AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	**REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following

☐ Trademarks or ☒ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO.	DATE FILED March 7, 2011	U.S. DISTRICT COURT Northern District of California
PLAINTIFF LOTES CO., LTD.		DEFENDANT HON HAI PRECISION INDUSTRY CO., LTD. and FOXCONN ELECTRONICS, INC.

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,908,313	06/21/2005	Hon Hai Precision Ind. Co., Ltd.
2 6,887,114	05/03/2005	Hon Hai Precision Ind. Co., Ltd.
3 5,634,803	06/03/1997	Hon Hai Precision Ind. Co., Ltd.
4 6,908,316	06/21/2005	Hon Hai Precision Ind. Co., Ltd.
5 6,135,791	10/24/2000	Hon Hai Precision Ind. Co., Ltd.
6 6,530,798	03/11/2003	Hon Hai Precision Ind. Co., Ltd.
7 6,905,353	06/14/2005	Hon Hai Precision Ind. Co., Ltd.
8 7,371,075	05/13/2008	Hon Hai Precision Ind. Co., Ltd.
9 5,882,211	03/16/1999	Hon Hai Precision Ind. Co., Ltd.
10 6,113,398	09/05/2000	Hon Hai Precision Ind. Co., Ltd.
11 6,679,717	01/20/2004	Hon Hai Precision Ind. Co., Ltd.

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director **Copy 3—Upon termination of action, mail this copy to Director**
Copy 2—Upon filing document adding patent(s), mail this copy to Director **Copy 4—Case file copy**

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33. An actual, present, and direct controversy has arisen and now exists between the parties. Lotes has established non-infringement of the claims of the Licensed Patents, has asked Defendants for repayment of past royalties, and has asserted that it has no obligation to pay future royalties. Defendants disagree and have refused to repay any past royalties or to forgo any future royalty payments.

34. There is a substantial and continuing justiciable controversy between Lotes and Defendants as to Defendants' right to threaten or maintain suit for infringement of the claims of the Licensed Patents, as to the scope thereof, and as to whether any of the Accused Products infringe any valid claim thereof.

35. Determination of whether the Accused Products infringe the '313 patent is required to be adjudicated in the United States under the Patent License Agreement and United States law. Determination of whether the Accused Products infringe the Taiwan '672 patent and '207 patent and the China '738 patent is required to be adjudicated in the United States under the Patent License Agreement.

SECOND CAUSE OF ACTION

Breach of Patent License Agreement

Against Both Defendants

36. Lotes realleges and incorporates by reference the allegations in paragraphs 1-35 above as if fully set forth herein.

37. In October 2006, Lotes and Defendants entered into the Patent License Agreement. The Patent License Agreement provides that if it is established that a Licensed Product does not infringe any of the Licensed Patents, then Lotes will no longer have to pay royalties on the product and will be entitled to a refund of royalties previously paid.

38. Lotes has fully performed all of its obligations under the Patent License Agreement. In particular, Lotes has demonstrated that the Accused Products do not infringe, or are not subject to, the Patent License Agreement, or both. To the extent that Lotes has not performed any obligation under the Patent License Agreement, it is excused from doing so by Defendants' nonperformance and breach of the Patent License Agreement. Lotes is and at all

times has been fully entitled to Defendants' complete performance of all of its obligations under the Patent License Agreement.

39. Defendants have breached the Patent License Agreement. Defendants have refused to acknowledge that the Accused Products do not infringe any of the claims of the Licensed Patents, have refused to agree that Lotes may stop paying royalties on sales of the non-infringing products, have refused to refund any royalties previously paid on sales of the non-infringing products, and have claimed that additional unpaid royalties are due on sales of the non-infringing products.

40. Defendants' breach of the Patent License Agreement is a substantial factor in causing damage and injury to Lotes. As a direct and proximate result of Defendants' conduct alleged in this Complaint, Lotes has been damaged in an amount to be proven at the time of trial, but not less than the amount of royalties paid on non-infringing products to date. In addition, Lotes is entitled to judgment that no further royalties need be paid on non-infringing products.

