

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**TEX PAT, LLC,**  
*Relator,*

v.

**(1) SHARP CORPORATION,  
(2) SHARP ELECTRONICS CORPORATION,  
(3) SHARP ELECTRONICS,  
MANUFACTURING COMPANY OF  
AMERICA, INC., AND  
(4) SHARP ELECTRONICS OF CANADA  
LTD.,**

*Defendants.*

**Civil Action No. 5:10-CV-185**

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT FOR FALSE PATENT MARKING**

Relator Tex Pat, LLC (“Relator”) makes the following allegations against Sharp Corporation, Sharp Electronics Corporation, Sharp Electronics Manufacturing Company of America, Inc., and Sharp Electronics of Canada Ltd. (collectively, “Sharp” or “Defendant”):

**NATURE OF THE ACTION**

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

**PARTIES**

2. Relator is a Texas limited liability company having a principal place of business at 2300 Richmond, Suite 345, Houston, Texas 77098-3265. Relator has appointed Philip D. Racusin, 2300 Richmond Avenue, Suite 345, Houston, TX 77098-3265, as its agent for service of process.

3. On information and belief, Sharp Corporation is a Japanese corporation with its principal place of business at 22-22 Nagaike-cho, Abeno-ku, Osaka 545-8522, Japan.

Sharp Corporation may be served at 22-22 Nagaike-cho, Abeno-ku, Osaka 545-8522, Japan, via an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.

4. On information and belief, Sharp Electronics Corporation is a New York corporation with its principal place of business at Sharp Plaza, Mahwah, NJ 07495-1163. Sharp Electronics Corporation has appointed C T Corporation System, 111 Eighth Avenue, New York, NY 10011, as its agent for service of process.

5. On information and belief, Sharp Electronics Manufacturing Company of America, Inc. is a California corporation with its principal place of business at 9295 Siempre Viva Road, Suite J2, San Diego, CA 92154. Sharp Electronics Manufacturing Company of America, Inc. has appointed C T Corporation System, 818 W. 7th Street, Los Angeles, CA 90017, as its agent for service of process.

6. On information and belief, Sharp Electronics of Canada Ltd. is a Canadian corporation with its principal place of business at 335 Britannia Road East, Mississauga, Ontario L4Z 1W9, Canada. Sharp Electronics of Canada Ltd. may be served at 335 Britannia Road East, Mississauga, Ontario L4Z 1W9, Canada, via an officer, a managing or general agent, or any other person or entity authorized by appointment or by law to receive service of process.

#### **JURISDICTION AND VENUE**

7. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

9. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

### **FACTS**

10. Sharp has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising patents, including, by way of example only, U.S. Patent Nos. 4,577,216 ("the '216 Patent"), 4,631,603 ("the '603 Patent"), and 4,907,093 ("the '093 Patent"), true and correct copies of which are attached, as Exhibits A-C, respectively, in connection with Defendant's products and/or related product packaging and advertisements, including, by way of example only, the BD-HP20U blu-ray disc player, LC-32D6U AQUOS television, LC-26D6U AQUOS television, LC-37D6U AQUOS television, LC-37DB5U liquid crystal television, LC-37D4U AQUOS television, LC-32D4U AQUOS television, LC-26D4U AQUOS television, SD-HX600 1-

bit digital receiver with DVD, and DV-MX1U DVD player products, as illustrated in Exhibits D-J.

11. The '216 Patent (Exhibit A), which is titled "Method and Apparatus for Modifying the Color Burst to Prohibit Videotape Recording," was filed in the United States on November 14, 1983 and issued on March 18, 1986.

12. The '216 Patent expired, at the very latest, on November 14, 2003.

13. When the '216 Patent expired, all future rights in that patent ceased to exist.

14. The '603 Patent (Exhibit B), which is titled "Method and Apparatus for Processing a Video Signal so as to Prohibit the Making of Acceptable Video Tape Recordings Thereof," was filed in the United States on April 17, 1985 and issued on December 23, 1986.

15. The '603 Patent expired, at the very latest, on April 17, 2005.

16. When the '603 Patent expired, all future rights in that patent ceased to exist.

17. The '093 Patent (Exhibit C), which is titled "Method and Apparatus for Preventing the Copying of a Video Program," was filed in the United States on November 1, 1988 and issued on March 6, 1990. The '093 Patent is a continuation of S/N 895,045, filed August 11, 1986.

18. The '093 Patent expired, at the very latest, on March 6, 2007.

19. Subsequent to expiration of the '603 Patent and the '093 Patent, Sharp has and/or continues (and/or has and/or continues to cause others)<sup>1</sup> to mark upon, affix to, and/or use in advertising these patents in combination with its BD-HP20U blu-ray disc player products. *See, e.g.,* Exhibit D (containing, in part, product instructions, which were

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<sup>1</sup> *See* Exhibit D (indicating document authored by "Sharp Electronics").

available on Sharp's website at the time of filing of this Original Complaint,<sup>2</sup> having a warranty revision date of December 16, 2005, an electronic creation date of September 11, 2007, a last modification date of February 15, 2008, and marking, affixing, and/or advertising the BD-HP20U blu-ray disc player products in combination with the '603 Patent and the '093 Patent).

