

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

OPTICAL MEMORY STORAGE, LLC

Plaintiff,

v.

**CMC MAGNETICS CORP.,
HOTAN CORP.,
FUJIFILM HOLDINGS CORP.,
FUJIFILM HOLDINGS AMERICA
CORP.,
FUJIFILM NORTH AMERICA CORP.,
f/k/a FUJIFILM U.S.A., INC.,
FUJIFILM RECORDING MEDIA U.S.A.,
INC.,
HEWLETT-PACKARD CO.,
IMATION CORP.,
MOSER BAER INDIA LIMITED,
RITEK CORP.,
ADVANCED MEDIA, INC.,
KONINKLIJKE PHILIPS ELECTRONICS
N.V.,
PHILIPS ELECTRONICS NORTH
AMERICA CORP.,
PANASONIC CORP.,
PANASONIC CORP. OF NORTH
AMERICA, and
WAL-MART STORES, INC.,**

Defendants.

Civil Action No. 2:11-cv-13110

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Optical Memory Storage, LLC (“OMS”) files this Complaint against CMC Magnetics Corp., Hotan Corp., FUJIFILM Holdings Corp., FUJIFILM Holdings America Corp., FUJIFILM North America Corp. f/k/a FUJIFILM U.S.A., Inc., FUJIFILM Recordings Media U.S.A., Inc., Hewlett-Packard Co., Imation Corp., Moser Baer India Limited, Ritek Corp., Advanced Media, Inc., Koninklijke Philips Electronics N.V., Philips Electronics North America Corp., Panasonic Corp., Panasonic Corp. of North America, and Wal-Mart Stores, Inc.

(collectively referred to as “Defendants”) for infringement of U.S. Patent No. 5,128,099 (“the ‘099 patent”), U.S. Patent No. 6,011,757 (“the ‘757 patent”), and/or U.S. Patent No. 5,335,219 (“the ‘219 patent”) (collectively the “patents in suit”).

BACKGROUND

The technology claimed in the patents in suit focuses on optical recording mediums and phase change materials that are commonly found in rewritable CDs (“CD-RW”), DVDs (“DVD-RW”) and Blue-Ray (BD-RE) discs. Stanford R. Ovshinsky, who resides and works in the Detroit, Michigan area, is a named inventor on each of the patents in suit. He is also world renowned as the father of phase-change media and rewritable optical discs such as CD-RW, DVD-RW and BD-RE. The founders of Sony, Sharp and several other technology companies have repeatedly called on Mr. Ovshinsky’s expertise and he has been recognized by the Public Broadcasting Station as “Japan’s American Genius.” Mr. Ovshinsky is a named inventor on hundreds of patents for his innovative work, not only in phase change materials and optical recording mediums, but also for the nickel-metal hydride battery, flat-panel display technology, non-silver photography, hydrogen storage materials and thin film solar cell technology. In 1960 Mr. Ovshinsky and his wife formed Energy Conversion Devices, Inc., where he worked until 2007. In 2007, Mr. Ovshinsky left Energy Conversion Devices, Inc. and founded a new company, Ovshinsky Innovations, LLC, where he continues to work on developing revolutionary technologies in the Detroit area.

THE PARTIES

1. OMS is a Delaware limited liability company with its principal place of business at 500 Newport Center Drive, 7th Floor, Newport Beach, California 92660. OMS is the exclusive licensee of the patents in suit with the right to enforce the patents.

CMC

2. On information and belief, CMC Magnetics Corp. is incorporated under the laws of Taiwan with its principal place of business at 53 Ming Chuan West Road, 15th Floor, Taipei, Taiwan, R.O.C. CMC Magnetics Corp. may be served at its principal place of business at 53 Ming Chuan West Road, 15th Floor, Taipei, Taiwan, R.O.C.

