

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**OLIVISTAR, LLC,**

**Plaintiff,**

**v.**

**SONY CORPORATION OF AMERICA,**

**Defendant.**

**CIVIL ACTION NO. 2:14-cv-338  
(Lead Case)**

**CIVIL ACTION NO. 2:14-cv-347  
(Consolidated Case)**

**JURY TRIAL DEMANDED**

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**PLAINTIFF'S FIFTH AMENDED COMPLAINT**

Plaintiff Olivistar, LLC ("Plaintiff" or "Olivistar"), by and through its undersigned counsel, files this Complaint against Defendant Sony Corporation of America ("Sony") as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendant's infringement of Plaintiff's United States Patent No. 6,839,731 entitled "System and Method for Providing Data Communication in a Device Network" (the "'731 patent"; a copy of which is attached hereto as Exhibit A) and United States Patent No. 8,239,481 entitled "System and Method for Implementing Open-Control Remote Device Control" (the "'481 patent"; a copy of which is attached hereto as Exhibit B). Olivistar is the owner by assignment of the '731 patent and '481 patent. Olivistar seeks injunctive relief and monetary damages.

**PARTIES**

2. Plaintiff Olivistar, LLC is a limited liability company organized under the laws of the State of Texas. Plaintiff maintains its principal place of business at 2150 S. Central Expressway, Suite 200, McKinney, Texas 75070.

3. Upon information and belief, Defendant Sony Corporation of America is a business organized and existing under the laws of the State of New York, with its principal place of

business located at 550 Madison Ave, 27th floor, New York, NY 10022. Sony conducts business in the State of Texas and its Registered Agent for service of process is Corporation Service Company, 80 State Street, Albany, New York 12207.

#### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. § *et seq.*, including 35 U.S.C. § 271, 281, and 284-85, among others. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §1331 and §1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant is present within or have minimum contacts with the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

6. More specifically, Defendant, directly and/or through authorized intermediaries, ships, distributes, offers for sale, sells, and/or advertises products and services in the United States, the State of Texas, and the Eastern District of Texas including but not limited to the Accused Instrumentalities as detailed below. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who use the Defendant's products and services in the State of Texas and in the Eastern District of Texas. Defendant derives substantial revenue from goods and services provided to individuals in Texas and in this district.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§1391 and 1400(b). On information and belief, Defendant has transacted business in this district, and has directly and/or indirectly committed and/or induced acts of patent infringement in this district.

**COUNT I– INFRINGEMENT OF U.S. PATENT 6,839,731**

8. Olivistar refers to and incorporates herein the allegations of Paragraphs 1-7 above.

9. The ‘731 patent was duly and legally issued by the United States Patent and Trademark Office on January 4, 2005, after full and fair examination. The ‘731 patent is in full force and effect. Plaintiff is the owner by assignment of the ‘731 patent and possesses all rights of recovery under the ‘731 patent, including the exclusive right to sue for infringement and recover past damages.

10. Defendant owns, operates, advertises, controls, sells, and otherwise provides methods that infringe the ‘731 patent. The ‘731 patent provides, among other things claim 1, “in a system including one or more premises-server computing devices in communication with a number of input and/or output devices, a central communication device and at least one client computing device in communication with the central communication device, a method for processing device data, the method comprising: (1) transmitting an access request to the central communication device, the access request including one or more identification attributes corresponding to a client computing device; (2) obtaining a listing of available premises-server computing devices, the listing of available premises-server computing devices corresponding to a set of premises-server computing devices a client computing device is authorized to access based at least in part on the identification attributes; (3) establishing a direct connection with a proxy application in each of the one or more premises server computing devices for which the communication request is successful; and (4) obtaining device information from each proxy

application associated with the one or more premises-server computing device, the device information corresponding to a current input and/or output device state; (5) wherein establishing a direct connection with a proxy application in each of the one or more premises-server computing devices cannot occur prior to obtaining the listing of available premises-server computing devices” and claim 15, “in a system including one or more premises-server computing devices in communication with a number of input and/or output devices, a central communication device and at least one client computing device in communication with the central communication device, a method for processing device data, the method comprising: (1) obtaining an access request from a client computing device, the access request including one or more identification attributes corresponding to the client device; (2) generating a list of premises-server computing devices corresponding to a set of premises-server computing devices the client device obtains access based upon a processing of the one or more identification attributes; and (3) transmitting the list of premises-server computing devices available for communication with the client device; (4) wherein the client device cannot directly access the premises-server computing device prior to obtaining the list of premises-server computing devices available for communication.”

