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 corporation, VIA TECHNOLOGIES, INC.,
 11 a Taiwan corporation, and VIA LABS, INC.,
 a Taiwan corporation

12
 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN JOSE DIVISION**

17 VIA TECHNOLOGIES, INC., a California
 corporation, VIA TECHNOLOGIES, INC., a
 18 Taiwan corporation, and VIA LABS, INC., a
 Taiwan corporation

Case No. 5:14-cv-03586

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

Plaintiffs,

vs.

DEMAND FOR JURY TRIAL

22 ASUS COMPUTER INTERNATIONAL, a
 California corporation, ASUSTEK
 23 COMPUTER INC., a Taiwan corporation, and
 24 ASMEDIA TECHNOLOGY INC., a Taiwan
 corporation,

Defendants.

1 Plaintiffs VIA Technologies, Inc., a California corporation (“VIA-US”), VIA
2 Technologies, Inc., a Taiwan corporation (“VIA-TW”), and VIA Labs, Inc., a Taiwan
3 corporation (“VLI”) (collectively, “Plaintiffs” or “VIA”) allege for their Complaint against
4 ASUS Computer International, a California corporation (“ACI”), ASUSTeK Computer Inc., a
5 Taiwan corporation (“ASUS-TW”), and ASMedia Technology Inc., a Taiwan corporation
6 (“ASM”) (collectively, “Defendants”), as follows:

7 1. VIA brings this action to put an end to Defendants’ continued willful
8 infringement and wrongful commercial exploitation of some of VIA’s most valued intellectual
9 property relating to USB 3.0, which Defendants misappropriated through a carefully-
10 orchestrated scheme, and have been knowingly and actively using to unfairly compete with VIA
11 for the past several years.

12 2. VIA’s internal investigation and criminal investigations by prosecutors in
13 Taiwan uncovered a scheme hatched by Defendants in at least as early as 2007 to copy VIA’s
14 notable success in the development of USB technology, and boost their own flagging sales at
15 VIA’s expense, by inducing various VIA employees – including a then-VIA Vice-President,
16 Chewei Lin – to steal VIA’s highly confidential and proprietary trade secret information
17 relating to USB 3.0 controller chip technology, and defect to high-level positions with the
18 Defendants.

19 3. As a result of this mass theft and defection, ASM went from being a digital photo
20 frame manufacturer with no USB-related products to mass producer of complex USB 3.0 chips
21 virtually overnight, a highly suspicious circumstance that prompted the Taiwanese prosecutors
22 currently pursuing criminal charges against ASM and its employees to state that, “it is
23 extremely difficult to develop and take such chips into mass production in such a short time
24 frame [of one year between ASM’s announcement of its intent to start developing high-speed
25 I/O products in 2008, and its move to mass production in 2009].” This abrupt change in ASM’s
26 product focus also coincided with a marked improvement in its financial situation whereby it
27 went from having less than US\$10M in sales and reporting net operating losses for at least three
28 consecutive years starting in 2007, to more than doubling its sales and reporting positive net

1 operating income starting in 2010.

2 4. ASUS-TW, which has been the single largest customer for ASM's USB host
3 controller products, has also benefitted directly from this illegal scheme by incorporating the
4 USB 3.0 products that ASM created using VIA's trade secrets into its motherboards, desktop
5 computers, and laptop computers, and thereby dramatically increased its own sales, including
6 sales made in the United States through ACI, which also doubled in the same timeframe. In
7 addition, as the majority shareholder of ASM, ASUS-TW also generates tremendous profits
8 from ASM's increased sales.

9 5. By misappropriating and infringing VIA's intellectual property, Defendants have
10 willfully and maliciously violated VIA's rights in its trade secrets and patents and engaged in
11 unfair competition, which should be enjoined.

12 **THE PARTIES**

13 6. Plaintiff VIA-US is a California corporation with its principal place of business
14 at 940 Mission Court, Fremont, California 94539.

15 7. Plaintiff VIA-TW is a Taiwan corporation with its principal place of business at
16 8F, No. 533, Zhongzheng Rd., Xindian District, New Taipei City 231, Taiwan.