3. On information and belief, Hotan Corp. is a wholly-owned subsidiary of CMC Magnetics Corp. and is a California corporation with its principal place of business at 751 North Canyon Parkway, Livermore, California 94551-9479. Hotan Corp.'s registered agent for service in California is Robert Tsai, 751 North Canyons Parkway, Livermore, California 94551. Defendants CMC Magnetics Corp. and Hotan Corp. are collectively referred to as "CMC."

4. On information and belief, this Court has personal jurisdiction over CMC because CMC has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

FUJIFILM

5. On information and belief, FUJIFILM Holdings Corp. is incorporated under the laws of Japan with its principal place of business at Midtown West, 7-3, Akaska 9-chome, Minato-ku, Tokyo, 107-0052, Japan. FUJIFILM Holdings Corp. may be served at its principal place of business at Midtown West, 7-3, Akaska 9-chome, Minato-ku, Tokyo, 107-0052, Japan.

6. On information and belief, FUJIFILM Holdings America Corp. is a Delaware corporation and is a wholly owned subsidiary of FUJIFILM Corporation, which is a wholly owned subsidiary of FUJIFILM Holdings Corporation. On information and belief FUJIFILM Holdings America Corp. has a principal place of business at 200 Summit Lake Drive, Valhalla,

New York 10595. FUJIFILM Holding America Corp.'s registered agent for service of process in Delaware is The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

7. On information and belief, FUJIFILM North America Corporation is a New York corporation and wholly-owned subsidiary of FUJIFILM Holdings America Corp. with its principal place of business at 200 Summit Lake Drive, Valhalla, New York 10595. FUJIFILM North America Corporation's registered agent for service of process in Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

8. On information and belief, FUJIFILM Recording Media U.S.A., Inc. is a Delaware corporation and a wholly owned subsidiary of FUJIFILM Holdings America Corp. with its principal place of business at 200 Summit Lake Drive, Valhalla, New York 10595. FUJIFILM Recording Media U.S.A., Inc.'s registered agent for service of process in Delaware is The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. Defendants FUJIFILM Holdings Corp., FUJIFILM Holdings America Corp., FUJIFILM North America Corp., and FUJIFILM Recording Media U.S.A., Inc. are collectively referred to as "FUJIFILM."

9. On information and belief, this Court has personal jurisdiction over FUJIFILM because FUJIFILM has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

HEWLETT-PACKARD

10. On information and belief, Hewlett-Packard Co. is a California corporation with its principal place of business at 3000 Hanover Street, Palo Alto, California 94304-1185.

Hewlett Packard Co.'s registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Defendant Hewlett-Packard Co. is referred to as "HP."

11. On information and belief, this Court has personal jurisdiction over HP because HP has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

IMATION

12. On information and belief, Imation Corp. is a Delaware corporation with its principal place of business at 1 Imation Way, Oakdale, Minnesota 55128-3414. Imation Corp.'s registered agent for service of process in Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. Defendant Imation Corp. is referred to as "Imation."

13. On information and belief, this Court has personal jurisdiction over Imation because Imation has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

MOSER BAER

14. On information and belief, Moser Baer India Limited is incorporated under the laws of India with its principal place of business at 43B, Okhla Industrial Estate, New Delhi, India 110020. Moser Baer India Limited may be served at its principal place of business at 43B, Okhla Industrial Estate, New Delhi, India 110020.

15. On information and belief, this Court has personal jurisdiction over Moser Baer because Moser Baer has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

RITEK

16. On information and belief, Ritek Corporation is incorporated under the laws of Taiwan with its principal place of business at 42, Kuan-Fu North Road, Hsin-Chu Industrial Park, 30316, Taiwan. Ritek Corporation may be served at its principal place of business at 42, Kuan-Fu North Road, Hsin-Chu Industrial Park, 30316, Taiwan.

17. On information and belief, Advanced Media, Inc., d/b/a Ritek USA, is an indirect subsidiary of Ritek Corp. with its principal place of business at 1440 Bridgegate Drive, Suite 395, Diamond Bar, California 91765. Advanced Media, Inc.'s registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Defendants Ritek Corp. and Advanced Media, Inc. are collectively referred to as "Ritek."

