

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

**KONINKLIJKE PHILIPS N.V. and  
U.S. PHILIPS CORPORATION**

Plaintiff,

v.

**NINTENDO CO., LTD. and  
NINTENDO OF AMERICA INC.**

Defendant.

C.A. No. 14-602-GMS

**DEMAND FOR JURY TRIAL**

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Koninklijke Philips N.V. and U.S. Philips Corporation, by way of their First Amended Complaint for Patent Infringement (“Amended Complaint”) against Defendants Nintendo Co. Ltd. and Nintendo of America, allege as follows:

**Nature of the Action**

1. This is a civil action for infringement of a patent arising under the laws of the United States relating to patents, including 35 U.S.C. § 281.

**Subject Matter Jurisdiction**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this civil action arises under the laws of the United States and because this civil action arises under an Act of Congress relating to patents.

**The Parties**

3. Plaintiff Koninklijke Philips N.V. is a corporation organized under the laws of the Netherlands, with a place of business in Amsterdam, the Netherlands. Plaintiff U.S. Philips

Corporation is a corporation organized under the laws of Delaware with its principal place of business at 3000 Minuteman Road, M/S 109, Andover, MA 01810. Plaintiffs Koninklijke Philips N.V. and U.S. Philips Corporation are collectively referred to in this Amended Complaint as “Philips.”

4. Upon information and belief, Defendant Nintendo Co. Ltd. is a corporation organized and existing under the laws of Japan, having a principal place of business at 11-1, Kamitoba, Hokotate-cho, Minami-Ku, Kyoto, 601-8116, Japan.

5. Upon information and belief, Defendant Nintendo of America is a corporation organized and existing under the laws of the State of Washington with its principal place of business at 4600 150th Avenue, Northeast, Redmond, Washington 98052.

6. Upon information and belief, Defendant Nintendo America is a wholly-owned subsidiary of Defendant Nintendo Japan. Nintendo Co. Ltd. and Nintendo of America are sometimes collectively referred to in this Amended Complaint as “Nintendo.”

#### **Factual Background**

7. Philips is a world-renowned company that has expended enormous efforts in recent decades to achieve advancements in research and development in various technological fields. Philips has engaged in the field of applied electronics for many years and has conducted research in areas relating to the visual representation of spatial processes and to automatic processes, electronic displays of information, and the control of content delivery between multiple computer systems. The present patents-in-suit stem from these fields of research and development and claim protection for an interactive system for which a user can control apparatuses remotely and control content in an intuitive manner. Such intuitive mechanisms are used in present-day home video game consoles.

**Interactive Virtual Modeling Products**

8. Nintendo has made, used, sold, offered for sale, and imported within the United States products with interactive virtual modeling features, including but not limited to motion-controlled gaming consoles and motion-detecting devices. These products are hereinafter referred to in this Amended Complaint as “interactive virtual modeling products.”

9. Nintendo has made, used, sold, offered for sale, and imported motion-controlled gaming consoles and motion-detecting devices including the Wii console, Wii Remote Plus Controller, Wii Remote Controller, Wii Nunchuk Controller, Wii MotionPlus, Wii Balance Board, Wii U console, Wii U GamePad, and Wii Mini console.

10. Upon information and belief, Nintendo has made, used, sold, offered for sale, and imported interactive virtual modeling hardware and software products within the United States that model a user’s body in a virtual environment by animating a virtual body to follow the physical movements of the user.

11. The interactive virtual modeling products or services of Nintendo have been made, used, sold, offered for sale, and imported within the United States without any authority or license from Philips.

**Human-Computer Interaction Products**

12. Nintendo has made, used, sold, offered for sale, and imported within the United States products with human-computer interaction (“HCI”) features, including but not limited to HCI gaming systems and HCI pointing devices. These products are hereinafter referred to in this Amended Complaint as “HCI products.”