17 8. Plaintiff VLI is a Taiwan corporation with its principal place of business at 7F,
18 No. 529-1, Zhongzheng Rd, Xindian District, New Taipei City 23148, Taiwan.

19 9. On information and belief, Defendant ACI is a California corporation with its
20 principal place of business at 800 Corporate Way, Fremont, California 94539. On information
21 and belief, ACI can be served through its registered agent, C T Corporation System, 818 West
22 Seventh Street, Los Angeles, California 90017. On information and belief, ACI is ASUS-TW's
23 alter ego and exclusive sales and marketing agent in California and North America.

24 10. On information and belief, Defendant ASUS-TW is a Taiwan corporation with
25 its principal place of business at 15, Li-Te Road, Beitou District, Taipei City, Taiwan. On
26 information and belief, ASUS-TW does substantial business on an ongoing basis, on its own
27 behalf and for its majority-owned subsidiary ASM, in the United States, including in this state
28

1 and in this district, through its wholly-owned subsidiary, ACI, which is also named as a
2 defendant in this action.

3 11. On information and belief, Defendant ASM is a Taiwan corporation with its
4 principal place of business at 6F, No. 115, Minquan Rd., Xindian District, New Taipei City 231,
5 Taiwan. On information and belief, ASUS-TW and its affiliates owned over 90% of the shares
6 of ASM at the beginning of the timeframe relevant to this Complaint, and continue to own a
7 majority of the shares of ASM today. Also on information and belief, ASM does substantial
8 business on an ongoing basis in the United States, including in this state and in this district, both
9 directly, as well as through distributors and its sister company, ACI, which is a wholly-owned
10 subsidiary of ASUS-TW and another named defendant in this action.

11 12. Plaintiffs are informed and believe and thereon allege that at all pertinent times
12 herein mentioned, Defendants, and each of them, were the agents, servants, employees,
13 representatives and/or alter egos of their Co-Defendants and, in doing the things hereinafter
14 alleged, were acting within the course and scope of such agency and with the permission and
15 consent of their Co-Defendants. Defendants, and each of them, had and have actual or
16 constructive knowledge of the events, transactions and occurrences alleged herein, and either
17 knew or should have known of the conduct of their Co-Defendants and cooperated in, benefited
18 from and/or ratified such conduct. For example, on information and belief, ASUS-TW is and
19 has always been the 100% shareholder of ACI, and has kept ACI grossly undercapitalized at all
20 times relevant to this Complaint, with ACI consistently reporting a negative net worth and only
21 around US\$500,000 or less in capital since at least 2007, while having annual sales ranging
22 from around US\$400 million up to over US\$2 billion during the same timeframe. Also on
23 information and belief, the Chairman of ASUS-TW, Jonney Shih, has also been a director of
24 ACI since at least 2007, and Jerry Shen, the Chairman of ASM, has also been an ASUS-TW
25 director since at least 2007, the President and/or CEO of ASUS-TW since at least 2008, and is
26 currently the General Manager of the ASUS-TW motherboard business unit. ASUS-TW and
27 ACI have also had a number of other common officers and directors during the exact same
28 timeframe, including, but not limited to, Jackie Hsu and Eric Chen. Also, on information and

1 belief, ASM President and Director, Chewei Lin, was an ASUS-TW Vice President and the
2 General Manager of the ASUS-TW motherboard business unit until July of 2012.

3 **JURISDICTION**

4 13. This is an action for injunctive relief and to recover damages arising under the
5 patent laws of the United States, 35 U.S.C. § 1, et seq., including § 271. This Court has original
6 jurisdiction over the subject matter under 28 U.S.C. §§ 1331 and 1338(a) and (b) and
7 supplemental pendent jurisdiction over Plaintiffs' state-law causes of action under 28 U.S.C. §
8 1367.

9 14. This Court has general jurisdiction over ACI because ACI is incorporated under
10 California law and has its principal place of business in this District.

