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Defendants ASUSTEK COMPUTER INC.  
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MONOLITHIC POWER SYSTEMS, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

MONOLITHIC POWER SYSTEMS, INC.,  
Plaintiff,  
v.  
O2 MICRO INTERNATIONAL LIMITED,  
Defendant.

Case No. C 08-4567 CW

**MPS AND ASUSTEK'S MOTION FOR  
ATTORNEY'S FEES AND NON-TAXABLE  
COSTS PURSUANT TO 35 U.S.C. § 285 AND  
FED. R. CIV. P. 54(d)(2) AND 37(c)(2)**

DATE: August 5, 2010  
TIME: 2:00 p.m.  
PLACE: Courtroom 2 (4th Floor)  
JUDGE: Hon. Claudia Wilken

O2 MICRO INTERNATIONAL LIMITED,  
Counterclaimant,  
v.  
MONOLITHIC POWER SYSTEMS, INC.,  
ASUSTEK COMPUTER INC., ASUSTEK  
COMPUTER INTERNATIONAL  
AMERICA, BENQ CORPORATION, AND  
BENQ AMERICA CORP.,  
Counterclaim-Defendants.

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT on August 5, 2010, at 2 p.m., or as soon thereafter as the Court shall order, Plaintiff and Counterclaim Defendant Monolithic Power Systems, Inc. (“MPS”) and Co-Counterclaim Defendants ASUSTeK Computer, Inc., and ASUS Computer International (together “ASUSTeK”) will move the Court, pursuant to 35 U.S.C. § 285 and Fed. R. Civ. P. 54(d)(2) and 37(c)(2), for an order awarding MPS and ASUSTeK recovery of their reasonable attorney’s fees and non-taxable costs (“Motion for Fees and Non-Taxable Costs”).<sup>1</sup>

MPS and ASUSTeK base this Motion for Fees and Non-Taxable Costs on this Notice, the accompanying Memorandum of Points and Authorities, supporting declarations and exhibits thereto, the files and records of the Court, and such further argument and evidence as may be presented at or before the time of hearing. A proposed order granting this Motion is being filed concurrently herewith.

**CONCISE STATEMENT OF RELIEF SOUGHT**

MPS and ASUSTeK seek an award of attorney’s fees and non-taxable costs in the amount of \$13,507,643.30, based on the fact that this case is exceptional pursuant to 35 U.S.C. § 285 and based upon Rules 54(d)(2) and 37(c)(2) of the Federal Rules of Civil Procedure.

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<sup>1</sup> MPS and ASUSTeK will file a separate bill for their taxable costs under Fed. R. Civ. P. 54(d)(1). They contemplate doing so on or before July 7, 2010.

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

O2 Micro has abused the legal system for the past decade, repeatedly filing baseless patent infringement claims against Monolithic Power Systems (“MPS”) and MPS’s customers. Whenever possible, O2 Micro has engaged in blatant forum shopping, filing lawsuits in the Eastern District of Texas even though O2 Micro’s domestic operations are based in the Northern District of California.

Including this case, O2 Micro has accused MPS of patent infringement in six lawsuits. O2 Micro has lost each one. In all six lawsuits, O2 Micro’s asserted claims have been found to be not infringed, invalid, or both, or O2 Micro has chosen to slink away – just like in this case – and provide covenants not to sue rather than try to defend the validity of its patent claims.

Yet despite its abysmal record in court, O2 Micro’s specious infringement claims have devastated MPS’s business in the CCFL controller marketplace. O2 Micro’s threats and lawsuits, and the potential for injunctive relief, have intimidated nearly all of MPS’s former customers into purchasing O2 Micro’s products rather than MPS’s products.<sup>2</sup> In this manner, O2 Micro has illicitly diverted millions of dollars of business from MPS. Indeed, in this case, O2 Micro’s baseless infringement claims resulted in two more MPS customers, LG and BenQ, entering into settlement agreements that deter them from using MPS products. Those agreements essentially nullified MPS’s multi-million dollar defense. The Court should require O2 Micro to bear at least some portion (*i.e.*, the fee/cost portion) of the consequences for bringing its specious infringement claims.

O2 Micro’s adamant opposition to the Court appointing an independent expert is telling. From the outset, all parties knew that any qualified, unbiased expert would conclude that the patent claims were invalid and not infringed. Thus, MPS and ASUSTeK consistently supported

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<sup>2</sup> ASUSTeK, one of MPS’s few remaining CCFL controller customers chose to fight. As a result, O2 Micro demanded that it produce 30 deponents, many in Taiwan, when the only reasonable issues involving it were (1) whether ASUSTeK imported the alleged accused devices and (2) the revenues generated from sales of accused devices.

1 the Court's expressed desire to appoint an independent expert. Conversely, O2 Micro resisted  
2 the Court at every juncture.

3 Beyond O2 Micro's long-standing practice of filing baseless lawsuits and seeking at all  
4 costs to avoid the scrutiny of unbiased experts, there are many additional reasons why this case is  
5 "exceptional" under Section 285 of the Patent Laws and why MPS and ASUSTeK are entitled to  
6 their attorney's fees and non-taxable costs. O2 Micro's named inventor, Yung-Lin Lin, has  
7 repeatedly lied under oath about his alleged inventions. Lin and O2 Micro have presented false  
8 testimony in court and submitted false declarations to the Patent and Trademark Office ("PTO").  
9 They have withheld material prior art from the PTO. In this case, O2 Micro perpetuated Lin's  
10 false testimony about his alleged inventive activities for a year, serving false responses to  
11 discovery requests, presenting false testimony from its Rule 30(b)(6) witness, and filing frivolous  
12 motions to suppress the truth.

13 There is more. Three of the four patents that O2 Micro asserted in this case belong to a  
14 patent family, the '519 patent family, directed to CCFL inverter controllers in which the so-  
15 called "invention" was an "input pin" that receives two or more independent signals during  
16 operation. Lin is named as the lead inventor on those patents, which have a May 6, 2002 priority  
17 date. Yet, at the time Lin filed his patent applications, he knew that O2 Micro's own prior art  
18 OZ960A and OZ962 controllers, which another O2 Micro engineer had developed before Lin  
19 joined the company and which O2 Micro had sold in the United States since 1997, possessed an  
20 input pin that received multiple independent signals during operation. Yet O2 Micro and Lin  
21 chose to conceal the OZ960A and OZ962 prior art from the PTO during the prosecution of the  
22 '519 patent family. After MPS uncovered this misconduct, O2 Micro followed its usual *modus*  
23 *operandi*, dismissing its infringement claims and issuing a covenant not to sue.

24 The remaining O2 Micro patent, the '382 patent, is part of the same ignominious patent  
25 family that O2 Micro has asserted so unsuccessfully in the past. The claims of the '382 patent  
26 were drafted and submitted to the PTO *three weeks after* the May 15, 2007 jury verdict in this  
27 Court, in which the jury found all claims of another patent in the same family (U.S. Patent No.  
28 6,396,722 ("the '722 patent)) to be invalid and none to be literally infringed. Key to the

1 '382 patent claims is the “timer circuit” element, which – in the words of O2 Micro’s own expert  
2 on claim construction and invalidity (Mercer) – requires that a “first voltage signal” “exceed and  
3 continue to exceed” a “predetermined threshold” during the “predetermined duration.”

4 Despite the critical nature of the timer circuit element to the '382 patent, O2 Micro *never*  
5 *conducted the detailed tests* necessary to determine whether the accused MPS and ASUSTeK  
6 products met that element. Moreover, when MPS and ASUSTeK presented the test results  
7 showing that their products did not meet that requirement, O2 Micro then had its *other* technical  
8 expert (Flasck) fabricate a specious argument that persons of ordinary skill in the art  
9 (“POSITA”) do not understand plain English. Instead, O2 Micro argued, a POSITA would  
10 conclude that a signal which regularly and periodically falls below a predetermined threshold  
11 nonetheless “exceeds and continues to exceed” the threshold. Through this stratagem, O2 Micro  
12 misled the Court and avoided summary judgment of non-infringement. However, the Court’s  
13 independent expert, the ITC Staff, ALJ Gildea (the Administrative Law Judge in the ITC), and  
14 the full Commission all rejected O2 Micro’s argument.