11. Defendant directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale methods for providing data communication in a device network that infringed one or more claims of the ‘731 patent in this district and elsewhere in the United States. Particularly, Defendant makes, uses, provides, offers for sale, and sells their product entitled Sony Playstation 3, Sony Entertainment Network Servers ([www.sonyentertainmentnetwork.com](http://www.sonyentertainmentnetwork.com)), PSP and PS Vita and/or Sony TVs and the use thereof (“Accused Instrumentality”) which directly and/or indirectly infringes the ‘731 patent. Defendant

has at least made and used the Accused Instrumentality in a manner which directly infringes the '731 patent, directly or through their agents for purposes of development, testing, quality assurance, deployment, and maintenance.

12. Defendant also infringes under 35 U.S.C. § 271(b) by inducing infringement of the '731 patent in the State of Texas, literally or under the doctrine of equivalents, in this judicial district, and elsewhere in the United States, by, among other things, advising, encouraging, or otherwise inducing others to perform the steps claimed by the '731 patent to the injury of Olivistar. Defendant actively instructs their customers to use the Accused Instrumentality in a way that infringes the '731 patent. Since at least the filing date of the Original Complaint, Defendant has had knowledge of the '731 patent, and by continuing the actions described herein, has had specific intent to induce infringement of the '731 patent pursuant to 35 U.S.C. § 271(b).

13. Specifically, Defendant advertises the Accused Instrumentality to its Customers, and instructs its Customers, such that when Defendant's Customers follow Defendant's instructions, each of said Customers necessarily perform all steps in methods claimed in the '731 patent i.e. each of Defendant's Customers are direct infringers, including at least: claim 1 "in a system including one or more premises-server computing devices in communication with a number of input and/or output devices, a central communication device and at least one client computing device in communication with the central communication device, a method for processing device data, the method comprising: (1) transmitting an access request to the central communication device, the access request including one or more identification attributes corresponding to a client computing device; (2) obtaining a listing of available premises-server computing devices, the listing of available premises-server computing devices corresponding to a set of premises-server computing devices a client computing device is authorized to access

based at least in part on the identification attributes; (3) establishing a direct connection with a proxy application in each of the one or more premises server computing devices for which the communication request is successful; and (4) obtaining device information from each proxy application associated with the one or more premises-server computing device, the device information corresponding to a current input and/or output device state; (5) wherein establishing a direct connection with a proxy application in each of the one or more premises-server computing devices cannot occur prior to obtaining the listing of available premises-server computing devices.” Since at least the filing date of the Original Complaint, Defendant has had knowledge of the ‘731 patent pursuant to 35 U.S.C. § 271(c), and by continuing the actions described above, by continuing to sell the Accused Instrumentality and instruct their customers to use the Accused Instrumentality in an infringing manner, Defendant has had specific intent to induce infringement of the ‘731 patent pursuant to 35 U.S.C. § 271(b).

14. Defendant’s customers use the Accused Instrumentality as instructed by Defendant and in doing so, complete all elements in at least Claim 1 of the ‘731 patent making Defendant’s customers direct infringers of the ‘731 patent. Defendant specifically intended for its customers to infringe the ‘731 patent because Defendant was served with Plaintiff’s infringement contentions on August 19, 2014 and was served with this law suit on May 23, 2014, at least by these dates Defendant knew of the ‘731 patent, and their infringement of the ‘731 patent, yet Defendant continued to advertise to their customers to use the Accused Instrumentality in an infringing manner. Since the dates listed above, Defendant knew that their customer’s acts constituted infringement because they knew about the ‘731 patent and how it applied to the Accused Instrumentality and Defendant knew that their advertisements and instructions to their customers would make their customers infringe the ‘731 patent thereby making Defendant have

specific intent for their customer's to directly infringe the '731 patent. Defendant would not be able to sell the Accused Instrumentality if they could not advertise and instruct their customers to perform the conduct that infringes the '731 patent. Specifically, in Defendant's advertisements and instructions, they tell their customers how to use the PSP and/or PS Vita i.e. client computing device, how to access the central server, sonyentertainmentnetwork.com, how to connect the TVs and/or Sony TVs and other input/output devices to the Sony PlayStation 3, and how to perform the method of Claim 1 as referenced above. Additionally, Defendant has support and help lines in which customers call in to get guidance on how to setup and operate the Accused Instrumentality. These support and help staff instruct these customers to operate the Accused Instrumentality in an infringing manner. This is not a case where Defendant just knew about the way their customers were using their products and nothing else, Defendant in this case planned to have their customers use their products in a manner that infringes the '731 patent and teaches their customers to use their products in a manner that infringes the '731 patent and Defendant had specific intent that their customers infringe the '731 patent by at least the date in which Defendant knew of the '731 patent as discussed above. In other words Defendant is taking affirmative steps to make sure their customers infringe the '731 patent when Defendant knows of the '731 patent and their customers' infringement of the '731 patent but does not stop their conduct.