18. On information and belief, this Court has personal jurisdiction over Ritek because Ritek has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

PHILIPS

19. On information and belief, Koninklijke Philips Electronics N.V. is incorporated under the laws of the Netherlands with a principal place of business at Breitner Center, Amstelvein 2, Amsterdam, 1096 BC, Netherlands. Koninklijke Philips Electronics N.V. may be

served at its principal place of business at Breitner Center, Amstelplein 2, Amsterdam, 1096 BC, Netherlands.

20. On information and belief, Philips Electronics North America Corp. is a Delaware corporation and a wholly-owned subsidiary of Koninklijke Philips Electronics N.V. with its principal place of business at 3000 Minuteman Road, Andover, Massachusetts 01810. Philips Electronics North America Corp.'s registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Defendants Koninklijke Philips Electronics N.V. and Philips Electronics North America Corp. are collectively referred to as "Philips."

21. On information and belief, this Court has personal jurisdiction over Philips because Philips has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

PANASONIC

22. On information and belief, Panasonic Corporation is incorporated under the laws of Japan with a principal place of business at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Panasonic may be served at its principal place of business at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan.

23. On information and belief, Panasonic Corporation of North America is a Delaware corporation and a wholly-owned subsidiary of Panasonic Corporation with its principal place of business at One Panasonic Way, Secaucus, NJ 07094. Panasonic Corporation of North America's registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, Delaware 19801.

Defendants Panasonic Corp. and Panasonic Corp. of North America are collectively referred to as “Panasonic.”

24. On information and belief, this Court has personal jurisdiction over Panasonic because Panasonic has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

WAL-MART STORES, INC.

25. On information and belief, Wal-Mart Stores, Inc. is incorporated under the laws of Delaware with a principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716. Wal-Mart’s registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, Delaware 19801.

Defendant Wal-Mart Stores, Inc. is hereinafter referred to as “Wal-Mart.”

26. On information and belief, this Court has personal jurisdiction over Wal-Mart because Wal-Mart has committed, and continues to commit, acts of infringement in this judicial district, has conducted business in this judicial district and/or has engaged in continuous and systematic activities in this judicial district.

JURISDICTION AND VENUE

27. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

28. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant is deemed to reside in this judicial district,

has committed acts of infringement in this judicial district, has purposely transacted business in this judicial district and/or has regular and established places of business in this judicial district.

29. Each Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Michigan Long Arm Statute, due at least to their substantial business in this State and judicial district, including: (A) at least part of their infringing activities alleged herein; and (B) regularly doing or soliciting business and, accordingly, deriving substantial revenue from goods and services provided to Michigan residents.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 5,128,099 AGAINST PANASONIC AND WAL-MART)¹

30. OMS incorporates paragraphs 1 through 29 herein by reference.

31. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. § 271, *et seq.*

32. OMS is the exclusive licensee of the '099 patent, entitled "Congruent State Changeable Optical Memory Material and Device," with ownership of all substantial rights in the '099 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '099 patent is attached as Exhibit A.

33. The '099 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

¹ Currently pending in this Court is action *Optical Memory Storage, LLC v. CMC Magnetics Corp., et al.*, case no. 2:11-cv-12566, which contains allegations of infringement against all other Defendants in this matter for infringement of the '099 patent.

INFRINGEMENT OF THE '099 PATENT BY PANASONIC

34. On information and belief, Panasonic is jointly, directly and/or indirectly infringing one or more claims of the '099 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '099 patent including, but not limited to, DVD-RW, DVD-RAM, ADA-RE and BD-RE discs ("Panasonic Discs"). Panasonic and users of Panasonic Discs have, at a minimum, directly infringed the '099 patent and Panasonic is thereby jointly and severally liable for infringement of the '099 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '099 PATENT BY WAL-MART

35. On information and belief, Wal-Mart is jointly, directly and/or indirectly infringing one or more claims of the '099 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '099 patent including, but not limited to Ritek Discs, Moser Baer Discs, Philips Discs, Imation Discs, HP Discs, FUJIFILM Discs, CMC Discs and Panasonic Discs ("Wal-Mart Discs"). Wal-Mart and users of Wal-Mart Discs have, at a minimum, directly infringed the '099 patent and Wal-Mart is thereby jointly and severally liable for infringement of the '099 patent pursuant to 35 U.S.C. § 271.

