

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

DENNIS W. NUSSER, an individual,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL, a
California Corporation; and ASUSTeK
COMPUTER, INC., a Taiwanese Corporation,

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, DENNIS W. NUSSER, an individual, by and through the undersigned, hereby files this Complaint for Patent Infringement against ASUS COMPUTER INTERNATIONAL, a California Corporation, and ASUSTEK COMPUTER, INC., a Taiwanese Corporation, and, in so doing, states as follows:

JURISDICTION, VENUE AND THE PARTIES

1. This is an action brought pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*

2. This Court has original jurisdiction pursuant to Title 28, United States Code, Section 1331, as this case involves a federal question arising under the Constitution, laws or treaties of the United States.

3. At all times material hereto, plaintiff Dennis W. Nusser (hereinafter "Plaintiff"), had a principle address located in Broward County, Florida.

4. At all times material hereto, defendant ASUS COMPUTER INTERNATIONAL, a California Corporation ("ASUS"), was engaged in the conduct of interstate commerce, and regularly conducted business in this judicial district by selling, or causing to be sold, its products

throughout this state, at local retail stores such as Toys ‘R’ Us, Inc., and online through consumer sites such as www.Amazon.com, and similarly advertised its products throughout the country *via* websites such as <http://usa.asus.com/index.aspx>.

5. At all times material hereto, defendant ASUSTeK COMPUTER, INC., a Taiwanese Corporation (hereinafter “ASUSTeK”, and collectively with ASUS, “Defendants”), was engaged in the conduct of interstate commerce, and regularly conducted business in this judicial district by selling, or causing to be sold, its products throughout this state, at local retail stores such as Toys ‘R’ Us, Inc., and online through consumer sites such as www.Amazon.com, and similarly advertised its products throughout the country *via* websites such as <http://usa.asus.com/index.aspx>.

6. This action arises as a result of the infringing conduct of Defendants, which implicate interstate commerce.

7. Venue is proper in the Southern District of Florida pursuant to Title 28, United States Code, Section 1391(b) and (c) as Defendants “reside” in this judicial district, as the term “reside” is interpreted under Chapter 87, United States Code, and because a substantial part of the events giving rise to the infringement claims at issue occurred within this judicial district. Venue is also appropriate pursuant to Title 28, United States Code, Section 1400(b), which provides, in part, that “[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides”.

8. All conditions precedent have been met, waived, or satisfied to bring this lawsuit.

GENERAL ALLEGATIONS

9. Over thirty-three years ago Plaintiff began a profession in the office furniture industry.

10. As part of Plaintiff's experience in this industry, Plaintiff became aware of the use of ergonomics in office environments that were being implemented in an effort to aid employees to learn how to properly and safely utilize their workstations.

11. Indeed, in the early 1980's, as a result of the knowledge gained by Plaintiff in the industry, Plaintiff was invited to lecture audiences on the use of ergonomics in office environments.

12. Following these experiences, and upon the emergence of the micro-computer in the mid-1980's, the computer went from being a tool used by a few to a common device used by many, including children. Today, it is believed that more than two hundred million people in the United States use computers.

13. As a consequence of the rapid explosion of computer usage, teaching curriculums increasingly started to include instruction to children on how to use a computer. However, because keyboards were manufactured primarily for adult usage, the sizes of the keyboards accompanying the computer would not accommodate smaller hands, such as the naturally smaller size of a child's hands.

14. Recognizing this void, Plaintiff realized that children would not be able to learn the proper touch typing methods on the keyboards then being supplied with computers.

15. Following thought and consideration, Plaintiff ultimately conceived of the innovative idea of creating an input apparatus, such as a keyboard, sized for use by non-adults (*i.e.*, children) and adults having smaller hands.

16. In the early 1990's, Plaintiff eventually filed his first patent application with the United States Patent and Trademark Office ("USPTO") to protect his innovative idea. On July 2,

1996, the United States of America granted Plaintiff his first patent, which was issued under United States Patent No. 5,531,529 (“the ‘529 Patent”).

17. Thereafter, Plaintiff sought, and eventually obtained, patents on his innovation from patent offices of several foreign countries, including Australia, Brazil, Canada, China, Germany, Denmark, Europe, Spain, Greece, Japan, Portugal and Russia, and also registered his rights with the World Intellectual Property Organization.