11 15. This Court has personal jurisdiction over ASUS-TW and ASM because, on
12 information and belief, ASUS-TW and ASM have conducted and continue to conduct a
13 substantial amount of business in this District, have committed and continue to commit acts of
14 patent infringement in this District, and/or have harmed and continue to harm Plaintiffs in this
15 District, by, among other things, using, selling, offering for sale, and/or importing infringing
16 products and services in this District. In particular, Defendants have purposefully availed
17 themselves of the benefits of California's laws and of the privilege of conducting business in
18 California by directing into California USB 3.0 controller chips, and motherboards and
19 computers containing USB 3.0 controller chips, embodying, or created using, VIA's patented
20 technology and/or misappropriated trade secrets. On information and belief, ASM and ASUS-
21 TW are continuing to import to, and market and sell in, California (and elsewhere in the United
22 States), products and services that embody Plaintiffs' patented technology and trade secrets, or
23 that were made using VIA's patented or trade secret designs, either directly, or through their
24 agent and/or alter ego ACI and others. As a result of Defendants' intentional conduct directed
25 toward California, Plaintiffs have suffered injury in California and elsewhere in the United
26 States.

27 16. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and 1400(b)
28 because, among other reasons, Defendants are subject to personal jurisdiction in this District,

1 and have committed and continue to commit acts of patent infringement in this District. On
2 information and belief, for example, Defendants have used, sold, offered for sale, and/or
3 imported infringing and misappropriated products or services to customers who reside in, or
4 may be found in, this District, and because Defendants unfairly compete with VIA within this
5 District.

6 **COMMON FACTUAL ALLEGATIONS**

7 **A. VIA IS A WORLDWIDE LEADER IN CHIPSET SOLUTIONS AND ONE OF THE**
8 **OLDEST AND MOST PROMINENT COMPANIES OF ITS KIND.**

9 17. Founded in 1987, VIA has a long history in the electronics industry as the
10 leading developer and manufacturer of integrated chipsets for PCs and peripherals.

11 18. As the world's largest independent manufacturer of motherboard chipsets, VIA
12 has long recognized the potential in USB as an extremely efficient and universal means of data
13 transfer.

14 19. This action concerns VIA's USB 3.0 controller chip technology, which includes
15 analog design schematics for the high speed input-output (I/O) modules that are used in hub
16 controller chips, host controller chips, and device controller chips to implement the USB 3.0
17 high-speed serial transfer protocol, such as PCI-e (Peripheral Component Interconnect Express),
18 SATA (Serial Advanced Technology Attachment), and SSC (Spread Spectrum Clock
19 Generator), and related legacy technologies for USB 1.0/1.1/2.0 (collectively, "USB 3.0
20 Technology").

21 20. USB 3.0 is the third major version of the Universal Serial Bus (USB) standard
22 for computer connectivity. Among other improvements, USB 3.0 adds a new transfer mode
23 called "SuperSpeed" (SS), capable of transferring data at up to 5 Gbit/s (625 MB/s), which is
24 more than ten times as fast as the 480 Mbit/s (60 MB/s) high speed of USB 2.0.

25 21. In as early as May 1997, VIA first incorporated USB 1.0 technology into its
26 award-winning core logic chipsets, starting with the VT82C586B chipset. In or around March
27 2001, VIA released its first chipset with USB 1.1 support – *i.e.*, the VT82C686A. Both of these
28

1 products were released by VIA long before the proliferation of USB-enabled PC peripherals in
2 the market.

3 22. In or around November 2001, with the introduction of USB 2.0 and the VIA
4 Vectro VT6202 4-port host controller, VIA became one of the first companies to satisfy the
5 requirements for higher bandwidth peripheral devices.

6 23. By developing and supplying both integrated and discrete solutions for PCs and
7 peripheral devices, VIA was a leader in driving the industry transition to the enhanced USB 2.0
8 standard.

9 24. VIA has channeled a tremendous amount of resources into research and
10 development and has actively pursued power efficiency across its entire silicon portfolio. As a
11 result, VIA has developed a complete line of VIA Vectro USB 2.0 controllers, integrating
12 advanced power management features into a low power package.

