**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

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| IRON OAK TECHNOLOGIES, LLC,<br>*Plaintiff*,<br>v.<br>TOSHIBA AMERICA INC.<br>and TOSHIBA CORPORATION,<br>*Defendants*. | CASE NO. |

## ORIGINAL COMPLAINT

For its complaint against Defendants Toshiba America, Inc. and Toshiba Corporation (collectively "Defendants") Plaintiff Iron Oak Technologies, LLC ("Iron Oak") alleges:

## PARTIES

1. Plaintiff Iron Oak is a limited liability company organized under the laws of the State of Texas and has its principal place of business at 3605 Scranton Drive, Richland Hills, Texas, 76118. Iron Oak is a technology development company wholly-owned by prolific inventors William (Bill) C. Kennedy III of Dallas and Kenneth R. Westerlage of Ft. Worth. Mr. Kennedy and/or Mr. Westerlage are named inventors on each of the 22 patents owned by Iron Oak.

2. Toshiba America, Inc. is a Delaware corporation with a principal place of business at 1251 Avenue of the Americas, Suite 4100, New York, New York 10020. Toshiba America, Inc. may be served with process via its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801. The contentions in this paragraph will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

3. Toshiba Corp. is a Japanese corporation with a principal place of business at 1-1, Shibaura, Minato-ku, Tokyo 1-1-1, Japan. The contentions in this paragraph will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

## NATURE OF ACTION, JURISDICTION AND VENUE

4. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 1 et seq.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (Federal Question) and § 1338 (Patent, Trademark and Unfair Competition).

6. Venue is proper under 28 U.S.C. §§ 1391(b), (c), & (d) and § 1400(b).

## FACTS COMMON TO ALL COUNTS

7. Iron Oak is the owner through assignment of U.S. Patent No. 5,699,275 issued December 16, 1997 ("the '275 Patent"), which is valid and enforceable. The '275 Patent is directed to a system and method for remote patching of operating code located in a mobile unit. A true and correct copy of the '275 patent is attached as Exhibit A.

8. Iron Oak is the owner through assignment of U.S. Patent No. 5,966,658 issued October 12, 1999 (the '658 Patent"), which is valid and enforceable. The '658 Patent is directed to the automated selection of a communication path. A true and correct copy of the '658 patent is attached as Exhibit B.

9. Iron Oak attempted to negotiate a license agreement with Defendants, as shown at least by Exhibit C. Those negotiations were unsuccessful.

## COUNT I

### Infringement of the '275 Patent

10. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

11. Defendants have committed acts of direct and indirect patent infringement of the '275 Patent by making, using, selling, offering to sell, and importing products, including but not limited to the products described in Exhibit C ("accused products"), for at least the reasons described therein.

12. In addition to directly infringing the '275 Patent through making, using, selling, offering to sell, and importing the accused products, the use of Defendants' accused products by others, as intended by Defendants and in accordance with instructions provided by Defendants, directly infringes the '275 Patent. Specifically, Defendants sell its accused products to customers in the United States with the expectation and intent that such customers will use and/or resell the accused products thereby directly infringing the '275 Patent. As such, Defendants have induced infringement of the '275 Patent.

13. Defendants' accused products are not staple articles of commerce and have no substantial uses that do not infringe the '275 Patent. Specifically, because Defendants' accused products themselves infringe the '275 Patent, any use or sale thereof infringes the '275 Patent. As such, Defendants' sale, offering for sale and importation into the United States of Defendants' accused products also constitutes contributory infringement of the '275 Patent.

14. Defendants had knowledge of the '275 patent prior to the filing of the Original Complaint in this action, as shown at least by Exhibit C.

15. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

16. Defendants' infringement of the '275 patent was and is willful. Despite knowing of the '275 Patent, Defendants engaged in, and continue to engage in, acts that infringe the '275 Patent.

17. Iron Oak has been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Iron Oak in an amount that adequately compensates it for, which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

## COUNT II

### Infringement of the '658 Patent

18. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

19. Defendants have committed acts of direct and indirect patent infringement of the '658 Patent by making, using, selling, offering to sell, and importing products, including but not limited to the products described in Exhibit C ("accused products"), for at least the reasons described therein.

20. In addition to directly infringing the '658 Patent through making, using, selling, offering to sell, and importing the accused products, the use of Defendants' accused products by others, as intended by Defendants and in accordance with instructions provided by Defendants, directly infringes the '658 Patent. Specifically, Defendants sell its accused products to customers in the United States with the expectation and intent that such customers will use and/or resell the

accused products thereby directly infringing the '658 Patent. As such, Defendants have induced infringement of the '658 Patent.

21. Defendants' accused products are not staple articles of commerce and have no substantial uses that do not infringe the '658 Patent. Specifically, because Defendants' accused products themselves infringe the '658 Patent, any use or sale thereof infringes the '658 Patent. As such, Defendants' sale, offering for sale and importation into the United States of Defendants' accused products also constitutes contributory infringement of the '658 Patent.

22. Defendants had knowledge of the '658 patent prior to the filing of the Original Complaint in this action, as shown at least by Exhibit C.

23. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

24. Defendants' infringement of the '658 patent was and is willful. Despite knowing of the '658 Patent, Defendants engaged in, and continue to engage in, acts that infringe the '658 Patent.

25. Iron Oak has been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Iron Oak in an amount that adequately compensates it for, which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

## PRAYER

**WHEREFORE**, Iron Oak requests judgment against Defendants as follows:

1. An award of damages, increased as deemed appropriate by the court, under 35 U.S.C. § 284;

2. An award of attorneys' fees under 35 U.S.C. § 285;

3. An award of prejudgment interest and costs of the action; and

4. Such other and further relief as the Court may deem just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

November 29, 2016

Respectfully submitted,

*/s/ Albert B. Deaver*
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