

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Aplix IP Holdings Corporation,

Plaintiff,

v.

Sony Computer Entertainment, Inc. and  
Sony Computer Entertainment America,  
LLC,

Defendants.

Civil Action No. 1:14-cv-12745-MLW

**JURY TRIAL DEMANDED**

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**AMENDED COMPLAINT**

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Plaintiff Aplix IP Holdings Corporation (“Aplix”), for its amended complaint against defendants Sony Computer Entertainment, Inc. (“SCE”) and Sony Computer Entertainment America, LLC (“SCEA”), collectively “Defendants,” states and alleges as follows:

**INTRODUCTION**

1. This case concerns patented technology covering game devices such as the hand-held Sony PlayStation Vita gaming console, the Sony PlayStation DualShock 3 and DualShock 4 controllers. The DualShock 3 and DualShock 4 controllers are used with the Sony Xperia line of smartphones and tablets. The DualShock 4 controller is also used with the PlayStation 4 system.

2. Beginning in 2003, a group of Massachusetts inventors, led by Dr. Beth Marcus, developed interactive-design technologies for improving data entry, control, and game-play on hand-held devices and host devices. Among other advancements, Marcus and her team deployed configurable input systems and elements on multiple surfaces of a hand-held device, taking advantage of the biomechanics of the human hand; leveraged the benefits associated with thumb-finger opposition; and designed hand-held accessory devices that would enable users to remotely operate (and play video games on) cell phones and tablet devices. Marcus and her team applied for patents on their inventions, and, after a thorough review, the United States Patent & Trademark Office awarded them several patents. These patents were assigned to Marcus' Boston-area start-up company, Zeemote, Inc., which sought to commercialize the technology. Aplix acquired Zeemote's assets, including the patents, and now asks this Court to find that the Defendants infringe the patents by importing, marketing, selling, and using the PlayStation Vita and accessories, including memory cards and pre-installed or bundled games, as well as the DualShock 3 and DualShock 4 controllers.

**PARTIES, JURISDICTION, AND VENUE**

3. Aplix is a Japanese corporation with its principal place of business in Tokyo, Japan.

4. SCE is a Japanese corporation with its principal place of business in Tokyo, Japan.

5. SCEA is a Delaware limited liability company with its principal place of business in San Mateo, California.

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendants pursuant to Massachusetts's long-arm statute, Mass. Gen. Laws ch. 223A, § 3. On information and belief, Defendants have, directly and/or indirectly through their agents and intermediaries, advertised (including through web sites), offered to sell, sold, and/or distributed in Massachusetts products that infringe Aplix's patents. Given Defendants' substantial and sustained contacts with the state, and their purposeful availment of the state's benefits and protections, the Court's exercise of personal jurisdiction over Defendants in this lawsuit satisfies due-process requirements. In addition, Defendants have voluntarily appeared in this action.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b) because Defendants have committed, and continue to commit, acts of infringement in the district.

### **FACTUAL BACKGROUND**

9. In the spring of 2003, Massachusetts residents Beth Marcus and David Lee began developing ideas for improving how people interact with hand-held devices.

Marcus and Lee, both graduates of the Massachusetts Institute of Technology, applied for a patent in October of that same year.

10. Two years later, Marcus, with three others residing in the Boston area, founded Zietoo, Inc. (later changing the company name to Zeetoo, Inc., and then to Zeemote, Inc. (“Zeemote”)) to continue the research and development of products. Among other activities, Zeemote developed and sold a hand-held electronic game controller that communicated with a user’s mobile phone via Bluetooth technology.

11. Marcus brought additional inventors to Zeemote, including Massachusetts residents Elaine Chen, Lorraine Wheeler, and Rob Podoloff. Together, the team worked to patent their innovations.

12. On May 15, 2007, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 7,218,313 (“the ’313 patent”), titled “Human Interface System.”

13. On October 9, 2007, the USPTO duly and legally issued United States Patent No. 7,280,097 (the “’097 patent”), titled “Human Interface Input Acceleration System.”

14. On December 9, 2008, the USPTO duly and legally issued United States Patent No. 7,463,245 (the “’245 patent”), also titled “Human Interface System.”

15. On February 23, 2010, the USPTO duly and legally issued United States Patent No. 7,667,692 (the “’692 patent”), also titled “Human Interface System.”