15 On the invalidity front, O2 Micro and Lin were keenly aware of MPS’s MP1010-based  
16 inverter circuits, developed in 1998. After all, the prior art MP1010 had beaten O2 Micro’s  
17 OZ960 product to market by approximately two years and it was one of the key pieces of  
18 invalidating prior art presented during the 2007 trial. O2 Micro’s original patent application was  
19 not filed until July 22, 1999. In an attempt to avoid this prior art, Lin testified that he conceived  
20 of his invention in February 1998 and thereafter diligently worked to reduce it to practice.  
21 However, no one could corroborate Lin’s claim. Moreover, the contemporaneous documents  
22 contradicted him. Those documents showed that, to the extent Lin was even thinking about open  
23 lamp protection during 1998 and the first five months of 1999, he was pursuing a different  
24 approach than what is claimed in the '382 patent. Four months after MPS began (in February  
25 1999) to broadly distribute the MP1010 documentation, which describes the use of an open lamp  
26 timer circuit, Lin abruptly changed course and adopted the early MPS approach. Lin  
27 subsequently claimed that approach in his patent. Both this Court and ALJ Gildea found that  
28 Lin’s conception date was no earlier than his July 22, 1999 patent filing.



1 Lin and other O2 Micro personnel also testified extensively – and falsely – about a set of  
2 very basic drawings depicting four transistors arranged in a full bridge arrangement (the same  
3 arrangement used in the MP1010). Lin created these drawings on some unknown date and stored  
4 them in a computer folder that he labeled “MPS.” Although Lin had manually entered the date  
5 “Feb., 18, 1998” [sic] on the drawings, and made an obvious typographical error by inserting an  
6 extra comma when he did so, he and other O2 Micro personnel insisted that the computer  
7 program had automatically entered the date. Ultimately, Lin and O2 Micro were forced to  
8 confess that Lin had manually dated the drawings.

9 Even though the “Feb., 18, 1998” drawings do not reflect any of the significant elements  
10 of the ’382 patent claims, O2 Micro steadfastly maintained that they somehow corroborated a  
11 February 1998 conception date. O2 Micro even argued that MPS was collaterally estopped from  
12 challenging Lin’s false testimony concerning his alleged invention date. Not surprisingly, the  
13 Court and ALJ Gildea rejected all of O2 Micro’s arguments in this regard.

14 When viewed in context, it is clear that O2 Micro’s actions have not been those of a party  
15 legitimately pursuing a patent infringement case. Instead, O2 Micro has pursued baseless claims  
16 in order to harass, and improperly divert business from, its competitors. MPS and ASUSTeK  
17 should be awarded their fees and non-taxable costs.

## 18 **II. ARGUMENT**

### 19 **A. Legal Standard**

20 The court may award reasonable attorney’s fees to the prevailing party in “exceptional  
21 cases.” 35 U.S.C. § 285. Where a patent holder grants a covenant not to sue and dismisses its  
22 suit with prejudice, the accused infringer is the “prevailing party.” *See Highway Equip. Co., Inc.*  
23 *v. FECO, Ltd.*, 469 F.3d 1027, 1035-36 (Fed. Cir. 2006) (the accused infringer’s “prevailing  
24 party status . . . is sufficiently based on [the patent holder] having filed a covenant not to sue with  
25 the court to end the litigation, resulting in a dismissal with prejudice”).

26 The purpose of Section 285 is “to compensate the prevailing party for its monetary  
27 outlays in the prosecution or defense of the suit.” *Central Soya Co., Inc. v. Geo. A. Hormel &*  
28 *Co.*, 723 F.2d 1573, 1578 (Fed. Cir. 1983). In addition, Section 285 serves as a deterrent to the

1 “improper bringing of clearly unwarranted suits” for patent infringement. *Mathis v. Spears*, 857  
 2 F.2d 749, 753-54 (Fed. Cir. 1988) (“In the present case, a wrong has been done. Mathis has  
 3 severely injured Hydro, having forced it to defend, at monstrous expense, its right freely to  
 4 compete, subjecting Hydro to a totally unwarranted suit. . . . The only deterrent to the []  
 5 improper bringing of clearly unwarranted suits on obviously invalid or unenforceable patents is  
 6 Section 285. [Yet, n]o award under Section 285 can fully compensate a defendant subjected to  
 7 bad faith litigation, *e.g.*, for loss of executives’ time and missed business opportunities.”).

8 A case may be deemed exceptional based upon litigation misconduct (such as fraud,  
 9 inequitable conduct, misconduct during the litigation, vexatious or unjustified litigation, or  
 10 conduct that violates Rule 11 or similar infractions) *or* if both (1) the litigation is brought in  
 11 subjective bad faith, and (2) the litigation is objectively baseless. *ICU Med., Inc. v. Alaris Med.*  
 12 *Sys., Inc.*, 558 F.3d 1368, 1379 (Fed. Cir. 2009). *See also Veteran Med. Prods., Inc. v. Bionix*  
 13 *Dev. Corp.*, No. 1:05-cv-655, 2009 WL 891724, \*17–\*19 (W.D. Mich. Mar. 31, 2009) (granting  
 14 accused infringer’s motion for attorney’s fees under Section 285 in a declaratory judgment case,  
 15 where the patentee’s conduct constituted “vexatious, unjustified, or frivolous litigation”). Here,  
 16 as in *Veteran Medical*, O2 Micro “knew or, on reasonable investigation, should have known,  
 17 that there was no legal basis for a [] patent infringement.” Likewise, here, as in *Veteran*  
 18 *Medical*, O2 Micro pursued its baseless and unjustified infringement claims long after any  
 19 reasonable litigant would have abandoned them.

## 20 **B. O2 Micro Engaged in Litigation Misconduct**

21 Litigation misconduct alone can suffice to make a case exceptional. *Brasseler, U.S.A. I,*  
 22 *L.P. v. Stryker Sales Corp.*, 267 F.3d 1370, 1380 (Fed. Cir. 2001). Here, O2 Micro’s course of  
 23 conduct clearly rises to the level of litigation misconduct.

### 24 **1. O2 Micro Has Abused the Judicial System by Bringing Baseless** 25 **Lawsuits to Harass MPS and MPS’s Customers**

26 This case is the sixth lawsuit in which O2 Micro has alleged that MPS is infringing its  
 27 patents. O2 Micro has lost all six. O2 Micro’s pattern of vexatious and unjustified litigation and  
 28 abuse of the legal process warrants a finding that this case be deemed exceptional.

1 In October 2001, O2 Micro filed suit in the Northern District of California, alleging that  
2 MPS infringed U.S. Patent No. 6,259,615 (“the ’615 patent”), the first patent in the family that  
3 includes the ’382 patent. *O2 Micro Int’l, Ltd. v. Monolithic Power Sys., Inc.*, Case No. C 01-  
4 3995 CW (N.D. Cal.). On February 11, 2004, this Court granted MPS’s motion for summary  
5 judgment of non-infringement. The Federal Circuit subsequently affirmed. *O2 Micro Int’l Ltd.*  
6 *v. Monolithic Power Sys., Inc.*, 467 F.3d 1355 (Fed. Cir. 2006).<sup>3</sup>

7 O2 Micro, however, continued to threaten and harass MPS and its customers. Apparently  
8 believing that it would have better luck in another forum, O2 Micro sued an MPS customer,  
9 Sumida, in the Eastern District of Texas in January 2003, alleging infringement of the ’615  
10 patent and the next issued patent in the patent family, the ’722 patent. This forced MPS to file a  
11 lawsuit in this District in May 2004, asking the court to declare the ’722 patent claims invalid,  
12 unenforceable and not infringed. *Monolithic Power Sys., Inc. v. O2 Micro Int’l Ltd.*, Case Nos.  
13 C 04-0200 CW. On May 15, 2007, the jury in this District returned a verdict that none of the  
14 asserted claims was literally infringed and that all of the asserted claims were invalid based upon  
15 MPS’s own CCFL product, the MP1010, which had been commercialized more than a year  
16 before July 22, 1999. On March 5, 2009, the Federal Circuit affirmed the determination that all  
17 of the asserted claims of the ’722 patent were invalid. *Monolithic Power Sys., Inc. v. O2 Micro*  
18 *Int’l Ltd.*, 558 F.3d 1341 (Fed. Cir. 2009).<sup>4</sup>

19 In October 2004, continuing its practice of forum shopping, O2 Micro sued MPS and two  
20 of its customers, ASUSTeK and Compal, in the Eastern District of Texas, alleging infringement  
21 of the next patent in the ’615 patent family (U.S. Patent No. 6,804,129 (“the ’129 patent”). O2  
22 Micro chose Texas despite this Court’s intimate familiarity with the parties and the ’615 patent  
23 family. Thereafter, O2 Micro engaged in protracted litigation to prevent the case from being  
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25 <sup>3</sup> In that case, when confronted with irrefutable evidence of non-infringement, O2 Micro tried to  
26 change its infringement theory at the last minute. The Federal Circuit affirmed this Court’s  
refusal to allow such improper gamesmanship. *Id.*

27 <sup>4</sup> The Texas jury initially returned a verdict in favor of O2 Micro on the ’722 patent. This was  
28 vacated on appeal in light of the decision affirming the invalidity of that patent.