36. OMS has been damaged as a result of Defendants' infringing conduct described in this Court. Defendants are, thus, liable to OMS in an amount that adequately compensates OMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

37. Further, the infringement by each Defendant identified in this Count has been willful as each such Defendant has had notice of the '099 patent since at least service of Plaintiff's first Complaint on such Defendant and/or its affiliated entity identified herein. With knowledge of the '099 patent, each such Defendant has acted despite an objectively high likelihood that its actions constitute infringement of the '099 patent and a subjective knowledge or obviousness of such risk.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,011,757 AGAINST ALL DEFENDANTS)

38. OMS incorporates paragraphs 1 through 37 herein by reference.

39. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. § 271, *et seq.*

40. OMS is the exclusive licensee of the '757 patent, entitled "Optical Recording Media Having Increased Erasability," with ownership of all substantial rights in the '757 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '757 patent is attached as Exhibit B.

41. The '757 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

INFRINGEMENT OF THE '757 PATENT BY CMC

42. On information and belief, CMC is jointly, directly and/or indirectly infringing one or more claims of the '757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '757 patent including, but not limited to, CD-RW, DVD-RW, DVD+RW, DVD-RAM, Mini CD-RW and BD-RE discs ("CMC Discs").

CMC and users of CMC Discs have, at a minimum, directly infringed the ‘757 patent and CMC is thereby jointly and severally liable for infringement of the ‘757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE ‘757 PATENT BY FUJIFILM

43. On information and belief, FUJIFILM is jointly, directly and/or indirectly infringing one or more claims of the ‘757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the ‘757 patent including, but not limited to, CD-RW, DVD-RAM, DVD+RW, DVD-RW and BD-RE discs (“FUJIFILM Discs”). FUJIFILM and users of FUJIFILM Discs have, at a minimum, directly infringed the ‘757 patent and FUJIFILM is thereby jointly and severally liable for infringement of the ‘757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE ‘757 PATENT BY HP

44. On information and belief, HP is jointly, directly and/or indirectly infringing one or more claims of the ‘757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the ‘757 patent including, but not limited to, CD-RW and DVD+RW discs (“HP Discs”). HP and users of HP Discs have, at a minimum, directly infringed the ‘757 patent and HP is thereby jointly and severally liable for infringement of the ‘757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE ‘757 PATENT BY IMATION

45. On information and belief, Imation is jointly, directly and/or indirectly infringing one or more claims of the ‘757 patent in this judicial district and elsewhere in Michigan and the

United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '757 patent including, but not limited to, CD-RW, DVD-RAM, DVD+RW, DVD-RW and BD-RE discs ("Imation Discs"). Imation and users of Imation Discs have, at a minimum, directly infringed the '757 patent and Imation is thereby jointly and severally liable for infringement of the '757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '757 PATENT BY MOSER BAER

46. On information and belief, Moser Baer is jointly, directly and/or indirectly infringing one or more claims of the '757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '757 patent including, but not limited to, CD-RW, DVD+RW, DVD-RW and BD-RE discs ("Moser Baer Discs"). Moser Baer and users of Moser Baer Discs have, at a minimum, directly infringed the '757 patent and Moser Baer is thereby jointly and severally liable for infringement of the '757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '757 PATENT BY RITEK

47. On information and belief, Ritek is jointly, directly and/or indirectly infringing one or more claims of the '757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '757 patent including, but not limited to, CD-RW, DVD+RW, DVD-RW, Mini DVD-RW, DVD-RAM and BD-RE discs ("Ritek Discs"). Ritek and users of Ritek Discs have, at a minimum, directly infringed the '757 patent and Ritek

is thereby jointly and severally liable for infringement of the '757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '757 PATENT BY PHILIPS