20. Subsequent to expiration of the '603 Patent and the '216 Patent, Sharp has and/or continues (and/or has and/or continues to cause others)<sup>3</sup> to mark upon, affix to, and/or use in advertising these patents in combination with its LC-37D6U AQUOS television, LC-32D6U AQUOS television, and LC-26D6U AQUOS television products. *See, e.g., Exhibit E* (containing, in part, product instructions, having an electronic creation date of August 8, 2005, a last modification date of October 21, 2005, and marking, affixing, and/or advertising the LC-37D6U AQUOS television, LC-32D6U AQUOS television, and LC-26D6U AQUOS television products in combination with the '603 Patent and the '216 Patent); *see also Exhibit F* (containing, in part, product instructions, having an electronic creation date of August 8, 2005, a last modification date of August 31, 2005, and marking, affixing, and/or advertising the LC-37D6U AQUOS television, LC-32D6U AQUOS television, and LC-26D6U AQUOS television products in combination with the '603 Patent and the '216 Patent).

21. Subsequent to expiration of the '603 Patent and the '216 Patent, Sharp has and/or continues (and/or has and/or continues to cause others)<sup>4</sup> to mark upon, affix to, and/or use in advertising these patents in combination with its LC-37DB5U liquid crystal television

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<sup>2</sup> Sharp's website, accessed by entering the following search string into www.google.com: *site:www.Sharpusa.com "BD-HP20U"* (last accessed Oct. 30, 2010).

<sup>3</sup> *See Exhibit E* (indicating document authored by "Sharp Electronics"); *see also Exhibit F* (indicating document authored by "SHARP").

<sup>4</sup> *See Exhibit G* (indicating document authored by "Sharp Electronics").

products. *See, e.g., Exhibit G* (containing product instructions, having an electronic creation date of August 1, 2005, a last modification date of October 19, 2005, and marking, affixing, and/or advertising the LC-37DB5U liquid crystal television products in combination with the '603 Patent and the '216 Patent).

22. Subsequent to expiration of the '603 Patent and the '216 Patent, Sharp has and/or continues (and/or has and/or continues to cause others)<sup>5</sup> to mark upon, affix to, and/or use in advertising these patents in combination with its LC-37D4U AQUOS television, LC-32D4U AQUOS television, and LC-26D4U AQUOS television products. *See, e.g., Exhibit H* (containing product instructions, having an electronic creation date of July 20, 2005, a last modification date of October 19, 2005, and marking, affixing, and/or advertising the LC-37D4U AQUOS television, LC-32D4U AQUOS television, and LC-26D4U AQUOS television products in combination with the '603 Patent and the '216 Patent).

23. Subsequent to expiration of the '216 Patent, Sharp has and/or continues (and/or has and/or continues to cause others)<sup>6</sup> to mark upon, affix to, and/or use in advertising these patents in combination with its SD-HX600 1-bit digital receiver with DVD television products. *See, e.g., Exhibit I* (containing product instructions, having an electronic creation date of March 15, 2004, a last modification date of November 5, 2004, and marking, affixing, and/or advertising the SD-HX600 1-bit digital receiver with DVD television products in combination with the '216 Patent).

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<sup>5</sup> *See Exhibit H* (indicating document authored by "Sharp Electronics").

<sup>6</sup> *See Exhibit I* (indicating document authored by "Sharp Electronics").

24. Subsequent to expiration of the '603 Patent, Sharp has and/or continues (and/or has and/or continues to cause others)<sup>7</sup> to mark upon, affix to, and/or use in advertising these patents in combination with its DV-MX1U DVD player products. *See, e.g., Exhibit J* (containing product instructions, having an electronic creation date of August 5, 2005, a last modification date of December 2, 2005, and marking, affixing, and/or advertising the DV-MX1U DVD player products in combination with the '603 Patent).

25. Sharp is a large, sophisticated company. *See, e.g., Exhibit K* at p. 2 (containing, in part, Sharp's 2010 Annual Report, indicating net sales of \$29,955,957,000 for fiscal year 2010); *id.* at p. 6 (indicating Sharp is traded on Tokyo Stock Exchange).

26. Sharp has, and/or routinely retains, sophisticated legal counsel. *See, e.g., Exhibit K* at 25 (noting Sharp takes action to protect its patents, including filing lawsuits).

27. Sharp has decades of experience applying for, obtaining, licensing, and/or litigating patents. *See, e.g., Exhibit K* at p. 25 (providing that "[a]s of March 31, 2010, Sharp had approximately 17,500 patents in Japan and 22,500 overseas").

28. Sharp knows, and at the very least reasonably should know, that the above patents do not cover any of the above Sharp products, or any products whatsoever. *See, e.g., Exhibit K* at p. 25 ("We exercise care concerning the intellectual property . . .").

29. As a result of its false marking, Sharp has injured the United States Government, including its sovereign interest, and Sharp's existent and potential competitors, as well as the general public, including Relator—a member of the general public incurring the time and expense of enforcement. *See, e.g., Exhibit K* at p. 25 ("In order to secure a competitive edge . . . Sharp is aggressively promoting patent right obtainment."); *id.*

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<sup>7</sup> *See Exhibit J* (indicating document authored by "Sharp Electronics").

(“Sharp utilizes these patents to strengthen its strategic business.”); *id.* at 32 (declaring problems with its intellectual property can lead to Sharp’s competitive disadvantage).

**CLAIM**

30. Relator incorporates paragraphs 1–29, as if fully set forth herein. Sharp has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its products, including the BD-HP20U blu-ray disc player, LC-32D6U AQUOS television, LC-26D6U AQUOS television, LC-37D6U AQUOS television, LC-37DB5U liquid crystal television, LC-37D4U AQUOS television, LC-32D4U AQUOS television, LC-26D4U AQUOS television, SD-HX600 1-bit digital receiver with DVD, and DV-MX1U DVD player products, with intent to deceive the public.

**PRAAYER FOR RELIEF**

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and



those in active concert or participation with any of them, from violating 35 U.S.C. §292; and

- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: October 31, 2010

Respectfully submitted,

By: /s/ Hao Ni

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