1 transferred to this Court. Ultimately, O2 Micro lost that campaign and the case was transferred.  
2 *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, Case No. C 06-2929 CW. It was then  
3 consolidated with the then-pending case involving the '722 patent. Once it found itself back in  
4 this District, O2 Micro elected to dismiss its infringement claims with prejudice and to grant a  
5 covenant not to sue MPS, ASUSTeK and Compal, rather than try to defend the validity of the  
6 '129 patent. Dkt. 579, *Monolithic Power Sys., Inc. v. O2 Micro Int'l Ltd.*, Case Nos. C 04-0200  
7 CW and C 06-2929 CW.

8 O2 Micro's reprehensible litigation behavior continued. Despite having dismissed its  
9 '129 patent claims against MPS, O2 Micro pursued infringement claims under the '129 patent  
10 against another MPS customer, Hon Hai, in the Eastern District of Texas. This forced MPS to  
11 bring yet another lawsuit in this District, requesting that the Court find the '129 patent claims to  
12 be invalid, unenforceable and not infringed. *Monolithic Power Sys., Inc v. O2 Micro Int'l Ltd.*,  
13 Case No. C 07-2363 CW (N.D. Cal.). O2 Micro twice moved to dismiss that lawsuit, arguing  
14 that the Court lacked subject matter jurisdiction because O2 Micro was only suing MPS's  
15 customers, not MPS. After the Court denied O2 Micro's second motion, O2 Micro elected to  
16 dismiss its infringement claims against MPS and its customers, rather than to try to defend the  
17 validity and enforceability of the '129 patent outside of Texas. *See id.*, Dkt. 76 (August 26, 2008  
18 Stipulated Dismissal With Prejudice). This is compelling evidence that even when O2 Micro  
19 knows that it is pursuing worthless infringement claims, it will continue to do so if it thinks it can  
20 get away with it or at least avoid summary judgment.

21 Undeterred, O2 Micro continued to threaten and harass MPS's customers with baseless  
22 claims of patent infringement in an effort to destroy MPS's business. After O2 Micro's repeated  
23 threats to its customers, MPS filed this lawsuit on October 1, 2008, asking the Court to declare  
24 invalid, unenforceable and not infringed the claims of U.S. Patent Nos. 6,856,519 ("the '519  
25 patent"), 6,809,938 ("the '938 patent"), 6,900,993 ("the '993 patent"), and 7,120,035 ("the '035  
26 patent") (collectively, "the '519 patent family"). Dkt. 1.

27 Wanting to avoid this Court at all costs, O2 Micro once again engaged in forum  
28 shopping. On December 15, 2008, O2 Micro filed a complaint with the ITC, asserting

1 infringement of the '938, '519, and '035 patents within the '519 patent family (*i.e.*, the same  
2 patents already before this Court) and the '382 patent, which was the next patent issued in the  
3 '615 patent family. On March 2, 2009, the day before the Case Management Conference,  
4 O2 Micro moved to stay the present litigation on the grounds that the parties were “currently  
5 litigating four of these [five] patents” in a separate ITC proceeding. Dkt. 39. The Court denied  
6 O2 Micro’s motion (Dkt. 60) and suggested that if O2 Micro was interested in having a single  
7 proceeding that would bind the parties, it should proceed only in this court. Confident that the  
8 accelerated pace of the ITC proceeding would allow it to extract settlements from MPS’s  
9 customers (if not MPS itself), O2 Micro ignored the Court’s suggestion.

10 **2. O2 Micro and Lin Withheld Known, Material Prior Art from the**  
11 **PTO in Order to Obtain the Patents in the '519 Patent Family**

12 The patents in the '519 patent family claim priority to an application filed on May 6,  
13 2002. Thus, any patent claim covering a product sold or offered for sale in the United States  
14 prior to May 6, 2001 would invalidate the patent claim under 35 U.S.C. § 102(b) (“on-sale bar”).  
15 The evidence established that O2 Micro’s own prior art OZ962 / OZ960A inverter controllers  
16 and associated literature anticipated the patent claims. Lin, the lead inventor on the '519 patent  
17 family, knew all about those inverter controllers.<sup>5</sup> Yet, he concealed that information from the  
18 PTO in order to obtain his patents. O2 Micro then falsely denied dozens of requests for  
19 admission in order to conceal Lin’s inequitable conduct.

20 In this lawsuit, O2 Micro accused MPS and BenQ of infringing claim 7 of the '519  
21 patent, claims 1, 2, 3 and 6 of the '938 patent, and claim 4 of the '035 patent. Exh. 2 (O2 Micro  
22 3/13/2009 Disclosure of Asserted Claims and Preliminary [sic] Infringement Contentions) at 2.<sup>6</sup>

23 \_\_\_\_\_  
24 <sup>5</sup> During 1997 and 1998, Lin worked as an applications engineer at O2 Micro. His duties  
25 included working with customers, at least one within the United States, to help them incorporate  
26 the OZ962 / OZ960A product into their CCFL inverters. *See* Exh. 1 (May 3, 2007 Trial Tr.), at  
27 703-707.

28 <sup>6</sup> All numbered exhibits cited herein are attached to the Declaration of Dean G. Dunlavy in  
Support of MPS and ASUSTeK’s Motion for Attorney’s Fees and Non-Taxable Costs Pursuant  
to 35 U.S.C. § 285 and Fed. R. Civ. P. 54(d)(2) and 37(c)(2), being filed contemporaneously  
with this Motion.

1 All of these patents purport to cover circuitry in which one input pin of the CCFL controller  
2 receives “at least two independent input signals, each said input signal supporting an associated  
3 function of said controller during operation of said controller.” Claim 1 of the ’938 patent is  
4 representative of these claims.

5 O2 Micro’s infringement claim chart for the ’938 patent identified pin 4 of the MPS  
6 MP1009 CCFL inverter controller as the alleged infringing “input pin.” Exh. 3, at 2. O2 Micro  
7 attached, as Exhibit B to its contentions, a schematic of the accused BenQ inverter utilizing the  
8 MP1009. The schematic showed that pin 4 received a single external signal, labeled “ON/OFF.”  
9 Exh. 4. But according to O2 Micro, the fact that the pin was connected to an external  
10 compensation capacitor, used to smooth out fluctuations in a current feedback signal supplied to  
11 pin 4 via a circuit path *inside* the integrated circuit, meant that the pin received “two independent  
12 input signals.” O2 Micro identified the two independent signals as “a signal for soft start and a  
13 signal for compensation.” Exh. 3, at 2.

14 The problem for O2 Micro was that its OZ962 and OZ960A products, which were made  
15 in the United States and had been on sale in this country for years before the ’519 patent family’s  
16 priority date (Exh. 1, at 703-707), contained pins which *received the same two signals* – a signal  
17 for soft start and a signal for compensation. As shown in the OZ960A data sheet, pin 7 of the  
18 OZ960A, labeled “CMP,” is connected to an external signal as well as to a compensation  
19 capacitor, labeled “C3” in this data sheet, to provide “compensation for the current sense  
20 feedback.” Exh. 5, at 3, 8. It is also connected, internally, to the soft start signal through a  
21 resistor. *Id.* at 7, Figure 2. These connections and functions were also disclosed in the  
22 datasheets for the OZ962 product. *See, e.g.*, Exh. 6 (O2 Micro 10/27/98 OZ962 datasheet) at 2  
23 (“Functional Block Diagram” showing CMP pin connected internally to soft start signal “SST”  
24 through 30k resistor), at 3 (“Pin Description Table” describing pin 7 as providing compensation  
25 for the current sense feedback); at 10-11 (Application Figures 1 and 2 showing CMP pin  
26 connected to current feedback signal and to the compensation capacitor, labeled “C2” in this  
27 datasheet). Thus, according to the claim constructions that O2 Micro relied upon to allege  
28

1 infringement by MPS, O2 Micro's own prior art products met every limitation of the claims and  
2 thus invalidated them.