16. On April 26, 2011, the USPTO duly and legally issued United States Patent No. 7,932,892 (the “’892 patent”), also titled “Human Interface Input Acceleration System.”

17. In late 2009, Aplix, a Japanese operating company that sells a variety of products, purchased Zeemote’s assets and patent portfolio, which included the ’313, ’097, ’245, ’692, and ’892 patents. Aplix owns all right, title and interest in this group of patents.

18. In 2006, Defendants released the PlayStation 3 (“PS3”), a video game system, in the United States. Defendants offer for sale a hand-held controller, known as the DualShock 3, alone and in conjunction with the PS3.

19. In 2008, Sony Mobile Communications (formerly Sony Ericsson Mobile Communications AB) released its first Xperia smartphone in the United States. Since that time, a family of Sony Xperia smartphones and tablets have been released.

20. In 2012, Defendants released the PlayStation Vita (“PS Vita”), a hand-held electronic game console, in the United States. Defendants offer the PS Vita for sale with pre-installed applications and memory cards. Defendants offer for sale additional applications (e.g., video games) and memory cards for use with the PS Vita.

21. In addition, Defendants induce users to install and use additional applications (e.g., video games) on the PS Vita delivered by download through the PlayStation Store or delivered on PlayStation Vita cards.

22. In 2013, Defendants released the PlayStation 4 (“PS4”), a video game system including the DualShock 4, a hand-held controller, in the United States. Defendants sell and offer for sale the DualShock 4 controller alone and in conjunction with the PS4. Several applications are pre-installed on the PS4. Defendants offer for sale additional applications (e.g., video games) for use with the PS4.

23. In addition, Defendants induce users to install and use additional applications (e.g., video games) on the PS4 delivered by download through the PlayStation Store or delivered on digital video discs.

24. The DualShock 3 and DualShock 4 controllers can be used in conjunction with Sony’s Xperia smartphones and tablets as well as the PS3 and PS4.

25. In the summer of 2013, Aplix notified Defendants that the PS Vita infringed numerous claims of the ’313, ’245, and ’692 patents, and Aplix offered to license the technology to Defendants in exchange for reasonable royalties. On or about August 29, 2013, Aplix presented detailed claim charts to Defendants’ representatives explaining how the PS Vita infringed the patents. Licensing negotiations continued between the parties through March 2014, but the parties did not reach an agreement.

26. Despite having actual notice that the PS Vita infringes Aplix’s patents, Defendants continue to promote the PS Vita and encourage game developers to develop and users in the United States to install videogames that implement infringing features on the PS Vita via its website.

27. SCE and SCEA are members of the Sony group of companies and work in concert to promote and sell the PS Vita, as well as the DualShock 3 and DualShock 4 controllers in the United States.

28. On information and belief, Defendants use the PS Vita and DualShock 3 and DualShock 4 controllers in the United States, in their effort to test and market the products.

29. This is an exceptional case under 35 U.S.C. § 285. Aplix is entitled to recover its attorneys' fees and costs in connection with this action.

**COUNT I — INFRINGEMENT OF THE '313 PATENT**

30. Aplix incorporates and realleges by reference paragraphs 1 through 29 as if fully set forth here.

31. Defendants have had actual knowledge of the '313 patent since at least August 29, 2013.

32. Defendants have directly infringed, and continue to directly infringe, one or more of the '313 patent's claims by offering to sell, selling, and using the PS Vita and accessories, including memory cards and games, in the United States, and by importing the PS Vita into the United States.

33. Defendants have indirectly infringed, and continue to indirectly infringe, one or more of the '313 patent's claims. Defendants have intended, and continue to intend, that users and/or game developers infringe the '313 patent, as evidenced by Defendants' continued efforts to promote, sell, and offer to sell the PS Vita and certain

game applications and their continued instructions to game developers to design games that will implement infringing features of the PS Vita, despite having actual knowledge that the PS Vita infringes the '313 patent.

34. Because of Defendants' infringement of the '313 patent, Aplix is entitled to a reasonable royalty in an amount to be established at trial.