13 25. In recognition of its contribution to power efficiency, VIA was awarded the
14 world's first Low Power certification by the USB Implementers Forum.

15 26. VIA's significant investments in research and development have also garnered
16 VIA over 2,200 issued patents and patent applications in the United States alone, including the
17 patent at issue here.

18 27. The trade secret components of VIA's USB 3.0 Technology are not accessible to
19 the public or any third party through any public channels, and VIA has never publicly disclosed
20 this information to the public. These trade secrets are core, critical components of VIA's
21 product offerings, the culmination of well over a decade of research and development, and have
22 brought significant economic benefit to VIA.

23 28. VIA has at all relevant times taken extensive steps to protect the trade secrets
24 relating to its USB 3.0 Technology, including not only contractual measures, but also
25 technological and procedural measures. VIA requires all employees to sign non-disclosure
26 agreements, and limits access to its trade secrets only to those employees who need it in order to
27 perform their job functions. To the extent that VIA's licensees, vendors, joint venturers, or
28 customers need access to VIA's trade secrets, they are likewise required to execute non-

1 disclosure agreements. All IC design at VIA is done on secure workstations without Internet
2 access that can only be accessed by first logging into the company intranet. Even then, each
3 designer is only given access to the specific folders on these workstations that he or she needs in
4 order to work on his or her assigned projects. Normally, designers have no authority to
5 download schematics from these secured workstations, and can only obtain approval to do so
6 from high-level executives.

7 **B. DEFENDANTS METHODICALLY ORCHESTRATED THE MISAPPROPRIATION OF**
8 **VIA'S TRADE SECRETS AND WILLFULLY INFRINGED VIA'S PATENTS.**

9 29. In October 2007, a former Vice President of VIA, Chewei Lin, left VIA to
10 become President and Director of ASM. Dozens of other VIA employees, including senior
11 product managers and R&D engineers, also joined ASM at around the same time, including Chi
12 Chang, who is now the head of research and development at ASM. On information and belief,
13 the majority of current ASM analog designers, production control staff, and product managers
14 are from VIA.

15 30. As a result of ASM's mass raiding of VIA's employees, the former employees of
16 VIA who joined ASM collectively had knowledge of substantially all of VIA's confidential
17 trade secret information relating to USB 3.0 Technology, including hub controller chips, host
18 controller chips, and device controller chips.

19 31. VIA's internal investigation has revealed that former VIA employees who joined
20 ASM downloaded and printed numerous circuit diagrams for high speed controller integrated
21 circuits (ICs) from VIA's workstations while such employees were still employed by VIA.

22 32. Prior to the migration of VIA's former employees to ASM in 2007, ASM had no
23 expertise in the high-speed I/O field at all, including with the legacy USB 1.0/1.1/2.0
24 technologies critical to implementing the USB 3.0 protocol. Rather, ASM's original business
25 since its founding in 2004 was making digital photo frames. Nevertheless, in 2008, shortly after
26 luring away VIA's former employees, ASM announced that it would start to develop high speed
27 I/O products, including USB 3.0 products and was able to take USB 3.0 device controller chips
28 into mass production in 2009, approximately one year later. In 2010, ASM also launched USB

1 3.0 host controller chips. In January 2011, ASM, who previously had only sought trademark
2 protection for marks used in connection with a narrow subset of digital photo frame-related
3 products and accessories, filed applications in both Taiwan and the United States to register a
4 trademark for use in connection with a wide range of ICs and high speed I/O products.

5 33. According to the Prosecutor in the criminal proceedings against ASM in Taiwan,
6 “it is extremely difficult to develop and take such chips into mass production in such a short
7 time frame [of one year].” See <http://online.wsj.com/article/PR-CO-20131217-906634.html>.
8 This feat could have been accomplished by ASM only through its reliance on proprietary
9 technical and operational information misappropriated from VIA.

