

Stores Texas, L.L.C.; Sam's East, Inc.; Sam's West, Inc.; RadioShack Corporation; Toys "R" Us-Delaware, Inc.; Dell Inc.; QVC, Inc.; Trans World Entertainment Corporation; BJ's Wholesale Club, Inc.; PC Connection, Inc.; CompUSA.com, Inc.; and Tiger Direct, Inc. (collectively the "Defendants"). In support, Plaintiff UltimatePointer, L.L.C. alleges as follows:

INTRODUCTION

1. This is an action for patent infringement brought under 35 U.S.C. § 271 for Defendants' direct and indirect infringement of United States Patent No. 7,746,321 ("the '321 patent") by making, using, selling, offering to sell, and/or importing Nintendo Wii video game console systems, Wii games, Wii controllers, and Wii sensor bars (the "accused products") in this Judicial District and elsewhere in the United States, without authorization of the owner of the '321 patent, Plaintiff UltimatePointer, L.L.C.

THE PARTIES

2. Plaintiff UltimatePointer, L.L.C. ("UltimatePointer") is a limited liability company organized and existing under the laws of the state of Delaware.

3. Defendant Nintendo Co., Ltd. ("Nintendo Japan") is a Japanese corporation with a regular place of business at 11-1 Kamitoba hokotate-cho, Minami-ku, Kyoto 601-8501 Japan. Nintendo Japan is not registered to do business in Texas and does not have a regular place of business in Texas. Nintendo Japan has appeared in this action through its counsel of record.

4. Defendant Nintendo of America Inc. ("Nintendo America") is a corporation organized and existing under the laws of the State of Washington, with a regular place of business at 4600 150th Avenue N.E., Redmond, Washington 98052. Nintendo America is registered to do business in Texas and has appeared in this action through its counsel of record.

5. Defendant GameStop Corporation (“GameStop”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 625 Westport Parkway, Grapevine, Texas 76051. GameStop is registered to do business in Texas and has appeared in this action through its counsel of record.

6. Defendant Best Buy Stores, L.P. (“Best Buy Stores”) is a corporation organized and existing under the laws of the Commonwealth of Virginia with a regular place of business at 7601 Penn Ave South, Richfield, Minnesota 55423. Best Buy Stores is registered to do business in Texas and has appeared in this action through its counsel of record.

7. Defendant BestBuy.com, LLC (“BestBuy.com”) is a corporation organized and existing under the laws of the Commonwealth of Virginia with a regular place of business at 7601 Penn Ave South, Richfield, Minnesota 55423. BestBuy.com is registered to do business in Texas and has appeared in this action through its counsel of record.

8. Defendant Best Buy Purchasing, LLC (“Best Buy Purchasing”) is a corporation organized and existing under the laws of the State of Minnesota with a regular place of business at 7601 Penn Ave South, Richfield, Minnesota 55423. Best Buy Purchasing is not registered to do business in Texas, but has appeared in this action through its counsel of record.

9. Defendant Sears, Roebuck and Co. (“Sears”) is a corporation organized and existing under the laws of the State of New York with a regular place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Sears is registered to do business in Texas and has appeared in this action through its counsel of record.

10. Defendant Kmart Corporation (“Kmart”) is a corporation organized and existing under the laws of the State of Michigan with a regular place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Kmart has a regular place of business in Texas at 1100

McCann Road, Longview, Texas 75601 and has appeared in this action through its counsel of record.

11. Defendant Target Corporation (“Target”) is a corporation organized and existing under the laws of the State of Minnesota with a regular place of business at 1000 Nicollet Mall, Minneapolis, MN 55403. Target is registered to do business in Texas and has appeared in this action through its counsel of record.

12. Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Wal-Mart is registered to do business in Texas and has appeared in this action through its counsel of record.

13. Defendant Wal-Mart Stores Texas, L.L.C. (“Wal-Mart Texas”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 702 SW 8th Street, Bentonville, Arkansas 72716. Wal-Mart Texas is registered to do business in Texas and has appeared in this action through its counsel of record.

14. Defendant Sam’s West, Inc. (“Sam’s West”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 702 SW 8th Street, Bentonville, Arkansas 72716. Sam’s West is registered to do business in Texas and has appeared in this action through its counsel of record.

