IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
NO. 1:02CV01057

STATIC CONTROL COMPONENTS, INC.,	)
Plaintiff,	)
v.	)
DALLAS SEMICONDUCTOR CORPORATION and LEXMARK INTERNATIONAL, INC.,	)
Defendants.	)

FIRST AMENDED COMPLAINT
(Jury Trial Demanded)

Plaintiff, STATIC CONTROL COMPONENTS, INC. ("Plaintiff" or "Static Control") sues the Defendants, DALLAS SEMICONDUCTOR CORPORATION ("Dallas") and LEXMARK INTERNATIONAL, INC. ("Lexmark") and says:

OVERVIEW

1. Plaintiff brings this action, in part, under the United States antitrust laws and the North Carolina competition laws against Defendants for illegal conduct arising from Defendants' anticompetitive acts affecting the markets for remanufactured toner cartridges used on certain Lexmark printer model lines, for components used to remanufacture toner cartridges used on the same Lexmark printer model lines, and for microchips used in toner cartridges for the same Lexmark printer model lines. As a result of Defendants' anticompetitive conduct, Plaintiff has sustained injury for which it seeks money damages and other appropriate relief to compensate it

for the harm it suffered and injunctive relief to end the illegal conduct. Defendants have conspired to restrain trade, including refusals to deal with Plaintiff and other competitors, which has resulted in reduced output and higher prices. Defendants also have conspired to monopolize the market for refurbished toner cartridges for certain Lexmark printers and the market for components used to refurbish certain Lexmark printers. Moreover, individually, each Defendant has monopolized or attempted to monopolize the relevant markets. All of this anticompetitive conduct has injured competition and consumers in the United States and foreign countries by reducing output, excluding competitors, and raising prices.

2. Plaintiff also seeks a declaratory judgment under the federal patent laws that either (1) Dallas's patents, U.S. Patent No. 5,210,846 and U.S. Patent No. 5,398,326 (collectively "The Patents"), are not valid, or (2) Plaintiff does not infringe The Patents or The Patents are otherwise not enforceable against Plaintiff.

3. Plaintiff brings this action, in part, against Defendants under the Lanham Act and North Carolina unfair competition law for illegal conduct resulting from Lexmark's misleading intimidation of Plaintiff's customers and misleading information disseminated to customers and end-users. As a result of Defendants' illegal conduct, Plaintiff has sustained injury for which it seeks money damages, injunctive relief, and other appropriate relief to compensate it for the harm it has suffered. Defendants have falsely informed customers that Plaintiff's products are infringing Defendants' intellectual property. Defendants have misled end-users of Lexmark toner cartridges and customers of Plaintiff's products that license agreements prohibit the remanufacturing of Lexmark toner cartridges, when no license agreement actually exists. Defendants' false and misleading statements cause consumers and others in the trade to believe

that Plaintiff's products are illegal and unlawful and that Plaintiff is engaged in unlawful conduct and is a dishonest and disreputable business.

JURISDICTION AND VENUE

4. Plaintiff brings this action, in part, pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to obtain injunctive relief and to recover damages, including treble damages, costs of suit, and reasonable attorneys' fees, against the Defendants for injuries sustained by Plaintiff as a result of violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, as alleged herein.

5. Plaintiff also bring this action, in part, under 28 U.S.C. §§ 1331 and 1338, to obtain a declaratory judgment that The Patents issued to Dallas are not valid or that Plaintiff is not infringing The Patents under 35 U.S.C. § 101, *et seq.*, as alleged herein.

6. Plaintiff brings this action, in part, under 28 U.S.C. §§ 1331 and 1338 for damages sustained by Plaintiff as a result of Defendants' violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a), as alleged herein.

7. Plaintiff also brings this action under 28 U.S.C § 1332, to recover damages, including treble damages, costs of suit, and reasonable attorneys' fees, against Defendants for injuries sustained by Plaintiff as a result of violations of North Carolina's competition laws, N.C. Gen. Stat. §§ 75-1, 75-1.1, 75-2.1, as alleged herein.

8. Personal jurisdiction exists over the Defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and the North Carolina Long-Arm Statute, N.C. Gen. Stat. § 1-75.4.

9. Venue is proper in the Court pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b), (c), and 1400(b). Each Defendant maintains offices, has

representatives, may be found, and/or transacts business within this District within the meaning of Section 12 of the Clayton Act, 15 U.S.C. § 22.

10. The Defendants illegally contract, combine, and conspire with persons and entities that have committed, and continue to commit, overt acts within North Carolina in furtherance of the contract, combination and conspiracy alleged in this Complaint.

11. The Defendants' conduct collectively and individually has unlawfully restrained the domestic and foreign commerce of the United States and injured consumers in the United States and foreign countries.

12. As a result of Defendants' anticompetitive acts, as alleged in this Complaint, consumers and Plaintiff have sustained harm in North Carolina.

13. Venue in this Court is also proper under N.C. Gen. Stat. § 1- 76, *et seq*.

PARTIES

14. Plaintiff Static Control Components, Inc. is a North Carolina corporation with its principal place of business in Lee County, North Carolina.

15. Dallas, on information and belief, is a Texas corporation with a principal place of business in Dallas, Texas.

16. Lexmark, on information and belief, is a Delaware corporation with a principal place of business in Lexington, Kentucky.

