

1 Denise M. De Mory (CA Bar No. 168076)

2 (admitted Pro Hac Vice)

3 ddemory@bdiplaw.com

4 Cliff Win, Jr. (CA Bar No. 270517)

5 (admitted Pro Hac Vice)

6 cwin@bdiplaw.com

7 BUNSOW DE MORY SMITH & ALLISON LLP

8 600 Allerton Street, Suite 101

9 Redwood City, CA 94063

10 Telephone: 415-426-4747

11 Facsimile: 415-426-4744

12 Michael D. Rounds (Nevada Bar No. 4734)

13 mrounds@watsonrounds.com

14 Adam P. McMillen (Nevada Bar No. 10678)

15 amcmillen@watsonrounds.com

16 WATSON ROUNDS

17 10000 West Charleston Blvd.

18 Suite 240

19 Las Vegas, NV 89135

20 Telephone: 702-636-4902

21 Facsimile: 702-636-4904

22 *Attorneys for Plaintiff*

23 NXP B.V.

17 UNITED STATES DISTRICT COURT

18 DISTRICT OF NEVADA

20 NXP B.V.,

21 Plaintiff,

22 v.

23 NINTENDO CO. LTD.,
24 NINTENDO OF AMERICA, INC.

25 Defendants.

CASE NO.: 2:13-cv-00453-MMD-VCF

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY DEMAND

1 Plaintiff NXP B.V. (“NXP”) for its first amended complaint against Defendants Nintendo
2 Co. Ltd. (“Nintendo Japan”) and Nintendo of America Inc. (“Nintendo USA”) (collectively
3 “Nintendo”) on personal knowledge as to its own actions and on information and belief as to all
4 others based on its investigation, hereby alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. This is an action for patent infringement arising under the Patent Laws of the
7 United States, 35 U.S.C. §§ 100, *et seq.* This Court has subject matter jurisdiction over this action
8 under 28 U.S.C. §§ 1331, 1332 and 1338(a).

9 2. This Court has personal jurisdiction over Nintendo. Nintendo manufactures
10 (directly or indirectly through third party manufacturers) and/or assembles products that are and
11 have been used, offered for sale, sold, and purchased in the District of Nevada. Nintendo also,
12 directly and/or through its distribution network, places electronic products within the stream of
13 commerce, which stream is directed at the District of Nevada, with the knowledge and/or
14 understanding that such products will be sold in this District. Nintendo has purposefully availed
15 itself of the privilege of conducting business activities within the State of Nevada and this
16 District, which activities, upon information and belief, infringe one or more claims of the United
17 States patents owned by NXP, causing injury in the State of Nevada and this District.

18 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and
19 1400(b). Plaintiff believes and based thereon, allege, that Nintendo resides in this judicial district
20 within the meaning of 28 U.S.C. § 1391(c), and further, that Nintendo has committed, contributed
21 to, and/or induced acts of patent infringement in this judicial district and provides goods or
22 services and does business in this judicial district.

23 4. Some of Nintendo’s recent Nevada activities include the following. Nintendo
24 showcased and promoted the Nintendo Wii U in Las Vegas, Nevada. Upon information and
25 belief, at the International Consumer Electronics Show (“CES”) 2012 event held in Las Vegas,
26 Nevada on January 8-13, 2012, Nintendo advertised, demonstrated, used, offered to sell, and/or
27 sold its Wii U product. Upon information and belief, several Nintendo executives and employees
28

1 encouraging customers to use Nintendo's infringing products, including without limitation,
2 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
3 '882 patent.

4 18. Upon information and belief, Nintendo intends to continue its unlawful
5 infringing activity related to the '882 patent.

6 19. Nintendo's acts of infringement have caused damage to NXP, and NXP is
7 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
8 wrongful acts in an amount subject to proof at trial.

9 **COUNT II**

10 **(Infringement of the '716 Patent)**

11 20. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above
12 as if fully set forth herein.

13 21. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and
14 has been directly infringing, contributing to the infringement of, and/or inducing others to infringe
15 the '716 patent by making, using, selling, and/or offering to sell in the United States, or importing
16 into the United States, without authority, products or processes that practice the inventions
17 claimed in the '716 patent, including without limitation, Nintendo's Wii U.