35. At least since August 29, 2013, Defendants' infringement of the '313 patent has been willful.

## **COUNT II — INFRINGEMENT OF THE '097 PATENT**

36. Aplix incorporates and realleges by reference paragraphs 1 through 35 as if fully set forth here.

37. Defendants have had actual knowledge of the '097 patent since at least October 30, 2014.

38. Defendants have directly infringed, and continue to directly infringe, one or more of the '097 patent's claims by offering to sell, selling, and using the DualShock 3 and DualShock 4 controllers in the United States, and by importing the DualShock 3 and DualShock 4 controllers into the United States.

39. Because of Defendants' infringement of the '097 patent, Aplix is entitled to a reasonable royalty in an amount to be established at trial.



**COUNT III — INFRINGEMENT OF THE '245 PATENT**

40. Aplix incorporates and realleges by reference paragraphs 1 through 39 as if fully set forth here.

41. Defendants have had actual knowledge of the '245 patent since at least August 29, 2013.

42. Defendants have directly infringed, and continue to directly infringe, one or more of the '245 patent's claims by offering to sell, selling, and using the PS Vita and DualShock 4 controller in the United States, and by importing the PS Vita and DualShock 4 controller into the United States.

43. Defendants have indirectly infringed, and continue to indirectly infringe, one or more of the '245 patent's claims. Defendants have intended, and continue to intend, that users and/or game developers infringe the '245 patent, as evidenced by Defendants' continued efforts to promote, sell, and offer to sell the PS Vita and the DualShock 4 controller and their continued instructions to game developers to design games that will implement infringing features of the PS Vita and DualShock 4 controller despite having actual knowledge that the device and game applications infringe the '245 patent.

44. Because of Defendants' infringement of the '245 patent, Aplix is entitled to a reasonable royalty in an amount to be established at trial.

45. At least since August 29, 2013, Defendants' infringement of the '245 patent has been willful.

**COUNT IV — INFRINGEMENT OF THE '692 PATENT**

46. Aplix incorporates and realleges by reference paragraphs 1 through 45 as if fully set forth here.

47. Defendants have had actual knowledge of the '692 patent since at least August 29, 2013.

48. Defendants have directly infringed, and continue to directly infringe, one or more of the '692 patent's claims by offering to sell, selling, and using the PS Vita in the United States, and by importing the PS Vita into the United States.

49. Because of Defendants' infringement of the '692 patent, Aplix is entitled to a reasonable royalty in an amount to be established at trial.

50. At least since August 29, 2013, Defendants' infringement of the '692 patent has been willful.

**COUNT V — INFRINGEMENT OF THE '892 PATENT**

51. Aplix incorporates and realleges by reference paragraphs 1 through 50 as if fully set forth here.

52. Defendants have had actual knowledge of the '892 patent since at least October 30, 2014.

53. Defendants have directly infringed, and continue to directly infringe, one or more of the '892 patent's claims by offering to sell, selling, and using the DualShock 3

and DualShock 4 controllers in the United States, and by importing the DualShock 3 and DualShock 4 controllers into the United States.

54. Because of Defendants' infringement of the '892 patent, Aplix is entitled to a reasonable royalty in an amount to be established at trial.

WHEREFORE, Aplix prays for the following judgment and relief:

- a. A judgment for Aplix and against Defendants;
- b. A judgment that Defendants have infringed the '313, '097, '245, '692, and '892 patents;
- c. An order that Defendants account for and pay to Aplix all damages that are available under 35 U.S.C. § 284, including treble damages for willful infringement;
- d. An order compelling Defendants to make an accounting of their sales, profits, royalties, and damages owed to Aplix, including a post-judgment equitable accounting of damages for the period of infringement of the '313, '097, '245, '692, and '892 patents following the period of damages established by Aplix at trial;
- e. An order compelling Defendants to pay to Aplix pre-judgment and post-judgment interest;
- f. An award to Aplix of its costs, fees, and expenses in this action, including by declaring this case to be exceptional under 35 U.S.C. § 285;

- g. A permanent injunction prohibiting Defendants from continuing to infringe the '313, '097, '245, '692, and '892 patents; and
- h. Any other relief that the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Aplix demands a jury trial on all issues so triable.

Dated: October 30, 2014.

Respectfully submitted,

APLIX IP HOLDINGS CORPORATION

By its attorneys,

/s/ Brandon T. Scruggs

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### **CERTIFICATE OF SERVICE**

I certify that, on the above date, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Brandon Scruggs

Brandon Scruggs

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