3           MPS served O2 Micro with a series of requests for admission targeting the invalidating  
4 nature of the OZ960A / OZ962 products, as well as Lin's inequitable conduct in not disclosing  
5 the material information about those products to the PTO.<sup>7</sup> Although it had no basis to do so,  
6 O2 Micro denied most of these requests. Exh. 7 (O2 Micro Responses to MPS's First Set of  
7 Requests for Admission). For example, O2 Micro inexplicably denied that the OZ962 (1)  
8 generated a plurality of signals to drive an inverter circuit (RFA 158); (2) was on sale in the  
9 United States during 1997 or 1998 (RFAs 159, 160); (3) was used in a computer system that was  
10 on sale in the United States during 1998 (RFA 161); or (4) was accurately described in the  
11 OZ962 datasheet (RFA 162). It also denied numerous statements and circuit connections that  
12 were set forth in the OZ962 datasheet. *See, e.g., id.*, O2 Micro responses to RFAs 168, 170, 172,  
13 174, 175, 177, 178, 181-184, and 186-198.

14           On April 27, 2009, MPS served its invalidity contentions concerning the '519 patent  
15 family. On May 5, 2009, MPS filed its First Amended Answer to O2 Micro's infringement  
16 claims, detailing Lin's inequitable conduct. Dkt. 86, ¶¶ 40-42.

17           Lin's deposition was scheduled to commence on June 17, 2009. Just days before the  
18 deposition, O2 Micro announced that it was going to drop its claims of infringement concerning  
19 the '519 patent family and would not permit any questioning of Lin concerning that family.  
20 Exh. 8 (6/15/2009 e-mail from O2 Micro counsel Robert Harkins). Shortly thereafter, O2 Micro  
21 "covenant[ed] not to assert the '519 patent family against MPS or MPS's direct or indirect  
22 customers for past or future infringement" and stipulated to the dismissal with prejudice of the  
23 '519 patent family. *See* Dkt. 100 (Stipulated Dismissal With Prejudice).

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26 <sup>7</sup> Most of the discovery in this case has the parallel ITC caption attached to it, rather than the  
27 Northern District of California caption. Pursuant to the Court's Case Management Order, "[a]ll  
28 discovery in [the] ITC proceeding shall apply to this proceeding." *See* Dkt. 60 (Case  
Management Order), at 1.

1                   **3.       O2 Micro Engaged in Extensive Misconduct in Pursuing Its Claims**  
 2                   **Concerning the '382 Patent**

3                   After the dismissal of the '519 patent family, O2 Micro continued to pursue its frivolous  
 4 claims as to the '382 patent. In doing so, O2 Micro made a series of arguments that were  
 5 baseless and contingent upon a multitude of lies and misrepresentations. For example, to  
 6 overcome a rejection by the PTO and avoid an invalidity finding by the ITC and this Court, Lin  
 7 and O2 Micro lied about the conception date and then concocted a scheme to cover-up those lies.  
 8 It took MPS and ASUSTeK close to a year, and millions of dollars in attorney's fees, to expose  
 9 O2 Micro's fraud.

10                   a.           **In their PTO Filings, Lin and O2 Micro "Buried" the Material**  
 11                   **MP1010-Related Prior Art Amongst 15,000 Pages of Largely**  
 12                   **Irrelevant "Filler" Information**

13                   The '382 patent claims priority to U.S. Provisional Application No. 60/145,118, filed on  
 14 July 22, 1999. CCFL inverters employing the MPS MP1010 product predate that priority date.  
 15 The court-appointed independent expert, Professor Perreault, concluded that the circuit disclosed  
 16 and described in MPS's February 1999 application note "AN-01" for the MP1010 invalidated the  
 17 '382 patent claims. Dkt. 376-1, at 14 ("Based on at least the [MP1010's] AN-01 reference, it is  
 18 my assessment that all of the asserted claims of the '382 patent are invalid, based on anticipation  
 19 and/or obviousness."). Lin and O2 Micro took steps to ensure that the PTO never considered this  
 20 MP1010-related prior art by burying it amongst 15,000 pages of "filler."

21                   Lin and O2 Micro were keenly aware of MPS's MP1010-based inverter circuits. The  
 22 MP1010 was the first full-bridge CCFL inverter driver IC on the market and O2 Micro's  
 23 customers, such as Ambit, began using it as early as January 1999.<sup>8</sup> Moreover, it was one of the

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24 <sup>8</sup> By July 22, 1999, MPS had been distributing MP1010 datasheets and application notes, as well  
 25 as CCFL inverter modules employing the MP1010, to customers and prospective customers for  
 26 more than half a year. *See* Exh. 9 (October 2, 1998 MPS reference circuit and bill of materials),  
 27 Exh. 10 (MPS record of MP1010 demonstration boards distributed to prospective customers in  
 28 December 1998 and January 1999), and Exh. 11 (MP1010 application note AN-01, dated  
 February 1999). By January 1999 as well, various MPS customers had been manufacturing and  
 distributing such CCFL inverter modules. *See, e.g.*, Exh. 12 (Sumida schematic, dated  
 January 19, 1999). All of these prior art datasheets, application notes, and inverter modules  
 contain and disclose over-voltage protection circuitry (including, *inter alia*, a capacitor divider  
 coupled to the CCFL, a feedback signal line coupled to the capacitor divider, a timer circuit



1 key pieces of prior art presented to the jury that, in May 2007, concluded that all of the claims of  
2 O2 Micro's '722 patent were invalid. Lin attended that entire trial. Yet, despite the fact that the  
3 MP1010 was the closest prior art to the asserted claims (indeed, it anticipates those claims),  
4 O2 Micro buried the MP1010-related materials within 15,000 pages of largely irrelevant "filler"  
5 material that it submitted to the PTO during the prosecution process – including more than 130  
6 U.S. patents, over 80 articles and other publications, and hundreds of pleadings, docket sheets,  
7 discovery responses, and transcripts from various cases. *See* '382 patent, at 2-13 (listing  
8 materials submitted by O2 Micro).

9 In contravention of MPEP § 2004.13, O2 Micro did nothing to separate the material prior  
10 art from the irrelevant filler. Indeed, O2 Micro did not submit the MP1010 inverter circuit  
11 schematics dated October 2, 1998 that had been introduced at the 2007 trial. Through this  
12 strategy, O2 Micro ensured that the examiner would not find the most material prior art. Not  
13 surprisingly, the PTO never identified the MP1010 in any of its office actions and none of the  
14 MP1010 materials are marked with an asterisk, indicating "cited by examiner."

15 The patent examiner specifically complained about O2 Micro's efforts to bury him with  
16 irrelevant materials when he transmitted the notice of allowability for the '382 patent. He wrote:

17 [I]t is impractical for the examiner to review the references  
18 thoroughly with the number of reference cited in this case. By  
19 initializing each of the cited references on the accompanying 1449  
20 forms, the examiner is merely acknowledging the submission of  
the cited references and merely indicating that only a cursory  
review has been made of the cited references.

21 MPEP § 2004.13 states: It is desirable to avoid the submission of  
22 long lists of documents if it can be avoided. Eliminate clearly  
23 irrelevant and marginally pertinent cumulative information. If a  
24 long list is submitted, highlight those documents which have been  
25 specifically brought to applicant's attention and/or are known to be  
26 of most significance. [Citations omitted]

27 Further, it should be noted that an applicant's duty of disclosure of  
28 material and information is not satisfied by presenting a patent  
examiner with "a mountain of largely irrelevant material from  
which he is presumed to have been able, with his experience and

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coupled to the feedback signal line, and a protection circuit coupled to the timer circuit that shut  
down the part during open lamp/over-voltage conditions).

1 with adequate time, to have found the critical [material]. It ignores  
2 the real world conditions under which examiners work.” [Citation  
omitted.]

3 Patent applicant has a duty not just to disclose pertinent prior art  
4 references but to make a disclosure in such a way as not to “bury”  
it within other disclosures of less relevant prior art. [Citation  
omitted.]

