

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HITACHI CHEMICAL CO., LTD.,

Plaintiff,

v.

K.C. TECH CO., LTD.,

Defendant.

§ CIVIL ACTION NO. 1:11-cv-969

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DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Hitachi Chemical Co, Ltd. (“Hitachi Chemical”) makes the following allegations against K.C. Tech Co., Ltd. (“KC Tech”).

PARTIES

1. Plaintiff Hitachi Chemical Co., Ltd. is a Japan corporation having a headquarters located at Shinjuku-Mitsui Building, 1-1, Nishi-Shinjuku 2-chome, Shinjuku-ku, Tokyo, Japan.

2. Upon information and belief, Defendant K.C. Tech Co., Ltd. is a Korean corporation having a principal place of business at 168-27 Samseong-dong, Gangnam-gu, Seoul, The Republic of Korea.

JURISDICTION

3. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over the subject matter pursuant to 28 U.S.C. sections 1331 and 1338(a).

4. The Court has personal jurisdiction over KC Tech because, on information and belief, KC Tech has purposely availed itself of the privilege of conducting activities within this

State and District, at a minimum, because it has imported and sold infringing products in this District and/or has committed, contributed to, and/or induced acts of infringement in this District.

5. Venue is proper in this District pursuant to 28 U.S.C. sections 1391 and 1400(b) because this is a judicial district where KC Tech does business and has committed, contributed to, and/or induced acts of patent infringement.

THE PATENTS

6. Hitachi Chemical is the lawful owner by assignment of U.S. Patent No. 7,115,021 (“the ’021 patent”), which was duly and legally issued by the United States Patent and Trademark Office on October 3, 2006. The ’021 patent is entitled “Abrasive, Method of Polishing Target Member and Process for Producing Semiconductor Device.” A true and correct copy of the ’021 patent is attached hereto as Exhibit A. Masato Yoshida, Toranosuke Ashizawa, Hiroki Terazaki, Yasushi Kurata, Jun Matsuzawa, Kiyohito Tanno and Yuuto Ootuki are named inventors on the ’021 patent.

7. Hitachi Chemical is the lawful owner by assignment of U.S. Patent No. 7,871,308 (“the ’308 patent”), which was duly and legally issued by the United States Patent and Trademark Office on January 18, 2011. The ’308 patent is entitled “Abrasive, Method of Polishing Target Member and Process for Producing Semiconductor Device.” A true and correct copy of the ’308 patent is attached hereto as Exhibit B. Masato Yoshida, Toranosuke Ashizawa, Hiroki Terazaki, Yasushi Kurata, Jun Matsuzawa, Kiyohito Tanno and Yuuto Ootuki are listed as inventors on the ’308 patent.

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KC TECH'S PRODUCTS

8. KC Tech sells cerium oxide (or “ceria”) slurries, for example, KCS-3100, in the United States for use in chemical-mechanical polishing processes.

9. The KCS-3100 slurry contains ceria particles.

10. The KCS-3100 slurry contains a dispersant.

11. The ceria particles in the KCS-3100 slurry have crystal grain boundaries.

12. During polishing, ceria particles in the KCS-3100 slurry are broken into smaller particles.

13. When the ceria particles in the KCS-3100 slurry are broken into smaller particles during polishing, they expose new surfaces at the crystal grain boundaries that were not previously exposed.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 7,115,021

14. Hitachi Chemical incorporates by reference, as if fully set forth herein, paragraphs 1 through 13 above.

15. Upon information and belief, KC Tech has infringed and is still infringing the '021 patent, directly, indirectly, contributorily, and/or by inducement of others, literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing within the Western District of Texas and elsewhere within the United States products and/or services that infringe one or more of the claimed inventions of the '021 patent. Such products include, but are not limited to, KC Tech's KCS-3100 slurry sold to Samsung Electronics in the Western District of Texas, and other similar products and/or services offered by KC Tech. On information and belief, having knowledge of the '021 patent, KC Tech has sold and continues to sell the KCS-3100 slurry to Samsung Electronics, who uses the slurry in ways intended and instructed by KC Tech which, when so used and with KC Tech's knowledge, infringe the '021

patent. KC Tech's actions infringe one or more of the '021 patent claims, including but not limited to claim 1.

16. KC Tech's actions constitute infringement in violation of one or more of 35 U.S.C. section 271(a), (b) and (c).

17. Upon information and belief, KC Tech was aware of the '021 patent prior to the filing of this Complaint but recklessly continued to make, use, sell, offer for sale and/or import products, and instruct and encourage its customers to use these products in semiconductor polishing, knowing that such actions constitute a high likelihood of infringement of the '021 patent. Upon information and belief, KC Tech acted and continues to act despite an objectively high likelihood that its actions constituted and continue to constitute infringement of a valid and enforceable patent; this objectively-defined risk was so obvious that it should have been known to KC Tech; and in fact KC Tech acted and continued to act knowing of this objectively-defined risk. KC Tech's infringement thus has been willful, warranting an award of enhanced damages pursuant to 35 U.S.C. section 284.

18. Upon information and belief, KC Tech's conduct justifies a finding that this is an exceptional case justifying an award of attorneys fees pursuant to 35 U.S.C. section 285.

