

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHISON ELECTRONICS CORP.,

Plaintiff,

v.

PNY TECHNOLOGIES INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

For its Complaint, Plaintiff Phison Electronics Corp. (“Phison”) alleges:

A. PARTIES

1. Plaintiff Phison Electronics Corp. is a corporation organized and existing under the laws of Taiwan, having a principal place of business at No. 1 Qun Yi Rd., Jhuan, Miaoli, Taiwan 350, R.O.C.

2. Defendant PNY Technologies Inc. (“PNY” or “Defendant”) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 100 Jefferson Road, Parsippany, New Jersey, 07054.

3. PNY is in the business of making, selling, offering to sell, licensing, and/or distributing a variety of memory and graphics products and providing related services for use by consumers in the United States. These products and services include different types of technology, among them flash memory technology. Flash memory devices are used for digital storage. Some of these devices include a Universal Serial Bus (“USB”) connection, which connects to other devices via a USB port.

4. PNY's memory storage products include, but are not limited to, the Cube and Attache families of products, flash memory drives containing SMI controllers, and any other flash memory products of any form (collectively the "Accused Flash Memory Products"). The Accused Flash Memory Products are USB flash memory devices that include a controller and blocks of memory. These internal parts are physically located on a printed circuit board assembly ("PCBA"), which is found inside the Accused Flash Memory Products and held in place by concave props that are formed from the metal housing of the USB flash memory device.

5. The Accused Flash Memory Products have controllers that are specifically designed to control read and write commands to the blocks of memory as received from a host. These controllers are designed to operate using data perturbation, and are designed to transmit predetermined data when they are reading from a new block.

6. The Accused Flash Memory Products can be used by individuals in a wide range of activities that require digital storage.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. PNY is subject to personal jurisdiction in this district because PNY is a Delaware corporation and, upon information and belief, is doing and has done substantial business in this district, including business relating to the sale and distribution for sale of the Accused Flash Memory Products.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b), because, among other reasons, PNY is incorporated in Delaware, is subject to personal jurisdiction in this judicial district, and has committed acts of infringement in this judicial district.

COUNT I

(Infringement of U.S. Patent No. 7,518,879)

10. Plaintiff incorporates and realleges the allegations in the preceding paragraphs as if fully set forth herein.

11. On April 14, 2009, the United States Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 7,518,879 (“the ’879 patent”), entitled “Universal Serial Bus (USB) Memory Plug” to Tom Chung, Dean Huang and Peter Huang. A true and correct copy of the ’879 patent is attached as Exhibit A.

12. Phison Electronics Corp. is the owner, by assignment, of all right, title, and interest in the ’879 patent, including the right to recover damages for past infringement.

13. PNY has infringed and continues to infringe the ’879 patent in this district and throughout the United States by making, using, importing, offering for sale and/or selling the Accused Flash Memory Products, which practice one or more of the claims of the ’879 patent.

14. PNY was aware of the ’879 patent at least as early as June, 2012.

15. PNY also has induced and/or is inducing the infringement of the ’879 patent by making, using, importing, offering for sale and/or selling the Accused Flash Memory Products. The Accused Flash Memory Products, as provided by PNY to its customers, necessarily infringe the ’879 patent and PNY has known of this infringement since at least June 2012. PNY sold and/or offered for sale the Accused Flash Memory Products, and is continuing to do so, to distributors and retailers, specifically intending to actively encourage them to sell the infringing devices for use in the United States in a manner that PNY knows to be infringing. PNY also sold and/or offered for sale the Accused Flash Memory Products, and is continuing to do so, to end

users and others, specifically intending to actively encourage them to use the infringing devices in the United States in a manner that PNY knows to be infringing.

16. PNY has also contributed to and/or is contributing to the infringement of the '879 patent by making, using, importing, offering for sale and/or selling the Accused Flash Memory Products. PNY has made and/or sold the Accused Flash Memory Products with knowledge that these Products are especially designed for use as a component of a patented machine and are not staple articles of commerce suitable for substantial noninfringing use. For example, among other things, PNY actively and knowingly sells its Accused Flash Memory Products and provides the manuals and other documentation for the Accused Flash Memory Products to its customers and others for use as a component of a patented machine. PNY's flash memory products are especially designed as a component of a patented machine, constitute a material part of the invention, are sold by PNY for the designed use, and are not a staple article of commerce suitable for substantial noninfringing use. On information and belief, PNY's customers and others have used the Accused Flash Memory Products in the United States in this manner and infringed the '879 patent.

17. As a result of PNY's infringement of the '879 patent, Plaintiff has suffered and will continue to suffer damage. Plaintiff is entitled to recover from PNY the damages adequate to compensate for such infringement, in an amount to be determined at trial.

18. PNY's acts of infringement of the '879 patent herein have been committed and are being committed with full knowledge of Plaintiff's rights in the patent. On information and belief, PNY has acted and is continuing to act despite an objectively high likelihood that its actions constituted direct and/or indirect infringement of a valid patent, and knew or should have known of that objectively high risk since at least June, 2012. PNY's acts, since at least

June, 2012, constitute willful and deliberate infringement, entitling Plaintiff to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

19. PNY's acts of infringement have caused and will continue to cause irreparable harm to Plaintiff, entitling Plaintiff to injunctive relief.

