

ORIGINAL

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of Notebook Computer Products

Investigation No. 337-TA-_____

**COMPLAINT UNDER SECTION 337 OF
THE TARIFF ACT OF 1930, AS AMENDED**

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EXHIBIT LIST

1. Certified copy of U.S. Patent No. 7,156,693
2. Certified copy of U.S. Patent No. 5,430,867
3. Certified copy of assignment for U.S. Patent No. 7,156,693
4. Certified copy of assignment for U.S. Patent No. 5,430,867¹
5. Photos of Acer Aspire 4810T notebook computer
6. User manual for the Aspire 4810T product
7. Claim chart for '693 patent
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9. Receipt reflecting sale of Acer Aspire 4810T notebook computer in the United States
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12. Photograph of product label from purchase of 4810T, showing shipment date of August 6, 2009
13. Photograph of cable labeled "Wistron JM41 Power Cable" that connects motherboard and USB port of Aspire 4810T
14. Screenshot of the Ethernet MAC address of the Aspire 4810T
15. **CONFIDENTIAL** Identification of licensees of Asserted Patents
16. Photographs of Toshiba notebook computer products
17. Claim chart applying claim 20 of '693 patent to NB205

¹ Exhibit 4 includes an abstract of title for U.S. Patent No. 5,430,867 and an abstract of title and certified copy of the assignment for U.S. Patent No. 5,222,231, from which U.S. Patent No. 5,430,867 is a continuation. The assignment for U.S. Patent No. 5,222,231 ~~includes an assignment of all rights in, among other things, continuations of U.S. Patent No. 5,222,231.~~

18. Claim chart applying claim 23 of '867 patent to Satellite A505
19. **CONFIDENTIAL** Declaration of R. Scott Sims regarding domestic industry

LIST OF APPENDICES

- A. Certified Copy of Prosecution History of the '693 Patent, and 3 additional copies on CDs
- B. Certified Copy of Prosecution History of the '867 Patent, and 3 additional copies on CDs
- C. Copy of the '693 Patent and References Mentioned in the Prosecution History of the '693 Patent
- D. Copy of the '867 Patent and References Mentioned in the Prosecution History of the '867 Patent

I. INTRODUCTION

1.1. Complainant Toshiba Corporation (hereinafter "Complainant" or "Toshiba") requests the U.S. International Trade Commission ("ITC") to commence an investigation pursuant to section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(a)(1)(B)(i) ("section 337"), and to remedy the unlawful importation into the United States, the sale for importation, and/or the sale within the United States after importation by the owner, importer, or consignee, of articles covered by valid and enforceable United States patents owned by Toshiba.

1.2. The proposed respondents, Wistron Corporation ("Wistron"), Wistron InfoComm (Texas) Corporation ("Wistron Texas"), and Wistron InfoComm Technology (America) Corporation ("Wistron America") (all collectively "Respondents"), have engaged in unfair acts in violation of section 337 through the unlicensed importation, sale for importation and/or sale after importation of certain notebook computer products covered by one or more claims of Complainant's U.S. Patent Nos. 7,156,693 ("the '693 patent") and 5,430,867 ("the '867 patent") (collectively "the Asserted Patents").

1.3. Certified copies of the '693 and '867 patents accompany this complaint as **Exhibits 1** and **2**, respectively. Toshiba Corp. owns by assignment the entire right, title and interest in and to these patents. Certified copies of the recorded assignments of the '693 and '867 patents accompany this complaint as **Exhibits 3** and **4**, respectively.

1.4. As required by section 337(a)(2) and defined by section 337(a)(3), an industry exists in the United States relating to certain notebook computer products protected by the Asserted Patents. The domestic industry for the Asserted Patents includes Complainant's substantial United States investments and expenditures in activities, including supporting the notebook computer products claimed in the Asserted Patents and their customers through customer support, technical service, repair and replacement parts, and engineering support.

