

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

ACTIVISION TV, INC.,

*Plaintiff,*

v.

CINEMARK USA, INC.

*Defendant.*

Civil Action No. 2:13-CV-00692

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Activision TV, Inc. files this Complaint against Defendant Cinemark USA, Inc. (“Cinemark”) and alleges the following:

**NATURE OF THE ACTION**

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S. C. §§ 1, *et seq.*

**THE PARTIES**

2. Activision is a corporation organized under the laws of Delaware with its principal place of business at 5400 Yahl Street, Suite D, Naples, Florida 34109.

3. Upon information and belief, Cinemark USA, Inc. is a corporation organized under the laws of Texas with a principal place of business at 3900 Dallas Parkway, Suite 500, Plano, TX 75093, and a registered agent for service of process at Corporation Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, TX 78701.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, Defendant is subject to the jurisdiction of this Court by reason of its acts of patent infringement which have been committed in this Judicial District, and by virtue of its regularly conducted and systematic business contacts in this State. Further, Defendant has used infringing digital signs in the forum which are at least used at Defendant's locations in this forum. On information and belief, 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 business related to the infringement alleged herein. Further, on information and belief, Defendant is subject to the Court's general jurisdiction as a result of its activities in the forum, including, regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in Texas. As such, Defendant has purposefully availed itself of the privilege of conducting business within this Judicial District; has established sufficient minimum contacts with this Judicial District such that it should reasonably and fairly anticipate being haled into court in this Judicial District; has purposefully directed activities at residents of this State; and, at least a portion of the patent infringement claims alleged herein arise out of or are related to one or more of the foregoing activities.

6. Venue is proper in this District under 28 U.S.C. §§ 1400 (b) and 1391.

## **COUNT I** **INFRINGEMENT OF U.S. PATENT NOS. 7,369,058 and 8,330,613**

7. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 6 as though fully set forth herein.

8. On May 6, 2008, United States Patent No. 7,369,058, entitled “REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’058 Patent is attached as Exhibit A to this Complaint.

9. On December 11, 2012, United States Patent No. 8,330,613 (collectively with the ’058 Patent the “Activision Patents”), entitled “REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’613 Patent is attached as Exhibit B to this Complaint.

10. Plaintiff, as the assignee and owner of all right, title, and interest in and to the Activision Patents, has the right to assert causes of action arising under the Activision Patents and the right to any remedies for infringement thereof.

11. Defendant has been directly infringing and continues to directly infringe one or more claims of each of the Activision Patents in the United States at least by using digital signage systems including but not limited to Defendant’s Digital Menu Boards throughout the United States and in this judicial district in violation of 35 U.S.C. § 271 (a).

12. Defendant was made aware of the Activision Patents and its infringement thereof at least as early as the filing of this Complaint.

13. Despite Plaintiff’s notice regarding the Activision Patents, at least as of the filing of this Complaint, Defendant has continued to infringe the Activision Patents. On information and belief, Defendant’s infringement has been and continues to be willful.

14. Because of Defendant's infringement of the Activision Patents, Plaintiff has suffered damages and will continue to suffer damages in the future. Plaintiff is entitled to an award of such damages, but in no event less than a reasonable royalty, the precise amount to be determined at trial.

15. Plaintiff has suffered irreparable injury due to the acts of infringement by Defendant and will continue to suffer such irreparable injury unless Defendant's infringing activities are enjoined.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Activision TV, Inc. respectfully demands entry of judgment against Defendant Cinemark USA, Inc. as follows:

- A. finding that Defendant has infringed one or more claims of the Activision Patents;
- B. permanently enjoining and restraining Defendant, its agents, affiliates, subsidiaries, servants, employees, officers, directors, attorneys, and those persons in active concert with or controlled by Defendant from further infringing the Activision patents;
- C. awarding Plaintiff damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement of the Activision Patents and any continuing or future infringement of the Activision Patents through the date such judgment is entered, together with pre-judgment and post-judgment interest, costs and expenses as justified under 35 U.S.C. § 284;

D. finding Defendant's infringement of the Activision Patents to be willful, and awarding Plaintiff enhanced damages pursuant to 35 U.S.C. § 284 for such willful infringement of the Activision Patents;

E. ordering an accounting of all infringing acts including, but not limited to, those acts not presented at trial and an award of damages to Plaintiff for any such acts;

F. declaring that this case is exceptional under 35 U.S.C. § 285, and awarding Plaintiff's reasonable attorneys' fees and costs incurred in this action; and,

G. awarding such other and further relief at law or in equity as the Court deems just and proper.

Dated: September 4, 2013

Respectfully Submitted

/s/Melissa R. Smith

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**Attorney for Plaintiff  
ACTIVISION TV, INC.**