

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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|-------------------------------------|---|-----------------------------------|
| WINTEK CORPORATION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 13-__ -__ |
| |) | |
| TPK HOLDING CO., LTD., |) | JURY TRIAL DEMANDED |
| TPK AMERICA, LLC, |) | |
| TPK TOUCH SOLUTIONS (XIAMEN), INC., |) | |
| ACER, INC., |) | |
| ACER AMERICA CORPORATION, and |) | |
| ACER AMERICAN HOLDINGS CORPORATION, |) | |
| |) | |
| Defendants. |) | |
| |) | |

COMPLAINT

Plaintiff, Wintek Corporation (“Wintek”), for its Complaint against defendants TPK Holding Co., Ltd., TPK America, LLC, and TPK Touch Solutions (Xiamen), Inc. (collectively, the “TPK defendants”) and defendants Acer Inc., Acer America Corporation, and Acer American Holdings Corporation (collectively, “the Acer defendants”) alleges as follows:

The Parties

1. Plaintiff Wintek is a corporation organized and existing under the laws of Taiwan, Republic of China, having a principal place of business at No. 10, Jianguo Road, Tanzi District, Taichung City 42760, Taiwan, Republic of China.

2. Defendant TPK Holding Co., Ltd. (“TPK Holding”), is a holding company organized and existing under the laws of the Cayman Islands, BVI, and has a physical address at

Maples Corporate Services Ltd., Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, and that further has a mailing address at PO Box 309, George Town, Grand Cayman, Cayman Islands.

3. Defendant TPK America, LLC (“TPK USA”) is a wholly-owned subsidiary of defendant TPK Holding, is a limited liability corporation existing and organized under the laws of the State of Delaware, and has places of business at 1400 Bridge Parkway, Suite 102, Redwood City, California 94065, and at 414 E. 40th Street, Holland, Michigan 49423.

4. Defendant TPK Touch Solutions (Xiamen) Inc. is a wholly-owned subsidiary of defendant TPK Holding, is organized and existing under the laws of the People’s Republic of China, and has a place of business at 199 Banxang Road, Xiamen Torch High-Tech Industrial Development Zone, People’s Republic of China.

5. Defendant Acer Inc. is a company organized and existing under the laws of Taiwan, Republic of China and has a principal place of business at 8F, 88, Sec. 1, Xintai 5th Rd., Xizhi, New Taipei City 221, Taiwan.

6. Defendant Acer American Holdings Corporation (“Acer American Holdings” or “AAH”) is an indirectly wholly-owned subsidiary of Acer Inc., is organized under the laws of the State of Delaware, and has a principal place of business at 333 West San Carlos Street, Suite 1500, San Jose, California 95110

7. Gateway, Inc. (“Gateway”) is a wholly-owned subsidiary of defendant Acer American Holdings and, upon information and belief, is engaged in the sale of brand-name information technology products and organized and existing under the laws of the State of

Delaware, having a principal place of business at 7565 Irvine Center Drive, Irvine, California 92618.

8. Defendant Acer America Corporation (“Acer America” or “AAC”) is a majority-owned subsidiary of Gateway, is engaged (upon information and belief) in the sale of brand-name information technology products, is organized and existing under the laws of the State of California, and has a principal place of business at 333 West San Carlos Street, Suite 1500, San Jose, California 95110

Nature of the Action

9. This is an action for infringement and correction of inventorship of U.S. Patent No. 8,330,738 (“the ’738 patent”) (attached as “Exhibit A”) under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including direct and/or indirect infringement of at least claims 1, 4, 6, 7, and 9 of the ’738 patent.

Jurisdiction and Venue

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the Patent Laws of the United States, including 35 U.S.C. §§ 256 and 271.

11. Venue is proper with respect to the TPK Defendants and the Acer defendants in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

Personal Jurisdiction

12. This Court has personal jurisdiction over the TPK defendants because, among other things, these defendants have engaged and/or participated in, at least, acts of indirect infringement in violation of the ’738 patent in this judicial district that have injured Wintek.

Moreover, defendant TPK Holding Co., Ltd. has chosen to organize the business of its U.S. subsidiary, defendant TPK America, LLC, as a Delaware corporation, whereby the TPK defendants have purposefully availed themselves of Delaware's corporate laws and have subjected themselves to personal jurisdiction in Delaware.

13. This Court also has personal jurisdiction over the TPK defendants because, among other things, they have and will continue to place products that practice the inventions claimed in the '738 patent into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and users of such products who are located within this judicial district will purchase and use them. Specifically, upon information and belief, the TPK defendants have induced Acer to make, sell, offer to sell, advertise, market, and distribute in this judicial district products, including the accused Acer V5 notebook, that practice the inventions claimed in the '738 patent.