5 Exh. 13 (Dec. 28, 2007 Notice of Allowability), at O2ITC 015743-44.

6 **b. Lin and O2 Micro Lied About the “Feb., 18, 1998” Schematics**

7 In addition to burying the examiner, and in an effort to avoid the relevant prior art, Lin  
8 submitted a false declaration to the PTO in which he claimed that he had conceived of his  
9 invention in February 1998 and thereafter diligently worked to reduce it to practice. Exh. 14. He  
10 also provided false testimony to the same effect during his deposition and at the ITC. *See, e.g.*,  
11 Exh. 15 (6/17/09 Lin Depo. Tr.), at 248:22 - 252:14; Exh. 16 (ITC Tr. (Lin)) at 573:9 - 575:14.  
12 No one at O2 Micro, however, could corroborate Lin’s testimony. For this reason and others,  
13 both ALJ Gildea (Dkt. 320-6 – April 19, 2010 Initial Determination (“ID”) at 118-19) and this  
14 Court rejected O2 Micro’s claim of a February 1998 conception date. Dkt. 285 (Feb. 16, 2010  
15 Order), at 17-19.

16 **(1) The “Feb., 18, 1998” Schematics Did Not Corroborate**  
17 **Conception**

18 Lin and O2 Micro’s misrepresentations went far beyond concealing the lack of  
19 corroboration. First, the crude drawings that Lin created on some unknown date and dated  
20 “Feb., 18, 1998” do not depict the claimed invention or support a claim that Lin conceived in  
21 February 1998. The drawings *do not have any of the key elements of the patent claims*. Lin  
22 was forced to admit this during his testimony in the ITC. Even O2 Micro’s expert, Dr. Nagel,  
23 admitted this. For example, the drawings do not show:

- 24 • a capacitor divider (required by all asserted claims): Exh. 16 (ITC  
25 Tr. (Lin)), at 674-675; Exh. 17 (ITC Tr. (Silzars)), at 2075; Exh. 18  
(Depo Tr. of O2 Micro PSpice expert, Dr. Nagel), at 77:3-8.
- 26 • a feedback signal from the capacitor divider (required by all  
27 asserted claims): Dkt. 320-6 at 118; Exh. 16 (ITC Tr. (Lin)), at  
28 675-76, 698; Exh. 17 (ITC Tr. (Silzars)), at 2075.

- 1 • a timer circuit (required by all asserted claims): Dkt. 320-6 at 118;  
2 Exh. 16 (ITC Tr. (Lin)), at 676-77; Exh. 17 (ITC Tr. (Silzars)), at  
3 2075; Exh. 18 (Nagel Depo Tr.), at 77:22-25; Exh. 19 (ITC Tr.  
4 (Lin)), at 381, 440.
- 5 • a protection circuit (required by all asserted claims): Dkt. 320-6 at  
6 118; Exh. 17 (ITC Tr. (Silzars)), at 2075; Exh. 18 (Nagel Depo  
7 Tr.), at 78:2-5; Exh. 19 (ITC Tr. (Lin)), at 440.
- 8 • a sense resistor (required by asserted claims 4, 7, 11 and 14): Exh.  
9 16 (ITC Tr. (Lin)), at 677-78; Exh. 17 (ITC Tr. (Silzars)), at 2075;  
10 Exh. 18 (Nagel Depo Tr.), at 78:6-16.
- 11 • a second feedback line or second voltage signal (required by  
12 asserted claims 4, 7, 11 and 14): Exh. 16 (ITC Tr. (Lin)), at 678-  
13 79; Exh. 17 (ITC Tr. (Silzars)), at 2075; Exh. 18 (Nagel Depo Tr.),  
14 at 78:17-25.

15 During the ITC hearing, O2 Micro tried to bluff its way through the corroboration  
16 requirement by having Lin testify about scattered and unwitnessed entries from his notebook and  
17 planner bearing dates from January through April 1998. None of those entries supported a  
18 February 1998 conception date. To the contrary, the entries reflected nothing more than  
19 complaints from O2 Micro's customers about O2 Micro's existing OZ962 product – complaints  
20 for which Lin had no solution. Exh. 19 (ITC Tr. (Lin)), at 355-61; Exh. 16 (ITC Tr. (Lin)), at  
21 508-13, 539-41, 641-51. None of the entries disclosed any of the claim elements identified in the  
22 bulleted list above.

23 In April 1999, Lin sent two documents to O2 Micro's patent attorney, Ed Pflieger, to  
24 "initiate a patent application." Exhs. 20, 21. These communications provide additional evidence  
25 that, as late as April 1999, Lin's concept for open lamp protection was far different than the  
26 circuitry ultimately claimed in the '382 patent. Like the prior art MP1010 circuits, the '382  
27 patent claims implement open lamp protection during startup through the use of a timer circuit  
28 coupled to a capacitor divider that provides a voltage signal representative of the voltage across  
the CCFL. Lin's April 1999 circuitry did not. It did not employ a capacitor divider or a timer  
circuit. Instead, Lin contemplated detecting whether current was flowing through the CCFL. If  
no current was flowing, the circuit would assume was that the lamp was open and shut down.

1 Exhs. 20, 21; Exh. 16 (ITC Tr. (Lin)), at 733-34.<sup>9</sup> *Id.*; Exh. 23 (ITC Tr. (Silzars)), at 2078.  
 2 Thus, not only was there no corroboration of a conception date prior to July 22, 1999, there was  
 3 strong evidence that Lin had not conceived his alleged invention prior to that date.

4 (2) **Lin and O2 Micro Repeatedly Lied about How the  
 5 Schematics Came to be Dated “Feb., 18, 1998”**

6 Lin and O2 Micro repeatedly lied about how the date “Feb., 18, 1998” came to appear on  
 7 the drawings, forcing MPS to expend substantial time and money to pry the truth out of  
 8 O2 Micro. During the 2007 trial, Lin falsely claimed that his computer had automatically dated  
 9 the schematic drawings with the phrase “Feb., 18, 1998.”:

10 Q: First of all, there’s a date, there’s a printed date in the title block of  
 February 18th, 1998. What does that date indicate, Dr. Lin?

11 A: That’s the program date, which is when the file, the circuit diagram  
 12 generated. *That computer automatically print the date when I  
 save the file.*

13 Q: Okay. So the machine printed that date; is that right?

14 A: Yes.

15 Exh. 24 (May 2, 2007 Trial Tr.), at 570:13-21 (emphasis added).

16 Similarly, O2 Micro executive Adam Badgett testified falsely:

17 Q: Now look at Exhibit 1010 [the drawings], and tell me if you  
 18 recognize these documents.

19 A: Yes, these are all schematics. They appear to be generated by a  
 standard schematic capture CAD tool.

20 Q: There is a PSpice program used at O2 Micro? Are you familiar  
 21 with that program?

22 A: I am familiar with what that is, yes.

...

23 Q: These have a date in the title block of February 18th, 1998. Can  
 24 you explain to us how that date is put on to these documents?

25 A: *This date is automatically inserted by the software program.*

26 Exh. 1 (May 3, 2007 Trial Tr.), at 748:6-22 (emphasis added).

27 <sup>9</sup> Incidentally, this exact same technique had been described in the October 1994 datasheet for  
 28 the Unitrode UC3871 CCFL inverter controller. Exh. 22, at MPS ITC 053869.

1 O2 Micro’s counsel emphasized this false testimony in his closing argument, telling the  
2 jury that the computer had automatically inserted the date on the drawings and this corroborated  
3 Lin’s claimed February 1998 conception date. Exh. 25 (May 14, 2007 Trial Tr.), at 1684.

4 O2 Micro continued this false line of argument in the present case, forcing MPS and  
5 ASUSTeK to undertake extensive discovery – and engage a second expert – to ferret out the  
6 truth. During this process, O2 Micro repeatedly changed its story as one claim after another was  
7 disproved.

