AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & 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 § 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 X Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
CV 11-01133 EMC	3/9/2011	Northern District of California, San Francisco

PLAINTIFF	DEFENDANT
VIA TECHNOLOGIES	AFTG-TG LLC

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,983,002	7,366,804	** See attached Complaint **
2 6,401,222	7,653,766	
3 6,687,858		
4 7,251,752		
5 7,069,475		

In the above—entitled case, the following patent(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 7,069,601		
2 6,691,181		
3 7,249,203		
4 7,472,207		
5 6,842,802		

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

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
Richard W. Wieking	Mark J. Jenkins	March 10, 2011

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

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VIA TECHNOLOGIES, INC.,
a Taiwan Corporation;
VIA TECHNOLOGIES, INC.,
a California corporation;
CENTAUR TECHNOLOGY, INC.,
a California Corporation; and
VIA TECHNOLOGIES CPU, INC.,
a Texas Corporation.

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FILED
MAR - 9 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EMC

1133

VIA TECHNOLOGIES, INC., a Taiwan corporation; VIA TECHNOLOGIES, INC., a California corporation; CENTAUR TECHNOLOGY, INC., a California corporation; and VIA TECHNOLOGIES CPU, INC., a Texas corporation; **Plaintiffs,** **v.** **AFTG-TG, L.L.C., a Wyoming limited liability company, PHILLIP M. ADAMS & ASSOCIATES, L.L.C., a Utah limited liability company,** **Defendants.**	**CASE NO. CV 11 1113** **COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT AND INVALIDITY OF PATENTS** **JURY DEMAND**

1. Plaintiffs VIA TECHNOLOGIES, INC., a Taiwan corporation, VIA TECHNOLOGIES, INC., a California corporation, CENTAUR TECHNOLOGY, INC., a California corporation, and VIA TECHNOLOGIES CPU, INC., a Texas corporation (collectively, "Plaintiffs") by and through their attorneys allege as follows:

THE PARTIES

2. Plaintiff VIA Technologies, Inc. ("VIA Technologies") is a Taiwan corporation with its principal place of business at 1F, 531 Chung-Cheng Rd., Hsin-Tien, Taipei, Taiwan.

3. Plaintiff VIA Technologies, Inc., a California corporation ("VIA USA"), has a principal place of business at 940 Mission Court, Fremont, CA 94539, and is a wholly owned subsidiary of VIA Technologies.

4. Plaintiff Centaur Technology, Inc. ("Centaur") is a California corporation with its principal place of business at 7600-C N. Capital of Texas Highway, Suite 300, Austin, Texas 78731, and is a wholly owned subsidiary of VIA Technologies.

5. Plaintiff VIA Technologies CPU, Inc. ("VIA CPU") is a Texas corporation with its principal place of business at 701 Highlander Blvd., Suite 300, Arlington, Texas 76015, and is a wholly owned subsidiary of VIA Technologies.

6. On information and belief, Defendant AFTG-TG, L.L.C. ("AFTG") is a Wyoming limited liability company with its principal place of business in Wyoming.

7. On information and belief, Defendant Phillip M. Adams & Associates ("PMMA") is a Utah limited liability company with its principal place of business now in Wyoming.

JURISDICTION AND VENUE

8. VIA Technologies, VIA USA, Centaur, and VIA CPU (collectively "Plaintiffs") file this Complaint against AFTG and PMAA (collectively "Defendants") pursuant to the patent laws of the United States, Title 35 of the United States Code, with a specific remedy sought

based upon the laws authorizing actions for declaratory judgment in the federal courts of the United States, 28 U.S.C. §§ 2201 and 2202.

9. This Court has subject matter jurisdiction over this action, which arises under the patent laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1338(a), under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and, as to the declaratory judgment claim relating to misappropriation of trade secret, 28 U.S.C. § 1367(a).

10. Personal jurisdiction is proper pursuant to the United States Constitution and California's Long Arm Statute Cal. Civ. Proc. 410.10, and venue in the District is proper pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, Defendants conduct business in this District, AFTG or PMAA reside and/or do business in this District, and a substantial part of the events that give rise to this action occurred in this District. Upon information and belief, Defendants have and continue to transact business in this District by providing consulting services, negotiating licensing arrangements, and participating in litigation in and directed at companies located in this District.