18. Several years later, following subsequent research and consideration, Plaintiff domestically filed a continuation patent application to the ‘529 Patent with the USPTO. On September 5, 2006, the United States of America granted Plaintiff his second patent, which was issued under United States Patent No. 7,101,101 (“the ‘101 Patent”).

19. Plaintiff filed another continuation patent application to the ‘529 and ‘101 Patents with the USPTO. On April 8, 2008, the United States of America granted Plaintiff his third patent, which was issued under United States Patent No. 7,354,209 (“the ‘209 Patent”).

20. A copy of the ‘529 Patent, ‘101 Patent and ‘209 Patent, as well as a compilation of Plaintiff’s foreign patents, is attached hereto as Composite Exhibit “A”.

21. In and around March 2008, following the successful pursuit of the majority of the aforementioned patents, Plaintiff discovered that Defendants were causing to be manufactured, marketed and sold, netbook computers containing keyboard dimensions that infringed the claims of his patents. The netbooks at issue included, without limitation, the ASUS Eee PC 700 Series and Eee PC 900 Series, which include the ASUS Eee PC 900HA, 900SD, and T91MT.

22. Accordingly, on March 19 and 24, 2008, Plaintiff sent his initial correspondences to Defendants advising them of their infringing activities, and offered to license his patent rights to them. Copies of the March 2008 correspondences are attached hereto as Exhibit “B”.

23. In connection with his communications with Defendants, Plaintiff provided copies of his domestically and internationally issued patents.

24. Nearly one month later, on April 23, 2008, Plaintiff received a correspondence from one of Defendants' representatives in Taiwan concerning the claims of infringement. Defendants' representative advised Plaintiff that he "was assigned to take care of [Plaintiff's] mentioned issue", and instructed Plaintiff to send all future correspondences to him. A copy of the April 23, 2008 correspondence is attached as Exhibit "C".

25. Within the April 23, 2008 correspondence, Defendants blamed their vendors for any potential infringement, and advised Plaintiff that Defendants are purportedly protected by full indemnification agreements with their vendors, and would forward Plaintiff's notifications to its vendors. Defendants also advised that "evaluation of [Plaintiff's] patents would be time consuming", cautioning Plaintiff of a potential delayed response.

26. Having not heard again from Defendants for over one month, on May 29, 2008 Plaintiff sent a follow-up correspondence to Defendants' representative requesting an update. A copy of this May 29, 2008 correspondence is attached hereto as Exhibit "D".

27. On June 5, 2008, still not having heard from Defendants, Plaintiff again made an effort to follow-up with Defendants' representative by sending a short email to Defendants indicating that he had still not received a response. A copy of this June 5, 2008 correspondence is attached hereto as Exhibit "E".

28. Finally, on June 10, 2008, Defendants responded to Plaintiff. Similar to prior correspondences, Defendants reminded Plaintiff that it had indemnification agreements with its vendors, but also noted that its vendors believed the patents not to be infringed because of "prior

art.” A copy of this June 10, 2008 correspondence is attached hereto as Exhibit “F”. Following this June 2008 correspondence, Plaintiff sought legal counsel.

29. However, before engaging a law firm to pursue his rights, and in an effort to avoid the cost of litigation, Plaintiff again corresponded with Defendants’ representative in April 2009, demanding that Defendants cease their conduct immediately and compensate Plaintiff for their past infringing conduct. Defendants responded by suggesting that Plaintiff’s patents were invalid due to anticipation. Copies of these communications are attached hereto as Exhibit “G”.

30. Unable to convince Defendants to cease their infringing conduct, Plaintiff was thereafter forced to locate and retain legal counsel to enforce his patent rights.

31. To this end, Plaintiff eventually retained the undersigned counsel to pursue his interests in this matter, and is obligated to pay the undersigned a reasonable attorneys’ fee for their services, and to reimburse the undersigned for any costs incurred in connection with said representation.

32. Prior to filing the instant lawsuit, Plaintiff’s counsel engaged Defendants’ representative, again demanding that Defendants cease their infringing conduct. Defendants again responded suggesting that they possessed references to invalidating prior art, but demanded that Plaintiff execute a non disclosure agreement, governed by the laws of the Republic of China, before any such prior art was revealed. Several communications thereafter ensued concerning Defendants’ potential purchase of Plaintiff’s patents, or execution of a license to use the same. A copy of some of the correspondences between Defendants’ representative and Plaintiff’s counsel are attached hereto as Exhibit “H”.