17. On information and belief, Dallas has for many years engaged in substantial business activities in North Carolina and continues to engage in such activities by, among other things, promoting and selling its goods and services to customers located in North Carolina.

18. On information and belief, Lexmark has for many years engaged in substantial business activities in North Carolina and continues to engage in such activities by, among other things, promoting and selling its goods and services to customers located in North Carolina.

INTERSTATE COMMERCE

19. Defendants' activities, including activities related to their illegal, anticompetitive activities, are in the flow of and substantially affect interstate commerce.

20. Among other things, Defendants' anticompetitive conduct results in communications with one another across state lines using interstate telecommunications networks, the Internet, and the United States mail. Defendants also ship products, which are at issue in this Complaint, across state lines. Defendants reap substantial revenues from sales of products, which are at issue in this Complaint, amounting to millions of dollars, throughout the United States.

RELEVANT MARKET AND DEFENDANTS' MARKET POWER

21. The relevant geographic market for purposes of Plaintiff's claim is worldwide, including the United States and other relevant submarkets thereof.

22. The relevant product markets for purposes of Plaintiff's claims consist of the following:

(a) remanufactured Lexmark toner cartridges for use in Lexmark printer model lines Optra S, Optra SE, Optra T, T520/522, T620/622, and 320 ("Cartridges Market");

(b) components used to remanufacture Lexmark toner cartridges for use in Lexmark printer model lines Optra S, Optra SE, Optra T, T520/522, T620/622, and 320 ("Components Market"); and

(c) microchips used in Lexmark toner cartridges for use in Lexmark printer model lines Optra S, Optra SE, Optra T, T520/522, T/620/622, and 320 ("Microchips Market").

23. Defendants have and exercise market power within the relevant markets. On information and belief, Defendants have approximately an 85% share of the Cartridges Market, an 85% share of the Components Market, and an 85% share of the Microchips Market.

24. As alleged herein, there are no other substitutes available to customers and end-users for products within the Cartridges Market, Components Market, and Microchips Market. As alleged herein, there are barriers to entry into the Cartridges Market, Components Market, and Microchips Market, including Defendants' unlawful anticompetitive activities to exclude competition.

25. The Defendants' anticompetitive conduct in the relevant markets has excluded competitors and resulted in consumers paying higher prices than would have prevailed in competitive markets. Consumers paying higher prices and the exclusion of competitors are indicia of Defendants' market power and unlawful anticompetitive conduct.

DEFENDANTS' ANTICOMPETITIVE ACTIVITIES

26. This action arises out of Lexmark's and Dallas's anticompetitive activities in the relevant markets. That anticompetitive conduct includes:

(a) a conspiracy by Defendants to restrain trade, including refusals to deal with Plaintiff and competitors, that has resulted in Defendants restricting output and increasing prices;

(b) a conspiracy by Defendants to monopolize the relevant markets;

(c) Lexmark's unilateral monopolization and attempted monopolization of the Cartridges Market and Components Market; and

(d) Dallas's unilateral monopolization and attempted monopolization of the Microchips Market.

27. Lexmark is an original equipment manufacturer ("OEM") of laser toner printers and laser toner cartridges. In order for a laser toner printer to function properly, it must also contain a laser toner cartridge. These toner cartridges are depleted during the normal operation of the printer.

28. Laser toner cartridges contain toner and other components. Toner is the ink in the xerographic process used in laser printers. Most of the other components in the toner cartridge have a usable life beyond the initial toner load. If the toner cartridge is repaired and/or overhauled and new toner added, the toner cartridge can be reused. This constitutes remanufacturing toner cartridges.

29. The plastic toner cartridge is made of heat resistant plastic that is difficult to recycle for other uses. Moreover, if thrown away in a landfill, it would take hundreds of years for the toner cartridge to begin to decompose. Remanufacturing toner cartridges is the most environment-friendly way of handling depleted toner cartridges.

30. Lexmark sells a variety of printer models. Lexmark designs its printer models so that only a Lexmark designed toner cartridge for that particular model will work in a given model of a Lexmark laser printer. There are no other manufacturers of new toner cartridges whose cartridges are able to be used in Lexmark printers. Thus, in order for a Lexmark printer to function, it must have either a new Lexmark toner cartridge or a remanufactured Lexmark toner cartridge.

31. Lexmark sells its printers for very little, if any profit. Lexmark sells toner cartridges for a substantial profit.

32. Lexmark introduces new model printers and toner cartridges every few years. Generally, Lexmark will discontinue selling the old model printer upon introduction of a new model. Lexmark will continue to sell toner cartridges for the discontinued model for many years to come.

33. On information and belief, customers do not life-cycle cost the total costs of using Lexmark printer lines Optra S, Optra SE, Optra T, T520/522, T/620/622, and 320 at the time they purchase these Lexmark printers.

34. Remanufacturers take used OEM laser toner cartridges, inspect and clean the toner cartridges, replace any worn components in the toner cartridges, and add new toner. The resulting remanufactured or recycled laser toner cartridge is sold at a substantial discount when compared with the price of a new toner cartridge. On information and belief, remanufactured Lexmark toner cartridges for Lexmark printer model lines Optra S, Optra SE, Optra T, T520/522, T620/622, and 320 cost approximately 50-75% of the cost of new toner cartridges for the same Lexmark printer model lines.

