

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ELPIDA MEMORY, INC. and
ELPIDA MEMORY (USA) INC.,

Plaintiffs,

V.

INTELLECTUAL VENTURES I LLC and
INTELLECTUAL VENTURES II LLC,

Defendants.

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C.A. No. _____

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT
OF PATENT INVALIDITY AND NON-INFRINGEMENT**

Plaintiffs Elpida Memory, Inc. and Elpida Memory (USA) Inc. (collectively, “Elpida”), through their attorneys, bring this Complaint against Defendants Intellectual Ventures I LLC and Intellectual Ventures II LLC (collectively, “IV”) and request a jury trial on all issues so triable. Elpida alleges as follows, upon knowledge with respect to itself and its own acts, and upon information and belief as to the circumstances and facts of others:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment that U.S. Patent Nos. 5,654,932 (the “’932 patent”), 5,963,481 (the “’481 patent”), and 5,982,696 (the “’696 patent”) (collectively the “Patents-in-Suit”) entitled “Memory Devices With Selectable Access Type And Methods Using The Same,” “Embedded Enhanced DRAM, And Associated Method,” and “Memories With Programmable Address Decoding And Systems And Methods Using The Same,” respectively, are invalid and not infringed by Elpida. The ’932, ’481, and ’696 patents are attached as Exhibits A, B, and C, respectively.

THE PARTIES

2. Plaintiff Elpida Memory, Inc. is a corporation organized under the laws of Japan, having its principal place of business at Sumitomo Seimei Yaesu Building, 3rd Floor, 2-1 Yaesu 2-chome, Chuo-ku, Tokyo, 104-0028, Japan.

3. Plaintiff Elpida Memory (USA) Inc. is a corporation organized under the laws of the State of Delaware, having its principal place of business at 1175 Sonora Court, Sunnyvale, California 94086.

4. On information and belief, Defendant Intellectual Ventures I LLC is a limited liability company organized under the laws of the State of Delaware, having a principal place of business at 3150 139th Avenue SE, Building 4, Bellevue, Washington 98005.

5. On information and belief, Defendant Intellectual Ventures II LLC is a limited liability company organized under the laws of the State of Delaware, having a principal place of business at 3150 139th Avenue SE, Building 4, Bellevue, Washington 98005.

6. On information and belief, Defendant Intellectual Ventures II LLC owns all right, title, and interest to the '932 patent, including the right to sue for infringement of the '932 patent.

7. On information and belief, Defendant Intellectual Ventures I LLC owns all right, title, and interest to the '481 patent, including the right to sue for infringement of the '481 patent.

8. On information and belief, Defendant Intellectual Ventures II LLC owns of all right, title, and interest to the '696 patent, including the right to sue for infringement of the '696 patent.

JURISDICTION AND VENUE

9. This action arises under the Patent Laws of the United States (35 U.S.C. § 1, *et seq.*).

10. The Court has jurisdiction over the subject matter of all causes of action herein pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

11. On information and belief, IV has systematic and continuous contacts in this judicial district.

12. On information and belief, IV regularly avails itself of the benefits of this judicial district, including the jurisdiction of the courts.

13. The Court has personal jurisdiction, general and specific, over IV.

14. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391(b) and (c).

BACKGROUND

15. Elpida is a developer and manufacturer of Dynamic Random Access Memory (DRAM) integrated circuits. Elpida has made and sold billions of dollars worth of DRAM worldwide.

16. On information and belief, IV acquires and licenses patents from individual inventors, companies, universities, and other institutions.

17. In October and November 2010, Intellectual Ventures Management, LLC provided Elpida Memory, Inc. with lists of patents to which it offered Elpida a license. The lists include, *inter alia*, U.S. Patent Nos. 5,581,513 (the “513 patent”), 5,598,374 (the “374 patent”), 6,373,753 (the “753 patent”), 6,455,937 (the “937 patent”), and 6,462,998 (the “998 patent”) (collectively, the “Originally Asserted Patents”), and the Patents-in-Suit.

18. On December 8, 2010, IV filed a suit for patent infringement against Elpida, and Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc. (collectively, “Hynix”), in the District of Delaware, alleging, *inter alia*, that Elpida’s and Hynix’s DRAM products infringe the Originally Asserted Patents. (Exhibit D, Complaint in Civil Action No. 10-1066-SLR (D.