14. This Court has personal jurisdiction over the Acer defendants because, among other things, these defendants have engaged and/or participated in acts of direct infringement in violation of the '738 patent in this judicial district that have injured Wintek. Moreover, defendant Acer Inc. has chosen to organize the business of its subsidiaries, defendant Acer American Holdings and Gateway, as Delaware corporations and, upon information and belief, to market and sell Acer products, including the accused Acer V5 notebook and similar infringing products, to consumers in Delaware, whereby the Acer defendants have purposefully availed themselves of Delaware's corporate laws and have subjected themselves to personal jurisdiction in Delaware.

15. This Court also has personal jurisdiction over the Acer defendants because, among other things, they have established minimum contacts within the forum such that the

exercise of jurisdiction over such defendants will not offend traditional notions of fair play and substantial justice. Moreover, the Acer defendants have placed products that practice the inventions claimed in the '738 patent into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and users of such products who are located within this judicial district will purchase and use them. Specifically, upon information and belief, the Acer defendants have sold, advertised, marketed, and distributed in this judicial district products, including, without limitation, the accused Acer V5 notebook, that practice the inventions claimed in the '738 patent.

The Patent-In-Suit

16. On December 11, 2012, the U. S. Patent and Trademark Office issued the '738 patent, entitled "Capacitive Touch Panel and Electrode Structure Thereof," finding that "[t]he requirements of law have been complied with, and it has been determined that a patent on the invention shall be granted under the law." Wintek is the assignee of all rights, title, and interest in the '738 patent, and it possesses all rights to sue and recover for any current or past infringement of the '738 patent. The inventions claimed in the '738 patent are entitled to claim priority to at least the filing date of Serial No. 12/342,513, which Wintek filed with the U.S. Patent and Trademark Office on December 23, 2008. The '738 patent further claims a foreign application priority date of December 24, 2007, to which Wintek is entitled.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 8,330,738

A. Infringement by the TPK Defendants

17. Wintek incorporates Paragraphs 1-16 by reference as if fully restated herein.

18. Upon information and belief, each of the TPK defendants has indirectly infringed the '738 patent (and, upon information and belief, will continue to indirectly infringe the '738 patent following the filing of this Complaint), in violation of 35 U.S.C. § 271(b), by aiding, assisting, and encouraging customers, retailers, and end users, without authority, to make, use, sell, and offer to sell touch panel products within the United States, and to import touch panel products into the United States, that incorporate the capacitive touch panel and electrode structure claimed in the '738 patent, knowing of the existence of the '738 patent and intending that the unauthorized use, sale, offer to sell, and importation of the patented invention by such persons will directly infringe Wintek's patent rights.

19. Each of the TPK defendants has had received actual notice of its infringement of the '738 patent no later than the filing date of this Complaint, if not earlier.

20. Wintek has been and shall continue to be damaged by the TPK defendants' infringement of the '738 patent. Specifically, Wintek has suffered or may have suffered at least (a) past and future lost profits for lost sales, (b) past and future price erosion, (c) lost revenues calculated as reasonable royalty, (d) entire market value rule damages, and/or any other available remedy that is capable of making Wintek whole.

21. Wintek is further entitled to an enhancement of any award up to three times the amount of compensatory damages found at trial.

22. The TPK defendants' acts of inducing infringement and their course of conduct leading to and during this litigation, render this case "exceptional" and warrant an award of reasonable attorney fees and costs.

23. Wintek is entitled to an award of costs permitted under Federal Rule of Civil Procedure 54, as well as prejudgment and postjudgment interest.

24. Wintek has not licensed rights under the '738 patent to any person and believes that its exercise of the right to exclude infringers is critical to Wintek's ability to successfully exploit the '738 patent. For at least these reasons, Wintek is entitled to an award of preliminary and permanent injunctive relief.

B. Infringement by the Acer Defendants

25. Wintek incorporates Paragraphs 1-24 by reference as if fully restated herein.

26. The Acer defendants have directly infringed the '738 patent (and, upon information and belief, will continue to directly infringe the '738 patent following the filing of this Complaint), in violation of 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by using, offering to sale, and selling within the United States, and/or by importing into the United States, capacitive touch panel products that incorporate the capacitive touch panel and electrode structure claimed in the '738 patent, including touch panels incorporated into one or more notebook products within the Acer V5 family of touch panel products.

27. Upon information and belief, the Acer defendants have indirectly infringed the '738 patent (and, upon information and belief, will continue to indirectly infringe the '738 patent following the filing of this Complaint), in violation of 35 U.S.C. § 271(b), by aiding, assisting, and encouraging customers, retailers, and end users, without authority, to use, sell, and offer to sell touch panel products within the United States, and to import touch panel products into the United States, that incorporate the capacitive touch panel and electrode structure claimed in the '738 patents, knowing of the existence of the '738 patent and intending that the unauthorized

use, sale, offer to sell, and importation of the patented invention by such persons will directly infringe Wintek's patent rights.

