

Nanya Infringed Elpida's DRAM Patents, ITC Judge Finds

By **Stewart Bishop**

Law360, New York (April 03, 2013, 5:31 PM ET) -- A U.S. International Trade Commission judge has found that Nanya Technology Corp. infringed several of bankrupt Elpida Memory Inc.'s dynamic random access memory patents by importing semiconductor chips with DRAM circuits and modules.

Administrative Law Judge E. James Gildea found in an initial determination March 26 that Taiwan-based Nanya and its U.S. unit violated Section 337 of the Tariff Act of 1930 by infringing various claims of U.S. Patent Numbers 6,150,689; 6,635,918; 7,713,828; 7,495,453; and 7,906,809.

The judge further held that “a domestic industry exists that practices” those patents as well.

However, Judge Gildea found that Nanya had not infringed U.S. Patent Number 7,659,571 or two other claims of the '453 patent.

Tokyo-based Elpida brought the ITC action in November 2011, to which Nanya responded within days by launching its own ITC suit claiming Elpida infringed four of its DRAM patents.

The back-and-forth at the trade body came two months after Elpida filed suit against Nanya in California federal court alleging infringement of four DRAM-related technology patents. That case, which was later amended to add the patents Elpida asserted against Nanya in the ITC action, had been stayed pending the resolution of the ITC proceeding.

Nanya's ITC case fizzled after Elpida initiated Japanese bankruptcy proceedings, and U.S. Bankruptcy Judge Christopher S. Sontchi recognized the company as a foreign representative in a Delaware Chapter 15 case that began in March 2012. Chapter 15 allows U.S. courts to recognize a foreign bankruptcy proceeding as the case's primary venue and allows them to prevent creditors from seizing the company's U.S. assets.

Nanya dropped its ITC action altogether in late 2012, after Micron Technology Inc. offered to acquire Elpida for \$2.5 billion. Nanya said at the time that the ITC investigation, which was still in the prehearing phase, should be terminated because Micron has a license to the patents-in-suit.

On Feb. 27, the Japanese bankruptcy court approved Elpida's reorganization plan premised on the sale of the chipmaker to Micron, leaving recognition of the plan by a Delaware bankruptcy judge as the deal's last major hurdle.

The order from the Tokyo District Court followed a creditor vote in favor of the plan, according to Idaho-based Micron.

Under the proposed deal, Micron will pay 60 billion yen (\$650 million) up front for Elpida's equity, with the remaining 140 billion yen coming in installments to pay down Elpida's debt through 2019.

Elpida's bondholders challenged the deal as a steal for Micron, but their competing plan that would reorganize the company under bondholder control was rejected by the Japanese court in favor of the Micron-sponsored plan.

Robert Busby of Morgan Lewis LLP, an attorney for Elpida, said Wednesday that Judge Gildea's notice speaks for itself and much more information on which Nanya products it applies to will soon be made public by the judge.

Representatives for Nanya could not be immediately reached for comment.

Nanya is represented by Matthew H. Poppe, Daniel J. Weinberg, Lisa C. Ward, Sten Jensen, Davin Stockwell and Donald Daybell of Orrick Herrington & Sutcliffe LLP.

Elpida is represented by Robert W. Busby Jr., Nathan W. McCutcheon, David M. Morris, Adam D. Brooke, Jeremy D. Peterson, Jacob A. Snodgrass, Andrew J. Gray IV, Jason E. Gettleman and Tae-Woong Koo of Morgan Lewis & Bockius LLP.

The case is In the Matter of Certain Semiconductor Chips with DRAM Circuitry, and Modules and Products Containing the Same, case number 337-TA-819, in the U.S. International Trade Commission.

--Additional reporting by Ciaran McEvoy, Lance Duroi and Jacqueline Bell. Editing by Andrew Park.

All Content © 2003-2013, Portfolio Media, Inc.