THIRD CAUSE OF ACTION

Declaratory Judgment as to Scope of Patent License Agreement Against Both Defendants

41. Lotes realleges and incorporates by reference the allegations in paragraphs 1-40 above as if fully set forth herein.

42. Under the Patent License Agreement, Lotes is obligated to pay royalties only on "Licensed Products." The Patent License Agreement defines "Licensed Products" as "a product of Licensee listed on Exhibit [] hereto, subject to Section 3.2 below." Section 3.2 removes from the definition of Licensed Product any product that "no longer infringes any Valid Claim of any of the Licensed Patents . . . ."

43. Defendants contend that the definition of "Licensed Products" includes any and all products produced by Lotes that fall into any of the broad categories of products described in the portion of the Exhibit that specifies applicable royalty rates, and is not limited to the products listed in the product chart in the Exhibit. Lotes disagrees and contends that the definition of "Licensed Products" includes only products with part numbers listed in the product chart.

44. There is an actual, present, and direct dispute between Lotes and Defendants respecting the scope and application of the Patent License Agreement. Lotes has paid royalties on certain products that are not "Licensed Products" and has requested that Defendants repay those royalties. Defendants have refused. Defendants have demanded the payment of royalties on additional products that are not "Licensed Products." Lotes is not obligated to pay those royalties and is entitled to a refund of royalties paid on products that are not "Licensed Products." Lotes is entitled to judgment that the Patent License Agreement applies only to the products specifically listed in the Exhibit to that agreement, that no further royalties need be paid on other products, and that Lotes is entitled to a refund of royalties paid on products that are not Licensed Products.

FOURTH CAUSE OF ACTION

Conversion

Against Both Defendants

45. Lotes realleges and incorporates by reference the allegations in paragraphs 1-44 above as if fully set forth herein.

46. Lotes paid royalties to Defendants on sales of products that are either non-infringing, not subject to the Patent License Agreement, or both. Based upon their refusal to recognize that the Accused Products do not infringe any valid claim of a Licensed Patent, are not subject to the Patent License Agreement, or both, Defendants have refused to repay amounts improperly acquired and retained by them.

47. Lotes has an immediate right to possession of the funds wrongfully acquired and retained by Defendants.

48. Upon information and belief, Defendants have converted the funds by a wrongful act or disposition.

49. Defendants' conversion of the funds has damaged Lotes in an amount to be proven at trial, but including at least all royalties paid on products that do not infringe any valid claim of a Licensed Patent or are not subject to the Patent License Agreement.

FIFTH CAUSE OF ACTION

Breach of Covenant of Good Faith and Fair Dealing

Against Both Defendants

50. Lotes realleges and incorporates by reference the allegations in paragraphs 1-49 above as if fully set forth herein.

51. Lotes and Defendants entered into the Patent License Agreement and Settlement Agreement.

52. Lotes performed all of its obligations under the Patent License Agreement and Settlement Agreement. To the extent that Lotes has not performed any obligation, it is excused from doing so by Defendants' nonperformance and breach.

53. All conditions required for Defendants' performance under the Patent License Agreement and Settlement Agreement have occurred.

54. Under the Patent License Agreement and Settlement Agreement, Defendants owe a duty of good faith and fair dealing to Lotes. A covenant of good faith and fair dealing is implied by law in all agreements, including the Patent License Agreement and the Settlement Agreement.

55. Defendants breached their duty of good faith and fair dealing to Lotes. Immediately after entering into the Settlement Agreement and Patent License Agreement, and repeatedly thereafter, Defendants have sought to defeat the purpose of those agreements and deprive Lotes of the benefit of those agreements, by repeatedly and baselessly asserting to Lotes' customers that Lotes continues to infringe Defendants' patents, knowing that their communications with Lotes' customers would disrupt and interfere with Lotes' business relationships and cause Lotes to lose sales or be forced to make less profitable sales, and with the intent of causing those harms.

56. As a direct result of their breach of their duty of good faith and fair dealing, Defendants unfairly interfered with Lotes' right to receive the benefits of the Patent License Agreement and Settlement Agreement, and thus harmed and damaged Lotes. Lotes has lost sales, been forced to make less profitable sales, and been forced to incur increased costs of sales.

57. Defendants' breach of the covenant of good faith and fair dealing is a substantial factor in causing damage and injury to Lotes. As a direct and proximate result of Defendants' conduct alleged in this Complaint, Lotes has been damaged in an amount to be proven at the time of trial, but not less than the amount of lost sales, lost profits on sales, and increased costs of sales it has incurred.

