



OBJECTIVE ANALYSIS

Semiconductor Market Research

OBJECTIVE ANALYSIS ALERT!

November 17, 2008

SPANSION SUES SAMSUNG

On Monday, November 17, Spansion announced the filing of patent infringement complaints against Samsung with the US International Trade Commission (ITC) and in the US District Court in Delaware. With the ITC lawsuit Spansion hopes to bar US import of well over one hundred million MP3 players, cell phones, digital cameras and other consumer electronic devices containing Samsung's NAND flash chips. The Delaware complaint seeks an injunction and treble damages for flash memory patent violations.

Although Samsung is the target of the litigations, this sort of ITC complaint requires Spansion to name the manufacturers of downstream products containing Samsung's infringing devices. These companies include: Apple, Asus, Kingston, Lenovo, PNY, RIM, Sony, Sony-Ericsson, Transcend, Samsung's other businesses in cell phones and consumer electronics, and many others.

Spansion calls this move: "one of the largest patent infringement claims ever filed." Spansion estimates Samsung's flash revenues since 2003 have totaled over \$30 billion.

What is Spansion's Motivation?

Some have asked us whether this is a move of desperation by a company that is having bad times. Not in the slightest! Spansion has been building up to this since opening acquisition talks with Saifun last year, and Saifun has been working similar deals since its inception. Remember that Saifun filed a patent infringement suit against Spansion's parents, AMD & Fujitsu, in 2002. Saifun brought to Spansion a true understanding of how to use the patent system to gain a strong revenue stream. The addition of Saifun's understanding to Spansion's large patent portfolio gives the combined companies a strongly synergistic ability to achieve significant royalty revenues.

This is a first move by Spansion to defend its intellectual property in court. By reining in a company they believe to be a major infringer Spansion hopes to set an example for other would-be infringers.

Spansion explains that Saifun brought to Spansion a new way of looking at their patent portfolio with a better understanding of how to evaluate Spansion's existing patents. Prior to the acquisition Spansion's IP strategy has been largely defensive: the company wrote patents to give them a stronger stance in any IP lawsuits that were filed against them. Saifun's team is taking a more proactive stance, regarding Spansion's patents as a potential revenue source, and seeking out infringement in competing devices.

Spansion hopes to license its charge-trapping technology broadly – a technology that was largely owned by Spansion and Saifun before the acquisition, and now the exclusive property of Spansion. Spansion expects charge trapping technology to be widely used by NAND manufacturers at processes below 32nm

Spansion explains that they had to take this “regrettable action” to build an IP licensing business, since allowing any company to flagrantly violate Spansion’s patents would undermine any ability to collect royalties from other firms.

Why Choose Samsung?

Spansion explains that they have been in conversations with the majority of flash memory manufacturers to discuss friendly ways of licensing their charge-trapping IP on fair terms, but that the company’s negotiations with Samsung came to a sudden stop a few months ago. At this point Spansion investigated Samsung devices (“prior-generation, current-generation, and future-generation products”) and found what they claim to be significant infringement on Spansion patents. Some of these same patents had been referred to by Samsung as prior art in their own patent filings. This led to Spansion’s request for treble damages, which are awarded by courts when the infringement was found to be knowing and intentional.

Samsung & SanDisk

The current drama between Samsung and SanDisk is relevant to discuss here. For about two years SanDisk and Samsung have been in negotiations to renew Samsung’s license of SanDisk’s patent portfolio. These discussions came to an impasse a few months ago, taking an unusual twist when Samsung offered to acquire SanDisk. It is noteworthy that Samsung came to terms with neither SanDisk nor Spansion.

Samsung seems to be taking a firmer stance than they have in the past to avoid paying royalties to other firms. Samsung, like SanDisk and Spansion, has been building a strong patent portfolio over the past few years, a move that was probably expected to decrease their royalty payments as the portfolio grew.

How About all those Other Companies?

Right about now there are probably several difficult conversations transpiring between Samsung and those customers named in the ITC suit. These companies could not have anticipated being shut out of the US market through the actions of one of their key suppliers – that’s just not supposed to happen. The naming of these customers will place considerable pressure on Samsung.

We are not sure how quickly an injunction can be obtained against the downstream companies, but an immediate injunction would occur at the absolute wrong time for any of them with the dawn of the Christmas gift-giving market.

This is a move that is used in patent lawsuits to force a situation to a speedy resolution. If these customers are driven to either stop selling their products or to stop buying Samsung flash, guess which path they will take?

What Does this Mean to the Industry?

Spanion has signaled the industry that they expect to build a significant royalty stream by licensing their portfolio of more than 3,000 patents and applications. Flash makers who are in negotiations today for the company's charge trapping technology are now warned not to take these negotiations lightly. Although Spanion's management expresses a preference for fair royalties attained through friendly negotiations, they show today that they don't intend to back down if challenged.

This same approach could be used in any manufacturing industry. OEMs may want to check with all of their suppliers to ascertain that there is no threat that similar negotiation breakdowns will threaten their sources of supply. We advise our OEM clients to check with their suppliers to ascertain that no licensing discussions have reached an impasse.

It is too soon to know how Samsung will react, but we expect to a prompt response. As this story evolves we will keep our clients and key prospects apprised of the situation.

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