18 22. Upon information and belief, Nintendo has induced the infringement and/or
19 contributed to the infringement of the '716 patent by knowingly and with intent, actively
20 encouraging customers to use Nintendo's infringing products, including without limitation,
21 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
22 '716 patent.

23 23. Upon information and belief, Nintendo intends to continue its unlawful
24 infringing activity related to the '716 patent.

25 24. Nintendo's acts of infringement have caused damage to NXP, and NXP is
26 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
27 wrongful acts in an amount subject to proof at trial.

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COUNT III

(Infringement of the '432 Patent)

25. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above as if fully set forth herein.

26. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and has been directly infringing, contributing to the infringement of, and/or inducing others to infringe the '432 patent by making, using, selling, and/or offering to sell in the United States, or importing into the United States, without authority, products or processes that practice the inventions claimed in the '432 patent, including without limitation, Nintendo's Wii U.

27. Upon information and belief, Nintendo has induced the infringement and/or contributed to the infringement of the '432 patent by knowingly and with intent, actively encouraging customers to use Nintendo's infringing products, including without limitation, Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the '432 patent.

28. Upon information and belief, Nintendo intends to continue its unlawful infringing activity related to the '432 patent.

29. Nintendo's acts of infringement have caused damage to NXP, and NXP is entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's wrongful acts in an amount subject to proof at trial.

COUNT IV

(Infringement of the '316 Patent)

30. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above as if fully set forth herein.

31. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and has been directly infringing, contributing to the infringement of, and/or inducing others to infringe the '316 patent by making, using, selling, and/or offering to sell in the United States, or importing

1 into the United States, without authority, products or processes that practice the inventions
2 claimed in the '316 patent, including without limitation, Nintendo's Wii U.

3 32. Upon information and belief, Nintendo has induced the infringement and/or
4 contributed to the infringement of the '316 patent by knowingly and with intent, actively
5 encouraging customers to use Nintendo's infringing products, including without limitation,
6 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
7 '316 patent.

8 33. Upon information and belief, Nintendo intends to continue its unlawful
9 infringing activity related to the '316 patent.

10 34. Nintendo's acts of infringement have caused damage to NXP, and NXP is
11 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
12 wrongful acts in an amount subject to proof at trial.

13 **COUNT V**

14 **(Infringement of the '503 Patent)**

15 35. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above
16 as if fully set forth herein.

17 36. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and
18 has been directly infringing, contributing to the infringement of, and/or inducing others to infringe
19 the '503 patent by making, using, selling, and/or offering to sell in the United States, or importing
20 into the United States, without authority, products or processes that practice the inventions
21 claimed in the '503 patent, including without limitation, Nintendo's Wii U.

22 37. Upon information and belief, Nintendo has induced the infringement and/or
23 contributed to the infringement of the '503 patent by knowingly and with intent, actively
24 encouraging customers to use Nintendo's infringing products, including without limitation,
25 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
26 '503 patent.

1 H. All other relief in law or in equity to which Plaintiff may show itself justly entitled.

2 DATED: May 23, 2013

BUNSON DE MORY SMITH & ALLISON LLP

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4 By: /s/ Denise M. De Mory

Denise M. De Mory, (CA Bar No. 168076)

(admitted Pro Hac Vice)

5 Cliff Win, Jr., (CA Bar No. 270517)

(admitted Pro Hac Vice)

6 BUNSON DE MORY SMITH & ALLISON LLP

7 600 Allerton Street, Suite 101

Redwood City, CA 94063

8 Telephone: 650-351-7248

Facsimile: 650-351-7253

9 Email: ddemory@bdiplaw.com

Email: cwin@bdiplaw.com

10 Michael D. Rounds (Nevada Bar No. 4734)

11 Adam P. McMillen (Nevada Bar No. 10678)

WATSON ROUNDS

12 10000 West Charleston Boulevard

Suite 240

13 Las Vegas, NV 89135

Telephone: 702-636-4902

14 Facsimile: 702-636-4904

Email: mrounds@watsonrounds.com

15 Email: amcmillen@watsonrounds.com

16 *Attorneys for Plaintiff*

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Watson Rounds, and that on this date a true and correct copy of the foregoing document, **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**, will be served upon counsel of record via electronic mail through the United States District Court’s CM/ECF system.

DATED May 23, 2013

/s/ Jeff Tillison
An Employee of Watson Rounds