1.5. Toshiba seeks exclusion orders pursuant to section 337(d) excluding from entry into the United States Respondents' notebook computer products covered by one or more claims of the Asserted Patents. Toshiba further seeks cease and desist orders directed to Respondents to halt the importation, marketing, advertising, demonstration, warehousing of inventory for distribution, sale and use of such imported products in the United States pursuant to section 337(f).

II. COMPLAINANT

2.1. Complainant Toshiba is a corporation organized under the laws of Japan with its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan. Toshiba designs, manufactures, markets, and sells various electronic consumer products, including notebook computer products. Toshiba's 2009 Annual Report is available on Toshiba's website at: <http://www.toshiba.co.jp/about/ir/en/library/ar/ar2009.htm>.

2.2. Since introducing the world's first notebook computer in 1985, Toshiba has consistently improved upon its revolutionary products to make them more reliable, easier to manufacture, and more secure. For the past 24 years, Toshiba's notebook computer products have enjoyed vast commercial success in the United States and around the world. To maintain this success, Toshiba has invested, and continues to invest, millions of dollars toward the development of its products.

2.3. Toshiba has sought and obtained patent protection in the United States for a number of inventions relating to aspects of its notebook computer products, including the inventions claimed in the '693 and '867 patents.

III. PROPOSED RESPONDENTS

3.1. Upon information and belief, Respondent Wistron, Corp. ("Wistron") is a corporation organized under the laws of the Republic of China (Taiwan) with its principal place

of business at 21F, 88, Sec. 1, Hsin Tai Wu Road, Hsichih, Taipei Hsien 221, Taiwan, R.O.C. Upon information and belief, Wistron manufacturers, markets, sells for importation, imports and/or sells after importation into the United States infringing notebook computer products. An example of such product is the Acer Aspire 4810T. *See Exhibit 5.*

3.2. Upon information and belief, Respondent Wistron InfoComm Technology (Texas) Corporation (“Wistron Texas”) is a Texas corporation located at 4051 Freeport Parkway, Suite 200, Grapevine, TX. Wistron Texas is a wholly owned subsidiary of Wistron. Upon information and belief, Wistron Texas markets, sells for importation, imports and/or sells after importation into the United States infringing notebook computer products. An example of such a product is the Acer Aspire 4810T. *See Exhibit 5.*

3.3. Upon information and belief, Respondent Wistron InfoComm Technology (America) Corporation (“Wistron America”) is a Texas corporation located at 800 Parker Square, Suite 285-A, Flower Mound, TX. Wistron America is a wholly owned subsidiary of Wistron LLC, which in turn is wholly owned by Wistron. Upon information and belief, Wistron America markets, sells for importation, imports and/or sells after importation into the United States infringing notebook computer products. An example of such a product is the Acer Aspire 4810T. *See Exhibit 5.*

IV. THE TECHNOLOGIES AND PRODUCTS AT ISSUE

4.1. The accused products and the Toshiba products that practice the Asserted Patents are notebook computer products that include certain touchpad and security features.

V. THE PATENTS-IN-SUIT

A. The '693 Patent

1. Identification of the Patent and Ownership by Toshiba

5.1. U.S. Patent No. 7,156,693 ("the '693 patent") (**Exhibit 1**), entitled "Electronic Apparatus With Pointing Device On The Housing," was issued on January 2, 2007. Toshiba is the assignee (*see Exhibit 3*) and Hiroyuki Kusaka is named as the sole inventor.

5.2. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by the following: (1) a certified copy and three additional copies of the prosecution history of the '693 patent (Appendix A, bearing bates nos. T00001 - T000421); and (2) four copies of each reference document mentioned in the prosecution history (Appendix C, bearing bates nos. T000716 -T001138).

2. Non-Technical Description of the Patented Invention

5.3. The '693 patent is directed to an electronic pointing device that is disposed entirely inside the housing of an electronic apparatus, such as a notebook computer. The pointing device has a flat input surface that is secured with an adhesive to the interior surface of the housing, adjacent to an operation area, such as a touch pad. This structure allows the pointing device to receive user inputs through the touch pad without being exposed as the outside wall of the computer.