13. Nintendo has made, used, sold, offered for sale, and imported HCI gaming systems and HCI pointing devices including the Wii console, Wii U console, Wii Mini console, Wii Remote Plus Controller, and Wii Remote Controller.

14. Upon information and belief, Nintendo has made, used, sold, offered for sale, and imported HCI hardware and software within the United States that make use of a camera, computer vision, and image processing techniques.

15. Nintendo's HCI products or services have been made, used, sold, offered for sale, and imported within the United States without any authority or license from Philips.

### **Touch-Screen Products**

16. Nintendo has made, used, sold, offered for sale, and imported within the United States products with touch-screen displays, including but not limited to touch-screen gaming devices. These products are hereinafter referred to in this Amended Complaint as "touch-screen products."

17. Nintendo has made, used, sold, offered for sale, and imported touch-screen gaming devices including the Wii U GamePad, 3DS, 3DS XL, 2DS, DS, DSi, DS Lite, and DSi XL.

18. Upon information and belief, Nintendo has made, used, sold, offered for sale, and imported touch-screen hardware and software within the United States that implement a touch-screen image scrolling system.

19. Nintendo's touch-screen products have been made, used, sold, offered for sale, and imported within the United States without any authority or license from Philips.

### **Text Entry Products**

20. Nintendo has made, used, sold, offered for sale, and imported within the United States products with text entry features, including but not limited to text entry gaming devices. These products are hereinafter referred to in this Amended Complaint as "text entry products."

21. Nintendo has made, used, sold, offered for sale, and imported text entry gaming devices including the Wii U GamePad.

22. Upon information and belief, Nintendo has made, used, sold, offered for sale, and imported text entry hardware and software products within the United States that input characters to a device.

23. The text entry products or services of Nintendo have been made, used, sold, offered for sale, and imported within the United States without any authority or license from Philips.

### **Streaming Products**

24. Nintendo has made, used, sold, offered for sale, and imported within the United States products with streaming features, including but not limited to streaming gaming devices. These products are hereinafter referred to in this Amended Complaint as “streaming products.”

25. Nintendo has made, used, sold, offered for sale, and imported streaming gaming devices including the Wii U console and DS devices including the 3DS, 3DS XL, and 2DS.

26. Upon information and belief, Nintendo has made, used, sold, offered for sale, and imported streaming hardware and software within the United States that enables the streaming of files.

27. Nintendo’s streaming products have been made, used, sold, offered for sale, and imported within the United States without any authority or license from Philips.

### **Personal Jurisdiction and Venue**

28. Upon information and belief, Nintendo has voluntarily placed interactive virtual modeling products into the stream of United States commerce, conscious that this judicial district was the likely destination of a substantial quantity of such products or services.

29. Upon information and belief, Nintendo has voluntarily placed HCI products into the stream of United States commerce, conscious that this judicial district was the likely destination of a substantial quantity of such products or services.

30. Upon information and belief, Nintendo has voluntarily placed touch-screen products into the stream of United States commerce, conscious that this judicial district was the likely destination of a substantial quantity of such products or services.

31. Upon information and belief, Nintendo has voluntarily placed text entry products into the stream of United States commerce, conscious that this judicial district was the likely destination of a substantial quantity of such products or services.

32. Upon information and belief, Nintendo has voluntarily placed streaming products into the stream of United States commerce, conscious that this judicial district was the likely destination of a substantial quantity of such products or services.

33. Upon information and belief, a substantial part of the events giving rise to Philips' claim for patent infringement occurred in this judicial district.

34. Upon information and belief, Nintendo maintains or has maintained continuous and systematic contacts with this judicial district.

35. Upon information and belief, Nintendo is subject to personal jurisdiction in this district because it purposefully engaged in activities that gave rise to this claim for patent infringement and which were directed at residents of this judicial district.

36. Upon information and belief, Nintendo is subject to personal jurisdiction in this district because it has maintained continuous and systematic contacts with this judicial district.