SIXTH CAUSE OF ACTION

Declaratory Judgment of Non-Infringement or Invalidity of Newly Asserted Patents Against Both Defendants

58. Lotes realleges and incorporates by reference the allegations in paragraphs 1-57 above as if fully set forth herein.

59. On information and belief, the rights in the '316 patent, the '791 patent, the '798 patent, the '353 patent, the '075 patent, the '211 patent, the '398 patent, and the '717 patent (the "Newly Asserted Patents") have been assigned to Hon Hai.

60. Lotes has made, used, offered for sale, sold, and/or imported, within the past six years and since the issuance of the Newly Asserted Patents, certain products that Defendants assert come within the scope of these patents. These products include the 989(sktG), 1156/1366(skts B/H), SODDR, and AM3(941) products. Defendants have charged Lotes with infringement of the Newly Asserted Patents by reason of these products. These products do not come within the scope of any of the claims of the Newly Asserted Patents, either literally or under the doctrine of equivalents. Lotes has not infringed and is not infringing any valid claim of the Newly Asserted Patents.

61. Defendants have demanded the extraordinary and commercially unreasonable compensation as a condition of licensing the Newly Asserted Patents to Lotes.

62. Moreover, one or more of the Newly Asserted Patents are invalid. Lotes has filed or is about to file requests for reexamination and invalidation of at least the U.S. '316, '798, '075, '211 and '398 patents. Hon Hai denies that any of these patents are invalid, in whole or in part.

63. An actual, present, and direct controversy has arisen and now exists between the parties concerning the infringement and validity of the claims of Newly Asserted Patents. There is a substantial and continuing justiciable controversy between Lotes and Defendants as to Defendants' right to threaten or maintain suit for infringement of the claims of the Newly Asserted Patents, as to the scope and validity thereof, and as to whether Lotes' products infringe any valid claim thereof. Lotes is entitled to judgment that the accused products do not infringe the Newly Asserted Patents, and that at least the '316, '791, '798, "353, '075, '211, and '398 patents are invalid.

SEVENTH CAUSE OF ACTION

Breach of Joint Development Agreement

Against Both Defendants

64. Lotes realleges and incorporates by reference the allegations in paragraphs 1-63 above as if fully set forth herein.

65. Lotes and Defendants are parties to the Joint Development Agreement with Intel Corporation. The Joint Development Agreement applies to at least some of the Lotes products that Defendants accuse of infringing the Newly Asserted Patents. In particular, under the Joint Development Agreement, Lotes is a "Phase I Program Supplier" of the 989(sktG) product and a "Phase II Program Supplier" of the 1156/1366(skts B/H) products.

66. Under the Joint Development Agreement, Defendants are required to license any "Background IP" to any Phase I Program Supplier on a royalty-free basis and to any Phase II Program Supplier at a commercially reasonable, non-discriminatory royalty. Furthermore, Defendants are required to assign all rights to any "Project IP" to Intel Corporation, which then licenses it to all Phase I and Phase II Program Suppliers on a royalty-free basis. Respecting the 989(sktG) and 1156/1366(skts B/H) products, the Newly Asserted Patents are, at a minimum, Background IP to which Defendants are compelled by the Joint Development Agreement to provide a license.

67. Lotes has fully performed all of its obligations under the Joint Development Agreement. To the extent that Lotes has not performed any obligation under the Joint

Development Agreement, it is excused from doing so by Defendants' nonperformance and breach of the Joint Development Agreement. Lotes is and at all times has been fully entitled to Defendants' complete performance of all of its obligations under the Joint Development Agreement.

68. Defendants have breached the Joint Development Agreement by refusing to grant Lotes a royalty-free or a commercially reasonable, nondiscriminatory license to any of the Newly Asserted Patents.

69. Defendants' breach of the Joint Development Agreement is a substantial factor in causing damage and injury to Lotes. As a direct and proximate result of Defendants' conduct alleged in this Complaint, Lotes has been damaged in an amount to be proven at the time of trial. Lotes also seeks an order compelling Defendants to specifically perform their obligations to Lotes under the Joint Development Agreement.