35. Plaintiff is a leading supplier to toner cartridge remanufacturers. Plaintiff supplies, among other things, toner and other components used by Plaintiff's customers in remanufacturing Lexmark toner cartridges.

36. Because owners of Lexmark printers can only buy toner cartridges from either Lexmark or from remanufacturers, every sale by a remanufacturer is a sale lost by Lexmark. There are no other substitutes available to consumers and end-users that need toner cartridges for Lexmark printers.

37. Lexmark has taken a series of actions designed solely to inhibit and exclude competition in the relevant markets. These actions, as discussed in more detail below, include (1) a sham Prebate program; (2) incorporating "killer microchips," which are anticompetitive microchips that Lexmark and Dallas have created, in Lexmark toner cartridges that are solely designed to preserve Defendants' market position and exclude competition; (3) the cancellation of Lexmark authorized service providers when the authorized service provider sells remanufactured Lexmark toner cartridges; (4) putting in place a program to selectively price toner cartridges to undercut identified remanufacturers; and (5) conspiring with Dallas to threaten competitors.

38. Lexmark's Prebate program is specifically intended to intimidate remanufacturers and exclude competition and has had the desired unlawful effect of raising prices and excluding competition. Under this program Lexmark purports to offer two toner cartridges for their printers, one labeled "Prebate" and a physically identical toner cartridge that does not have the Prebate label. Lexmark charges substantially more for the toner cartridge that is not labeled Prebate, and it does not make these non-Prebate toner cartridges readily available.

39. Lexmark sent letters to most of the companies in the toner cartridge remanufacturing business upon the introduction of this program. Lexmark falsely claimed that remanufacturing of Prebate-labeled toner cartridges violated Lexmark's intellectual property rights and that Prebate toner cartridges could not be legally remanufactured. Lexmark falsely informed customers that if they use Plaintiff's products to remanufacture Lexmark toner cartridges, the customers would violate the law. Lexmark has from time to time threatened competitors that remanufactured Prebate toner cartridges with intellectual property actions. Because Lexmark primarily sells Lexmark toner cartridges with the Prebate label, its program

has the effect of excluding competition and increasing prices to consumers in the relevant markets by restricting the supply of available Lexmark toner cartridges.

40. At the time customers purchase Lexmark printers in model lines Optra S, Optra SE, Optra T, T520/522, T620/622, and 320, customers are not aware that Lexmark has engaged in anticompetitive exclusionary conduct that forces customers to buy toner cartridges supplied or remanufactured only by Lexmark. Lexmark makes no effort to ensure that the buying public is aware of Lexmark's position on the Prebate or that Lexmark takes the position that these toner cartridges cannot be reused or refilled.

41. On information and belief, for the purpose of effectuating Defendants' illegal exclusionary conduct, Lexmark tracks customers and end-users that insist on purchasing non-Prebate cartridges. Lexmark is thus able to isolate and target customers and end-users that wish to use remanufactured toner cartridges as opposed to using Prebate-labeled toner cartridges, which Lexmark insists can only be used once. In so doing, Lexmark is able to unlawfully exclude competition and increase prices to customers and end-users.

42. Those end-users and remanufacturers who were intimidated by Lexmark's Prebate program, but desired to be able to use remanufactured toner cartridges, would order Lexmark toner cartridges without the Prebate label. Lexmark would then send representatives to these customers and would attempt to undercut the remanufacturer's price. If the end-user insisted on buying a remanufactured toner cartridge (typically because of environmental concerns), then Lexmark would offer to sell a remanufactured toner cartridge to these end-users.

43. These "remanufactured toner cartridges" were often, on information and belief, actually new toner cartridges labeled "remanufactured." They were also labeled "Prebate."

44. On information and belief, after an end-user purchases a Lexmark printer, Lexmark is purposefully misleading end-users to believe that they have a restricted license on Lexmark toner cartridges that requires end-users to purchase only toner cartridges from Lexmark. Lexmark, however, knows that its end-users have no such restricted license agreement. Lexmark's sole purpose for deceiving end-users that they are contractually bound by a license agreement to use only Lexmark toner cartridges is to preserve, maintain, or enhance its unlawful monopoly power in the relevant markets.

45. Through the Prebate program, Lexmark also seeks to extend its patent rights beyond their scope, which constitutes patent misuse. After the Prebate-labeled toner cartridge is depleted, the patent right is exhausted by the first sale doctrine. By using the sham Prebate license to deceive end-users and customers that they are bound by a restrictive license agreement, Lexmark misuses its patent rights to preserve, maintain, or enhance its unlawful monopoly power in the relevant markets.

46. On information and belief, there is no substantive difference in the sales process when a customer or end-user purchases a Prebate-labeled Lexmark toner cartridge, which includes the sham restricted license, or when a customer or end-user purchases a non-Prebate Lexmark toner cartridge. Customers or end-users are not made aware that their simple purchase of a Lexmark toner cartridge labeled Prebate creates a sham restrictive license between Lexmark and the customer or end-user.

