

Nature of Action and Jurisdiction

3. This cause of action arises under the Patent laws of the United States, Title 35, United States Code, and more particularly under 35 U.S.C. §§ 271 *et seq.* This Court has jurisdiction over this patent infringement action under the Judicial Code of the United States, 28 U.S.C. §§ 1338(a) and 1331.

4. Upon information and belief, Defendant Nintendo of America has engaged in business activity and infringing activity within this judicial district sufficient to vest this Court with personal jurisdiction over Defendant Nintendo of America.

Venue

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b) in that Defendant Nintendo of America is a corporation residing in this judicial district and a substantial part of the events giving rise to these claims has occurred in this judicial district. Defendant Nintendo of America also has committed acts in this judicial district that are accused to be direct and/or indirect infringement, contributory infringement, and inducement of infringement of the patent-in-suit.

FACTUAL BACKGROUND

6. The Martin Trust is the owner of all right, title, and interest in and to the '609 patent, entitled "METHOD FOR OPERATING AN ELECTRONIC MACHINE USING A POINTING DEVICE."

7. On August 9, 2005, the '609 patent was duly and legally issued by the U.S. Patent and Trademark Office in the name of the inventor, John R. Martin.

8. On March 7, 2008, this patent infringement action was initiated by John R. Martin, the inventor and then owner of the '609 patent.

9. On April 29, 2008, a request for Inter Partes Reexamination of the '609 patent was filed with the United States Patent and Trademark Office (the "USPTO"), and reexamination of the '609 patent was granted on June 12, 2008.

10. On June 3, 2008, Defendant Nintendo of America filed an unopposed motion to stay this case, pending the resolution of the reexamination proceeding before the USPTO, which motion was granted by this Court on June 4, 2008.

11. On February 17, 2011, John R. Martin assigned to the Martin Trust all right, title, and interest in and to the '609 patent. Plaintiff is the sole trustee of the Martin Trust.

12. On October 9, 2012, the USPTO's Patent Trial and Appeal Board (the "PTAB") issued its final decision on Reexamination, rejecting claims 1 and 2 from the original issued '609 patent, and allowing newly added claims 45-47 (to be renumbered as claims 3-5).

13. On July 2, 2013, the USPTO issued a Reexamination Certificate for the '609 patent, canceling original claims 1 and 2, and adding new claims 3-5 that were determined to be patentable by the PTAB.

14. A copy of the '609 patent that includes the issued Reexamination Certificate is attached hereto as Exhibit A.

15. John R. Martin has previously given Defendant Nintendo of America actual notice of the '609 patent, and the Martin Trust has previously given Defendant Nintendo of America actual notice of the Reexamination Certificate for the '609 patent.

16. On information and belief, Defendant Nintendo of America uses, has used, sells, has sold, services, has serviced, offers to sell, has offered to sell, and/or has induced others to sell, offer to sell, manufacture, and/or use electronic machines having a touch screen or a

pointing device and/or methods of operating those machines which are covered by at least one claim of the '609 patent.

17. Pursuant to 35 U.S.C. § 282, the '609 patent, including each and every claim therein, is presumed valid.

COUNT I -- PATENT INFRINGEMENT

18. Plaintiff Martin repeats and realleges the allegations set forth in the preceding paragraphs.

19. Defendant Nintendo of America has been and is now infringing the '609 patent by making, using, selling, and/or offering to sell in the United States, and/or importing into the United States systems and products covered by one or more claims of the '609 patent, including at least claim 5 thereof. Such infringing systems and products include at least the Nintendo Wii and/or one or more video games playable on the Nintendo Wii.