PRAYER FOR RELIEF

Lotes requests the following relief as a result of the unlawful acts of Defendants described herein:

a. A judgment in favor of Lotes on all of the claims for relief pleaded herein;

b. Entry of judgment that Defendants are without right or authority to threaten or to maintain suit against Lotes or its customers for alleged infringement of the Licensed Patents and Newly Asserted Patents;

c. Entry of judgment that Lotes has not infringed and is not infringing any valid claim of the Licensed Patents and Newly Asserted Patents because of the making, using, offering for sale, selling, or importing of the Licensed Products or the 989(sktG), 1156/1366(skts B/H), SODDR, and AM3(941) products;

d. Entry of judgment that the claims of one or more of the Newly Asserted Patents are invalid;

e. Entry of a preliminary injunction enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from initiating infringement litigation and from threatening Lotes and any of its present

or prospective agents, customers, dealers, employees, servants, sellers, and users with infringement litigation or charging any of them either verbally or in writing with infringement of any claims of the Licensed Patents or Newly Asserted Patents because of the manufacture, use, offer for sale, sale, or importation of the Accused Products or the 989(sktG), 1156/1366(skts B/H), SODDR, or AM3(941) products, to be made permanent following trial;

f. Entry of a judgment declaring this to be an exceptional case under 35 U.S.C. § 285;

g. An order that Lotes is entitled to cease paying royalties under the Patent License Agreement with respect to Accused Products that do not infringe any valid claim of any Licensed Patent, and is entitled to a refund of all royalties previously paid under the Patent License Agreement with respect to such products;

h. A declaration that the definition of "Licensed Products" in the Patent License Agreement includes only those products having part numbers listed in the product chart in the Exhibit to the Patent License Agreement;

i. An order compelling Defendants to specifically perform their obligations to Lotes under the Joint Development Agreement;

j. An award to Lotes of compensatory, consequential, and punitive damages flowing from Defendants' wrongful acts, as described herein;

k. An order requiring Defendants to disgorge any and all revenues, gains, profits, and advantages obtained and to be obtained by Defendants as a result of Defendants' unlawful acts as described herein;

l. Entry of judgment awarding Lotes its costs and reasonable attorneys' fees incurred herein, including attorneys' fees and costs allowed under the Patent License Agreement and Settlement Agreement;

m. An order awarding Lotes pre-judgment and post-judgment interest; and

n. An order for such other and further relief as the Court may deem appropriate.

Dated: March 6, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____
JAMES M. CHADWICK

Attorneys for Plaintiff
LOTES CO., LTD.

DEMAND FOR JURY TRIAL

Plaintiff Lotes Co. Ltd. hereby demands a jury trial on all issues triable as of right to a jury. FED. R. CIV. P. 38(b).

Dated: March 6 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____
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Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

LOTES CO., LTD., a Taiwan Corporation,

Plaintiff,

v.

HON HAI PRECISION INDUSTRY CO., LTD., a Taiwan Corporation, and FOXCONN ELECTRONICS, INC., a California Corporation,

Defendants.

Case No. CV11 1036 HRL

COMPLAINT FOR

(1) DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF LICENSED PATENTS;

(2) BREACH OF PATENT LICENSE AGREEMENT;

(3) DECLARATORY JUDGMENT AS TO SCOPE OF PATENT LICENSE AGREEMENT;

(4) CONVERSION;

(5) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING;

(6) DECLARATORY JUDGMENT OF NON-INFRINGEMENT OR INVALIDITY OF NEWLY ASSERTED PATENTS;

(7) BREACH OF JOINT DEVELOPMENT AGREEMENT

DEMAND FOR JURY TRIAL

Plaintiff Lotes Co., Ltd. ("Lotes" or "Plaintiff"), for its Complaint against Defendants Hon Hai Precision Industry Co., Ltd. ("Hon Hai") and Foxconn Electronics, Inc. ("Foxconn") (collectively, "Defendants"), alleges the following:

NATURE OF THE CASE

1. In this action, Lotes seeks a determination of the scope and application of the Patent License Agreement effective October 2006 between Lotes and Defendants (the "Patent License Agreement" or "PLA"), and a declaration that the following patents, licensed by Lotes from Defendants pursuant to the Patent License Agreement, do not cover certain products made, used, and sold by Lotes (the "Accused Products") and are not infringed by Lotes:

- U.S. Patent No. 6,908,313, entitled "Electrical Socket Having Terminals with Elongated Mating Beams" ("the '313 patent," attached hereto as Exhibit 1);
- U.S. Patent No. 6,887,114, entitled "Electrical Connector with High Performance Contacts" ("the '114 patent," attached hereto as Exhibit 2);
- U.S. Patent No. 5,634,803, entitled "Ejector for Use with a Card Edge Connector" ("the '803 patent," attached hereto as Exhibit 3);
- Taiwan Patent No. 207,672 ("the '672 patent," attached hereto as Exhibit 4);
- Taiwan Patent No. 209,207 ("the '207 patent," attached hereto as Exhibit 5); and
- China Patent No. 02241738.9 ("the '738 patent," attached hereto as Exhibit 6).

2. In this action, Lotes further seeks a declaration that the following U.S. patents newly asserted by Defendants are invalid or are not infringed by Lotes:

- U.S. Patent No. 6,908,316, entitled "Electrical Connector with Accurate Measuring Benchmarks" ("the '316 patent," attached hereto as Exhibit 7);
- U.S. Patent No. 6,135,791, entitled "Method for Achieving Uniform Expansion of Dielectric Plate" ("the '791 patent," attached hereto as Exhibit 8);
- U.S. Patent No. 6,530,798, entitled "Ball Grid Array Socket Connector" ("the '798 patent," attached hereto as Exhibit 9);

- U.S. Patent No. 6,905,353, entitled "Electrical Connector Assembly with Pick Up Cap Protecting Contacts" ("the '353 patent," attached hereto as Exhibit 10);
- U.S. Patent No. 7,371,075, entitled "Electrical Connector with Dual-Function Housing Protrusions" ("the '075 patent," attached hereto as Exhibit 11);
- U.S. Patent No. 5,882,211, entitled "System for Arranging a Pair of Opposite Connectors" ("the '211 patent," attached hereto as Exhibit 12);
- U.S. Patent No. 6,113,398, entitled "Electrical Assembly Including Two Opposite Head to Head Arranged Connectors for Interconnecting Two Modules" ("the '398 patent," attached hereto as Exhibit 13); and
- U.S. Patent No. 6,679,717, entitled "Electrical Connector with Anti-Mismatching Mechanism" ("the '717 patent," attached hereto as Exhibit 14).

3. This is also an action for breach of the Patent License Agreement, a declaratory judgment as to the scope of the Patent License Agreement, conversion of the royalties that Lotes paid on products that are not Licensed Products under the Patent License Agreement, breach of the covenant of good faith and fair dealing respecting the Patent License Agreement and the Settlement Agreement effective as of October 2006 between Lotes and Defendants (the "Settlement Agreement" or "SA"), and breach of the Joint Development Agreement with Intel Corporation to which Lotes and Defendants are parties (the "Joint Development Agreement" or "JDA").

JURISDICTION AND VENUE

4. Respecting the first and sixth causes of action, the jurisdiction of this Court arises under the laws of the United States concerning actions relating to federal questions, 28 U.S.C. § 1331, and patents, 28 U.S.C. § 1338(a), and under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202.

5. Respecting the second, third, fourth, fifth, and seventh causes of action, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) because these causes of action are part of the same case or controversy as the first and sixth causes of action.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), and (d). The Patent License Agreement includes a choice of law and venue clause. That clause provides that the "[Patent License] Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the law of the United States of America, and California specifically . . . ." (PLA § 9.12.) That clause also provides that the "Parties and their Affiliates . . . expressly agree to submit to the exclusive jurisdiction of such court for such purpose." (*Id.*)

7. This is an Intellectual Property Action and is therefore assigned on a district-wide basis per Civil Local Rule 3-2(c). Assignment to the San Jose Division of the Court is proper pursuant to Civil Local Rule 3-2(c) because a substantial part of the events or omissions which give rise to the claims alleged occurred in Santa Clara County, California.

THE PARTIES

8. Lotes is a Taiwan corporation having a place of business at No.15, Wusyun Street, Anle District, Keelung City, 20446 Taiwan. Lotes is a leading designer and manufacturer of connectors, CPU sockets, coolers, and antennas for notebook computers, personal computers, and mobile electronic devices.