47. Lexmark began to place electronic components (microchips) on their toner cartridges with the introduction of the Optra SE model line printer. Currently a number of Lexmark model lines have these anticompetitive microchips, including the Optra SE, Optra S, Optra T, the T520/522, the T620/622 and the 320. These anticompetitive microchips are

manufactured by Dallas. The Defendants conspired to create and use an algorithm in the microchip that "authenticates" the toner cartridge, making it unusable with a Lexmark printer when remanufactured by a competitor. The anticompetitive microchips generally have the same basic design feature. The printer will not print unless it sees a usable microchip on the toner cartridge. When the initial toner load in a new toner cartridge is exhausted, the microchip is rendered unusable. Thus, a remanufactured toner cartridge cannot be used in these "chipped printers" unless it uses a replacement microchip supplied by the Defendants. Defendants refuse to deal with Plaintiff and other competitors to supply such a microchip.

48. Lexmark and Dallas, from time to time, have acted in concert to redesign the anticompetitive microchips to include multi-layered, multi-stage encryption to further roadblock competitors from competing in the relevant markets. Defendants' sole purpose for redesigning the anticompetitive microchips is to exclude competitors from the relevant markets, restrict output and increase end-user prices.

49. Dallas sells its anticompetitive microchips only to Lexmark. Dallas refuses to sell its anticompetitive microchips to any other party. To ensure that only Lexmark receives Dallas's anticompetitive microchips, the Defendants have created a system whereby Dallas allocates only certain serial numbers that are used to identify each individual anticompetitive microchip. Defendants can thereby track every single anticompetitive microchip that enters the market to ensure that only Lexmark has access to the microchips.

50. Defendants' sole purpose for using the Dallas microchips with the Lexmark toner cartridges is to exclude competition, restrict output, and increase end-user prices in the relevant markets. As a result of Defendants' conduct involving the Dallas microchips, Defendants have

excluded and otherwise unlawfully restrained competitors from the relevant markets, thereby preserving Defendants' market position and increasing prices.

51. On information and belief, other printer toner cartridge manufacturers, such as Hewlett-Packard, do not use microchips for the same anticompetitive purpose that Defendants do. Other printer toner cartridge manufacturers do not similarly restrict customers' abilities to have their toner cartridges remanufactured. Thus, the industry practice is to permit customers to purchase either new or remanufactured replacement toner cartridges, which is less restrictive than Defendants' use of the anticompetitive microchips and other exclusionary practices. As a result of Defendants' anticompetitive activities, however, Lexmark printer customers believe that at the time they purchase a Lexmark printer, they will be able to use either new replacement toner cartridges or remanufactured toner cartridges with their Lexmark printer model lines Optra S, Optra SE, Optra T, T520/522, T620/622, and 320.

52. On information and belief, Lexmark is installing Dallas's anticompetitive microchips on toner cartridges with the Prebate label and toner cartridges not labeled Prebate. Customers and end-users that purchase non-Prebate labeled toner cartridges believe that the non-Prebate labeled toner cartridges can be remanufactured without any restriction. Because Lexmark and Dallas, acting in concert, have illegally used the anticompetitive microchips to exclude competition in the relevant markets by, among other conduct, refusing to deal with Plaintiff and remanufacturers, those customers and end-users are not aware that the non-Prebate toner cartridges that have the anticompetitive microchip cannot be remanufactured without any restriction.

53. On information and belief, the percentage of Hewlett-Packard toner cartridges that are remanufactured is approximately 35%. On information and belief, the percentage of

Lexmark toner cartridges that are remanufactured is approximately 14%. The disparity in the percentage of Lexmark toner cartridges that are remanufactured versus Hewlett-Packard toner cartridges is an indication that Defendants' exclusionary conduct is having an unlawful anticompetitive effect in the relevant markets.

54. On information and belief, the percentage of Lexmark toner cartridges remanufactured as part of the total Lexmark toner cartridges, either new or remanufactured, sold in the United States has decreased from 1998 to present. During the same time period, the percentage of Hewlett-Packard toner cartridges remanufactured as part of the total Hewlett-Packard toner cartridges, either new or remanufactured, sold in the United States has increased. These trends indicate that Defendants' exclusionary conduct is having an unlawful anticompetitive effect in the relevant markets.

55. Lexmark certifies authorized service providers that are able to perform warranty service on Lexmark printers. Many of these authorized service providers sell new as well as remanufactured Lexmark toner cartridges. Lexmark has embarked on a campaign to revoke the status of authorized service providers. On information and belief, Lexmark is revoking the status of authorized service providers because Lexmark does not want competitive remanufactured toner cartridges available in the relevant markets. If an authorized service provider remanufactures toner cartridges, Lexmark will terminate that authorized service provider. Lexmark's purpose for terminating the authorized service provider is to preserve and maintain its monopolies in the relevant markets.

56. Certain suppliers have offered, or have contemplated offering, replacement microchips for Lexmark toner cartridges. On information and belief, Lexmark and Dallas, acting in concert, have threatened these suppliers in a scheme designed to discourage such offerings.

For example, in 2000, Plaintiff met with Lexmark and informed Lexmark that it was contemplating selling microchips. One week after Plaintiff met with Lexmark, Dallas sent a letter to Plaintiff threatening patent infringement litigation. Other suppliers of replacement microchips received similar letters. After Plaintiff entered the relevant markets with replacement microchips for toner cartridges for Lexmark printer model lines T520 and T620, Dallas sent another letter to Plaintiff alleging infringement based solely on a picture of a microchip on Plaintiff's web site.

57. Dallas's assertions of its intellectual property rights are a sham. Dallas has knowledge that its claims of infringement are baseless. Dallas's purpose in attempting to assert its intellectual property rights is solely to harass or otherwise hinder its competitors in the relevant markets. Moreover, no reasonable litigant could anticipate success in asserting Dallas's intellectual property rights.