10 34. VIA’s reverse engineering of ASM’s chips confirmed that ASM’s chips, for
11 example, the ASM1042, ASM1042A, and ASM1051, have schematics that are substantially
12 similar to the analog designs in VIA’s chips.

13 35. On August 21, 2012, VIA filed a criminal complaint with the Taipei District
14 Prosecutor’s Office charging ASM and its employees with stealing VIA’s USB 3.0 Technology.

15 36. Based on the reverse engineering reports presented to prosecutors in Taiwan,
16 raids of ASM’s offices were conducted by Taiwan police on August 30, 2012, and again on
17 April 16, 2013. During these raids, copies of VIA’s confidential and proprietary schematics—
18 prominently displaying VIA’s federally registered trademark and logo—were discovered in
19 ASM’s offices, along with copies of ASM’s schematics for its ASM1042 and ASM1051 chips,
20 which the Taiwanese prosecutors reviewed and concluded were substantially similar to VIA’s
21 schematics.

22 37. On November 8, 2013, the Taipei District Prosecutor’s Office concluded its
23 investigation and announced that it was proceeding with the criminal prosecution of ASM and
24 four ASM employees, including former VIA employee, Chi Chang, the head of research and
25 development at ASM.

26 38. On December 17, 2013, VIA filed a civil suit against ASUS-TW and ASM in the
27 Taipei District Court seeking damages for the losses incurred as a result of their theft of VIA’s
28 USB 3.0 Technology. Also named in the Taiwan suit are various ASM employees, including

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1 ASM Chairman, Jerry Shen, who is also the CEO and a director of ASUS-TW, and ASM
2 President and director, Chewei Lin, who was also the General Manager of the ASUS-TW
3 motherboard business unit during the relevant timeframe at issue in this Complaint.

4 39. As part of the Taiwan suit, VIA is also requesting the court to enjoin ASM from
5 producing and selling products developed using VIA’s misappropriated trade secrets.

6 40. ASUS-TW is the largest single customer of ASM’s USB 3.0 host controller
7 chips, which are incorporated into motherboards, desktop computers, and laptop computers
8 made and sold by ASUS-TW.

9 41. Thus, as ASUS-TW is the controlling shareholder of ASM, has had and
10 continues to have directors and officers in common with ASM and ACI, and derives substantial
11 direct economic benefits from ASM’s misappropriation of VIA’s trade secrets by incorporating
12 large volumes of ASM’s USB chips into ASUS-TW’s products, which are then sold in this
13 District, in California, and throughout the United States by ASUS-TW’s wholly-owned
14 subsidiary, alter ego, and exclusive sales and marketing agent, ACI, the wrongful acts of ASM
15 described herein should be imputed to ASUS-TW and ACI as well.

16 **COUNT I**

17 **INFRINGEMENT OF U.S. PATENT NO. 7,313,187**

18 42. Plaintiffs incorporate Paragraphs 1-41 above as if fully set forth herein.

19 43. United States Patent No. 7,313,187 (the “’187 patent”), entitled “High-speed
20 serial linking device with de-emphasis function and the method thereof,” issued on December
21 25, 2007 from United States Patent Application No. 10/856,044, filed on May 28, 2004, which
22 claims priority to Taiwan application Serial No. 092120025, filed Jul. 22, 2003. VIA is the
23 assignee of the ’187 patent, which was invented by Chi Chang while still employed at VIA, and
24 the application for which was pending when he defected from VIA to become ASM’s head of
25 research and development. A true and correct copy of the ’187 patent is attached as Exhibit A.

26 44. ASM has had knowledge of the ’187 patent since at least as early as October
27 2007, when Chi Chang, the inventor of the ’187 patent left VIA and became ASM’s head of
28 research and development. Further, ASM’s knowledge can be imputed to ASUS-TW as of

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1 October 2007 through the common officers and directors shared by ASM and ASUS-TW at that
 2 time, including, but not limited to, Jerry Shen, who was both the Chairman of ASM and an
 3 ASUS-TW director, and Chewei Lin, who left VIA at around the same time as Chi Chang and
 4 was both President and Director of ASM and the General Manager of the ASUS-TW
 5 motherboard business unit. ASM and ASUS-TW’s knowledge can also be imputed to ACI as of
 6 October 2007 through the common officers and directors shared by ASUS-TW and ACI at that
 7 time, including, but not limited to, Jonney Shih, who was both the Chairman of ASUS-TW and
 8 Director of ACI, and Jackie Hsu, who was both the President of ACI, and an executive of
 9 ASUS-TW.