5.4. Unlike the prior art, the claimed apparatus can be manufactured without performing unnecessary steps, such as creating an opening in the outside wall of the housing to enable a user to operate the touchpad. Thus, the claimed inventions reduce the amount of time and labor associated with the assembly of the electronic apparatus and, in particular, the touchpad portion of the electronic apparatus. Moreover, the patent further teaches that an

optional sticker can be adhered to the touch pad to make it easier for a user to locate and use the touch pad.

3. Foreign Counterparts Sharing the '693 Patent Written Description

5.5. The following is a list of the foreign patents and applications sharing the same written description as the '693 patent:

Country/Region	Type	Number	Status
Japan	Patent Application	JP2004227222A2	Abandoned
Europe	Patent Application	EP1445682A3	Abandoned
China	Patent	CN 1517826A	Granted

5.6. Complainant certifies that there are no other foreign patents or patent applications sharing the same or a portion of the same written description as the '693 patent that have been issued, abandoned, denied, or remain pending.

B. The '867 Patent

1. Identification of the Patent and Ownership by Toshiba Corp.

5.7. U.S. Patent No. 5,430,867 ("the '867 patent") (**Exhibit 2**), entitled "Data Processing System having a Resume Function and an Operating Method Thereof," issued on July 4, 1995. Toshiba is the assignee (*see Exhibit 4*) and Shizuka Gunji is named as the sole inventor. This patent is a continuation of Application No. 40,995, abandoned, which is a continuation of Application No. 507,490, issued as U.S. Patent No. 5,222,231.

5.8. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by the following: (1) a certified copy and three additional copies of the prosecution history of the '867 patent (Appendix B, bearing bates nos. T000422 -

T000715); and (2) four copies of each reference document mentioned in the prosecution history (Appendix D, bearing bates nos. T001139 - T001418).

2. Non-Technical Description of the Patented Invention

5.9. The '867 patent is directed to systems and methods for saving the contents of a computer when the power is switched off and for protecting the saved contents of the computer from unauthorized use when the power is switched on again.

5.10. The '867 patent further relates to detecting when power to the computer has been switched off, storing the state of the computer immediately prior to the power being switched off, requiring a password from a user wishing to resume the state of the computer prior to being switched off, checking the password input by the user against the password stored in the memory of the computer, and if the passwords coincide, allowing the user to resume using the computer. If the passwords do not match, the user is not allowed to access the contents of the computer.

3. Foreign Counterparts Sharing the '867 Patent Written Description

5.11. The following is a list of the foreign patents and applications sharing the same or a portion of the same written description as the '867 patent:

Country/Region	Type	Number	Status
Korea	Patent	KR9304943	Granted
Taiwan	Patent	TWN 282854	Granted
Japan	Patent	JP02728724B2	Granted
Europe	Application	EP09107419.5	Abandoned

5.12. Complainant certifies that there are no other foreign patents or patent applications sharing the same or a portion of the same written description as the '867 patent that have been issued, abandoned, denied, or remain pending.

VI. UNFAIR ACTS OF THE RESPONDENTS

6.1. Upon information and belief, Respondents' notebook computer products ("the Accused Products") infringe at least claims 1-2, 5, 7, 9, 15-17, and 20-22 of the '693 patent and claims 21-25 of the '867 patent ("the Asserted Claims").

6.2. On information and belief, the Accused Products are manufactured, assembled, and/or packaged outside of the United States. These same products are then imported into the United States, sold for importation into the United States, and/or sold after importation into the United States by Respondents. These acts constitute direct infringement of the Asserted Claims of Toshiba's patents.

6.3. The importation into the United States, sale for importation into the United States, and/or sale after importation into the United States of the Accused Products likewise constitute contributory infringement. In particular, Respondents are contributory infringers of the Asserted Claims because they manufacture, assemble, and/or package notebook computer products that practice the claimed inventions, which are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by Respondents to be specially adapted for use in practicing the inventions of the Asserted Patents.