58. The actions taken by Lexmark and Dallas to threaten enforcement of The Patents were specifically intended to monopolize and restrain trade in the relevant markets. The threats of infringement also have created a substantial barrier to entry into the relevant markets.

59. On information and belief, Defendants have conspired to extend The Patents' scope beyond the legitimate coverage of The Patents' issued claims to intimidate and prevent competitors such as Plaintiff from competing in the relevant markets.

60. On information and belief, there is a close link between the downward price pressure on Lexmark's laser printers and Lexmark's need to increase Lexmark's revenue and profit growth from its supplies business. Lexmark, thus, considers its toner cartridge supply business to be critical to Lexmark's profitability. Lexmark has issued press releases describing its supplies-driven business model, which emphasizes the profitability of Lexmark's sales in

toner cartridges for its printers. Lexmark has recently reported that its higher supplies margins have resulted in a 23% increase in profitability for the fourth quarter ended December 31, 2002, as compared with the same period in 2001.

61. Consequently, on information and belief, Lexmark considers the remanufacturing of Lexmark printer toner cartridges by third parties to be a significant threat to Lexmark's revenue, profit growth, and monopolization of the relevant markets.

62. On information and belief, Lexmark has acted with the intent to restrain and monopolize the relevant markets to ensure that Lexmark will obtain artificially inflated monopolistic profits from Lexmark's new and remanufactured printer toner cartridge sales.

INVALIDITY AND NON-INFRINGEMENT OF PATENTS

63. Dallas, through its attorneys, filed a patent application on February 19, 1993, which led to the issuance of US Patent No. B1 5,398,326 on March 14, 1995. Dallas filed a patent application on May 15, 1989, which led to the issuance of US Patent No. B1 5,210,846 on May 11, 1993.

64. Dallas, through its attorneys, on or about December 2, 2002 accused Static Control of infringing one or more of The Patents. The accused products of Static Control are, on information and belief, replacement chips for use in remanufactured Lexmark printer cartridges, Model Optra T, Optra S, T520 and T620, (collectively the "Chips").

65. Plaintiff denies infringing The Patents.

66. Plaintiff alleges on information and belief that The Patents are invalid, unenforceable and void.

67. Dallas with full knowledge of the activities of Plaintiff has failed to assert The Patents while Plaintiff invested time and money in building its business and goodwill, and Dallas is guilty of laches and cannot maintain any cause of action against Plaintiff under The Patents.

68. Dallas has so misused The Patents and has so used them in violation of the antitrust laws as to render them unenforceable.

69. This is a claim for declaratory judgment under 28 U.S.C. § 2201 and 2202 involving the rights of the parties under federal patent law. There is a real pending controversy between the parties as to the validity and infringement of The Patents.

70. Dallas's actions in alleging infringement have placed Static Control at reasonable apprehension of suit for infringement of The Patents.

71. Absent a declaration of rights by this Court, the assertions and threats by Dallas will subject Static Control to continuing uncertainty and damages to its business. To resolve the legal and factual questions raised by Static Control and to afford relief from uncertainty and controversy which the assertions and threats by Dallas have precipitated, Static Controls is entitled to a declaratory judgment of its rights under 28 U.S.C. §§ 2201 and 2202.

FIRST CLAIM FOR RELIEF

(Non-Infringement of The Patents)

72. This claim for relief incorporates by reference the allegations in Paragraphs 1 through 71 above.

73. Static Control's Chips have been accused by Dallas of infringing some or all of The Patents' claims.

74. Static Control's Chips do not infringe any valid claims of The Patents.

75. Static Control is entitled to a judgment declaring that it has not infringed The Patents through the sale of the Chips.

SECOND CLAIM FOR RELIEF

(Invalidity of Patent No. 5,398,326)

76. This claim for relief incorporates by reference the allegations in Paragraphs 1 through 75 above.

77. The utility patent number B1 5,398,326 is invalid because it fails to comply with the requirements set forth in 35 U.S.C. §§ 101, 102, 103 and 112.

78. Plaintiff is entitled to a judgment declaring that utility patent number B1 5,398,326 is invalid.

THIRD CLAIM FOR RELIEF

(Invalidity of Patent No. 5,210,846)

79. This claim for relief incorporates by reference the allegations in Paragraphs 1 through 78 above.

80. The utility patent number B1 5,210,846 is invalid because it fails to comply with the requirements set forth in 35 U.S.C. §§ 101, 102, 103 and 112.

81. Plaintiff is entitled to a judgment declaring that utility patent number B1 5,210,846 is invalid.

FOURTH CLAIM FOR RELIEF

(Violation of Section 1 of the Sherman Act — Restraint of Interstate Commerce)

82. The Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 81 above.

83. Defendants have engaged in an unlawful contract, combination or conspiracy to unreasonably restrain interstate commerce in the relevant markets in the United States in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

84. Defendants' aforesaid unlawful combination and conspiracy to restrain interstate commerce in the relevant markets has consisted, among other things, of Defendants' conspiring to engage in the above alleged predatory and/or anticompetitive conduct for the purpose of restraining interstate commerce in the relevant markets.

85. Defendants' actions, as alleged above, have unlawfully injured competition in and adversely affected interstate commerce and business activities in interstate commerce.

