

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

VIASAT, INC.,

Plaintiff,

v.

**WESTERN DIGITAL CORPORATION
and WESTERN DIGITAL
TECHNOLOGIES, INC.,**

Defendants.

Case No.: 6:21-cv-01230-ADA

JURY TRIAL DEMANDED

PLAINTIFF VIASAT, INC.'S PRELIMINARY INFRINGEMENT CONTENTIONS

Pursuant to the Court's default Order Governing Proceedings, Plaintiff Viasat, Inc. hereby provides its preliminary infringement contentions. *See* Exhibits A and B.

I. Asserted Patents and Accused Devices

Viasat contends that Defendants infringe U.S. Patent Nos. 8,615,700 and 8,966,347 either literally or under the doctrine of equivalents. Defendants infringe under 35 U.S.C. § 271(a) by making, using, offering to sell, and selling within the United States flash memory products utilizing ECC. Specifically, "Western Digital's proprietary Sentinel ECC&DSP™ technology is embedded in all its NAND controllers. . . across various product lines (enterprise and client grade SSD, embedded NAND, memory cards, USB drives, etc.)." *Western Digital White Paper: The Application of ECC/DSP to Flash Memory* at 5. Viasat contends that all models, versions, and configurations of the accused devices listed in Exhibit C infringe the asserted patents. Defendants also infringe under 35 U.S.C. § 271(a) by importing into the United States the accused devices. Defendants infringe indirectly under 35 U.S.C. § 271(b) by actively inducing infringement of the

asserted patents. Defendants contributorily infringe under 35 U.S.C. § 271(c) by offering to sell and selling within the United States and importing into the United States the accused devices, including controllers to be used with flash memory.

Viasat incorporates by reference the allegations from its Complaint. D.I. 1. In addition, Viasat will amend its Complaint by April 22, 2022, and incorporates by reference any additional details provided therein about Defendants' infringement of the asserted patents.

II. Direct Infringement Under 35 U.S.C. § 271(a)

Defendants directly infringe the asserted patents under 35 U.S.C. § 271(a) when they make, use, offer to sell, and/or sell within the United States, and/or import into the United States, the accused devices. Viasat contends that this infringement includes when Defendants test or otherwise use these products, as well as when Defendants demonstrate these products, virtually or in person, including at trade shows, trainings, or otherwise. Viasat also incorporates by reference the allegations from its Complaint and its forthcoming Amended Complaint. D.I. 1.

III. Induced Infringement Under 35 U.S.C. § 271(b)

Defendants infringe the asserted patents under 35 U.S.C. § 271(b) by actively inducing infringement. Viasat contends that Defendants actively induce infringement by third parties, such as end users who use the accused devices. Defendants have had knowledge of the asserted patents since no later than November 29, 2021. To the extent that Defendants denies knowledge, Defendants have been willfully and deliberately blind to the asserted patents and that its inducing acts constitute patent infringement. Viasat contends that Defendants knowingly developed and sold their infringing products and induced others to infringe in a manner that was known to Defendants as infringing or was so obvious that Defendants should have known about this infringement. Defendants have caused direct infringers, including third parties, to directly infringe

the asserted patents. Defendants have knowledge and specific intent that their inducing acts would cause infringement or have been willfully blind to the possibility that their inducing acts would cause the infringing acts. For example, Defendants are aware that the features claimed in the asserted patents are features in the accused devices and are features used by others that purchase the accused devices and, therefore, that purchasers will infringe the asserted patents by using the accused devices. Defendants are aware that the methods claimed in the asserted patents are performed in the course of the normal and routine use of the accused products, which have no substantial non-infringing use. Defendants actively induce infringement of the asserted patents with knowledge of the asserted patents and of the infringement and has the specific intent to encourage that infringement by, for example, disseminating the accused devices and providing promotional materials, marketing materials, training materials, instructions, product manuals, user guides, and technical information (including, but not limited to, the documents described and cited in the attached Exhibits A-C) to others including, but not limited to, resellers, distributors, customers, and/or other end users of the accused devices. Those third parties directly infringe the asserted patents by making, using, selling, offering for sale, and/or importing the accused devices. Viasat also incorporates by reference its contentions from its Complaint and its forthcoming Amended Complaint. D.I. 1.

