

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MONKEYMEDIA, INC.,)	
)	CIVIL ACTION NO. 1:10-cv-00319
Plaintiff,)	
)	
vs.)	JURY TRIAL DEMANDED
)	
APPLE, INC.,)	
)	
Defendant.)	

SECOND SUPPLEMENTAL COMPLAINT

MONKEYmedia, Inc. brings this Second Supplemental Complaint against Apple, Inc. for infringement of new claims in U.S. Patent No. 6,393,158 ('158) that were determined to be patentable by the United States Patent and Trademark Office, following reexamination.

I. PARTIES

1. Plaintiff MONKEYmedia, Inc. ("MONKEYmedia") is a Texas corporation with its principal place of business in Austin, Texas.
2. Defendant Apple, Inc. ("Apple") has appeared and answered herein.

II. JURISDICTION AND VENUE

3. Plaintiff MONKEYmedia asserts causes of action under 35 U.S.C. § 271 for infringement of the '158 Patent. This Court has original and exclusive subject matter jurisdiction over these claims under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

III. The '158 Patent

5. As described in Plaintiff's underlying Complaint, Eric Gould Bear, the founder of MONKEYmedia, is a prolific inventor and is named as the first inventor in over 100 patents and

patent applications. The '158 Patent is in the "Seamless Expansion" patent family. The inventions in the Seamless Expansion patent family, which were conceived by Bear and his co-inventor at least as early as 1994, concern the display of optional content in the context of audio-visual content streams. MONKEYmedia is the owner by assignment of all right, title and interest in and to the '158 Patent.

6. After MONKEYmedia filed the above-referenced lawsuit, defendants in this action and a related action filed a request for *ex parte* reexamination of the '158 Patent on December 3, 2010. This petition was granted, and, based on the reexamination, Claims 1-34 were cancelled, and new Claims 35-41 were added and determined to be patentable. A true and correct copy of the "Ex Parte Reexamination Certificate Issued Under 35 U.S.C. §307", which was issued on February 22, 2013, is attached hereto as Exhibit 1.

7. The relevant claims in the '158 Patent are generally directed towards methods for playing stored content, such as audiovisual content on DVDs and Blu-ray discs, by playing a "main" video segment and determining whether a content expansion is desired. If a content expansion is desired, then the expansion is played rather than the next ("continuing") segment of the main video. After the viewer finishes with the expansion, the main video resumes. If a content expansion is not desired, the continuing segment of the main video is played.

8. The methods claimed in the '158 Patent are also relevant to the playing of certain interactive ads and similar content on computers, including mobile devices. For example, Apple has introduced iPhone and iPod Touch devices with the iOS operating system and also introduced the iPad. These devices have a platform that allows advertisers to display a banner or other cue on the device while a user is listening to audio or watching a video in a particular application. If the system running the application determines that the content expansion is

desired by the viewer (i.e. the viewer has clicked on the banner), the device pauses the main audio and/or video and causes the ad or other expansion content to take over the screen and play in the application rather than playing the next (“continuing”) portion of the main audio and/or video. After the viewer finishes with the expansion, the main audio and/or video resumes. If the expansion content is not desired, the device plays the next portion of the main audio and/or video.

IV. CAUSES OF ACTION

Infringement of the '158 Patent

9. MONKEYmedia reincorporates by reference and realleges paragraphs 1 through 8 above as if fully set forth herein.

10. Apple has, without authority, consent, right, or license, and in direct infringement of the '158 Patent in violation of 35 U.S.C. § 271(a), practiced the methods claimed in the '158 Patent. Specifically, products manufactured, sold and offered for sale by Apple practice each step of the methods in one or more of claims 35-41 of the '158 Patent.

11. Moreover, Apple has indirectly infringed the '158 Patent in connection with its products in violation of 35 U.S.C. § 271(b), by actively inducing third parties, such as advertisers, developers and/or users to directly infringe the claims of the '158 Patent. This active inducement includes encouraging such parties to directly infringe the '158 Patent by carrying out the methods disclosed in those claims on the Apple Devices.

12. Apple has also created and/or distributed in the United States, features incorporated into its products, knowing that such features are especially made and adapted for use in infringing the '158 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. Third parties, such as advertisers, developers and/or users directly

infringe these claims by practicing the methods in connection with Apple devices that provide the opportunity for Seamless Expansion. This conduct by Apple constitutes contributory infringement under 35 U.S.C. § 271(c).

V. JURY DEMAND

13. MONKEYmedia demands a trial by jury on all issues.

VI. PRAYER

14. WHEREFORE, MONKEYmedia respectfully requests the following relief:

(a) That this Court find Apple has committed acts of patent infringement in violation of the Patent Act, 35 U.S.C. § 271;

(b) That this Court enter judgment that:

(i) MONKEYmedia is the owner of the MONKEYmedia '158 Patent and all rights of recovery thereunder;

(ii) The MONKEYmedia '158 Patent is valid and enforceable; and

(iii) Apple has infringed the MONKEYmedia '158 Patent;

(c) That, after trial, this Court enter an injunction enjoining Apple, its officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with them, from continuing the acts herein complained of, and more particularly, that Apple and such other persons be permanently enjoined and restrained from further infringing the MONKEYmedia '158 Patent, including in connection with the accused products;

(d) That this Court require Apple to file with this Court, within thirty (30) days after the entry of final judgment, a written statement under oath setting forth in detail the manner in which Apple has complied with the injunction;

(e) That the Court award MONKEYmedia damages of no less than a reasonable royalty that have been incurred as a result of Apple's patent infringement, with pre-judgment interest;

(f) That this Court award MONKEYmedia its costs and disbursements in this action;

(g) That this Court award MONKEYmedia post-judgment interest on all amounts awarded to it, at the maximum rate allowed by law; and

(j) That this Court grant MONKEYmedia all further relief to which it may be entitled.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY
A Professional Corporation
401 Congress Avenue, Suite 2200, P. O. Box 98
Austin, Texas 78701
512-480-5600 Tel./512- 480-5853 Telecopier

By: /s/ Steven D. Smit
Steven D. Smit
State Bar ID No. 18527500
William G. Christian
State Bar ID No. 00793505
Matthew C. Powers
State Bar ID No. 24046650

ATTORNEYS FOR PLAINTIFF
MONKEYMEDIA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notice of this filing to the following:

Vincent J. Belusko (admitted Pro Hac Vice)
Bita Rahebi (admitted Pro Hac Vice)
Alex S. Yap (admitted Pro Hac Vice)
MORRISON & FOERSTER LLP
707 Wilshire Blvd, Suite 6000
Los Angeles, California 90017-3543
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Alan D. Albright (State Bar No. 00973650)
Brian C. Nash (State Bar No. 24051103)
BRACEWELL & GIULIANI LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Telephone: (512) 472-7800
Facsimile: (512) 472-9123

/s/ Steven D. Smit
Steven D. Smit