37. Upon information and belief, Nintendo resides in this district for purposes of 28 U.S.C. §§ 1391(c) and 1400(b) because it is subject to personal jurisdiction in this district.

38. Upon information and belief, venue for this civil action in this judicial district is proper under 28 U.S.C. § 1391. Moreover, Nintendo of America appointed the Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 as its registered agent in Delaware.

**Count I - Infringement of U.S. Patent No. 6,285,379**

39. Philips incorporates by reference each and every allegation set forth in this Amended Complaint.

40. United States Letters Patent No. 6,285,379 (the "'379 patent") issued on September 4, 2001 to Richard D. Gallery. A copy of the '379 patent, entitled "Virtual Body Control Device" is attached hereto as Exhibit A.

41. Philips is the owner by assignment of the '379 patent.

42. Philips provided actual notice to Nintendo of the '379 patent no later than November 14, 2011 by way of a letter from Mr. Susumu Tsugaru to Mr. Toshiro Hibino.

43. Nintendo has had actual knowledge of the '379 patent no later than the date that it received the November 14, 2011 letter.

44. Nintendo has had actual knowledge of its infringement of the '379 patent no later than the date that it received the November 14, 2011 letter.

45. Upon information and belief, Nintendo has directly infringed, induced infringement of, and contributed to infringement of one or more claims of the '379 patent, both literally and under the doctrine of equivalents, by making, using, selling, offering for sale, and importing interactive virtual modeling products within the United States.

46. With regard to inducement of infringement, Nintendo had knowledge of its induced infringement of the '379 patent no later than when it received a notice letter dated December 16, 2011 from Mr. Susumu Tsugaru to Mr. Toshiro Hibino.

47. The December 16, 2011 notice letter provided Nintendo with knowledge of Nintendo's and its users' infringement. Moreover, Nintendo has with specific intent or willful blindness, actively and knowingly induced infringement of the '379 patent by providing its users and others with detailed explanations, instructions, information, and support services related to

arrangements, applications, and uses of its interactive virtual modeling products that promote and demonstrate how to use its interactive virtual modeling products in an infringing manner, and upon information and belief, those users and others have used the interactive virtual modeling products in an infringing manner.

48. With regard to contributory infringement, Nintendo has the requisite knowledge that its interactive virtual modeling products are especially made for use in an infringement of the '379 patent. For example, the Wii Remote Plus Controller, which is marketed and sold as a separate motion-detecting device, is made especially to be used in conjunction with Nintendo's motion-controlled gaming consoles including, for example, the Wii console, the Wii U console, and the Wii Mini console. Nintendo's interactive virtual modeling products, including its motion-detecting devices, have no substantial noninfringing use because they are manufactured for use only in Nintendo's motion-controlled gaming consoles and such use is infringing.

49. Upon information and belief, the infringing interactive virtual modeling products of Nintendo include but are not limited to motion-controlled gaming consoles and motion-detecting devices such as the Wii and Wii U video gaming systems and related software and accessories including, for example, the Wii console, Wii Remote Plus Controller, Wii Remote Controller, Wii Nunchuk Controller, Wii MotionPlus, Wii Balance Board, Wii U console, Wii U GamePad, and Wii Mini console.

50. Upon information and belief, the infringement of the '379 patent by Nintendo has been deliberate and willful.

**Count II - Infringement of U.S. Patent No. 8,537,231**

51. Philips incorporates by reference each and every allegation set forth in this Amended Complaint.



52. United States Letters Patent No. 8,537,231 (the “’231 patent”) issued on September 17, 2013 to Gerhardus Engbertus Mekenkamp and Tim Dekker. A copy of the ’231 patent, entitled “User Interface System Based on Pointing Device” is attached hereto as Exhibit B.