10 45. With the above-described knowledge of the ’187 patent, Defendants directly
 11 infringed and continue to directly infringe one or more claims of the ’187 patent, in this judicial
 12 District and elsewhere in the United States, by, among other things, making, using, selling,
 13 offering for sale, and/or importing into the United States a high-speed serial linking device with
 14 de-emphasis function, comprising: a parallel-to-serial unit which receives a parallel data to
 15 serialize the parallel data into a serial data and a delayed serial data, wherein the delayed serial
 16 data is one serial bit time lag behind the serial data; a pre-driver which receives the serial data
 17 and the delayed serial data to output a data differential pair according to the serial data and
 18 output a delayed-and-inverted differential pair according to the delayed serial data, wherein the
 19 delayed-and-inverted differential pair is the inverse of and one serial bit time lag behind the data
 20 differential pair; and an output driver unit which receives the data differential pair and the
 21 delayed-and-inverted differential pair to output a de-emphasized transmission differential pair.
 22 Upon information and belief, Defendants’ infringing devices include the ASM1042,
 23 ASM1042A, ASM1051, ASM1051E, ASM1051U, ASM1053, ASM1054, and ASM1074
 24 (“Infringing Chips”), as well as motherboards, computers, and other products containing the
 25 same.

26 46. With the above-described knowledge of the ’187 patent, Defendants have also
 27 contributed to and continue to contribute to the infringement of one or more claims of the ’187
 28 patent by others, including OEM and end-user customers and other distributors, under 35 U.S.C.

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1 § 271(c) by importing, offering to sell, and selling the above-described Infringing Chips made
2 and sold by ASM and/or devices made and sold by ASUS-TW that incorporate the above-
3 described Infringing Chips made and sold by ASM, knowing that the above-described
4 Infringing Chips made and sold by ASM are especially made or adapted to embody the
5 invention described in the '187 patent and/or to enable the practice of high-speed serial linking
6 transmissions with de-emphasis function in a manner that infringes the '187 patent, and further
7 knowing that these devices are not staple articles or commodities of commerce suitable for
8 substantial non-infringing uses.

9 47. By engaging in the conduct described herein, Defendants have injured Plaintiffs
10 and are thus liable for infringement of the '187 patent pursuant to 35 U.S.C. § 271.

11 48. Defendants have committed these acts of infringement without license or
12 authorization.

13 49. As a result of Defendants' infringement of the '187 patent, VIA has suffered
14 monetary damages and is entitled to a money judgment in an amount adequate to compensate
15 for Defendants' infringement, but in no event less than a reasonable royalty for the use made of
16 the invention by Defendants, together with interest and costs as fixed by the Court.

17 50. Furthermore, because Defendants have committed these acts of infringement
18 willfully, wantonly, and deliberately with notice of the '187 patent, VIA seeks enhanced
19 damages pursuant to 35 U.S.C. § 284 and a finding that this is an exceptional case within the
20 meaning of 35 U.S.C. § 285, entitling VIA to its attorneys' fees and expenses.

21 51. VIA has also suffered and will continue to suffer severe and irreparable harm
22 unless this Court issues a permanent injunction prohibiting Defendants, their agents, servants,
23 employees, representatives, and all others acting in active concert therewith from infringing the
24 '187 patent. In particular, Defendants' disregard for VIA's property rights threatens VIA's
25 relationships with the actual and potential licensees of this intellectual property, inasmuch as
26 Defendants will derive a competitive advantage over any of VIA's current or future licensees by
27 using VIA's patented technology without paying compensation for such use. Accordingly,
28 unless and until Defendants' continued acts of infringement are enjoined, VIA will suffer

1 further irreparable harm for which there is no adequate remedy at law.