9. On information and belief, Hon Hai is a Taiwan corporation having a place of business at 2 Zihyou Street, Tucheng City, Taipei County, 236 Taiwan.

10. On information and belief, Foxconn is a California corporation having a place of business at 1688 Richard Avenue, Santa Clara, California 95050-2844.

FACTUAL BACKGROUND

11. In October of 2006, after several years of litigation in the United States, Taiwan, and China, Lotes and Defendants entered into the Settlement Agreement, which resolved all pending litigation. At the same time, and as part of the settlement, Lotes and Defendants entered into the Patent License Agreement.

12. Pursuant to the Patent License Agreement, Defendants granted and Lotes acquired a license to certain patents, including, among others, the '313 patent (claims 1-7), the '114

patent, the '803 patent, the '672 patent, the '207 patent, and the '738 patent. (PLA Exhibit, p. 12.) Collectively, these patents are referred to as the "Licensed Patents." (PLA § 1.4).

13. The Patent License Agreement specifies a list of products to which it applies. (PLA Exhibit, pp. 12-13.) The products are defined in the Patent License Agreement as the "Licensed Products," and the agreement is limited to these products. (PLA §§ 1.5, 2.1.) In other words, the Patent License Agreement does not grant a license to practice the Licensed Patents generally, but only with respect to the Licensed Products. Correspondingly, the obligation of Lotes to pay royalties applies only to the Licensed Products. (PLA §§ 1.8, 3.1.)

14. The Patent License Agreement provides that if Lotes establishes that any Licensed Product does not infringe any of the Licensed Patents, then it will no longer be considered a Licensed Product, and hence Lotes will have no obligation to pay royalties on that product. (PLA § 3.2.) The Patent License Agreement also specifies a nonbinding alternative dispute resolution mechanism for disputes regarding whether Licensed Products do or do not infringe. (PLA § 8.) Either party may reject the results of the nonbinding mediation process and seek relief from a court of competent jurisdiction. (PLA § 8.1(E).) If a court determines that a Licensed Product does not infringe, then Lotes is entitled to a refund of all royalties paid on that product. (PLA § 8.1(H).)

15. The Patent License Agreement includes a choice of law and venue clause. That clause provides that the "[Patent License] Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the law of the United States of America, and California specifically . . . ." (PLA § 9.12.) That clause also provides that the "Parties and their Affiliates . . . expressly agree to submit to the exclusive jurisdiction of such court for such purpose." (*Id.*)

16. The Settlement Agreement includes a similar, nonbinding dispute resolution mechanism for "any future claims regarding the infringement issues between them . . . ." (SA § 6.1.) Again, if the alternative dispute resolution process does not result in an agreement, then either party is permitted to seek "relief from a court of competent jurisdiction." (SA § 6.1.5.) The

SA also provides that it will be construed and that the legal relations between the parties will be determined in accordance with U.S. and California law. (SA § 8.3.)

17. Between October 24, 2006 (when the Settlement Agreement and Patent License Agreement were executed) and November 13, 2006, in accordance with these agreements, Lotes submitted documents demonstrating that most or all of the Licensed Products did not and do not come within the scope of the Licensed Patents. Lotes exchanged a series of communications with Defendants regarding whether or not the Licensed Patents were infringed.

18. On December 18, 2006, Defendants sent Lotes an e-mail confirming that several of the Licensed Patents were not infringed, including the '672 patent. As to others, Defendants made arguments that the patents were still infringed, or requested product samples to conduct further analysis. Lotes provided the requested product samples. On January 19, 2007, Defendants sent Lotes a letter confirming that additional Lotes products did not infringe asserted patents. However, certain Licensed Products remained in dispute. The parties engaged in further discussions, but were unable to resolve their differences.

19. From January to March of 2007, Defendants sent teams out to Lotes' customers to tell them not to buy Licensed Products made by Lotes, claiming that other litigations were soon to be filed against Lotes.