19. Upon information and belief, the unlawful infringement activities by KC Tech are continuing and will continue unless enjoined by this Court.

20. As a result of the infringing acts described herein, Hitachi Chemical has sustained and will continue to sustain damages, including irreparable harm, unless KC Tech is enjoined from infringing the '021 patent.

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COUNT II - INFRINGEMENT OF U.S. PATENT NO. 7,871,308

21. Hitachi Chemical incorporates by reference, as if fully set forth herein, paragraphs 1 through 20 above.

22. Upon information and belief, KC Tech has infringed and is still infringing the '308 patent, directly, indirectly, contributorily, and/or by inducement of others, literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing within the Western District of Texas and elsewhere within the United States products and/or services that infringe one or more of the claimed inventions of the '308 patent. Such products include, but are not limited to, KC Tech's KCS-3100 slurry sold to Samsung Electronics in the Western District of Texas, and other similar products and/or services offered by KC Tech. On information and belief, having knowledge of the '308 patent, KC Tech has sold and continues to sell the KCS-3100 slurry to Samsung Electronics, who uses the slurry in ways intended and instructed by KC Tech which, when so used and with KC Tech's knowledge, infringe the '308 patent. KC Tech's actions infringe one or more of the '308 patent claims, including but not limited to claim 30.

23. KC Tech's actions constitute infringement in violation of one or more of 35 U.S.C. section 271(a), (b) and (c).

24. Upon information and belief, KC Tech was aware of the '308 patent prior to the filing of this Complaint but recklessly continued to make, use, sell, offer for sale and/or import products, and instruct and encourage its customers to use these products in semiconductor polishing, knowing that such actions constitute a high likelihood of infringement of the '308 patent. Upon information and belief, KC Tech acted and continues to act despite an objectively high likelihood that its actions constituted and continue to constitute infringement of a valid

and enforceable patent; this objectively-defined risk was so obvious that it should have been known to KC Tech; and in fact KC Tech acted and continued to act knowing of this objectively-defined risk. KC Tech's infringement thus has been willful, warranting an award of enhanced damages pursuant to 35 U.S.C. section 284.

25. Upon information and belief, KC Tech's conduct justifies a finding that this is an exceptional case justifying an award of attorneys fees pursuant to 35 U.S.C. section 285.

26. Upon information and belief, the unlawful infringement activities by KC Tech are continuing and will continue unless enjoined by this Court.

27. As a result of the infringing acts described herein, Hitachi Chemical has sustained and will continue to sustain damages, including irreparable harm, unless KC Tech is enjoined from infringing the '308 patent.

PRAYER FOR RELIEF

WHEREFORE, Hitachi Chemical Co., Ltd., prays for entry of a judgment against K.C. Tech Co., Ltd., as follows:

- a) A finding that K.C. Tech Co., Ltd., has infringed directly and/or indirectly, either literally or under the doctrine of equivalents, one or more claims of U.S. Patent Nos. 7,115,021 and 7,871,308;
- b) An award of damages adequate to compensate Hitachi Chemical Co., Ltd., for K.C. Tech Co., Ltd.'s infringement, in an amount to be proven at trial, together with interest and costs as fixed by the Court;
- c) A finding that K.C. Tech Co., Ltd.'s infringement of U.S. Patent Nos. 7,115,021 and 7,871,308 is and has been willful;
- d) An award of treble damages to be determined as provided for in 35 U.S.C.

section 284, together with prejudgment interest;

e) A finding that this case is exceptional and awarding Hitachi Chemical Co., Ltd.'s costs and attorneys fees in accordance with 35 U.S.C. section 285;

f) A permanent injunction prohibiting K.C. Tech Co., Ltd., its officers, directors, agents, and successors and anyone else acting in concert with K.C. Tech Co., Ltd., from continued infringement of U.S. Patent Nos. 7,115,021 and 7,871,308; and

g) Any other and further relief that this Court may deem appropriate and just.

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JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury on all issues properly tried to a jury.

DATED: November 14, 2011 Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

/s/ Bonnie M. Grant

By: _____
BONNIE M. GRANT

KILPATRICK TOWNSEND & STOCKTON LLP

Bonnie M. Grant (Texas State Bar No. 24067634)

1100 Peachtree Street, Suite 2800

Atlanta, GA 30309-4528

Telephone: (404) 815-6500

Facsimile: (404) 815-6555

Email: bgrant@kilpatricktownsend.com

FREDERICK L. WHITMER (New York State Bar No. 3835733)

31 West 52nd Street, 14th Floor

New York, NY 10019

Telephone: (212) 775-8700

Facsimile: (212) 775-8821

Email: fwhitmer@kilpatricktownsend.com

A. JAMES ISBESTER (California State Bar No. 129820)

Two Embarcadero Center Eighth Floor

San Francisco, CA 94111

Telephone: (415) 576-0200

Facsimile: (415) 576-0300

Email: jisbester@kilpatricktownsend.com

ANNE M. ROGASKI (California State Bar No. 184754)

1080 Marsh Road

Menlo Park, CA 94025

Telephone: (650) 326-2400

Facsimile: (650) 326-2422

Email: arogaski@kilpatricktownsend.com

Attorneys for Plaintiff

HITACHI CHEMICAL CO., LTD.