53. Koninklijke Philips N.V. is the owner by assignment of the ’231 patent.

54. Philips provided actual notice of the ’231 patent to Nintendo no later than May 14, 2014, the filing date of Philips’ original Complaint for Patent Infringement (“Complaint”).

55. Nintendo has had actual knowledge of the ’231 patent no later than May 14, 2014, the filing date of the Complaint.

56. Nintendo has had actual knowledge of its infringement of the ’231 patent no later than May 14, 2014, the filing date of the Complaint.

57. Upon information and belief, Nintendo has directly infringed, induced infringement of, and contributed to infringement of one or more claims of the ’231 patent, both literally and under the doctrine of equivalents, by making, using, selling, offering for sale, and importing HCI products within the United States.

58. With regard to inducement of infringement, Nintendo had knowledge of inducing its users and others to infringe the ’231 patent no later than May 14, 2014, the filing date of the Complaint.

59. Nintendo has with specific intent or willful blindness, actively and knowingly induced infringement of the ’231 patent by providing its users and others with detailed explanations, instructions, information, and support services related to arrangements, applications, and uses of its HCI products that promote and demonstrate how to use its HCI products in an infringing manner, and upon information and belief, those users and others have used the HCI products in an infringing manner.

60. With regard to contributory infringement, Nintendo has the requisite knowledge that its HCI products are especially made for use in an infringement of the '231 patent. For example, the Wii Remote Plus Controller, which is marketed and sold as a separate HCI pointing device, is made especially to be used in conjunction with Nintendo's HCI gaming systems including, for example, the Wii console, the Wii U console, and the Wii Mini console. Nintendo's HCI products, including its HCI pointing devices, have no substantial noninfringing use because they are manufactured for use only in Nintendo's HCI gaming systems and such use is infringing.

61. Upon information and belief, the infringing HCI products of Nintendo include but are not limited to HCI gaming systems and HCI pointing devices such as the Wii and Wii U video gaming systems and related software and accessories including, for example, the Wii console, Wii Remote Plus Controller, Wii Remote Controller, Wii U console, and Wii Mini console.

62. Upon information and belief, the infringement by Nintendo has been deliberate and willful.

**Count III - Infringement of U.S. Patent No. 6,690,387**

63. Philips incorporates by reference each and every allegation set forth in this Amended Complaint.

64. United States Letters Patent No. 6,690,387 (the "'387 patent") issued on February 10, 2004 to John Zimmerman and Jacquelyn Annette Martino. A copy of the '387 patent, entitled "Touch-Screen Image Scrolling System and Method" is attached hereto as Exhibit C.

65. Koninklijke Philips N.V. is the owner by assignment of the '387 patent.

66. Philips provided actual notice to Nintendo of the '387 patent no later than September 5, 2013 by way of a letter from Mr. Susumu Tsugaru to Mr. Toshiro Hibino.

67. Nintendo has had actual knowledge of the '387 patent no later than the date that it received the September 5, 2013 letter.

68. Nintendo has had actual knowledge of its infringement of the '387 patent no later than the date that it received the September 5, 2013 letter.

69. Upon information and belief, Nintendo has directly infringed and induced infringement of one or more claims of the '387 patent, both literally and under the doctrine of equivalents, by making, using, selling, offering for sale, and importing interactive virtual modeling products within the United States.

70. With regard to inducement of infringement, Nintendo knowingly induced its users and others to infringe the '387 patent no later than September 5, 2013.

71. Nintendo has with specific intent or willful blindness, actively and knowingly induced infringement of the '387 patent by providing its users and others with detailed explanations, instructions, videos, information, and support services related to arrangements, applications, and uses of its touch-screen products that promote and demonstrate how to use its touch-screen products in an infringing manner, and upon information and belief, those users and others have used the touch-screen products in an infringing manner.

72. Upon information and belief, the infringing touch-screen products of Nintendo include but are not limited to touch-screen gaming devices such as the Wii U and DS video gaming systems, related software, and accessories including, for example, the Wii U GamePad, 3DS, 3DS XL, 2DS, DS, DSi, DS Lite, and DSi XL.