COUNT II

(Infringement of U.S. Patent No. 8,176,267)

20. Plaintiff incorporates and realleges the allegations in the preceding paragraphs as if fully set forth herein.

21. On May 8, 2012, the USPTO duly and legally issued U.S. Patent No. 8,176,267 ("the '267 patent"), entitled "Data Accessing Method for Flash Memory Storage Device Having Data Perturbation Module, and Storage System and Controller Using the Same" to Chien-Hua Chu and Chih-Kang Yeh. A true and correct copy of the '267 patent is attached as Exhibit B.

22. Phison Electronics Corp. is the owner, by assignment, of all right, title, and interest in the '267 patent, including the right to recover damages for past infringement.

23. PNY has infringed and continues to infringe the '267 patent in this district and throughout the United States by making, using, importing, offering for sale and/or selling the Accused Flash Memory Products, which practice one or more of the claims of the '267 patent.

24. On information and belief, PNY was aware of the '267 patent at least as early as the time of service of this Complaint.

25. PNY also has induced and/or is inducing the infringement of the '267 patent by making, using, importing, offering for sale and/or selling the Accused Flash Memory Products. The Accused Flash Memory Products, as provided by PNY to its customers, necessarily infringe the '267 patent and PNY has known of this infringement since at least the time of service of this

Complaint. PNY sold and/or offered for sale the Accused Flash Memory Products, and is continuing to do so, to distributors and retailers, specifically intending to actively encourage them to sell the infringing devices for use in the United States in a manner that PNY knows to be infringing. PNY also sold and/or offered for sale the Accused Flash Memory Products, and is continuing to do so, to end users and others, specifically intending to actively encourage them to use the infringing devices in the United States in a manner that PNY knows to be infringing. For example, among other things, PNY actively and knowingly encourages its customers and others, by providing the Accused Flash Memory Products, and the related manuals and other documentation, to use PNY's flash memory devices, which inherently infringe the '267 patent during regular operation due to their design. On information and belief, these customers and others have used the Accused Flash Memory Products in the United States in this manner as encouraged by PNY, and thus have necessarily infringed the '267 patent.

26. PNY has also contributed to and/or is contributing to the infringement of the '267 patent by making, using, importing, offering for sale and/or selling the Accused Flash Memory Products. PNY has made and/or sold the Accused Flash Memory Products with knowledge that these Products are especially designed for use as a component of a patented machine or an apparatus for use in practicing a patented process, constitute a material part of the invention, and are not staple articles of commerce suitable for substantial noninfringing use. For example, among other things, PNY actively and knowingly sells its Accused Flash Memory Products and provides the manuals and other documentation for the Accused Flash Memory Products to its customers and others for use as a component in a patented machine or an apparatus for use in practicing a patented process. PNY's flash memory products are especially designed to be included in patented machines and apparatuses for use in practicing a patented process, are sold

by PNY for the designed use, and are not a staple article of commerce suitable for substantial noninfringing use. On information and belief, PNY's customers and others have used the Accused Flash Memory Products in the United States in this manner and infringed the '267 patent.

27. As a result of PNY's infringement of the '267 patent, Plaintiff has suffered and will continue to suffer damage. Plaintiff is entitled to recover from PNY the damages adequate to compensate for such infringement, in an amount to be determined at trial.

28. PNY's acts of infringement of the '267 patent herein have been committed, and/or are being committed with full knowledge of Plaintiff's rights in the patent. On information and belief, PNY has acted and/or is continuing to act despite an objectively high likelihood that its actions constituted direct and/or indirect infringement of a valid patent, and knew or should have known of that objectively high risk at least as of the time of service of this Complaint. PNY's acts, at least as of the time of service of this Complaint, constitute willful and deliberate infringement, entitling Plaintiff to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

29. PNY's acts of infringement have caused and will continue to cause irreparable harm to Plaintiff, entitling Plaintiff to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enters judgment and provides relief as follows:

- A. That PNY has infringed and is infringing the '879 and '267 patents (individually and collectively "the Asserted Patents");
- B. That PNY has induced and is inducing infringement of the Asserted Patents;

C. That PNY has contributed and is contributing to infringement of the Asserted Patents;

D. That PNY has willfully infringed and is willfully infringing the Asserted Patents;

E. That PNY, and its officers, agents, servants, employees, and those in active concert or participation with them directly or indirectly, be enjoined from infringing the Asserted Patents as permitted by 35 U.S.C. § 283;

F. For an accounting for any infringing sales not presented at trial and an award by the Court of additional damages for any such infringing sales;

G. That PNY be ordered to account for and pay to Plaintiff the damages resulting from PNY's infringement of the Asserted Patents, including lost profits, together with interest and costs, and all other damages permitted by 35 U.S.C. § 284, including enhanced damages up to three times the amount of damages found or measured, but in any event no less than a reasonable royalty;

H. That this action be adjudged an exceptional case and Plaintiff be awarded its attorneys' fees, expenses and costs in this action pursuant to 35 U.S.C. § 285; and

I. That Plaintiff be awarded such other equitable or legal relief as this Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: November 15, 2012

FISH & RICHARDSON P.C.

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