2 **COUNT II**

3 **Trade Secret Misappropriation Under Cal. Civil Code §§ 3426 et seq.**

4 52. Plaintiffs incorporate Paragraphs 1-51 above as if fully set forth herein.

5 53. VIA developed, is the owner of, and was, at all relevant times, in possession of
6 technical and operational trade secrets relating to USB 3.0 Technology. These include, but are
7 not limited to, chip design schematics.

8 54. VIA’s USB 3.0 Technology trade secrets are proprietary to VIA, not generally
9 known to the public or others who can obtain economic value from their disclosure or use, and
10 VIA derives independent economic value from the fact that they are not generally known to the
11 public because they enable VIA to maintain a leadership position in its industry and to make
12 and sell high-performance motherboard chipsets to meet its customers’ needs.

13 55. VIA has made, and continues to make efforts that are reasonable under the
14 circumstances to secure the secrecy of its trade secrets relating to its USB 3.0 Technology by,
15 among other things, restricting access to the trade secret information to only those persons who
16 need it, requiring all persons who access the trade secrets to execute non-disclosure agreements,
17 developing and storing the trade secrets only on secure, non-Internet-connected workstations
18 with restrictions on downloading.

19 56. Defendants misappropriated VIA’s trade secrets by improper means. Those
20 improper means include, without limitation, (a) inducing VIA employees to steal and disclose to
21 Defendants trade secrets in violation of the employees’ non-disclosure agreements with VIA,
22 and (b) receiving and using VIA’s trade secrets for the benefit of Defendants while knowing, or
23 having reason to know, that they had been acquired by unlawful means, such as by breach of a
24 contractual responsibility or fiduciary duty, or by corporate espionage.

25 57. On information and belief, Defendants have used and continue to use VIA’s
26 trade secrets, without its consent while knowing, or having reason to know, that Defendants’
27 knowledge of VIA’s trade secrets was derived from others who used improper means to acquire
28 the trade secrets or who owed a duty to VIA to maintain the secrecy of the trade secrets or to

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1 limit their use, or was acquired under circumstances giving rise to a duty by Defendants to
2 maintain or limit the use of such trade secrets.

3 58. On information and belief, Defendants have used their knowledge of VIA’s trade
4 secrets to design integrated circuits, including the Infringing Chips, to develop, make and sell
5 products and services for the California and U.S. market, to establish a significant market
6 presence in California, U.S. and world markets in astonishingly short order, to price their
7 products at a substantial discount to what would have been possible had Defendants incurred
8 their own research and development and ramp up expenses, and to compete directly and
9 unfairly with VIA.

10 59. Defendants’ wrongful conduct in misappropriating VIA’s trade secrets, unless
11 and until enjoined and restrained by this Court, will greatly and irreparably injure VIA’s
12 business.

13 60. VIA has no adequate remedy at law for its present and threatened future injuries.
14 This is particularly true because Defendants’ use of VIA’s trade secrets has allowed Defendants
15 to penetrate a valuable market in an unnaturally short time, and to steal customers’ business
16 directly from VIA. VIA, therefore, is entitled to injunctive relief prohibiting Defendants from
17 continuing their use of VIA’s trade secrets and confidential information to manufacture and sell
18 USB 3.0 chips and products containing USB 3.0 chips for importation into the United States
19 and elsewhere, and compelling Defendants to return all materials incorporating, disclosing, or
20 derived from improperly acquired knowledge of such secrets.

21 61. VIA is entitled to damages for the actual loss caused by Defendants’
22 misappropriation of its trade secrets, and/or for any unjust enrichment Defendants have enjoyed
23 by such misappropriation.

24 62. Defendants’ misappropriation of VIA’s trade secrets was willful and malicious.
25 California Civil Code Sections 3426.3(c) and 3426.4 thus entitle VIA to an award of exemplary
26 damages equal to twice its actual damages caused by the misappropriation, as well as VIA’s
27 reasonable attorneys fees.