73. Upon information and belief, the infringement of the '387 patent by Nintendo has been deliberate and willful.

**Count IV - Infringement of U.S. Patent No. 7,184,064**

74. Philips incorporates by reference each and every allegation set forth in this Amended Complaint.

75. United States Letters Patent No. 7,184,064 (the “’064 patent”) issued on February 27, 2007 to John Zimmerman and Jacquelyn Annette Martino. A copy of the ’064 patent, entitled “Touch-Screen Image Scrolling System and Method” is attached hereto as Exhibit D.

76. Koninklijke Philips N.V. is the owner by assignment of the ’064 patent.

77. Philips provided actual notice of the ’064 patent to Nintendo no later than the filing date of the Amended Complaint.

78. Nintendo has had actual knowledge of the ’064 patent no later than the filing date of the Amended Complaint.

79. Nintendo has had actual knowledge of its infringement of the ’064 patent no later than the filing date of the Amended Complaint.

80. Upon information and belief, Nintendo has directly infringed and induced infringement of one or more claims of the ’064 patent, both literally and under the doctrine of equivalents, by making, using, selling, offering for sale, and importing touch-screen products within the United States.

81. With regard to inducement of infringement, Nintendo had knowledge of inducing its users and others to infringe the ’064 patent no later than the filing date of the Amended Complaint.

82. Nintendo has with specific intent or willful blindness, actively and knowingly induced infringement of the ’064 patent by providing its users and others with detailed explanations, instructions, information, videos, and support services related to arrangements, applications, and uses of its touch-screen products that promote and demonstrate how to use its touch-screen products in an infringing manner, and upon information and belief, those users and others have used the touch-screen products in an infringing manner.

83. Upon information and belief, the infringing touch-screen products of Nintendo include but are not limited to touch-screen gaming devices such as the Wii U and DS video gaming

systems, related software, and accessories including, for example, the Wii U GamePad, 3DS, 3DS XL, 2DS, DS, DSi, DS Lite, and DSi XL.

84. Upon information and belief, the infringement of the '064 patent by Nintendo has been deliberate and willful.

**Count V - Infringement of RE 44,913**

85. Philips incorporates by reference each and every allegation set forth in this Amended Complaint.

86. United States Letters Patent No. RE 44,913 (the "'913 patent") issued on May 27, 2014 to Matthew J. Bickerton. A copy of the '913 patent, entitled "Text Entry Method and Device Therefor" is attached hereto as Exhibit E.

87. Koninklijke Philips N.V. is the owner by assignment of the '913 patent.

88. The '913 patent is a reissue patent of United States Letters Patent No. 6,885,318 (the "'318 patent").

89. The '318 patent issued on April 26, 2005 to Matthew J. Bickerton. A copy of the '318 patent, entitled "Text Entry Method and Device Therefor" is attached hereto as Exhibit F.

90. Koninklijke Philips N.V. is the owner by assignment of the '318 patent.

91. Philips provided actual notice to Nintendo of the '318 patent no later than September 5, 2013 by way of a letter from Mr. Susumu Tsugaru to Mr. Toshiro Hibino.

92. Philips provided actual notice to Nintendo that the '318 patent was currently in reissue no later than the date that Nintendo received the September 5, 2013 letter.

93. Nintendo has had actual knowledge of the '318 patent no later than the date that it received the September 5, 2013 letter.

94. Nintendo has had actual knowledge that the '318 patent was currently in reissue no later than the date that it received the September 5, 2013 letter.

95. Nintendo has had actual knowledge of its infringement of the '913 patent no later than May 27, 2014, the date the '913 patent issued.

96. Upon information and belief, Nintendo has directly infringed and induced infringement of one or more claims of the '913 patent, both literally and under the doctrine of equivalents, by making, using, selling, offering for sale, and importing text entry products within the United States.