15. Defendant Sam’s East, Inc. (“Sam’s East”) is a corporation organized and existing under the laws of the State of Arkansas with a regular place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Sam’s East is registered to do business in Texas and has appeared in this action through its counsel of record.

16. Defendant RadioShack Corporation (“RadioShack”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 300 Trinity Campus Circle, Fort Worth, Texas 76102. RadioShack is registered to do business in Texas and has appeared in this action through its counsel of record.

17. Defendant Toys “R” Us-Delaware, Inc. (“Toys R Us”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at One Geoffrey Way, Wayne, New Jersey 07470. Toys R Us is registered to do business in Texas and has appeared in this action through its counsel of record.

18. Defendant Dell Inc. (“Dell”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 1 Dell Way, Round Rock, Texas 78682. Dell is registered to do business in Texas and has appeared in this action through its counsel of record.

19. Defendant QVC, Inc. (“QVC”) is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 1200 Wilson Blvd., West Chester, Pennsylvania 19380. QVC is registered to do business in Texas and has a regular place of business in Texas located at 9855 Westover Hills Boulevard San Antonio, Texas 78251. QVC has appeared in this action through its counsel of record.

20. Defendant Trans World Entertainment Corporation (“Trans World”) is a corporation organized and existing under the laws of the State of New York with a regular place of business at 38 Corporate Circle, Albany, New York 12203. Trans World is registered to do business in Texas and has a regular place of business in Texas located at 4601 South Broadway Tyler, Texas 75703. Trans World has appeared in this action through its counsel of record.

21. Defendant BJ's Wholesale Club, Inc. ("BJ's Wholesale") is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 25 Research Drive, Westborough, Massachusetts 01581. BJ's Wholesale is not registered to do business in Texas and does not have a regular place of business in Texas. BJ's Wholesale has appeared in this action through its counsel of record.

22. Defendant PC Connection, Inc. ("PC Connection") is a corporation organized and existing under the laws of the State of Delaware with a regular place of business at 730 Milford Road, Merrimack, New Hampshire 03054. PC Connection is not registered to do business in Texas and does not have a regular place of business in Texas. PC Connection has appeared in this action through its counsel of record.

23. Defendant CompUsa.com, Inc. ("CompUsa") is a corporation organized and existing under the laws of the State of Florida with a regular place of business at 7795 West Flagler Street, Suite 35, Miami, Florida 33144. CompUsa is not registered to do business in Texas and does not have a regular place of business in Texas. CompUsa has appeared in this action through its counsel of record.

24. Defendant Tiger Direct, Inc. ("Tiger Direct") is a corporation organized and existing under the laws of the State of Florida with a regular place of business at 7795 West Flagler Street, Suite 35, Miami, Florida 33144. Tiger Direct is not registered to do business in Texas and does not have a regular place of business in Texas. Tiger Direct has appeared in this action through its counsel of record.

25. Defendants Nintendo Japan and Nintendo America manufacture, sell, offer for sale, and/or import the accused Nintendo Wii video game console systems, and certain of the accused Wii games, Wii controllers, and Wii sensor bars. The remaining Defendants (the

“Retailer Defendants”) are retailers who use, sell, offer to sell, and/or import the foregoing accused Nintendo products, as well as accused Wii games, Wii controllers, and Wii sensor bars made by third parties. All of the Defendants use, sell, and/or offer to sell the accused Nintendo Wii video game console systems.

JURISDICTION AND VENUE

26. The Court has original and exclusive federal question subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Act, 35 U.S.C. § 271. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1400(b) because each of the Defendants resides in this District, is deemed to reside in this District pursuant to 28 U.S.C. § 1391(c), and/or has committed or induced acts of infringement in this District and has a regular and established place of business in this District.

27. Each of the Defendants is subject to this Court’s specific personal jurisdiction in compliance with the Due Process Clause of the United States Constitution and the Texas Long Arm Statute because each Defendant has sold accused products in the State of Texas, actively induced and/or contributed to infringement in Texas, and/or has established regular and systematic business contacts with the State of Texas.

28. Joinder of all Defendants is proper under Rule 20 of the Federal Rules of Civil Procedure, and to the extent applicable, 35 U.S.C. § 299. Without limitation, Nintendo Japan and Nintendo America are jointly liable for infringement with the remaining Defendants with respect to successive wholesale and retail sales of the same Nintendo Wii video game console systems, Nintendo Wii games, Nintendo Wii controllers, and Nintendo Wii sensor bars. As such, questions of fact common to all Defendants will arise in the action.