IV. Contributory Infringement Under 35 U.S.C. § 271(c)

Defendants infringe under 35 U.S.C. § 271(c) by offering to sell and selling within the United States and importing into the United States the accused devices, which constitute a material part of the inventions of the asserted patents. For example, Defendants sell flash memory controllers that incorporate Sentinel ECC&DSP technology that, when combined in systems with flash memory, infringe the accused patents. Defendants know the accused devices are especially

made or especially adapted for use in infringement of the asserted patents, and they are not a staple article or commodity of commerce suitable for non-infringing uses. Defendants have knowledge of the asserted patents and that others including, but not limited to, resellers, distributors, customers, and/or other end users of the accused devices, infringe the asserted patents because, due to their specific designs, the accused devices do not have any substantial non-infringing uses. Viasat incorporates by reference the allegations from its Complaint and its forthcoming Amended Complaint. D.I. 1.

V. Willful Infringement

Defendants willfully infringe the asserted patents. Defendants have knowledge of the asserted patents and have and continue to intentionally infringe the patents. Defendants' behavior is and was malicious, wanton, deliberate, consciously wrongful, flagrant, or in bad faith. Viasat incorporates by reference the allegations from its Complaint and its forthcoming Amended Complaint. D.I. 1.

VI. Priority Dates

The '700 and '347 patents claim priority to a provisional application filed on August 18, 2009. The non-provisional application leading to the '700 patent was filed August 18, 2010. The '347 patent is a continuation of the '700 patent. Accordingly, the '700 and '347 patents are each entitled to a priority date of no later than August 18, 2010.

VII. Document Production

Certified copies of the file histories of the asserted patents are being concurrently produced bearing Bates numbers VIASAT_FEC00000001 and VIASAT_FEC00000354.

Representative examples of documents evidencing conception and reduction to practice the claimed inventions are being concurrently produced herewith. *See* VIASAT_FEC00000659 to

VIASAT_FEC00002090. The most relevant documents regarding the invention are located at VIASAT_FEC00000659 and VIASAT_FEC00000668. Viasat is also including in its production additional documents, including source code, that were stored electronically with the invention documents. Some of those documents may be unviewable due to their file types, but Viasat is producing them in their native form for Defendants to review as fully as possible.

Since the parties have not yet negotiated, and the Court has not entered, a final protective order in this case, Viasat produces its confidential documents as “Highly Confidential – Outside Attorneys’ Eyes Only” consistent with OGP 4.0 § VII. Once a final protective order has been entered, that protective order will govern these confidential documents.

Viasat’s production of documents is not a waiver of any legally cognizable privilege or other protection applicable to any information or document printed therefrom. To the extent any of the produced documents are subject to a claim of privilege or other protection, such production is inadvertent, and Viasat has not waived any rights by such inadvertent production. Defendants shall inform Viasat immediately if they discover inadvertently produced privileged or protected material and shall not review, copy, or disseminate such documents or information. Likewise, if Viasat informs Defendants that documents or information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege or ground for withholding production, have been inadvertently produced, Defendants shall not review, copy, or disseminate such documents or information. Defendants shall immediately sequester such documents or information and all copies of such documents or information which had previously been disclosed and shall destroy, or return to Viasat, all copies of such documents or information.

* * *

Viasat provides these preliminary contentions and charts based on presently available information, based on its present understanding, and without the benefit of discovery. The citations in this document and the attached charts are exemplary and include citations to certain illustrative supporting evidence. This evidence is merely exemplary and intended to provide notice of where each element of the asserted claims may be found in the Accused Devices and how the accused devices infringe the asserted claims. Where Viasat cites a portion of a document or other information, Viasat incorporates the entirety of the document or other information by reference. Viasat reserves the right to use and rely on additional information, including information that will be produced in discovery in this case and the related cases between the parties. Finally, these contentions are preliminary contentions only. Viasat reserves the right to update, amend, retract, supplemental, or otherwise modify these contentions, including as discovery in this case progresses, up to and including the time that Viasat is required to file final infringement contentions pursuant to the Scheduling Order in this case.

Dated: April 15, 2022

/s/ Melissa R. Smith

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