UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISON

Babbage Holdings, LLC, **Plaintiff,** **v.** **Sony Computer Entertainment America LLC and Sony Online Entertainment LLC,** **Defendants.**	**Civil Action No. 2:13-CV-757** **JURY TRIAL DEMANDED**

SECOND AMENDED COMPLAINT

Babbage Holdings, LLC ("Babbage") files this Second Amended Complaint against Sony Computer Entertainment America LLC and Sony Online Entertainment LLC (collectively, "Defendants"),[1] and alleges as follows:

PARTIES

1. Babbage is a limited liability company existing under the laws of the State of Texas, with its principal business mailing address at 3100 Independence Pkwy, Suite 311, Plano, Texas.

2. Defendant Sony Computer Entertainment America LLC ("Sony Computer") is a Delaware corporation with its principal place of business at San Mateo, California. Defendant Sony Online Entertainment LLC ("Sony Online") is a Delaware corporation with its principal place of business at San Diego, California.

[1] This Second Amended Complaint is filed pursuant to Federal Rule of Civil Procedure 15(a)(2). Specifically, the Defendants have consented in writing to the filing of this Second Amended Complaint.

JURISDICTION AND VENUE

3. This Court has jurisdiction because this is a patent infringement case arising under the patent laws of the United States Code, Title 35. This Court has exclusive subject matter jurisdiction over this case under 28 U.S.C. § 1338(a).

4. This Court has personal jurisdiction over Defendants. Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through subsidiaries or intermediaries, offered for sale, used, made, distributed, sold, advertised, and/or marketed accused video games in the State of Texas and the Eastern District of Texas. Defendants have voluntarily sold accused products in this District, either directly to customers in this District or through intermediaries with the expectation that accused video games would be sold and distributed to customers in this District. These accused video games have been purchased and used by consumers in the Eastern District of Texas. Defendants have committed acts of infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

5. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

COUNT I
(PATENT INFRINGEMENT)

6. Babbage incorporates the foregoing paragraphs by reference as if fully set forth herein.

7. United States Patent No. 5,561,811 (the "'811 patent"), entitled "Method and Apparatus for Per-User Customization of Applications Shared By A Plurality of Users On A Single Display," was duly and legally issued by the United States Patent and Trademark Office on October 1, 1996, after a full and fair examination. A copy of the '811 patent is attached hereto

as Exhibit A. The ’811 patent relates to, among other things, a method and apparatus for entering simultaneous and sequential input events for at least one application program under the control of multiple users of a computer system.

8. Babbage is the assignee of all rights, title, and interest in and to the ’811 patent and possesses all rights of recovery under the ’811 patent.

9. Defendants have infringed the ’811 patent under 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: (a) making, using, offering to sell, and/or selling within the United States video games that practice the inventions of the ’811 patent; (b) contributing to the infringement of the ’811 patent by others in the United States; and/or (c) inducing others to infringe the ’811 patent within the United States.

10. Sony Computer, for example, has sold, offered for sale, and/or used at least Gran Turismo 5 and Uncharted 3: Drake’s Deception, thereby infringing at least claim 7 of the ’811 patent.

11. Additionally, and without limitation, Sony Computer induced at least the use of The Last of Us by others, such as its customers, who also directly infringed the ’811 patent. For example, Sony Computer maintained the PlayStation Network without which infringement by using The Last of Us could not occur—i.e., multiplayer use of the game (constituting infringement) could not occur. Sony Computer also published the game, sold the game, and/or encouraged others to use the game in multiplayer mode, and instructed users how to play the game in multiplayer mode. Sony Computer has actively and knowingly aided and abetted that direct infringement including but not limited to through the acts described above. Sony Computer actually intended to cause the acts that constitute direct infringement, knew of the ’811 patent at least as early as November 21, 2012, and knew that the above-listed acts would

lead to actual infringement with respect thereto. Sony Computer maintained the PlayStation Network for use with The Last of Us after November 21, 2012, in such a way that its customers infringed the patent by using the multiplayer mode in that game. Sony Computer also published the game, sold the game, encouraged others to use the game in multiplayer mode, and/or instructed users how to play the game in such a way that its customers infringed the patent after November 21, 2012.