8 On May 11, 2009, in response to MPS Interrogatory No. 72, which required O2 Micro to  
9 “[d]escribe in detail the preparation, maintenance, preservation, destruction and record-keeping”  
10 of the schematic drawings, O2 Micro stated:

11 Dr. Yung-Lin Lin used a PSPICE simulation program on  
12 February 18, 1998 to create the identified document, which was  
13 printed out. **The program automatically provided a date stamp**  
14 **on the day it was created.** A paper copy of the document was stored  
15 on site at O2 Micro’s California offices. Sometime in approximately  
16 the 2001 timeframe a copy was made and produced to MPS in a  
17 lawsuit in the Northern District of California between MPS and O2  
18 Micro, after which time a copy has continued to be maintained by O2  
19 Micro’s outside litigation counsel. After a reasonable search, **O2**  
20 **Micro does not have an electronic copy of the file.**

21 Exh. 26 (O2 Micro’s Responses to MPS’s Third Set of Interrogatories (Nos. 70-74)), at 5-6  
22 (emphasis added). The response was verified under penalty of perjury by Steve Krems,  
23 O2 Micro’s Director of Information Technology. *See id.* at Verification. This verified response  
24 was false.

25 On July 21, 2009, MPS took O2 Micro’s Rule 30(b)(6) deposition as to the  
26 “[p]reparation, maintenance, preservation, destruction and record-keeping” of the schematic  
27 drawings. Krems appeared as O2 Micro’s corporate representative. At that time, O2 Micro’s  
28 story changed. Krems testified that Lin’s earlier trial testimony and the earlier interrogatory  
response were incorrect. According to Krems, Lin had not used the PSpice program to prepare  
the drawings after all. Instead, O2 Micro claimed that Lin had used a program called “OrCAD  
Capture” and that it was *the OrCAD Capture program* that *automatically inserted the date*

1 *when the schematics were created.* See Exh. 27 (Krems Dep. Tr.), at 44:11-17; 65:17-68:19.

2 This testimony was also false.

3 O2 Micro's lies continued. ASUSTeK Interrogatory No. 40 required O2 Micro to:

4 Explain the basis for O2 Micro's statement, in its response to MPS  
5 Interrogatory No. 72, that the PSpice program used by Dr. Lin  
6 "automatically provided a date stamp on the day it was created."  
7 Identify, by description and by Bates number, any documents  
8 supporting your response. To the extent that O2 Micro contends  
9 that there is a person who can testify that PSpice contained such a  
10 feature, identify that person or persons.

11 On July 23, 2009, O2 Micro served its response, again verified by its corporate  
12 representative under penalty of perjury:

13 O2 Micro's statement is based on the fact that **the program  
14 automatically provided a date stamp on the day the document  
15 was created.** Steve Krems of O2 Micro recently re-verified with  
16 the current version of **OrCAD Capture** and it **automatically  
17 generates a date when the document is created.** Dr. Yung-Lin  
18 Lin and Steve Krems have information on this topic and testified to  
19 that information during their depositions.

20 Exh. 28 (O2 Micro July 23, 2009 Responses to ASUSTeK Third Set of Interrogatories), at 5-6  
21 (emphasis added). This verified response, too, was false.

22 Continuing its deceit, O2 Micro responded falsely to ASUSTeK Interrogatory No. 41,  
23 which required O2 Micro to:

24 Explain how the PSpice program used by Dr. Lin to create the circuit  
25 diagrams dated "Feb., 18, 1998" [sic] that O2 Micro has identified in  
26 response to Commission Investigative Staff Interrogatory No. 14 allegedly  
27 "automatically provided a date stamp on the day it was created" when the  
28 date in the title block contains a typographical error – i.e., "Feb., 18, 1998."

O2 Micro responded:

**The program automatically provided a date stamp on the day  
the document was created,** containing whatever information was  
included in the date stamp in the format printed on the page. O2  
Micro also refers to the deposition testimony taken on July 21,  
2008 of Steve Krems, who served as a Rule 30(b)(6) witnesses for  
topics including the software related to the identified document.

*Id.* at 6-7 (emphasis added). Like the others, this verified response was false.

1 In addition to this extensive false testimony and verified discovery responses, O2 Micro  
2 improperly denied numerous MPS requests for admission directed at discovering the true facts.<sup>10</sup>

3 Only after MPS had located and retained Dr. Marc Herniter, a PSpice expert whose report  
4 unequivocally established that Lin and O2 Micro were lying, did O2 Micro come clean.  
5 Apparently realizing that it could no longer maintain the fiction that “the computer automatically  
6 dated the drawings,” O2 Micro “supplemented” its responses to ASUSTeK’s interrogatories to  
7 acknowledge that the schematic drawings with the phrase “Feb., 18, 1998” [sic] were created  
8 using PSpice Schematics. Using intentionally opaque verbiage, O2 Micro admitted that the  
9 PSpice Schematics program did not insert the claimed “Feb., 18, 1998” date into the title block.  
10 Rather, “**the user**” – *i.e.*, Lin – manually inserted the alleged date. *See* Exh. 29 (O2 Micro’s  
11 Supplemental Responses to ASUSTeK’s Third Set of Interrogatories to Complainants (Nos. 38-  
12 46)), at 7-8 (emphasis added).

13 (3) **Lin and/or O2 Micro Destroyed Lin’s Computer,  
14 Preventing MPS and ASUSTeK from Conducting a  
15 Forensic Examination of It**

16 Lin had stored his crude schematic drawings in a “folder” on his computer labeled  
17 “MPS.”<sup>11</sup> Exh. 16 (ITC Tr. (Lin)), at 710; Exh. 30 (Herniter Expert Report), at 22. If O2 Micro

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18 <sup>10</sup> For example, on April 6, 2009, O2 Micro denied MPS RFA 236, requesting that O2 Micro  
19 admit that “O2 Micro is not aware of any person who can corroborate that Yung-Lin Lin created  
20 the circuit diagrams dated February 18, 1998 that O2 Micro has identified in its response to  
21 Commission Investigative Staff Interrogatory No. 14 prior to June 24, 1999.” Exh. 7 (O2 Micro  
22 Responses to MPS’ First Set of Requests for Admission), at 60. Subsequently, in its response to  
23 ASUSTeK Interrogatory No. 43, O2 Micro had to admit that “the company currently does not  
24 have information as to who else saw the simulation file between [February 18, 1998] and  
25 June 24, 1999.” Exh. 28, at 8. O2 Micro had no good faith basis for its earlier denial. O2 Micro  
26 also had no good faith basis for denying RFA 235, 237 or 238, which address the same subject.

27 Similarly, O2 Micro had no good faith basis for denying MPS RFA 241 (“Admit that O2 Micro  
28 has been unable to locate any backup files on its corporate computer system for the files Yung-  
Lin Lin used to create the circuit diagrams dated February 18, 1998”). Exh. 7, at 61-62.  
O2 Micro later had to admit, in its response to MPS Interrogatory No. 72, that “O2 Micro does  
not have an electronic copy of the file.” Exh. 26, at 6. Likewise, O2 Micro falsely denied MPS  
RFA 243 (“Admit that O2 Micro disposed of the computer that Yung-Lin Lin used to create the  
circuit diagrams dated February 18, 1998”) (Exh. 7, at 62), only to later admit in its response to  
MPS Interrogatory No. 73 that “O2 Micro no longer has in its possession, custody or control the  
personal computer and its hard drive used by Dr. Lin in the 1998-1999 timeframe. . . . [I]ts drive  
was erased and the computer was disposed of after its useful life, which was three years.”  
Exh. 26, at 7.

1 had produced Lin's computer in discovery, MPS and ASUSTeK could have conducted a forensic  
2 investigation to determine when Lin created the "MPS" folder on his computer and when he  
3 created the schematics he manually dated "Feb., 18, 1998." O2 Micro prevented any such  
4 forensic examination by destroying Lin's computer, allegedly without making any backup files.  
5 Exh. 16 (ITC Tr. (Lin)), at 710-712; Exh. 26 (O2 Micro Responses to MPS's Third Set of  
6 Interrogatories, No. 73), at 7. Given the allegedly groundbreaking nature of the schematics, it is  
7 remarkable that neither Lin nor anyone else at O2 Micro sought to have them copied onto Lin's  
8 replacement computer. While O2 Micro claims that it cannot determine when it destroyed the  
9 computer, it is highly likely that it did so while involved in a lawsuit with MPS – MPS and O2  
10 Micro have been embroiled in litigation since 2000.

