. PATENT NO. 6,562,130**

31. Fox realleges and incorporates by reference each of paragraphs 1-30 above, as if fully set forth herein.

32. On May 13, 2003, the United States Patent and Trademark Office (“PTO”) duly and legally issued U.S. Patent No. 6,562,130 (“the ‘130 patent”), entitled “Low Defect Axially Grown Single Crystal Silicon Carbide.” A true and correct copy of the ‘130 patent is attached hereto as Exhibit I.

33. Fox is the owner by assignment of the ‘130 patent and has the exclusive right to make, use, import, offer for sale, and sell in the United States products covered by the ‘130 patent.

34. Cree has been making, using, selling, and/or offering for sale silicon carbide substrates and products that use silicon carbide that practice the invention of the ‘130 patent and, thus, infringe one or more claims of the ‘130 patent. Such silicon carbide products include, but are not limited to: Schottky diodes; metal semiconductor field effect transistors (“MESFET”); high electron mobility transistors (“HEMT”); and light emitting diodes (“LED”).

35. Cree has been infringing the ‘130 patent and will continue to do so unless and until enjoined by this Court.

36. Cree’s acts of infringement of the ‘130 patent have caused Fox irreparable injury and damages in an as-yet-undetermined amount and, unless and until enjoined by this Court, will continue to do so.

37. Fox gave Cree notice of Cree’s infringement on April 18, 2007, and Cree has continued to infringe in spite of this notice. At that time, Cree was committing acts of infringement at its Cree Dulles facility. Cree’s acts of

infringement of the '130 patent have been and continue to be willful and deliberate.

38. Attached hereto as Exhibit J is a claim chart depicting that Cree is infringing at least claim 1 of the '130 patent.

39. On information and belief, Dow Corning has been making, using, selling, and/or offering for sale silicon carbide wafers or substrates that infringe one or more claims of the '130 patent.

40. Dow Corning has been infringing the '130 patent and will continue to do so unless and until enjoined by this Court.

41. Dow Corning's acts of infringement of the '130 patent have caused Fox irreparable injury and damages, in an as-yet-undetermined amount and, unless and until enjoined by this Court, will continue to do so.

42. Fox gave Dow Corning notice of the infringement on February 23, 2007, and Dow Corning has continued to infringe in spite of this notice. Dow Corning's acts of infringement of the '130 patent have been and continue to be willful and deliberate.

43. Attached hereto as Exhibit K is a claim chart depicting that Dow Corning is infringing at least claim 1 of the '130 patent.

PRAYER FOR RELIEF

WHEREFORE, Fox respectfully requests the following relief:

A. the entry of judgment that Cree has infringed one or more claims of the '026 and '130 patents;

B. a permanent injunction enjoining Cree, its officers, agents, servants, employees, and attorneys, and those persons in active concert or

participation with them, from further infringement of the '026 and '130 patents;

C. the entry of judgment awarding Fox compensatory damages for Cree's infringement of the '026 and '130 patents;

D. the entry of judgment that Cree's infringement of the '026 and '130 patents has been deliberate and willful;

E. the entry of judgment that Dow Corning has infringed one or more claims of the '026 and '130 patents;

F. a permanent injunction enjoining Dow Corning, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from further infringement of the '026 and '130 patents;

G. the entry of judgment awarding Fox compensatory damages for Dow Corning's infringement of the '026 and '130 patents;

H. the entry of judgment that Dow Corning's infringement of the '026 and '130 patents has been deliberate and willful;

I. the entry of judgment awarding Fox enhanced damages, up to three times the amount of compensatory damages against each of Cree and Dow Corning pursuant to 35 U.S.C. § 284;

J. the entry of judgment awarding Fox pre- and post-judgment interest on its damages, together with its costs and expenses;

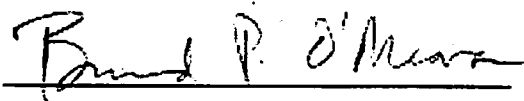
K. the entry of judgment awarding Fox reasonable attorney fees pursuant to 35 U.S.C. § 285; such other relief as this Court may deem just and proper.

VERIFICATION

I declare under penalty of perjury that I have read the foregoing Verified Complaint and that the same is true and correct.

Executed on June 25, 2010.


THE FOX GROUP, INC.

A handwritten signature in cursive script, reading "Bernard P. O'Meara", is written over a horizontal line.

Bernard P. O'Meara
President & CEO

Respectfully submitted,

Dated: June 29, 2010

By: 
Hayley S. Weimer (VA Bar No. 71541)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
Telephone: (202) 408-4000
Facsimile: (202) 408-4400
hayley.weimer@finnegan.com

Of Counsel:

Patrick J. Coyne
patrick.coyne@finnegan.com
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

Attorneys for Plaintiff
THE FOX GROUP, INC.