15. Defendant also infringes under 35 U.S.C. § 271(c) by contributing to infringement of the '731 patent in the State of Texas, literally or under the doctrine of equivalents, in this judicial district, and elsewhere in the United States, by, among other things, offering for sale, selling, or importing the Accused Instrumentality, and advising, encouraging, and contributing so that others can perform all of the steps claimed by the '731 patent to the injury of Olivistar.

16. Specifically, Pursuant to 35 U.S.C. § 271(c), Defendant advertises, sells, and provides the Accused Instrumentality to its Customers, and instructs its Customers, such that when Defendant's customers follow Defendant's instructions, each of said Customers necessarily perform all steps in methods claimed in the '731 patent i.e. each of Defendant's Customers are direct infringers, including at least: claim 1 "in a system including one or more premises-server computing devices in communication with a number of input and/or output devices, a central communication device and at least one client computing device in communication with the central communication device, a method for processing device data, the method comprising: (1) transmitting an access request to the central communication device, the access request including one or more identification attributes corresponding to a client computing device; (2) obtaining a listing of available premises-server computing devices, the listing of available premises-server computing devices corresponding to a set of premises-server computing devices a client computing device is authorized to access based at least in part on the identification attributes; (3) establishing a direct connection with a proxy application in each of the one or more premises server computing devices for which the communication request is successful; and (4) obtaining device information from each proxy application associated with the one or more premises-server computing device, the device information corresponding to a current input and/or output device state; (5) wherein establishing a direct connection with a proxy application in each of the one or more premises-server computing devices cannot occur prior to obtaining the listing of available premises-server computing devices."

17. Defendant advertises their product ("Accused Instrumentality") directing customers to use the product in an infringing manner while offering no other substantial noninfringing alternatives. When each of Defendant's customers use the Accused Instrumentality



as Defendant has advertised, all steps or elements necessary for direct infringement of the '731 patent have been completed or met. In fact, if a customer uses the Accused Instrumentality for any purpose for which it was intended, then the customer must directly infringe the '731 patent.

18. The material or apparatus that is sold or offered for sale by Defendant for use in practicing the patented methods in the '731 patent are the following: Sony Playstation 3 (Premises Server), Sony Entertainment Network Servers ([www.sonyentertainmentnetwork.com](http://www.sonyentertainmentnetwork.com), Central Communication Device), PSP and PS Vita (Client Computing Devices) and/or Sony TVs (Input/Output Devices). The only device that Defendant may not provide to their customers is a TV (Input/Output Device), which in some cases Sony does provide its customers with a Sony branded TV. These devices that are provided by Defendant when used together are material to practicing the methods in the '731 patent. These devices which are provided by Defendant, are designed specifically to practice the methods in the '731 patent. Specifically, when the customer uses the PSP, or PS Vita in conjunction with the other Accused Instrumentalities provided by Sony, the customer must choose which PlayStation 3 device in which they want to communicate. In other words, the customer must choose from the list of premises servers listed on their client computing device, which premises server they want to communicate with and/or control, once the customer selects the premises server, then the customer can communicate with and/or control that premises server.

19. As discussed above, the Defendant has known about the '731 patent since the service date of the original complaint May 23, 2014, and/or the Plaintiff's infringement contentions August 19, 2014. Defendant's products are specifically designed to infringe the methods in the '731 patent, and Defendant provides these products to their customers, and instructs, advertises, and helps their customers to connect the PSP, or PS Vita (Client Computing

Device), to their PlayStation 3 (Premises Server), and how to connect their PlayStation 3 to sonyentertainmentnetwork.com (Central Communication Device), and how to connect their TV (Input/Output Device) to the PlayStation 3, and how to operate the system of devices. These devices are provided by the Defendant to their customers so that their customers can practice the methods in the '731 patent. These products when used together were specifically designed to aid Defendant's customers in performing all of the steps in the methods of the '731 patent. For instance, to use the PSP and/or PS Vita, in conjunction with the PlayStation 3, and the sonyentertainmentnetwork.com server, the customer must first select which PlayStation 3 the customer wants to communicate with and/or control from the list of premises servers listed on the client computing device. Therefore the customer must infringe the method claims in the '731 patent when using these devices together.