86. On information and belief, Defendants willfully engaged in the actions, as alleged above, which constitute violations of Section 1 of the Sherman Act (15 U.S.C. § 1), and Defendants intended to restrain interstate commerce.

87. Defendants' actions intentionally have had the following adverse effects, among others, on the relevant markets:

(a) reduced output within the relevant markets, and

(b) increased prices of products within the relevant markets.

88. Defendants' actions, as alleged above, have proximately caused injury to Plaintiff by diverting sales from Plaintiff to Lexmark and inhibiting Plaintiff from effectively competing in the relevant markets. As a result, Plaintiff has suffered damages to its business or property by Defendants in an amount to be established at trial in excess of $18 million, exclusive of costs and interest.

89. Plaintiff is entitled to an award of damages, including an amount up to three times the amount found as actual damages, reasonable attorneys' fees and costs, under Section 4 of the Clayton Act, 15 U.S.C. § 15.

90. Plaintiff will continue to suffer damages as a result of the unlawful actions of Defendants unless Defendants, their officers, agents, servants, employees, attorneys, and those persons acting in concert with Defendants are permanently enjoined from continuing such anticompetitive actions.

FIFTH CLAIM FOR RELIEF

(Violation of Section 2 of the Sherman Act —

Conspiracy to Monopolize, Attempted Monopolization, and Monopolization)

91. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 90 above.

92. Defendants have conspired to monopolize the relevant markets in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

93. Defendants' aforesaid conspiracy to monopolize the relevant markets has consisted, among other things, of Defendants' conspiring to engage in the above alleged predatory and/or anticompetitive conduct in furtherance of their conspiracy to monopolize the relevant markets.

94. On information and belief, Defendants willfully engaged in the actions, as alleged above, which constitute violations of Section 2 of the Sherman Act (15 U.S.C. § 2), and Defendants specifically intended to monopolize the relevant markets.

95. Lexmark and Dallas, in addition to acting in concert with each other as alleged above, have each individually attempted to monopolize the relevant markets in the United States in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

96. Lexmark's and Dallas's activities are anticompetitive and predatory and were individually undertaken with the specific intent to inhibit competition, control prices and create and maintain Lexmark's monopoly in the Cartridges Market and Components Market, and Dallas's monopoly in the Microchips Market.

97. There is a dangerous probability that Lexmark will succeed in its attempt to monopolize or maintain its monopolies in the Cartridges Market and Components Market.

98. There is a dangerous probability that Dallas will succeed in its attempt to monopolize or maintain its monopoly in the Components Market.

99. On information and belief, Lexmark and Dallas each willfully engaged in the actions, as alleged above, which constitute violations of Section 2 of the Sherman Act (15 U.S.C. § 2), and specifically intended to monopolize the relevant markets.

100. In addition, Lexmark and Dallas have individually monopolized the relevant markets in the United States in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

101. Lexmark's aforesaid monopolization of the relevant markets has consisted of Lexmark obtaining a monopoly in the Cartridges Market and the Components Market with, on information and belief, approximately an 85% share of each market and engaging in the above alleged predatory and/or anticompetitive conduct to maintain its monopoly power in each market.

102. Dallas's aforesaid monopolization of the relevant markets has consisted of Dallas obtaining a monopoly in the Microchips Market with, on information and belief, approximately

an 85% share of that market and engaging in the above alleged predatory and/or anticompetitive conduct to maintain its monopoly power in that market.

103. Defendants' actions, as alleged above, have unlawfully injured competition in and adversely affected interstate commerce and business activities in interstate commerce.

104. Defendants' concerted actions and Lexmark's and Dallas's unilateral actions in violation of Section 2 of the Sherman Act, as alleged above, have proximately caused injury to Plaintiff by diverting sales from Plaintiff to Lexmark and Dallas, and inhibiting Plaintiff from effectively competing in the relevant markets. As a result, Plaintiff has suffered damages to its business or property by Defendants in an amount that is estimated to be at least $18 million.

105. Defendants' concerted actions and Lexmark's and Dallas's unilateral actions in violation of Section 2 of the Sherman Act, as alleged above, have resulted in excluding competitors from the relevant markets and in increasing prices to consumers in the relevant markets.

106. Plaintiff is entitled to an award of damages, including an amount up to three times the amount found as actual damages, attorneys' fees and costs, under 15 U.S.C. § 15.

107. Plaintiff will continue to suffer damages as a result of the unlawful actions of Defendants unless Defendants, their officers, agents, servants, employees, attorneys, and those persons acting in concert with Defendants are permanently enjoined from continuing such actions.

SIXTH CLAIM FOR RELIEF

(Violation of Section 43(a) of the Lanham Act —

False Advertising, Product Libel, and Unfair Competition)

108. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 107 above.

109. The communications regarding Lexmark's alleged intellectual property rights and Defendants' alleged unlawful conduct, as alleged above, constitute material misrepresentations and/or omissions of the nature, characteristics and qualities of Lexmark's and Plaintiff's goods, services and/or commercial activities and are thus in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Such misrepresentations and omissions were made willfully and in bad faith and in commercial advertising and promotion.

110. Lexmark's products about which Defendants have made misrepresentations, as well as Plaintiff's competing products, are marketed and sold in interstate commerce, and in commerce between the United States and foreign countries.