20. On April 29, 2008, Lotes commenced mediation of the remaining disputes regarding Licensed Products, in accordance with the Patent License Agreement. Thereafter, the parties met in mediation overseen by Judge William McDonald of JAMS on June 11, 2008, May 27, 2009, June 11, 2009, September 17, 2009, December 3, 2009, January 13, 2010, February 1, 2010, March 31, 2010, April 15, 2010, April 27, 2010, June 10-11, 2010, and most recently on March 3-4, 2011. In addition, the parties engaged in numerous additional communications regarding mediation and settlement, both directly and through the mediator. However, the parties were unable to reach an agreement, and were unable even to agree on a process for the submission of disputes to an independent licensed patent attorney.

21. On March 3, 2010, Hon Hai sent a letter to Lotes, asserting that several Lotes products infringe thirteen previously unasserted Hon Hai patents. On or about March 8,

2010, some of Lotes' customers received letters from Defendants claiming that Lotes is infringing two of Hon Hai's patents, neither of which are mentioned in the March 3, 2010 letter to Lotes.

22. On March 17, 2010, Defendants commenced litigation in Taiwan asserting non-payment of royalties by Lotes with respect to certain products that Defendants contend are "Licensed Products" under the Patent License Agreement. Although this dispute is subject to mediation under the Patent License Agreement and the Settlement Agreement, Defendants did not engage in any mediation prior to commencing this litigation. In addition, although this dispute is required by the Patent License Agreement to be brought in a court of competent jurisdiction in California (if not resolved by mediation), Defendants brought it in Taiwan.

23. On June 28, 2010, Hon Hai commenced a judicial mediation proceeding in Taiwan, regarding newly asserted patents ("First Judicial Mediation"). Hon Hai initially claimed that Lotes is infringing certain claims of five U.S. patents and two Taiwan patents not previously asserted. These patents are the '316 patent, the '791 patent, the '798 patent, the '353 patent, the '075 patent, Taiwan Patent No. 438,127 ("the '127 patent"), and Taiwan Patent No. 558,134 ("the '134 patent").

24. On July 16, 2010, Hon Hai sent warning letters to all of Lotes' customers, asserting that Lotes is infringing the newly asserted patents and warning the customers not to do business with Lotes. Hon Hai also sent teams out to meet in person with some of Lotes' customers, making the same allegations and threats.

25. On September 17, 2010, Hon Hai supplemented its claims in the First Judicial Mediation. Hon Hai asserted certain claims of two additional U.S. patents and one additional Taiwan patent. These patents are the '211 patent, the '398 patent, and Taiwan Patent No. 384,557 ("the '557 patent").

26. On November 12, 2010, without any prior notice to Lotes and without meeting and conferring in advance, as required by the Settlement Agreement, Hon Hai commenced a second judicial mediation in Taiwan (the "Second Judicial Mediation"). Hon Hai claimed that Lotes infringes certain claims of the '717 patent) and Taiwan Patent No. 588,863

("the '863 patent"). In December 2010, Hon Hai unilaterally terminated the two judicial mediation proceedings in Taiwan.

27. Lotes has filed or is about to file requests for reexamination and invalidation of the following patents asserted by Defendants: the U.S. '316, '798, '075, '211 and '398 patents.

FIRST CAUSE OF ACTION

Declaratory Judgment of Non-Infringement of Licensed Patents Against Both Defendants

28. Lotes realleges and incorporates by reference the allegations in paragraphs 1-27 above as if fully set forth herein.

29. On information and belief, the rights in the Licensed Patents have been assigned to Hon Hai, except that Hon Hai has rights only in certain claims of the '313 patent, namely claims 1-7.

30. Lotes has made, used, offered for sale, sold, and/or imported, within the past six years and since the issuance of the Licensed Patents, the Accused Products. The Accused Products include both products that would be Licensed Products under the Patent License Agreement if they infringed a valid claim of any of the Licensed Patents, and products that are not listed in, and hence not subject to, the Patent License Agreement.

31. Defendants have charged Lotes with infringement of the Licensed Patents by reason of the Accused Products.

32. The Accused Products do not come within the scope of any of the claims of the Licensed Patents, either literally or under the doctrine of equivalents. Lotes has not infringed and is not infringing any valid claim of the Licensed Patents. The manufacture, use, offer for sale, sale, and importation of the Accused Products did not and does not infringe any valid claim of the Licensed Patents. Because they do not infringe any valid claim of the Licensed Patents, the products are no longer within the scope of or subject to the Patent License Agreement, or never were.