29. Plaintiff UltimatePointer's claims against the Retailer Defendants for using, selling, offering to sell, and/or importing accused Wii games, Wii controllers, and Wii sensor bars made by third parties are properly joined under Rule 18 of the Federal Rules of Civil Procedure. Plaintiff UltimatePointer asserts these claims against the Retailer Defendants who are joined as opposing parties under Rule 20 of the Federal Rules of Civil Procedure and/or 35 U.S.C. § 299.

COUNT ONE
INFRINGEMENT OF UNITED STATES PATENT NO. 7,746,321

30. On June 29, 2010, U.S. Patent No. 7,746,321 ("the '321 patent") was duly and lawfully issued for an invention entitled "Easily Deployable Interactive Direct-Pointing System and Presentation Control System and Calibration Method Therefor."

31. The '321 patent was issued from United States Patent Application Serial No. 11/135,911, which was published on December 8, 2005 as United States Patent Application Publication No. 2005/0270494 A1 ("the '494 publication").

32. By written assignment from the sole inventor, Plaintiff UltimatePointer owns all right, title, and interest in and to the '321 patent, and all rights arising thereunder, including the right to bring suit and recover damages for past infringement. A true and correct copy of the '321 patent is attached hereto as Exhibit A.

33. Nintendo Japan has directly infringed and continues to directly infringe the '321 patent by making, using, selling, offering for sale, and/or importing the accused Nintendo products (Nintendo Wii video game console systems, Nintendo Wii games, Nintendo Wii controllers, and Nintendo Wii sensor bars), and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including resellers and

end users) to use, sell, offer for sale, and/or import the accused products. Nintendo Japan's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

34. Nintendo America has directly infringed and continues to directly infringe the '321 patent by making, using, selling, offering for sale, and/or importing the accused Nintendo products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including resellers and end users) to use, sell, offer for sale, and/or import the accused products. Nintendo America's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

35. Prior to the issuance of the '321 patent or the filing of this action, Nintendo America and/or Nintendo Japan were expressly and specifically notified of the existence of the '494 publication and that unauthorized manufacturing, sales, and importation of the accused products would infringe any patent issued with claims as published in the '494 publication.

36. Prior to the filing of this action, Nintendo America was further expressly and specifically notified of the issuance and existence of the '321 patent, and that its unauthorized manufacturing, sales, and importation of the accused products was an infringement of the '321 patent.

37. Nintendo America and/or Nintendo Japan refused to cease infringement after notice of the '494 publication and notice of the '321 patent. Instead, Nintendo America and/or Nintendo Japan continue to deliberately infringe the '321 patent. Nintendo America's and/or Nintendo Japan's infringement of the '321 patent was and is willful and in bad faith, entitling UltimatePointer to increased damages under 35 U.S.C. § 284 and to reasonable attorney fees under 35 U.S.C. § 285.

38. GameStop has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. GameStop's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

39. Best Buy Stores has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Best Buy Stores' actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

40. BestBuy.com has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. BestBuy.com's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

41. Best Buy Purchasing has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Best Buy Purchasing's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

42. Sears has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Sears's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

43. Kmart has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Kmart's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

44. Target has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Target's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

45. Wal-Mart has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Wal-Mart's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

46. Wal-Mart Texas has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and

inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Wal-Mart Texas' actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

47. Sam's West has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Sam's West's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

48. Sam's East has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Sam's East's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

49. RadioShack has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. RadioShack's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

50. Toys R Us has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly

infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Toys R Us' actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

51. Dell has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Dell's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

52. QVC has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. QVC's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

53. Trans World has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Trans World's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

54. BJ's Wholesale has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused

products. BJ's Wholesale's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

55. PC Connection has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. PC Connection's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

56. CompUsa has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. CompUsa's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

57. Tiger Direct has directly infringed and continues to directly infringe the '321 patent by using, selling, offering for sale, and/or importing the accused products, and has indirectly infringed and continues to indirectly infringe the '321 patent by contributing to and inducing others (including end users) to use, sell, offer for sale, and/or import the accused products. Tiger Direct's actions were unauthorized and infringe the '321 patent under 35 U.S.C. § 271.