Del.)). IV asserted that Elpida's DDR2 SDRAM and DDR3 SDRAM products, including part number EDJ1108BBSE, infringe certain of the Originally Asserted Patents.

19. In a letter dated July 11, 2011 (attached as Exhibit E), counsel for Intellectual Ventures Management, LLC "and various of its subsidiaries" contacted counsel for Elpida and stated, "It has come to the attention of Intellectual Ventures that Elpida is infringing United States Patent Nos. 5,963,481; 5,654,932; and 5,982,696 owned by Intellectual Ventures entities, and causing Elpida's distributors to infringe the patents as well." This correspondence also stated that "Intellectual Ventures will be filing claims against Elpida for patent infringement."

20. On July 11, 2011, IV filed a second suit for patent infringement against Elpida, Hynix, and certain of their customers, in the Western District of Washington, alleging, *inter alia*, that Elpida's and Hynix's DRAM products also infringe the '932, '481, and '696 patents that are the subject of the present complaint for declaratory judgment. (Exhibit F, Complaint in Civil Action No. 11-1145-RSL (W.D. Wash.)). IV asserted, *inter alia*, that Elpida's DDR2 SDRAM and DDR3 SDRAM products, including part number EDJ1108BBSE, infringe certain of the '932, '481, and '696 patents.

21. Elpida believes that the Patents-in-Suit are invalid, and it has not directly or indirectly infringed any claim of the Patents-in-Suit, either literally or under the doctrine of equivalents. As a result of IV's allegations and general course of conduct, there is an actual and justiciable controversy between Elpida and IV as to whether Elpida infringes any valid claim of the Patents-in-Suit.

COUNT I
(Invalidity and Non-Infringement of U.S. Patent No. 5,654,932)

22. Elpida repeats and realleges each and every allegation contained in paragraphs 1–21 of this Complaint as though fully set forth herein.

23. Each of the claims of the '932 patent is invalid for failure to comply with one or more sections of the patent laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and 112.

24. The use, offer for sale, and/or sale in the United States and/or importation into the United States of Elpida's SDRAM products does not infringe either directly, or indirectly by inducing or contributing to the infringement of, any valid claim of the '932 patent, either literally or under the doctrine of equivalents.

COUNT II
(Invalidity and Non-Infringement of U.S. Patent No. 5,963,481)

25. Elpida repeats and realleges each and every allegation contained in paragraphs 1–24 of this Complaint as though fully set forth herein.

26. Each of the claims of the '481 patent is invalid for failure to comply with one or more sections of the patent laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and 112.

27. The use, offer for sale, and/or sale in the United States and/or importation into the United States of Elpida's SDRAM products does not infringe either directly, or indirectly by inducing or contributing to the infringement of, any valid claim of the '481 patent, either literally or under the doctrine of equivalents.

COUNT III
(Invalidity and Non-Infringement of U.S. Patent No. 5,982,696)

28. Elpida repeats and realleges each and every allegation contained in paragraphs 1–27 of this Complaint as though fully set forth herein.

29. Each of the claims of the '696 patent is invalid for failure to comply with one or more sections of the patent laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and 112.

30. The use, offer for sale, and/or sale in the United States and/or importation into the United States of Elpida's SDRAM products does not infringe either directly, or indirectly by inducing or contributing to the infringement of, any claim of the '696 patent, either literally or under the doctrine of equivalents.

PRAYER FOR RELIEF

WHEREFORE, Elpida prays that the Court enter judgment as follows:

- (a) Declaring that each and every claim of U.S. Patent Nos. 5,654,932, 5,963,481, and 5,982,696 is invalid;
- (b) Declaring that Elpida does not infringe either directly, or indirectly by inducing or contributing to the infringement of, any claim of U.S. Patent Nos. 5,654,932, 5,963,481, and 5,982,696;
- (c) Declaring that IV and its officers, agents, employees, representatives, counsel, and all persons in active concert or participation with any of them, directly or indirectly, be enjoined from threatening or charging infringement of, or instituting or continuing any action for infringement of U.S. Patent Nos. 5,654,932, 5,963,481, or 5,982,696 against Elpida, its suppliers, customers, distributors, or users of its products;
- (d) Declaring this case an exceptional case under 35 U.S.C. § 285;
- (e) Awarding Elpida its costs and reasonable attorney's fees; and
- (f) Granting such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

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