6.4. Respondents also actively induce others to infringe the Asserted Claims through the importation into the United States, sale for importation into the United States, and/or sale after importation into the United States of the Accused Products, and the sale of infringing parts to others for incorporation into notebook computer products that infringe the Asserted Claims. Respondents further actively induce others to infringe the Asserted Claims through the importation into the United States and the sale after the importation in the United States of the Accused Products along with directions, demonstrations, guides, manuals, training for use, and

other materials that encourage the infringing use of the Accused Products. Further discovery may reveal that additional claims of the Asserted Patents are infringed by the Accused Products.

6.5. Respondents have been given actual notice of their infringement of the Asserted Patents by service of this Complaint. Moreover, with respect to at least the '867 patent, Respondents were given notice of their infringement in communications that took place between Toshiba and Respondents prior to the filing of this Complaint. Respondents have continued to infringe the Asserted Patents after receiving notice of the infringement.

6.6. The Accused Products that infringe the Asserted Claims include, but are not limited to, the Aspire 4810T notebook computer products. Further discovery may reveal additional infringing products and/or models. Photographs of the infringing Aspire 4810T products are attached to this Complaint as **Exhibit 5**. A copy of the user manual for the representative Aspire 4810T product is attached to this Complaint as **Exhibit 6**.

6.7. Claim charts demonstrating how 1-2, 5, 7, 9, 15-17, and 20-22 of the '693 patent and claims 21-25 of the '867 patent read on the Aspire 4810T are attached as **Exhibits 7 and 8**, respectively.

VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

7.1. Upon information and belief, the Accused Products are sold for importation into the United States, imported into the United States, or sold after importation into the United States.

7.2. Attached as **Exhibit 9** is a copy of a receipt reflecting the sale of an Acer Aspire 4810T notebook computer in the United States. The packing for the Aspire 4810T notebook computer and the notebook computer itself are labeled "MADE IN CHINA" as seen in **Exhibit 10**. In addition, **Exhibit 11** includes photographs of the Aspire 4810T in operation showing the infringing use.

7.3. Also attached as **Exhibit 12** is a photograph of the product label from the purchase of the Aspire 4810T, which shows a shipment date of August 06, 2009.

7.4. Upon information and belief, the Aspire 4810T is manufactured by Wistron. Attached as **Exhibit 13** is a photograph of a cable labeled "Wistron JM41 Power Cable" that connects the motherboard and the USB port of the Aspire 4810T. Moreover, the Organizationally Unique Identifier ("OUI"), also known as the MAC address, Vendor Address, and Vendor ID, is a 24-bit globally unique assigned number referenced by various standards. For example, the OUI is used in the family of 802 LAN standards. Before a company manufactures products that use these standards, it must apply to the IEEE for an OUI, and each OUI is specific to a vendor. Wistron has been assigned several OUI's by the IEEE, including "00-1F-16." Attached as **Exhibit 14** are screenshots of the Ethernet MAC address of an Aspire 4810T purchased and shipped on August 6, 2009 and screenshots from the IEEE Standards Association website showing that Wistron has been assigned the "00-1F-16" octet. As can be seen in these photographs, the first three octets of the Ethernet MAC Address are "00-1F-16," indicating that Wistron is the manufacturer of the Aspire 4810T.

VIII. CLASSIFICATION OF THE INFRINGING PRODUCTS UNDER THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

8.1. Upon information and belief, the Accused Products may be classified under at least the following heading of the Harmonized Tariff Schedule of the United States: 8471.30.0100.

IX. LICENSES

9.9. Toshiba has licensed one or more of the Asserted Patents to the licensees identified in **Confidential Exhibit 15**.

X. THE DOMESTIC INDUSTRY

10.1. As required by Section 337(a)(2) and defined by Section 337(a)(3), an industry in the United States exists in connection with the Asserted Patents. Toshiba-branded notebook computer products including, but not limited to, the NB205 and Satellite A505, are covered by one or more claims of the Asserted Patents. Photographs of such representative Toshiba notebook computer products are attached to this Complaint as **Exhibit 16**. Claim charts applying representative claim 20 of the '693 patent to the NB205 and representative claim 23 of the '867 patent to the A505 are attached as **Exhibits 17 and 18** respectively.