111. Defendants' misrepresentations and omissions concerning Defendants' and Plaintiff's products have deceived and are likely to deceive a substantial segment of the intended audience.

112. The misrepresentations made by Defendants are material and are likely to influence purchasing decisions in the relevant markets. Such misrepresentations have proximately caused and/or are likely to cause injury to Plaintiff by diverting sales from Plaintiff to Lexmark. Such conduct has also irreparably harmed Plaintiff by leading consumers and others in the trade to believe that Plaintiff is engaged in illegal conduct and is a dishonest and

disreputable business. Defendants' illegal conduct has substantially injured Plaintiff's business reputation.

113. Plaintiff is entitled to an award of damages, including an amount up to three times the amount found as actual damages, attorneys' fees and costs, under 15 U.S.C. § 1117(a).

114. Moreover, Plaintiff will continue to suffer damages as a result of the unlawful actions of Defendants unless Defendants, their officers, agents, servants, employees, attorneys, and those persons acting in concert with Defendants are permanently enjoined from continuing such actions and appropriate corrective advertising is awarded.

SEVENTH CLAIM FOR RELIEF

(Violation of N.C. Gen. Stat. § 75-1 — Restraint of North Carolina Commerce)

115. The Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 114 above.

116. Defendants have engaged in an unlawful contract, combination or conspiracy to unreasonably restrain interstate commerce in the relevant markets in the United States in violation of N.C. Gen. Stat. § 75-1.

117. Defendants' aforesaid unlawful combination and conspiracy to restrain commerce in the relevant markets in North Carolina has consisted, among other things, of Defendants' conspiring to engage in the above alleged predatory and/or anticompetitive conduct for the purpose of restraining commerce in the relevant markets in North Carolina.

118. Defendants' actions, as alleged above, have injured competition and adversely affected commerce within North Carolina and business activities in North Carolina commerce.

119. On information and belief, Defendants willfully engaged in the actions, as alleged above, which constitute violations of N.C. Gen. Stat. § 75-1, and Defendants intended to restrain commerce within North Carolina.

120. Defendants' actions have had the following adverse effects, among others, on the relevant markets:

(a) reduced output within the relevant markets, and

(b) increased prices of products within the relevant markets.

121. Defendants' actions, as alleged above, have proximately caused injury to Plaintiff by diverting sales from Plaintiff to Lexmark and inhibiting Plaintiff from effectively competing in the relevant markets. As a result, Plaintiff has suffered damages to its business or property by Defendants in an amount to be established at trial in excess of $75,000 exclusive of costs and interest.

122. Plaintiff is entitled to an award of damages, including an amount up to three times the amount found as actual damages, reasonable attorneys' fees and costs, under N.C. Gen. Stat. §§ 75-16 and 75-16.1.

123. Plaintiff will continue to suffer damages as a result of the unlawful actions of Defendants unless Defendants, their officers, agents, servants, employees, attorneys, and those persons acting in concert with Defendants are permanently enjoined from continuing such anticompetitive actions.

EIGHTH CLAIM FOR RELIEF

(Violation of N.C. Gen. Stat. § 75-1.1 — Unfair and Deceptive Trade Practices)

124. The Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 123 above.

125. Defendants have engaged in acts or practices that affect commerce and business activities in the state of North Carolina.

126. Defendants' anticompetitive and predatory actions, as alleged above, constitute unfair and deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1.

127. Defendants willfully engaged in the acts or practices, as alleged above, which constitute violations of N.C. Gen. Stat. § 75-1.1.

128. Defendants' unfair and deceptive acts have caused Plaintiff to suffer damages in an amount to be established at trial in excess of $75,000 exclusive of costs and interest.

129. Plaintiff is entitled to recover treble damages for injuries caused by the aforesaid conduct, as well as attorneys' fees and costs of suit for Defendants' willful conduct, under N.C. Gen. Stat. §§ 75-16 and 75-16.1.

130. Defendants' actions are ongoing and, unless enjoined, will continue to cause irreparable harm to Plaintiff.

NINTH CLAIM FOR RELIEF

(Violation of N.C. Gen. Stat. § 75-2.1 —

Conspiracy to Monopolize, Attempted Monopolization, Monopolization)

131. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 130 above.

132. Defendants have conspired to monopolize the relevant markets in violation of N.C. Gen. Stat. § 75-2.1.

133. Defendants' aforesaid conspiracy to monopolize the relevant markets has consisted, among other things, of Defendants' conspiring to engage in the above alleged predatory and/or anticompetitive conduct for the purpose of monopolizing the relevant markets.

134. On information and belief, Defendants willfully engaged in the concerted actions, as alleged above, which constitute violations of N.C. Gen. Stat. § 75-2.1, and Defendants specifically intended to monopolize the relevant markets.

135. Lexmark and Dallas, in addition to acting in concert with each other as alleged above, have each individually attempted to monopolize the relevant markets in violation of N.C. Gen. Stat. § 75-2.1.

136. Lexmark's aforesaid attempt to monopolize the relevant markets has consisted of, among other things, Lexmark engaging in the above alleged predatory and/or anti-competitive conduct to acquire monopoly power in the Cartridges Market and Components Market within North Carolina.

137. Dallas's aforesaid attempt to monopolize the relevant markets has consisted of, among other things, Dallas engaging in the above alleged predatory and/or anti-competitive conduct to acquire monopoly power in the Microchips Market within North Carolina.