58. Nintendo Japan and Nintendo America has knowledge of the '321 patent at least as early as December 10, 2010. The Retailer Defendants each had knowledge of the '321 patent at least as early as service of Plaintiff UltimatePointer's Complaint in this action.

59. With knowledge of the '321 patent and with the intent to induce infringement by end users and/or downstream resellers, Defendants have induced infringement, and will continue to induce infringement of the '321 patent by, *inter alia*, providing the accused products without license or authority to downstream retailers and/or end users, and by instructing direct infringers to use, sell, and/or offer to sell the accused products in an infringing manner, and by actively encouraging and promoting those infringing activities. Defendants' actions have caused downstream resellers and end users to directly infringe the '321 patent by using, selling, and/or offering to sell the accused products. Nintendo Japan and Nintendo America's inducing infringement occurred from at least as early as December 10, 2010. The Retailer Defendants' inducing infringement occurred from at least as early as service of Plaintiff UltimatePointer's Complaint in this action.

60. With knowledge of the '321 patent and the intent to contribute to infringement by others, Defendants have contributorily infringed the '321 patent by, *inter alia*, making, selling, offering for sale and/or importing supplemental, ancillary, and/or replacement components that are specially made and/or specially adapted for infringing use with the accused products, including but not limited to, Wii controllers, Wii games, and Wii sensor bars, all of which are designed and intended for use with the accused products and have no substantial non-infringing use. Defendants' actions have caused downstream resellers and end users to directly infringe the '321 patent by using, selling, and/or offering to sell the accused products. Nintendo Japan and Nintendo America's contributory infringement occurred from at least as early as December 10, 2010. The Retailer Defendants' contributory infringement occurred from at least as early as the date Defendants were served with Plaintiff UltimatePointer's Complaint in this action.

61. Defendants' infringement of the '321 patent has caused harm and damage to UltimatePointer. Pursuant to 35 U.S.C. § 284, UltimatePointer is entitled to damages adequate to compensate it for Defendants' infringement in an amount to be determined at trial, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the court.

62. Nintendo America and/or Nintendo Japan have infringed and continue to infringe claims from the '321 patent that were present in the '494 publication and others that are substantially identical to those present in the '494 publication. Pursuant to 35 U.S.C. § 154(d), UltimatePointer is therefore entitled to a reasonable royalty for such infringement beginning on the date of publication of the '494 publication.

JURY DEMAND

63. UltimatePointer hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff UltimatePointer requests the entry of a judgment in its favor and against Defendants including the following:

a) A finding and judgment that Defendants have directly and/or indirectly infringed the '321 patent either literally or under the doctrine of equivalents;

b) A judgment and award of the damages due to Defendants' infringement of the '321 patent, including damages for any continuing post-verdict infringement occurring between time of verdict and entry of final judgment, with an order for an accounting as required, and also including a reasonable royalty for infringement by Nintendo America and/or Nintendo Japan after publication of the '494 publication;

c) A finding and judgment that infringement by Nintendo America and/or Nintendo Japan was willful and in bad faith, and an award of enhanced damages since the issuance of the '321 patent pursuant to 35 U.S.C. § 284;

d) A finding and judgment that infringement by the Retailer Defendants was willful since acquiring knowledge of the '321 patent and continuing to persist in infringement in bad faith, which is a date no later than the date Defendants were served with Plaintiff UltimatePointer's Original Complaint, and an award of enhanced damages pursuant to 35 U.S.C. § 284;

e) A finding and judgment that this case is exceptional, and an award of reasonable attorney fees to Plaintiff UltimatePointer pursuant to 35 U.S.C. § 285;

f) An award of pre-judgment and post-judgment interest as allowed by law;

g) Costs of court; and

h) Such other and further relief, at law or in equity, as the Court may deem just and proper.

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DATE: October 9, 2012

Respectfully submitted,

/s/ Gregory L. Maag, with permission by
Thomas L. Warden

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ATTORNEYS FOR PLAINTIFF
ULTIMATEPOINTER, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2012, the foregoing *Third Amended Complaint for Patent Infringement* was filed electronically using the Court's CM/ECF system, and that the Notice of Electronic Filing from the court is proof of service of the document on all counsel who are registered users of the CM/ECF system and who are therefore deemed to have consented to electronic service.

/s/ Thomas L. Warden

Thomas L. Warden