INTRADISTRICT ASSIGNMENT

11. This action is properly filed in the San Francisco Division of the Northern District of California because VIA USA does business within the San Francisco Division.

EXISTENCE OF AN ACTUAL CONTROVERSY

12. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

13. Defendants have repeatedly demanded that VIA Technologies, VIA USA, Centaur and VIA CPU enter into a royalty-bearing license for the AFTG and PMAA patents (defined below). Defendants are claiming that certain VIA Technologies' products sold by VIA USA in the United States, and, improperly, that Centaur and VIA CPU products (although these

companies do not sell products), infringe one or more claims of the AFTG and PMAA patents, and have further communicated to Plaintiffs that if they do not take a license to the AFTG and PMAA patents, Plaintiffs may be subject to substantial liabilities.

14. On October 18, 2010, AFTG and PMAA filed a Complaint for Patent Infringement against eight defendants including VIA Technologies, VIA USA, Centaur and VIA CPU, in the United States District Court for the District of Wyoming ("the Wyoming Action"). On October 25, 2010, AFTG and PMAA filed an Amended Complaint, and a true and correct copy of the Amended Complaint in the Wyoming Action is attached hereto as Exhibit A.

15. In the Wyoming Action, PMAA and AFTG asserted six PMAA patents (referenced in Paragraph 1 of the Amended Complaint (Exhibit A) (the "PMAA patents")) and six AFTG patents (referenced in Paragraph 2 of the Amended Complaint, (the "AFTG patents")). The Amended Complaint filed in the Wyoming Action alleges that the PMAA and AFTG patents collectively disclose computer hardware and software technologies that detect and address the random destruction or corruption of data in disk drives used by computers, as well as apparatuses, systems and methods for preventing data corruption due to time-gap defects in computer systems. *See* Exhibit A at ¶¶ 3-6.

16. In the Wyoming Action, PMAA and AFTG also allege that the named defendants have purportedly "infringed various claims of each of the patents-in-suit in violation of 35 U.S.C. § 271 through, among other activities, the manufacture, use, importation, sale and/or offer for sale of computer chips, motherboards, computers and other products, as well as using infringing methods including but not limited to testing of Defendants' products as a part of the manufacturing process." *See* Exhibit A at ¶ 25.

17. PMAA and AFTG further allege in the Wyoming Action that "all Defendants have had actual and/or constructive notice of their infringement of the patents-in-suit, including actual precomplaint notice." *See* Exhibit A, ¶ 26.

18. In addition to their patent infringement claims, PMAA and AFTG also alleged in the Amended Complaint that VIA Technologies, VIA USA, Centaur, and VIA CPU misappropriated some ill-defined alleged trade secrets. *See* Exhibit A, ¶ 34.

19. VIA Technologies, VIA USA, Centaur and VIA CPU categorically deny Defendants' allegations that they infringe or have infringed the PMAA and AFTG patents, willfully or otherwise, and further deny that any misappropriation of trade secret occurred.

20. VIA Technologies, VIA USA, Centaur and VIA CPU further contend that the PMAA patents and AFTG patents are invalid and/or unenforceable.

21. VIA Technologies, VIA USA, Centaur and VIA CPU are informed and believe, and based thereon allege that, PMAA and AFTG filed the Wyoming Action in response to the instant action as a means of improper forum shopping and to wrongfully divest this Court of jurisdiction to hear the complete case and controversy between the parties.

22. On March 7, 2011, the Wyoming Court dismissed all claims against VIA Technologies, VIA USA, Centaur, and VIA CPU without prejudice as shown by the Order attached as Exhibit B.

23. Based upon the above facts, there is an actual and justifiable controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

FIRST CLAIM

DECLARATORY JUDGMENT REGARDING THE 5,983,002 PATENT

24. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 23 and incorporate them by reference.

25. Phillip M. Adams ("Adams") is listed as the inventor of United States Patent No. 5,983,002 (the "'002 Patent"), entitled "Defective Floppy Diskette Controller Detection Apparatus and Method".