20. Defendant Nintendo of America has contributorily infringed and continues to contributorily infringe the '609 patent by selling, offering to sell, and/or importing in or into the United States components, materials, and/or apparatuses for use in practicing a patented process covered by one or more claims of the '609 patent, including at least claim 5 thereof, wherein such components, materials, and or apparatuses constitute a material part of the invention. Such components and/or materials include at least the Nintendo Wii and/or one or more video games playable on the Nintendo Wii. Specifically, contributorily infringing aspects of the Nintendo Wii and/or the one or more games include at least programming in either of the Nintendo Wii or Wii playable games for displaying on a visual screen a dynamic virtual keyboard and/or selectable user input buttons for use in inputting one or more of text-based information and/or user selection choices to the Nintendo Wii. Defendant Nintendo of America

has contributorily infringed and continues to contributorily infringe the '609 patent knowing that the components, materials, and/or apparatuses are especially made or especially adapted for use in infringement of the '609 patent, and are not a staple article suitable for substantial non-infringing use.

21. Defendant Nintendo of America has induced infringement and continues to induce infringement of the '609 patent by, among other things, Defendant Nintendo of America's advertising, offering and providing of services, as well as instructing, directing, and/or advising others as to how to carry out an infringement of the '609 patent in connection with programmed aspects of the Nintendo Wii and one or more video games playable on the Nintendo Wii.

22. Upon information and belief, Defendant Nintendo of America had actual knowledge of the '609 patent at the time it was infringing, inducing infringement of, and contributorily infringing the '609 patent. Notwithstanding that actual knowledge, Defendant Nintendo of America continued to infringe, induce others to infringe, and contributorily infringe the '609 patent, and still continues to do so.

23. Defendant Nintendo of America's acts of infringement, inducement of infringement, and contributory infringement have been made with full knowledge of the '609 patent. Such acts may constitute willful and deliberate infringement, entitling the Martin Trust to enhanced damages and attorneys' fees.

24. As a consequence of Defendant Nintendo of America's infringement, the Martin Trust has been irreparably damaged, to an extent not yet determined, and will continue to be irreparably damaged by such acts in the future unless Defendant Nintendo of America is enjoined by this Court from committing further acts of infringement.

25. Plaintiff is entitled to recover damages adequate to compensate the Martin Trust for Defendant Nintendo of America's infringement, which in no event can be less than a reasonable royalty.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for entry of judgment declaring:

A. That Defendant Nintendo of America has infringed, contributorily infringed, and/or induced infringement, and that by its actions will continue to infringe, contributorily infringe, and/or induce infringement of the '609 patent;

B. That Defendant Nintendo of America, its agents, employees, representatives, successors, and assigns, and those acting, or purporting to act, in privity or in concert with Defendant Nintendo of America be preliminarily and permanently enjoined from further infringement, inducing infringement, and contributory infringement of the '609 patent;

C. That Defendant Nintendo of America account for and pay to the Martin Trust all monetary relief under 35 U.S.C. § 284, adequate to compensate for the infringement of the '609 patent, but in no event less than a reasonable royalty as provided for under 35 U.S.C. § 284;

D. That Defendant Nintendo of America account for and pay to the Martin Trust enhanced damages under 35 U.S.C. § 284;

E. That the Martin Trust be awarded reasonable attorneys' fees under 35 U.S.C. § 285;

F. That the Martin Trust be granted pre-judgment and post-judgment interest on the damages caused by reason of Defendant Nintendo of America's infringement of the '609 patent;

G. That costs be awarded to the Martin Trust; and

H. That the Martin Trust be granted such other and further relief as the Court may deem just and proper under the current circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all issues so triable.

Date: October 29, 2013

Respectfully submitted,

/s/ Stephen M. Hankins

Stephen M. Hankins

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*Attorneys for Plaintiff Richard L. Verkler,
as Trustee of the John R. Martin 2002
Declaration of Trust*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 29, 2013, a true and correct copy of the foregoing AMENDED COMPLAINT was electronically filed with the Clerk of the Court via the Court's CM/ECF system, which system will send a Notification of such Electronic Filing to all counsel of record who have consented to electronic service via the Court's CM/ECF system. Such Notice of Electronic Filing from the Court's CM/ECF system constitutes service under Fed. R. Civ. P. 5(b)(2)(D) and LR5.9.

/s/ Stephen M. Hankins

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