11 c. **O2 Micro Filed Two Frivolous Motions to Try to Conceal the**  
12 **Truth from the Jury in this Case, Claiming that "Collateral**  
13 **Estoppel" Protected its Misconduct**

14 Confronted with incontrovertible evidence establishing that Lin, Badgett and Krems had  
15 lied under oath about the PSpice schematics, that its verified interrogatory responses were false,  
16 and that it had no good faith basis for denying the MPS and ASUSTeK requests for admission,  
17 O2 Micro stonewalled and tried to engage in a cover up. O2 Micro filed two frivolous motions,  
18 arguing that MPS and ASUSTeK were collaterally estopped from pursuing the issue. In essence,  
19 O2 Micro argued that it had successfully misled the jury with Lin and Badgett's false testimony  
20 during the 2007 trial, and MPS and ASUSTeK should not have a chance to expose those lies.

21 O2 Micro first raised the argument in its motion to strike Dr. Herniter's expert report.  
22 *See* Dkt. 135, at 6-7. The Court denied this motion. Dkt. 229. O2 Micro made the same  
23 argument in its motion for summary adjudication that the invention date of the '382 patent was  
24 February 18, 1998. Dkt. 157, at 18-24. The Court denied this motion as well. Dkt. 285

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25 <sup>11</sup> Lin claimed that "MPS" did not refer to Monolithic Power Systems, but instead was meant to  
26 refer to "multiple power supplies." Not surprisingly, despite discovery requests demanding that  
27 it do so, O2 Micro could not produce a single document, either internal to the company or from  
28 any external source, that used the term "multiple power supplies" to refer to CCFL inverters.  
*See, e.g.*, Exh. 15 (6/17/09 Lin Depo. Tr.), at 165-67.



1 (Feb. 16, 2010 Order), at 12-14. Instead, the Court granted MPS and ASUSTeK summary  
2 adjudication that Lin's invention date was July 22, 1999. *Id.* at 19.

3 d. **O2 Micro's Misrepresentations and Obfuscation Forced MPS  
4 and ASUSTeK to Spend Millions of Dollars Unnecessarily**

5 In this case, as in *Mathis*, O2 Micro "has severely injured" MPS by "forc[ing] it to  
6 defend, at monstrous expense, its right freely to compete, [and] subjecting [MPS] to a totally  
7 unwarranted suit." *Mathis*, 857 F.2d at 753-54. Here, Section 285 is "[t]he only deterrent to  
8 [such] improper bringing of clearly unwarranted suits on [an] obviously invalid or unenforceable  
9 patent[]," and "[n]o award under Section 285 can fully compensate [MPS and ASUSTeK]  
10 subjected to [such] bad faith litigation, *e.g.*, for loss of executives' time and missed business  
11 opportunities." *Id.* at 754.

12 O2 Micro would not have been able to obtain the '382 patent and assert validity and  
13 infringement of that patent but for its burying of the MP1010-related materials, Lin's and others'  
14 lies about the "Feb., 18, 1998" schematic, and O2 Micro's deceptive cover-up of those lies.  
15 Similarly, O2 Micro would not have been able to obtain any of the patents in the '519 patent  
16 family had Lin submitted the datasheets and "on-sale bar" materials for the prior art OZ960A  
17 and OZ962 to the PTO. Such conduct clearly constitutes "litigation misconduct" and  
18 "inequitable conduct" on the part of O2 Micro. Thus, this case should be deemed "exceptional"  
19 to warrant an award of attorney's fees under Section 285. As in *Mathis*, attorney's fees under  
20 Section 285 is the bare minimum that MPS and ASUSTeK should be awarded in this case.

21 e. **MPS Is Entitled to Its Fees and Costs Pursuant to Rule 37(c)(2)  
22 for Having to Prove the Truth of the Matters Wrongfully  
23 Denied by O2 Micro in Bad Faith**

24 Separately, independent of Section 285, MPS is entitled to recover its attorney's fees  
25 pursuant to Fed. R. Civ. P. 37(c)(2). Rule 37(c)(2) provides, "If a party fails to admit what is  
26 requested under Rule 36 and if the requesting party later proves . . . the matter true, the  
27 requesting party may move that the party who failed to admit pay the reasonable expenses,  
28 including attorney's fees, incurred in making that proof." Fed. R. Civ. P. 37(c)(2). Here, MPS  
was forced to expend significant attorney's fees to prove the truth of matters set forth above

1 concerning Lin's alleged conception date of February 18, 1998. MPS prevailed on proving these  
2 facts. Dkt. 285, at 19. Moreover, O2 Micro falsely denied numerous requests for admission  
3 concerning the OZ962 / OZ960A prior art that Lin concealed from the PTO during the  
4 prosecution of the '519 patent family. Confronted with this evidence, O2 Micro chose to dismiss  
5 its claims of infringement concerning that family as well.

6 **C. O2 Micro Pursued Infringement Claims that It Knew, or Should Have**  
7 **Known, Were Baseless**

8 A case can be exceptional under 35 U.S.C. § 285 if a patentee bringing an action knows  
9 or upon reasonable investigation should know that its claim is baseless. *Micromesh Tech. Corp.*  
10 *v. American Recreation Prods., Inc.*, No. C-06-6030-MHP, 2007 WL 2501783 at \*3 (N.D. Cal.  
11 Aug. 30, 2007); *see Eltech Sys. Corp. v. PG Indus., Inc.*, 903 F.2d 805, 810 (Fed. Cir. 1990)  
12 (affirming award of attorney's fees to accused infringer where the patentee's expert assumed  
13 certain facts "having conducted no supporting tests," patentee "fail[ed] to submit any evidence  
14 that it attempted to evaluate any diaphragms under operating cell conditions, even though its  
15 experts said that was the only way to test for dimensional stability," and the patentee's tests were  
16 insufficient to establish whether there was infringement).

17 Thus, an inadequate pre-filing preparation is relevant to determining whether a case is  
18 exceptional. *Micromesh Tech.*, 2007 WL 2501783 at \*3, \*7 (granting attorney's fees to accused  
19 infringer under Section 285 where patentee stipulated to dismissal of its infringement suit, after  
20 accused infringer was forced to litigate its defense and expose the patentee's lack of adequate  
21 pre-filing investigation).

22 **1. O2 Micro's Expert on Claim Construction Acknowledged that the**  
23 **Asserted Claims Require the "First Voltage Signal" to "Exceed and**  
24 **Continue to Exceed" the "Predetermined Threshold" During the**  
25 **Entire "Predetermined Duration"**

26 O2 Micro utilized two expert witnesses on technical issues. It retained Dr. Ray Mercer as  
27 its expert on claim construction and validity. It retained Mr. Richard Flasck as its expert on  
28 infringement. Mr. Flasck's reports did not offer any opinions on claim construction.

Dr. Mercer submitted a declaration in support of O2 Micro's claim construction brief. In  
that declaration, Dr. Mercer stated:

1 [I]t is my opinion that to one of ordinary skill in the art “when said  
 2 first voltage signal exceeds a predetermined threshold for said  
 3 predetermined duration,” means “when the first voltage signal  
 exceeds and continues to exceed a ‘predetermined threshold’ for  
 the ‘predetermined’ amount of time, shutdown occurs.”

4 Dkt. 158, at 2 (emphasis added).

5 With regard to this claim construction, Dr. Mercer gave consistent testimony in the ITC.  
 6 He testified: “In the case of the ’382 patent, first you cross the threshold. Then you measure  
 7 [an] amount of time. And *during that time that voltage signal must remain above that*  
 8 *threshold.*” Exh. 31 (10/30/2009 ITC Hearing Tr.), at 2723:12-16 (emphasis added).

9 **2. O2 Micro Never Tested the Accused Products to Determine Whether**  
 10 **the Alleged “First Voltage Signal” “Exceeds and Continues to**  
 11 **Exceed” the “Predetermined Threshold” During the “Predetermined**  
**Duration”**

12 Mr. Flasck never bothered to test a single inverter circuit utilizing the accused MPS  
 13 products. Dkt. 320-2 (Initial Determination), at 39. Instead, he reviewed some datasheets and  
 14 made certain assumptions about how the products operate. He also reviewed, but did not  
 15 replicate, the test results attached to O2 Micro’s infringement contentions, but these results were  
 16 not detailed enough to show whether the accused first voltage signal exceeds the accused  
 17 threshold “for said predetermined duration.”

18 Mr. Flasck’s expert report, served on July 31, 2009, assumed that, during an open lamp  
 19 condition, the voltage signal he identified as the claimed “first voltage signal” would always  
 20 exceed a “predetermined threshold” throughout the claimed “predetermined duration.” There is  
 21 nothing in Mr. Flasck’s report addressing the actual operation of the accused products which, as  
 22 O2 Micro subsequently admitted and the Court has found, “squeg” during an open lamp  
 23 condition, such that “the voltage signal in the accused products does not exceed the threshold  
 24 value for each cycle.” Dkt. 285, at 16-17.