28 //

COUNT III

Unfair Competition Under Cal. Bus. & Prof. Code § 17200 et seq.

63. Plaintiffs incorporate Paragraphs 1-62 above as if fully set forth herein.

64. By virtue of the misconduct described herein, Defendants have engaged in and continue to engage in unlawful, unfair, and/or fraudulent business acts and practices within the meaning of California Business and Professions Code Section 17200.

65. Defendants have acted in a way to restrain competition or the free exercise of business activity.

66. Defendants' misappropriation and use of VIA's trade secrets were and are unlawful because, as set forth above, they are violations of the California Uniform Trade Secrets Act, California Civil Code Sections 3426 et seq.

67. Defendants' misappropriation and use of VIA's trade secrets and willful infringement of VIA's patent constitute an unfair attempt to gain an undeserved competitive edge against VIA and its licensees, and have caused harm to VIA that is immoral unethical, oppressive, and offensive to public policy, and which outweighs any possible utility such misappropriation and use might have.

68. The natural, probable, and foreseeable result of Defendants' conduct has been and will continue to be to injure VIA's businesses, to impose substantial expenses on VIA to counteract that conduct, and to injure and damage VIA in other ways.

69. Defendants have used this unfair business practice to their advantage, taking customers and substantial lucrative contracts away from VIA, and causing substantial price erosion as to VIA products and sales. Defendants have unfairly profited, and will continue to unfairly benefit, as a result of these acts of unfair competition.

70. Unless restrained and enjoined, Defendants will continue to irreparably harm VIA. VIA has no adequate remedy at law, and money damages cannot fully compensate them for the injury to their business. VIA is thus entitled to injunctive relief prohibiting Defendants from disclosing or continuing to use VIA's proprietary trade secrets to further their competing enterprise.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant them the following relief:

A. A judgment in favor of VIA that Defendants have infringed the '187 patent;

B. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '187 patent, or such other equitable relief the Court determines is warranted;

C. Preliminary and permanent injunctive relief pursuant to which Defendants and their employees, or representatives, and all persons acting in concert or participating with them are commanded, enjoined, or restrained, directly or indirectly, by any means whatsoever, as follows:

i. From using VIA's trade secrets and other proprietary information to manufacture, offer to sell, or sell products or services incorporating, using, or made using VIA's trade secrets;

ii. From disclosing VIA's trade secrets and proprietary information;

iii. Immediately to preserve and return to VIA (i) all information, including trade secret and other confidential or proprietary information improperly acquired from VIA; (ii) all materials (in paper, electronic, or any other form) containing any, or derived from, such trade secrets or other confidential or proprietary information; and (iii) all copies of such materials; and

iv. To turn over to the Court any proceeds they have received from the misappropriation of VIA's trade secrets, to be held in constructive trust until the conclusion of this litigation;

D. A judgment and order requiring Defendants to pay VIA their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '187 patent, as provided under 35 U.S.C. § 284; and requiring Defendants to pay VIA general damages, restitution and/or disgorgement arising from Defendants' trade-secret misappropriation and unfair competition, along with prejudgment and post-judgment interest thereon, as well as exemplary damages;

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1 E. A judgment and order finding that this is an exceptional case within the meaning
2 of 35 U.S.C. § 285 and/or that Defendants have engaged in willful and malicious
3 misappropriation of VIA’s trade secrets under California Civil Code § 3426.4, and awarding to
4 VIA its reasonable attorneys’ fees against Defendants;

5 F. A judgment and order requiring Defendants to provide an accounting and to pay
6 supplemental damages to VIA, including without limitation, pre-judgment and post-judgment
7 interest;

8 G. Costs of court; and

9 H. Any and all other relief to which VIA may be entitled.

10
11 Respectfully submitted,
12 DATED: August 7, 2014

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs VIA Technologies, Inc., a California corporation, VIA Technologies, Inc., a Taiwan corporation, and VIA Labs, Inc., request a trial by jury of any issues so triable by right.

Respectfully submitted,

DATED: August 7, 2014

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