12. Further, with respect to at least the above-listed games, Sony Computer sold, offered for sale, and/or imported a material component of the patented invention (e.g., videogames and/or accused videogame functionality) that is not a staple article of commerce capable of substantial non-infringing use (the multiplayer functionality of the videogames has no non-infringing use and/or no substantial non-infringing use), with knowledge of the ’811 patent, and knowledge that the component was especially made or adapted for use in an infringing manner.

13. Sony Online, for example, sold, offered for sale, and/or used at least Payday: The Heist, thereby infringing at least claim 7 of the ’811 patent.

14. Additionally, and without limitation, Sony Online induced at least the use of Payday: The Heist by others, such as its customers, who also directly infringed the ’811 patent. For example, Sony Online maintains the servers or computers without which infringement by using Payday: The Heist could not occur—i.e., multiplayer use of the game (constituting infringement) could not occur. Sony Online published the game, sold the game, encouraged others to use the game in multiplayer mode, and/or instructed users how to play the game in multiplayer mode. Sony Online has actively and knowingly aided and abetted that direct infringement including but not limited to the acts described. Sony Online actually intended to

cause the acts that constitute direct infringement, knew of the ’811 patent at least as early as November 21, 2012 (or was willfully blind to the ’811 patent, as its affiliate, Sony Computer, received a letter related to the patent, and any failure to forward that letter to Sony Online serves as a basis for a finding of willful blindness), and knew that the above-listed acts would lead to actual infringement and/or was recklessly indifferent with respect thereto. Sony Online maintained the servers or computers for use with Payday: The Heist after November 21, 2012, in such a way that its customers infringed the patent by using the multiplayer mode in that game. Sony Online published the game, sold the game, encouraged others to use the game in multiplayer mode, and/or instructed users how to play the game in such a way that its customers infringed the patent after November 21, 2012.

15. Further, with respect to at least the above-listed games, Sony Computer sold, offered for sale, and/or imported a material component of the patented invention (e.g., videogames and/or accused videogame functionality) that is not a staple article of commerce capable of substantial non-infringing use (the multiplayer functionality of the videogame has no non-infringing use and/or no substantial non-infringing use), with knowledge of the ’811 patent, and knowledge that the component was especially made or adapted for use in an infringing manner.

16. Defendants (either directly and/or indirectly through affiliates) had actual and/or constructive knowledge of the ’811 patent at least as early as 2010 and/or were recklessly indifferent thereto.

17. Upon information and belief, Defendants’ infringement was willful. Among other things, following notice of the ’811 patent, Defendants acted despite an objectively high likelihood that their action infringed a valid patent, and this objectively high likelihood of

infringement was either known or so obvious that it should have been known to Defendants. The totality of the circumstances also indicate that Defendants' infringement of the '811 patent was willful. For example, there is no evidence that Defendants sought or relied on any legal advice, much less competent legal advice, with respect to their infringement of the '811 patent, and Defendants have not presented any substantial defense to their infringement. Furthermore, Defendants have no reasonable basis for believing that they have not infringed the '811 patent or that the '811 patent was invalid or unenforceable. There is no evidence that Defendants took remedial action upon learning of the '811 patent by ceasing their infringing activity or by attempting to design around the '811 patent.

JURY DEMAND

18. Babbage hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

19. Babbage requests the following relief:

A. A judgment that Defendants have directly infringed the '811 patent, contributorily infringed the '811 patent, and induced infringement of the '811 patent, and that such infringement has been willful;

B. A judgment and order requiring Defendants to pay Baggage's damages under 35 U.S.C. § 284 , with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;

C. A judgment and order requiring Defendants to pay Babbage's prejudgment and post-judgment interest on the damages awarded;

D. A judgment and order requiring Defendants to pay Babbage the costs of this action (including all disbursements) and attorney's fees as provided by 35 U.S.C. § 285; and

E. Such other and further relief as the Court deems just and equitable.

Dated: December 20, 2013

Respectfully submitted,

s/Ujaala Rashid

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on December 20, 2013. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

s/Ujaala Rashid
UJAALA RASHID