28. The Acer defendants have had actual notice of their infringement of the '738 patent since at least the filing date of this Complaint, if not earlier.

29. Wintek has been and shall continue to be damaged by the Acer defendants' infringement of the '738 patent. Specifically, Wintek has suffered or may have suffered at least (a) past and future lost profits for lost sales, (b) past and future price erosion, (c) lost revenues calculated as reasonable royalty, (d) entire market value rule damages, and/or any other available remedy that is capable of making Wintek whole.

30. Wintek is further entitled to an enhancement of any award up to three times the amount of compensatory damages found at trial.

31. The Acer defendants' acts of inducing infringement and their course of conduct leading to and during this litigation, render this case "exceptional" and warrant an award of reasonable attorney fees and costs.

32. Wintek is entitled to an award of costs permitted under Federal Rule of Civil Procedure 54, as well as prejudgment and postjudgment interest.

33. Wintek has not licensed rights under the '738 patent to any person and believes that its exercise of the right to exclude infringers is important to Wintek's ability to successfully exploit the '738 patent. For at least these reasons, Wintek is entitled to an award of preliminary and permanent injunctive relief.

COUNT II - CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 8,330,738

34. Wintek incorporates Paragraphs 1-16 by reference as if fully restated herein.

35. On December 23, 2008, Wintek, through its attorneys and agents, filed an application for a United States patent, Serial No. 12/342,513 (“the ’513 application”) in the U.S. Patent and Trademark Office.

36. On October 23, 2012, the U.S. Patent and Trademark Office granted Wintek U.S. Patent No. 8,294,677 (“the ’677 patent”) on the ’513 application.

37. The ’677 patent names four inventors: Jason Wu, Taichung (TW); Yen-Chung Hung, Taichung (TW); Ruey-Shing Weng, Kaohsiung (TW); and Chih-Chang Lai, Taichung County (TW) (“the Wintek Inventors”).

38. On April 25, 2011, Wintek, through its attorneys and agents, filed a continuation application for a United States patent, Serial No. 13/093,348 (“the ’348 application”) in the U.S. Patent and Trademark Office.

39. On October 23, 2012, the U.S. Patent and Trademark Office granted Wintek U.S. Patent No. 8,330,738 on the ’348 application.

40. The ’738 patent names three of the four Wintek Inventors (Yen-Chung Hung, Taichung (TW); Ruey-Shing Weng, Kaohsiung (TW); and Chih-Chang Lai, Taichung County (TW)).

41. Through inadvertent error, Jason Wu is not named in the ’738 patent as an inventor.

42. On April 23, 2013, as provided in 35 U.S.C. § 256(a), Wintek, through its attorneys and agents, requested that the U.S. Patent and Trademark Office issue a Certificate of Correction adding Jason Wu as an inventor of the ’738 patent.

43. Separately, as provided in 35 U.S.C. § 256(b), Wintek seeks correction of inventorship of the '738 patent and an order by the Court that the Director of the U.S. Patent and Trademark Office issue a certificate adding Jason Wu as an inventor of the '738 patent.

Prayer For Relief

Wherefore, Plaintiff Wintek Corporation respectfully requests that the Court enter judgment against the TPK Defendants (TPK Holding Co., Ltd., TPK America, LLC, and TPK Touch Solutions (Xiamen)) and the Acer Defendants (Acer Inc., Acer American Holdings Corporation, and Acer America Corporation) as follows:

- a) declaring that Jason Wu is a joint inventor of the '738 patent and ordering the Director of the U.S. Patent and Trademark Office to issue a certificate correcting inventorship of the '738 patent accordingly.
- b) adjudging that the TPK defendants and the Acer defendants have, literally or under the doctrine of equivalents, directly infringed and or induced infringement one or more claims of U.S. Patent No. 8,330,738;
- c) adjudging that at least the TPK defendants' infringement has been willful;
- d) awarding Wintek the damages to which it is entitled under 35 U.S.C. § 284 for the Acer and TPK defendants' past infringement and any continuing or future infringement, including both compensatory damages and enhanced/treble damages for willful infringement, and ordering a full accounting of same;
- e) finding that this case is exceptional under 35 U.S.C. § 285 and awarding Wintek its reasonable attorney fees;

f) awarding Wintek pre-judgment and post-judgment interest on its compensatory damages and costs as may be provided by law;

g) preliminarily and permanently enjoining the Acer and TPK defendants from further infringing the claims of U.S. Patent No. 8,330,738; and

h) awarding Wintek such other and further relief as this Court may deem just and proper under the circumstances.

Demand For Jury Trial

Wintek hereby demands a trial by jury on all claims and issues so triable.

May 7, 2013

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