10.2. Toshiba America Information Systems, Inc. ("TAIS") is an indirect subsidiary of Complainant, located at 9740 Irvine Blvd., Irvine, CA 92718-1697, and conducts significant domestic industry activities in the United States relating to products practicing the Asserted Patents. These activities include significant employment of labor and/or capital in the United States.

10.3. In order to fully support its products and customers, TAIS, through its own employees and those with whom it has contracted, provides, *inter alia*, customer support, technical service, repair and replacement of parts, and engineering support relating to its notebook computer products covered by the '693 and '867 patents. In particular, TAIS invests in the support, service, repair, and replacement of the notebook computer products through its own employees as well as its contracts with various vendors of such services.

10.4. **Confidential Exhibit 19** is the declaration of R. Scott Sims, a Vice President of Customer Service and Support/Engineering at TAIS, which sets forth a portion of TAIS's labor and capital investment, from July 2009 to the present, in the support, service, repair, and replacement of its notebook computer products that practice the '693 and '867 patents.

XI. RELATED LITIGATION

11.1 The '867 patent was asserted in the following litigation:

- *Toshiba Corp. v. Trigem Computer, Inc.*, CV-03-4558-GHK (C.D. Cal.): On June 26, 2003, Toshiba filed a complaint seeking an injunction and damages for infringement of the '867 patent. The case settled.

11.2 The '867 and '693 patents are asserted in the following litigation:

- *Toshiba Corp., v. Wistron Corp., et al.* (C.D. Cal.): Toshiba has concurrently filed a complaint in the United States District Court for the Central District of California against the Respondents. In the complaint, Toshiba is seeking an injunction and damages for infringement of the '867 and '693 patents as well as two other patents.

XII. RELIEF REQUESTED

12.1. WHEREFORE, by reason of the foregoing, Complainant requests that the United States International Trade Commission:

- (a) institute an immediate investigation pursuant to 19 U.S.C. § 1337(a)(1)(B)(i) and (b)(1) into the violations of that section based on Respondents' unlawful importation into the United States, sale for importation into the United States, and/or sale in the United States after importation of certain notebook computer products that infringe one or more of the claims of U.S. Patent No. 7,156,693 and U.S. Patent No. 5,430,867;
 - (b) issue orders pursuant to 19 U.S.C. § 1337(d), excluding from entry into the United States all imported Respondents' notebook computer products
-

that infringe one or more of the claims of U.S. Patent No. 7,156,693 and U.S. Patent No. 5,430,867;

- (c) issue permanent orders pursuant to 19 U.S.C. § 1337(f) directing Respondents to cease and desist from importing, marketing, advertising, demonstrating, warehousing of inventory for distribution, sale and use of notebook computer products that infringe one or more claims of the patents at issue; and
- (d) grant such other and further relief as the Commission deems appropriate and just under the law, based on the facts complained of herein and determined by the investigation.

Respectfully submitted,

Dated: 1/18/10

By: 

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Attorneys for Complainant
TOSHIBA CORPORATION

VERIFICATION OF COMPLAINT

I, Yuji Uchigasaki, declare, in accordance with 19 C.F.R. 210.4 and 210.12(a), under penalty of perjury, that the following statements are true:

1. I am the Senior Manager of the Licensing & Contracts Department of the Intellectual Property Division of Toshiba Corporation, and I am duly authorized to sign the Complaint on behalf of Complainant;

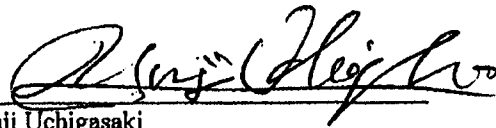
2. I have read the foregoing Complaint;

3. To the best of my knowledge, information, and belief, based upon reasonable inquiry, the foregoing Complaint is well-founded in fact and is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law, or the establishment of new law;

4. The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

5. The foregoing Complaint is not being filed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Executed this 19th day of January, 2010.



Yuji Uchigasaki
Senior Manager
Licensing & Contracts Department
Intellectual Property Division
Toshiba Corporation