20. There is no substantial non-infringing use for the components in each of the PSP, Vita, Playstation 3, sonyentertainmentnetwork.com and Sony TVs that allow all of these devices to sync together and be controlled by each other. The '731 Patent covers methods for providing Data Communication in a Device Network. The Playstation 3 has a component inside that allows it to sync with the PSP and/or Vita and be controlled by the PSP and/or Vita. The PSP and/or Vita has a component inside that allows it to sync with the Playstation 3 and control the Playstation 3. The sonyentertainmentnetwork.com central communication device has a component inside that allows it to be synced to and facilitate the communication between the PSP and/or Vita and the Playstation 3. The Sony TV has a component inside that allows it to sync with and receive communication and control commands from these aforementioned devices when all of these devices are synced together. All of these components discussed above allow Sony's customer's to practice the method claims in the '731 Patent. These components were

specifically designed to practice the method claims in the '731 Patent. When any of these components are used by Sony's customers, these customers have no choice but to practice the method claims in the '731 Patent. Therefore it is these components in each of the PSP, Vita, Sony TV, Playstation 3, and sonyentertainmentnetwork.com that have no substantial non-infringing use.

21. Defendant is willfully and intentionally infringing the '731 Patent from at least the service date of the Original Complaint, May 23, 2014. Plaintiff served their infringement contentions on Defendant on August 19, 2014 before the filing of this Fifth Amended Complaint. Defendant is fully aware of their infringement and Defendant's infringement at this point is willful and intentional as evidenced by Defendant continuing to make, use, provide, and offer for sale, the Accused Instrumentality.

22. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

23. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of the Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

24. Defendant's infringement of Plaintiff's exclusive rights under the '731 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**COUNT II – INFRINGEMENT OF U.S. PATENT 8,239,481**

25. Olivistar refers to and incorporates herein the allegations of Paragraphs 1-24 above.

26. The '481 patent was duly and legally issued by the United States Patent and

Trademark Office on August 7, 2012, after full and fair examination. The '481 patent is in full force and effect. Plaintiff is the owner by assignment of the '481 patent and possesses all rights of recovery under the '481 patent, including the exclusive right to sue for infringement and recover past damages.

27. Defendant owns, operates, advertises, controls, sells, and otherwise provides systems that infringe the '481 patent. The '481 patent provides, among other things, a "method for controlling devices in a computer system, the method comprising: (1) obtaining a user selection of one or more of a plurality of networked devices to be manipulated from a user interface, wherein at least one of the plurality of networked devices requires device-specific protocol instructions that are different from protocol instructions required by at least one of the other plurality of networked devices; (2) obtaining a user interface application corresponding to the selected one or more networked devices; (3) transmitting, to at least one user interface selection device, the user interface application corresponding to the selected one or more networked devices so that the user interface can be displayed on the at least one user interface selection device; (4) obtaining a user selection of an operation corresponding to at least one selected networked device; (5) encoding the selected operation according to a standard communication protocol instruction; (6) transmitting the selected standard protocol instruction to a server corresponding to the selected networked device; and (7) obtaining an output corresponding to the selected operation of the selected networked device.

28. Defendant directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems and methods for implementing open-control remote device control that infringed one or more claims of the '481 patent in this district and elsewhere in the United States, Particularly, Defendant makes,

uses, provides, offers for sale, and sells their product entitled Sony Playstation 3, PSP, Vita, Sony TVs, and sonyentertainmentnetwork.com and the use thereof (“Accused Instrumentality”) which directly infringes the ‘481 patent. Defendant has at least made or used the Accused Instrumentality in an infringing manner, directly or through intermediaries for purposes of development, testing, quality assurance, deployment, and maintenance.

29. Defendant is willfully and intentionally infringing the ‘731 Patent from at least the service date of the Original Complaint, May 23, 2014. Plaintiff served their infringement contentions on Defendant on August 19, 2014 before the filing of this Fifth Amended Complaint. Defendant is fully aware of their infringement and Defendant’s infringement at this point is willful and intentional as evidenced by Defendant continuing to make, use, provide, and offer for sale, the Accused Instrumentality.

30. Defendant’s aforesaid activities have been without authority and/or license from Plaintiff.

31. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of the Defendant’s wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

32. Defendant’s infringement of Plaintiff’s exclusive rights under the ‘481 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

### **JURY DEMAND**

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests that the Court find in its favor and against the Defendant, and that the Court grant Plaintiff the following relief:

- A. A judgment in favor of Plaintiff that Defendant has infringed one or more of the claims, directly, jointly and/or indirectly, by way of inducing and/or contributing to the infringement of the '731 patent;
- B. A judgment in favor of Plaintiff that Defendant has infringed one or more of the claims of the '481 patent, directly, and/or jointly;
- C. A permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and their officers, directors, agents servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '731 patent and/or the '481 patent, or such other equitable relief the Court determines is warranted;
- D. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- E. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- F. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and

G. Any further relief that this Court deems just and proper.

Dated: November 3, 2014

Respectfully submitted,

By: /s/ Austin Hansley  
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**OLIVISTAR, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2014, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Marshall Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. All other counsel was served by email, mail, or fax.

/s/ Austin Hansley  
Austin Hansley