48. On information and belief, Philips is jointly, directly and/or indirectly infringing one or more claims of the '757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '757 patent including, but not limited to, CD-RW, DVD+RW, DVD-RW and BD-RE discs ("Philips Discs"). Philips and users of Philips Discs have, at a minimum, directly infringed the '757 patent and Philips is thereby jointly and severally liable for infringement of the '757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '757 PATENT BY PANASONIC

49. On information and belief, Panasonic is jointly, directly and/or indirectly infringing one or more claims of the '757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '757 patent including, but not limited to, DVD-RW, DVD-RAM, ADA-RE and BD-RE discs ("Panasonic Discs"). Panasonic and users of Panasonic Discs have, at a minimum, directly infringed the '757 patent and Panasonic is thereby jointly and severally liable for infringement of the '757 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '757 PATENT BY WAL-MART

50. On information and belief, Wal-Mart is jointly, directly and/or indirectly infringing one or more claims of the '757 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making,

using, offering for sale, selling and/or importing apparatuses that infringe the '757 patent including, but not limited to, Ritek Discs, Moser Baer Discs, Philips Discs, Imation Discs, HP Discs, FUJIFILM Discs, CMC Discs and Panasonic Discs ("Wal-Mart Discs"). Wal-Mart and users of Wal-Mart Discs have, at a minimum, directly infringed the '757 patent and Wal-Mart is thereby jointly and severally liable for infringement of the '757 patent pursuant to 35 U.S.C. § 271.

51. OMS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to OMS in an amount that adequately compensates OMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

52. Further, the infringement by each Defendant identified in this Count has been willful as each such Defendant has had notice of the '757 patent since at least service of this Amended Complaint on such Defendant and/or its affiliated entity identified herein. With knowledge of the '757 patent, each such Defendant has acted despite an objectively high likelihood that its actions constitute infringement of the '757 patent and a subjective knowledge or obviousness of such risk.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. 5,335,219 AGAINST ALL DEFENDANTS)

53. OMS incorporates paragraphs 1 through 52 herein by reference.

54. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. § 271, *et seq.*

55. OMS is the exclusive licensee of the '219 patent, entitled "Homogenous Composition of Microcrystalline Semiconductor Material, Semiconductor Devices and Directly

Overwritable Memory Elements Fabricated Therefrom, and Arrays Fabricated From the Memory Elements,” with ownership of all substantial rights in the ‘219 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the ‘219 patent is attached as Exhibit C.

56. The ‘219 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

INFRINGEMENT OF THE ‘219 PATENT BY CMC

57. On information and belief, CMC is jointly, directly and/or indirectly infringing one or more claims of the ‘219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the ‘219 patent including, but not limited to, CD-RW, DVD+RW, DVD-RW, DVD-RAM, Mini CD-RW and BD-RE discs (“CMC Discs”). CMC and users of CMC Discs have, at a minimum, directly infringed the ‘219 patent and CMC is thereby jointly and severally liable for infringement of the ‘219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE ‘219 PATENT BY FUJIFILM

58. On information and belief, FUJIFILM is jointly, directly and/or indirectly infringing one or more claims of the ‘219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the ‘219 patent including, but not limited to, CD-RW, BD-RE, DVD+RW, DVD-RW and DVD-RAM discs (“FUJIFILM Discs”). FUJIFILM and users of FUJIFILM Discs have, at a minimum, directly

infringed the '219 patent and FUJIFILM is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '219 PATENT BY HP

59. On information and belief, HP is jointly, directly and/or indirectly infringing one or more claims of the '219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '219 patent including, but not limited to, CD-RW and DVD+RW discs ("HP Discs"). HP and users of HP Discs have, at a minimum, directly infringed the '219 patent and HP is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '219 PATENT BY IMATION