26. PMAA purports to own by assignment all rights, title, and interests in the '002 Patent.

27. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '002 patent is infringed by VIA USA, Centaur and VIA CPU.

28. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration of the '002 patent is invalid because it fails to satisfy the conditions and requirements for patentabilty as set forth, *inter alia*, in Sections 101, 102, 103 and/or 112 of the title 35 of the United States Code.

SECOND CLAIM

DECLARATORY JUDGMENT REGARDING THE 6,401,222 PATENT

29. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 28 and incorporate them by reference.

30. Adams is listed as the inventor on the face of United States Patent No. 6,401,222 (the "'222 Patent") entitled "Defective Floppy Diskette Controller Detection Apparatus and Method."

31. PMAA purports to own by assignment all rights, title, and interests in the '222 Patent.

32. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '222 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

33. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration of the '222 patent is invalid because it fails to satisfy the conditions and

requirements for patentabilty as set forth, *inter alia*, in Sections 101, 102, 103 and/or 112 of the title 35 of the United States Code.

THIRD CLAIM

DECLARATORY JUDGMENT REGARDING THE 6,687,858 PATENT

34. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 33 and incorporate them by reference.

35. Adams is listed as the inventor on the face of United States Patent No. 6,687,858 (the "'858 Patent") entitled "Software-Hardware Welding System."

36. PMAA purports to own by assignment all rights, title, and interests in the '858 Patent.

37. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '858 patent is infrinted by VIA Technologies, VIA USA, Centaur and VIA CPU.

38. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '858 patent is invalid because it fails to satisfy the conditions and requirements for patentabilty as set forth, *inter alia*, in Sections 101, 102, 103 and/or 112 of the title 35 of the United States Code.

FOURTH CLAIM

DECLARATORY JUDGMENT REGARDING THE 7,251,752 PATENT

39. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 38 and incorporate them by reference.

40. Adams is listed as the inventor on the face of United States Patent No. 7,251,752 (the "'752 Patent") entitled "Computerized Product Improvement Apparatus and Method."

41. PMAA purports to own by assignment all rights, title, and interests in the '752 Patent.

42. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '752 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

43. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '752 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

FIFTH CLAIM

DECLARATORY JUDGMENT REGARDING THE 7,069,475 PATENT

44. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 43 and incorporate them by reference.

45. Adams is listed as the inventor on the face of United States Patent No. 7,069,475 (the "'475 Patent"), entitled "Software-Hardware Welding System."

46. PMAA purports to own by assignment all rights, title, and interests in the '475 Patent.

47. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '475 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

48. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '475 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

SIXTH CLAIM

DECLARATORY JUDGMENT REGARDING THE 7,069,601 PATENT

49. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 48 and incorporate them by reference.

50. Adams is listed as the inventor on the face of United States Patent No. 7,069,601 (the "'601 Patent") entitled "Read-Write Function Separation Apparatus and Method."

51. PMAA purports to own by assignment all rights, title, and interests in the '601 Patent.

52. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '601 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

53. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '601 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

SEVENTH CLAIM

DECLARATORY JUDGMENT REGARDING THE 6,691,181 PATENT

54. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 53 and incorporate them by reference.

55. Adams is listed as the inventor on the face of United States Patent No. 6,691,181 (the "'181 Patent") entitled "Programmatic Time-Gap Defect Detection Apparatus and Method."

56. AFTG purports to own by assignment all rights, title, and interests in the '181 Patent.

57. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '181 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

58. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '181 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

EIGHTH CLAIM

DECLARATORY JUDGMENT REGARDING 7,249,203 PATENT

59. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 58 and incorporate them by reference.

60. Adams is listed as the inventor on the face of United States Patent No. 7,249,203 (the "'203 Patent"), entitled "Programmatic Time-Gap Defect Detection Apparatus and Method."

61. AFTG purports to own by assignment all rights, title, and interests in the '203 Patent.

62. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '203 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

63. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '203 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

NINTH CLAIM

DECLARATORY JUDGMENT REGARDING 7,472,207 PATENT

64. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 63 and incorporate them by reference.