138. On information and belief, Lexmark and Dallas each willfully engaged in the actions, as alleged above, which constitute violations of N.C. Gen. Stat. § 75-2.1, and each specifically intended to monopolize the relevant markets.

139. There is a dangerous probability that Lexmark will succeed in its attempt to monopolize or maintain its monopolies in the Cartridges Market and Components Market within North Carolina.

140. There is a dangerous probability that Dallas will succeed in its attempt to monopolize or maintain its monopoly in the Components Market within North Carolina.

141. In addition, Lexmark and Dallas have each individually monopolized the relevant markets in violation of N.C. Gen. Stat. § 75-2.1.

142. Lexmark's aforesaid monopolization of the Cartridges Market and Components Market has consisted of Lexmark obtaining a monopoly in those markets with, on information and belief, approximately an 85% share of each market and engaging in the above alleged predatory and/or anticompetitive conduct to maintain its monopoly power in each market.

143. Dallas's aforesaid monopolization of the Microchips Market has consisted of Dallas obtaining a monopoly in that market with, on information and belief, approximately an 85% share of that market and engaging in the above alleged predatory and/or anticompetitive conduct to maintain its monopoly power in that market.

144. On information and belief, Lexmark and Dallas each willfully engaged in the actions, as alleged above, which constitute violations of N.C. Gen. Stat. § 75-2.1, and intended to monopolize their respective relevant markets.

145. Defendants' actions, as alleged above, have injured competition and adversely affected commerce and business activities in the State of North Carolina.

146. Defendants' concerted actions and Lexmark's and Dallas's unilateral actions in violation of N.C. Gen. Stat. § 75-2.1, as alleged above, have proximately caused injury to Plaintiff by diverting sales from Plaintiff to Lexmark and inhibiting Plaintiff from effectively competing in the relevant markets. As a result, Plaintiff has suffered damages in an amount to be established at trial in excess of $75,000 exclusive of costs and interest.

147. Defendants' concerted actions and Lexmark's and Dallas's unilateral actions in violation of N.C. Gen. Stat. § 75-2.1, as alleged above, have resulted in excluding competitors from the relevant markets within North Carolina and in increasing prices to consumers in the relevant markets within North Carolina.

148. Plaintiff is entitled to recover treble damages for injuries caused by the aforesaid conduct, as well as attorneys' fees and costs of suit for Defendants' willful conduct, under N.C. Gen. Stat. §§ 75-16 and 75-16.1.

149. Moreover, Defendants' actions are ongoing and, unless enjoined, will continue to cause irreparable harm to Plaintiff.

TENTH CLAIM FOR RELIEF

(Civil Conspiracy)

150. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 149 above.

151. The Defendants conspired, as alleged above, to commit unlawful acts, or to do lawful acts in an unlawful way.

152. One or more of the Defendants, in furtherance of their illegal conspiracy, committed an overt act in furtherance of the aims of their conspiracy.

153. Plaintiff has suffered actual injury as a proximate result of the overt acts committed by one or both of the Defendants in furtherance of the conspiracy between the Defendants.

154. Plaintiff is entitled to recover damages, costs, attorneys' fees, and expenses necessary to counteract the effects of Defendants' illegal civil conspiracy.

JURY DEMAND

155. Plaintiff demands a jury trial of all matters so triable raised in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court to enter a judgment:

1. Declaring U.S. Patent Nos. B1 5,210,846 and B1 5,398,326 invalid;

2. In the alternative, declaring that Plaintiff either did not infringe The Patents or that Dallas has so misused The Patents and has so used them in violation of the antitrust laws as to render The Patents unenforceable against the Plaintiff;

3. That Plaintiff recover damages from Defendants in an amount to be determined at trial in excess of $18 million for Defendants' violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2);

4. That Plaintiff recover enhanced damages for as well as an enhanced accounting of Defendants' unjust enrichment profits in an amount not less than $75,000 for Defendants' violations of the Lanham Act under 15 U.S.C. § 1125(a);

5. That Defendants be permanently enjoined from violating the Lanham Act and be required to make and disseminate corrective advertising to remedy its Lanham Act violations against Plaintiff in a form and frequency acceptable to Plaintiff and the Court;

6. That Defendants be ordered to give a report in writing, under oath, stating that Defendants have complied with the Court's injunction and describing the steps taken to comply with the Court's injunction;

7. That Plaintiff recover damages from Defendants on Plaintiff's claims under North Carolina law in an amount to be established at trial in excess of $75,000, plus interest as allowed by law;

8. That Plaintiff recover Defendants' unjust enrichment profits in an amount not less than $75,000 for Defendants' violations of North Carolina law;

9. That said recovery be trebled, where applicable, under 15 U.S.C. § 15, 15 U.S.C. § 1117(a), and/or N.C. Gen. Stat. § 75-16;

10. That punitive damages be awarded, as permitted by law, on Plaintiff's claim for unfair competition, based on Defendants' wanton and willful conduct;

11. That the Court award Plaintiff its reasonable attorneys' fees and costs and prejudgment and post judgment interest under 15 U.S.C. § 15, 15 U.S.C. § 1117(a) and/or N.C. Gen. Stat. § 75-16.1;

12. That a trial by jury be had on all issues so triable; and

13. For such other and further relief as the Court may deem just and proper.

This the 28th day of February, 2003.

Respectfully submitted,

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