60. On information and belief, Imation is jointly, directly and/or indirectly infringing one or more claims of the '219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '219 patent including, but not limited to, CD-RW, DVD-RAM, DVD+RW, DVD-RW and BD-RE discs ("Imation Discs"). Imation and users of Imation Discs have, at a minimum, directly infringed the '219 patent and Imation is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '219 PATENT BY MOSER BAER

61. On information and belief, Moser Baer is jointly, directly and/or indirectly infringing one or more claims of the '219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making,

using, offering for sale, selling and/or importing apparatuses that infringe the '219 patent including, but not limited to, CD-RW, DVD+RW, DVD-RW and BD-RE discs ("Moser Baer Discs"). Moser Baer and users of Moser Baer Discs have, at a minimum, directly infringed the '219 patent and Moser Baer is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '219 PATENT BY RITEK

62. On information and belief, Ritek is jointly, directly and/or indirectly infringing one or more claims of the '219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '219 patent including, but not limited to, CD-RW, DVD-RW, DVD+RW, DVD-RAM, BD-RE and Mini DVD-RW discs ("Ritek Discs"). Ritek and users of Ritek Discs have, at a minimum, directly infringed the '219 patent and Ritek is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '219 PATENT BY PHILIPS

63. On information and belief, Philips is jointly, directly and/or indirectly infringing one or more claims of the '219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '219 patent including, but not limited to, CD-RW, DVD+RW, DVD-RW and BD-RE discs ("Philips Discs"). Philips and users of Philips Discs have, at a minimum, directly infringed the '219 patent and Philips is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '219 PATENT BY PANASONIC

64. On information and belief, Panasonic is jointly, directly and/or indirectly infringing one or more claims of the '219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '219 patent including, but not limited to, DVD-RW, DVD-RAM, ADA-RE and BD-RE discs ("Panasonic Discs"). Panasonic and users of Panasonic Discs have, at a minimum, directly infringed the '219 patent and Panasonic is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

INFRINGEMENT OF THE '219 PATENT BY WAL-MART

65. On information and belief, Wal-Mart is jointly, directly and/or indirectly infringing one or more claims of the '219 patent in this judicial district and elsewhere in Michigan and the United States, including at least claim 1, by among other things, making, using, offering for sale, selling and/or importing apparatuses that infringe the '219 patent including, but not limited to, Ritek Discs, Moser Baer Discs, Philips Discs, Imation Discs, HP Discs, FUJIFILM Discs, CMC Discs and Panasonic Discs ("Wal-Mart Discs"). Wal-Mart and users of Wal-Mart's Discs have, at a minimum, directly infringed the '219 patent and Wal-Mart is thereby jointly and severally liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

66. OMS has been damaged as a result of Defendants' infringing conduct described in this Court. Defendants are, thus, liable to OMS in an amount that adequately compensates OMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

67. Further, the infringement by each Defendant identified in this Count has been willful as each such Defendant has had notice of the '219 patent since at least service of this Amended Complaint on such Defendant and/or its affiliated entity identified herein. With knowledge of the '219 patent, each such Defendant has acted despite an objectively high likelihood that its actions constitute infringement of the '219 patent and a subjective knowledge or obviousness of such risk.

JURY DEMAND

OMS hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

OMS requests that the Court find in its favor and against Defendants, and that the Court grant OMS the following relief:

- a. Judgment that one or more claims of the '099 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- b. Judgment that one or more claims of the '757 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- c. Judgment that one or more claims of the '219 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- d. Judgment that Defendants account for and pay to OMS all damages to and costs incurred by OMS because of Defendants' infringing activities and other conduct complained of herein;
- e. Judgment that Defendants account for and pay to OMS a reasonable, on-going, post judgment royalty because of Defendants' infringing activities and other conduct complained of herein;

- f. That Defendants' infringements be found to be willful from the time that Defendants became aware of the infringing nature of their respective products and services, which is the time of filing of Plaintiff's Original Complaint, at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- g. That OMS be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- h. That this Court declare this an exceptional case and award OMS its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- i. That OMS be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: July 20, 2011

Respectfully submitted,

THE SIMON LAW FIRM, PC

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