33. On September 21, 2010, without warning, Defendants filed a declaratory action in the Northern District of California, naming Plaintiff as the defendant. Plaintiff is currently in the

process of filing a motion to dismiss for lack of personal jurisdiction and improper venue. A copy of the Complaint, without exhibits, is attached hereto as Composite Exhibit "I".

34. This lawsuit followed.

**COUNT I:
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

35. Plaintiff realleges and reavers paragraphs one (1) through thirty-four (34) as if fully set forth herein.

36. This is an action for temporary and permanent injunctive relief pursuant to Title 35, United States Code, Section 283, of the United States Patent Act.

37. Said section provides that this Court may "grant injunctions in accordance with the principles of equity to prevent the violations of any right secured by patent, on such terms as the court deems reasonable."

38. As alluded to in more detail above, Defendants have infringed, and continue to infringe, on the '529, '101 and '209 Patents, as well as all related internationally issued patents obtained by Plaintiff.

39. Despite various demands, Defendants continue to infringe against Plaintiff's patent rights.

40. Such refusal to honor Plaintiff's clear patent rights has caused, and will continue to cause, irreparable harm. Each day that Plaintiff is deprived of his earned intellectual property rights causes irreparable injury.

41. Plaintiff has no adequate remedy at law, especially because the property at issue is intellectual property and patented work that is being deprived.

42. There is no remedy at law that can fully compensate Plaintiff for the deprivation of said patent rights, and, in light of the facts of this case, there is a substantial likelihood that Plaintiff will succeed on the merits of the instant case.

WHEREFORE, Plaintiff DENNIS W. NUSSER, by and through the undersigned counsel, respectfully request that the Court enter a temporary and permanent injunction enjoining Defendants ASUS COMPUTER INTERNATIONAL, a California Corporation, and ASUSTEK COMPUTER, INC., a Taiwanese Corporation, and all those in active concert and participation with Defendants, from using, making, selling, marketing, distributing, transferring, or otherwise infringing on Plaintiff's rights as more fully set forth above, together with costs, attorneys' fees, and such other and further relief as this Court deems just and proper.

COUNT II:
WILLFUL PATENT INFRINGEMENT

43. Plaintiff realleges and reavers paragraphs one (1) through thirty-four (34) as if fully set forth herein.

44. This is an action for patent infringement pursuant to Title 35, United States Code, Section 271, of the United States Patent Act.

45. As more fully set forth above, Defendants have infringed, and continue to infringe, the '529, '101 and '209 Patents, as well as all related internationally issued patents obtained by Plaintiff, by making, using, offering to sell, inducing others to sell, and selling the infringing devices, including, without limitation, the Asus Eee PC original netbooks as originally marketed in 2007 and later, along with the Asus Eee PC 700 and 900 Series netbooks.

46. All such infringing conduct of Defendants has occurred and was committed by Defendants in a willful manner, irrespective of and despite Plaintiff's repeated verbal and written demands, which were sent by, or on behalf of, Plaintiff demanding that Defendants immediately

cease their infringing conduct and recognize Plaintiff's patent rights. Defendants' actions have been committed and performed in a willful, knowing and bad faith manner.

47. Defendants' actions have caused, and continue to cause, irreparable harm to Plaintiff to which there is no adequate remedy at law.

WHEREFORE, Plaintiff DENNIS W. NUSSER, by and through the undersigned counsel, respectfully demands judgment against Defendants ASUS COMPUTER INTERNATIONAL, a California Corporation, and ASUSTEK COMPUTER, INC., a Taiwanese Corporation, for the full amount of damages sustained, including, but not limited to, any and all remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, et. seq., which included, but are not limited to, a reasonable royalty award, disgorgement of the profits received by Defendants, treble damages, costs, pre and post judgment interest at the maximum allowable rate, attorneys' fees, and such other and further relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff DENNIS W. NUSSER hereby demands trial by jury of all issues so triable as a matter of law.

Dated this 4th day of October, 2010.

Respectfully Submitted,

/s/ Alexander D. Brown

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