65. Adams is listed as the inventor on the face of United States Patent No. 7,472,207 (the "'207 Patent"), entitled "Optimized-Incrementing, Time-Gap Defect Correction Apparatus and Method."

66. AFTG purports to own by assignment all rights, title, and interests in the '207 Patent.

67. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '207 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

68. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '207 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

TENTH CLAIM

DECLARATORY JUDGMENT REGARDING 6,842,802 PATENT

69. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 68 and incorporate them by reference.

70. Adams is listed as the inventor on the face of United States Patent No. 6,842,802 (the "'802 Patent") entitled "Programmatic Time-Gap Correction Apparatus and Method."

71. AFTG purports to own by assignment all rights, title, and interests in the '802 Patent.

72. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '802 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

73. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '802 patent is invalid because it fails to satisfy the conditions and

requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

ELEVENTH CLAIM

DECLARATORY JUDGMENT REGARDING 7,366,804 PATENT

74. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 73 and incorporate them by reference.

75. Adams is listed as the inventor on the face of United States Patent No. 7,366,804 (the "'804 Patent") entitled "Programmatic Time-Gap Defect Correction Apparatus and Method."

76. AFTG purports to own by assignment all rights, title, and interests in the '804 Patent.

77. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '804 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

78. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '804 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

TWELFTH CLAIM

DECLARATORY JUDGMENT REGARDING 7,653,766 PATENT

79. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 78 and incorporate them by reference.

80. Adams is listed as the inventor on the face of United States Patent No. 7,653,766 (the "'766 Patent") entitled "Time-Gap Defect Detection Apparatus and Method."

81. AFTG purports to own by assignment all rights, title, and interests in the '766 Patent.

82. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that no valid and enforceable claim of the '766 patent is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU.

83. VIA Technologies, VIA USA, Centaur and VIA CPU seek a judicial determination and declaration that the '766 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code.

THIRTEENTH CLAIM

DECLARATORY JUDGMENT REGARDING ALLEGED TRADE SECRETS

84. VIA Technologies, VIA USA, Centaur and VIA CPU hereby restate and reallege the allegations set forth in paragraphs 1 to 83 and incorporate them by reference.

85. Plaintiffs hereby seek a declaration that none of the Plaintiffs misappropriated any trade secret as alleged in the Amended Complaint. *See* Exhibit A, ¶¶ 28 – 36.

86. Plaintiffs further seek a declaration that any otherwise cognizable claim by Defendants for misappropriation of trade secrets is barred by laches and/or the applicable statute of limitations.

DEMAND FOR JURY TRIAL

87. Plaintiffs, under Rule 38 of the Federal Rules of Civil Procedure, demand a trial by jury on all claims and issues so triable.

REQUEST FOR RELIEF

WHEREFORE, VIA Technologies, VIA USA, Centaur and VIA CPU request judgment as follows:

1. Declaring that no valid and enforceable claim of the PMAA and AFTG patents is infringed by VIA Technologies, VIA USA, Centaur and VIA CPU;

2. Declaring that all of the claims of the PMAA and AFTG Patents are invalid;

3. Declaring that Defendants and their officers, employees, agents, alter egos, attorneys, and any persons in active concert or participation with them be restrained and enjoined from further prosecuting or instituting any action against VIA Technologies, VIA USA, Centaur and VIA CPU claiming that the PMAA and AFTG patents are valid, enforceable, infringed, or from representing that the products or services of VIA Technologies, VIA USA, Centaur and VIA CPU infringe the PMAA and AFTG patents;

4. Declaring that VIA Technologies, VIA USA, Centaur and VIA CPU have not misappropriated any trade secrets as alleged by Defendants, and that Defendants do not possess or have any claim for misappropriation for trade secrets.

5. Declaring this case exceptional under 35 U.S.C. § 285 awarding VIA Technologies, VIA USA, Centaur and VIA CPU their attorneys' fees and costs in connection with this case; and

6. Awarding VIA Technologies, VIA USA, Centaur and VIA CPU such other and further relief as the Court deems just and proper.

DATED: March 9, 2011

BUETHER JOE & CARPENTER, LLC

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