97. With regard to inducement of infringement, Nintendo knowingly induced its users and others to infringe the '913 patent no later than May 27, 2014, the date the '913 patent issued.

98. Nintendo has with specific intent or willful blindness, actively and knowingly induced infringement of the '913 patent by providing its users and others with detailed explanations, instructions, videos, information, and support services related to arrangements, applications, and uses of its text entry products that promote and demonstrate how to use its text entry products in an infringing manner, and upon information and belief, those users and others have used the text entry products in an infringing manner.

99. Upon information and belief, the infringing text entry products of Nintendo include but are not limited to text entry gaming devices such as the Wii U video gaming systems, related software, and accessories including, for example, the Wii U GamePad.

100. Upon information and belief, the infringement of the '913 patent by Nintendo has been deliberate and willful.

**Count VI - Infringement of U.S. Patent 7,529,806**

101. Philips incorporates by reference each and every allegation set forth in this Amended Complaint.

102. United States Letters Patent No. 7,529,806 (the “’806 patent”) issued on May 5, 2009 to Yevgeniy Eugene Shteyn. A copy of the ’806 patent, entitled “Partitioning of MP3 Content File for Emulating Streaming” is attached hereto as Exhibit G.

103. Koninklijke Philips N.V. is the owner by assignment of the ’806 patent.

104. Philips provided actual notice of the ’806 patent to Nintendo no later than the filing date of the Amended Complaint.

105. Nintendo has had actual knowledge of the ’806 patent no later than the filing date of the Amended Complaint.

106. Nintendo has had actual knowledge of its infringement of the ’806 patent no later than the filing date of the Amended Complaint.

107. Upon information and belief, Nintendo has directly infringed and induced infringement of one or more claims of the ’806 patent, both literally and under the doctrine of equivalents, by making, using, selling, offering for sale, and importing streaming products within the United States.

108. With regard to inducement of infringement, Nintendo had knowledge of inducing its users and others to infringe the ’806 patent no later than the filing date of the Amended Complaint.

109. Nintendo has with specific intent or willful blindness, actively and knowingly induced infringement of the ’806 patent by providing its users and others with detailed explanations, instructions, information, and support services related to arrangements, applications, and uses of its streaming products that promote and demonstrate how to use its streaming products in an infringing manner, and upon information and belief, those users and others have used the streaming products in an infringing manner.

110. Upon information and belief, the infringing streaming products of Nintendo include but are not limited to streaming gaming devices such as the Wii U and DS video gaming systems,

related software, and accessories including, for example, the Wii U console, 3DS, 3DS XL, and 2DS.

111. Upon information and belief, the infringement of the '806 patent by Nintendo has been deliberate and willful.

**Prayer for Relief**

**WHEREFORE**, Philips respectfully requests that judgment be entered:

- A. declaring that the Defendants have infringed the '379, '231, '387, '064, '913, and '806 patents;
- B. declaring that the Defendants' infringement of the '379, '231, '387, '064, '913, and '806 patents has been deliberate and willful;
- C. compensating Philips for all damages caused by the Defendants' infringement of the '379, '231, '387, '064, '913, and '806 patents;
- D. enhancing Philips's damages up to three times their amount pursuant to 35 U.S.C. § 284;
- E. preliminarily and permanently enjoining the Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from making, using, selling, offering for sale, and importing within the United States interactive virtual modeling products, HCI products, touch-screen products, text entry products, and streaming products;
- F. granting Philips pre- and post-judgment interest on its damages, together with all costs and expenses;
- G. granting Philips its reasonable attorney fees pursuant to 35 U.S.C. § 285; and
- H. awarding such other relief as this Court may deem just and proper.



**Demand for Jury Trial**

Plaintiff respectfully requests a trial by jury on all claims so triable.

ASHBY & GEDDES

*/s/ Tiffany Geyer Lydon*

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