25 **3. Confronted with the Actual Test Results Showing No Infringement,**  
**O2 Micro Concocted a Bogus Infringement Theory**

26 The rebuttal expert report of MPS and ASUSTeK’s technical expert, Dr. Aris Silzars,  
 27 served on August 24, 2009, presented the results of actual product testing. That testing  
 28 demonstrated that the identified “first voltage signal” in each of the accused products “squegs”

1 during an open lamp condition, such that the alleged “first voltage signal” does not exceed the  
2 threshold value for each cycle during the “predetermined duration.” Accordingly, the accused  
3 products do not satisfy the timer circuit element. Exh. 32 (Silzars’ Rebuttal Report), at 29-376.

4 *After* receiving Dr. Silzars’ rebuttal report, and *after* Dr. Silzars’ August 28, 2009  
5 deposition, O2 Micro concocted a new infringement theory. In particular, Mr. Flasck offered a  
6 new opinion that a POSITA would understand that a squegging signal “exceeds and continue to  
7 exceeds” the threshold “for” the applicable time period even though the signal does not exceed  
8 the threshold during every cycle. *See* Exh. 33 (8/31/09 Flasck Depo. Tr.), at 160:6 – 166:14.  
9 Flasck made the same assertion in a declaration that O2 Micro filed with the Court in opposition  
10 to MPS’s motion for summary judgment of non-infringement. *See* Exh. 34 (10/22/09 Flasck  
11 Decl.), ¶ 4:

12 [I]t is my opinion that one of skill in the art would understand that  
13 determining “when said first voltage signal exceeds a  
14 predetermined threshold for said predetermined duration” requires  
15 evaluating the time-varying AC waveform over time, using the  
16 peak-to-peak values. It is not correct to measure the voltage value  
17 at a single instant or a single cycle of the waveform.

18 Thus, according to O2 Micro, if the “first voltage signal” exceeds the predetermined  
19 threshold *even once* during the “predetermined duration,” the first voltage signal “*continues to*  
20 *exceed*” the “predetermined threshold” “*for* said predetermined duration” because the “peak-to-  
21 peak” voltage focuses only on the cycle(s) with the highest peak and the lowest valley, and  
22 ignores every cycle in between.

23 By making this nonsensical argument, O2 Micro sought to avoid the very claim  
24 construction articulated by its own claim construction expert, requiring that the first voltage  
25 signal “*continue[ ] to exceed*” the predetermined threshold “*for the above-mentioned time*  
26 *period.*” Moreover, O2 Micro used this deception to mislead the Court into concluding that there  
27 was a “triable issue on non-infringement . . . albeit narrow, on whether a person having ordinary  
28 skill in the art would find that the accused products meet the ’382 patent’s claim limitations even  
though – as O2 Micro admits – MPS’s products ‘squeg.’” Dkt. 285 (Feb. 16, 2010 Order), at 16-  
17.

1 The frivolous nature of O2 Micro's argument was demonstrated by Mr. Flasck's  
 2 admission that he could not "draw the line" as to how many cycles of the first voltage signal  
 3 must exceed the "predetermined threshold" during the "predetermined duration" in order to meet  
 4 the claim limitation. The identified first voltage signal in the Accused Products has about 60,000  
 5 cycles during a typical one-second time-out sequence. According to Mr. Flasck, the "line" might  
 6 be anywhere:

7 Q. [I]s there a reason this can't be carried to an extreme where I could  
 8 make my bucket my timing period, whatever the shutdown period  
 9 is, and squeg so that I **only** get **one peak** during the shutdown  
 10 period and it would still meet the [claim] limitation?

11 A. [T]here are common sense practical limitations in the context.  
 12 And **I don't know where to draw a line. There is no hard line**  
 13 **there, I guess.**

**But certainly, you know, what we've seen here in the patent  
 and in the -- in the accused products, I believe certainly falls on  
 the infringement side of the line.**

14 Exh. 35 (10/26/2009 ITC Hearing Tr.), at 1794:4 to 1795:5 (emphasis added).

15 Thus, O2 Micro's infringement argument consisted of nothing more than its paid expert's  
 16 *ipse dixit* that "I know infringement when I see it."

#### 17 **4. Professor Perreault, the ITC Staff, ALJ Gildea and the Full Commission All Rejected O2 Micro's Frivolous Argument**

18 The ITC Staff recognized the frivolous nature of O2 Micro's argument. It cogently  
 19 explained that O2 Micro newly concocted infringement theory would write the relevant language  
 20 out of the claims:

21 A voltage signal that exceeds a threshold only occasionally during  
 22 a predetermined duration by definition will not exceed the  
 23 threshold "for [the] predetermined duration." Indeed, ***under [O2  
 Micro's] view of the claims, a voltage signal that exceeded the  
 threshold even once would satisfy the limitation so long as the  
 timer kept running and the device eventually shut down.***

24 Simply put, ***[O2 Micro] cannot write the words "when said first  
 voltage signal exceeds a predetermined threshold for said  
 predetermined duration" out of the claims.***

25 Dkt. 337-2 (Exh. B to Motion (ITC Staff's Response to ITC Parties' Petitions for Review)), at 14  
 26 (emphasis added) (citation omitted).  
 27  
 28

1 Like the ITC Staff, ALJ Gildea rejected O2 Micro's "ignore every cycle that falls below  
2 the threshold" infringement theory. Dkt. 320-3 at 41-49, 52-66. So too did the court-appointed  
3 independent expert, Professor Perreault, who found no merit in O2 Micro's attempt to avoid the  
4 plain English of its patent claims. *See, e.g.*, Dkt. 376-1, at 15 (recognizing that "continues to  
5 exceed" is synonymous with "exceeds continuously" and finding that the condition was not met).

6 Thus, Professor Perreault, Dr. Silzars, Dr. Mercer, the ITC Staff, ALJ Gildea and the full  
7 Commission all concluded that the POSITA understands plain English just like the rest of the  
8 population. Yet, O2 Micro continued to pursue its objectively baseless infringement claims with  
9 the subjective bad faith intent to intimidate MPS's customers and deter them from buying  
10 competitive products from MPS. This further supports MPS and ASUSTeK's entitlement to  
11 their attorney's fees. *See Veteran Med. Prods.*, 2009 WL 891724, at \*17-\*19 (awarding accused  
12 infringer attorney's fees under similar circumstances).

13 **D. This Court Should Exercise Its Discretion to Award Attorney's Fees and**  
14 **Costs to MPS and ASUSTeK in the Amount of \$13,507,643.30**

15 The methodology of assessing a reasonable award under 35 U.S.C. § 285 is within the  
16 discretion of the district court. *Mathis*, 857 F.2d at 754. Where, as here, a prevailing party "has  
17 obtained excellent results, his attorney should recover a fully compensatory fee. Normally this  
18 will encompass all hours reasonably expended on the litigation." *Id.* at 755, *quoting Hensley v.*  
19 *Eckerhart*, 461 U.S. 424, 435 (1983) (*internal quotes omitted*). The statement of fees and costs  
20 of MPS and ASUSTeK, attached as Exhibit A to the Flagel Declaration, demonstrate that such  
21 fees and costs "encompass all hours reasonably expended on the litigation."

22 **III. CONCLUSION**

23 Based upon the foregoing, MPS and ASUSTeK respectfully request that the Court grant  
24 MPS and ASUSTeK's Motion for Fees and Non-Taxable Costs, and award MPS and ASUSTeK  
25 recovery of their attorney's fees and non-taxable costs in the amount of \$13,507,643.30, plus  
26 interest.

1 Dated: July 1, 2010

Respectfully submitted,

2 LATHAM & WATKINS LLP

3  
4 By: \_\_\_\_\_ /s/  
Mark A. Flagel

5 Attorneys for Plaintiff and Counterclaim-Defendant  
6 Monolithic Power Systems, Inc.

7  
8  
9 Dated: July 1, 2010

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13 Monolithic Power Systems, Inc. and  
14 Counterclaim-Defendants ASUSTeK Computer Inc.  
15 and ASUS Computer International  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 1st day of July 2010, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court’s CM/ECF system.

By: \_\_\_\_\_ /s/  
Mark A. Flagel

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