

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYPTON FUTURE MEDIA, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 14-1247-RGA
)	
HOLOGRAM USA, INC., MUSION DAS)	JURY TRIAL DEMANDED
HOLOGRAM LIMITED, and UWE MAASS,)	
)	
Defendants.)	

AMENDED COMPLAINT

Plaintiff Crypton Future Media, Inc., demands a trial by jury on all issues so triable and, for its Complaint against Defendants Hologram USA, Inc., Musion Das Hologram Limited, and Uwe Maass, alleges as follows:

THE PARTIES

1. Plaintiff Crypton Future Media, Inc. (“Crypton” or “Plaintiff”) is a corporation organized and existing under the laws of Japan, with a principal place of business located at 11F Nihon Seimei Sapporo Bldg., 1-1 Nishi 4 Kita 3, Chuo-Ku, Sapporo 060-0003 Japan.

2. On information and belief, Defendant Hologram USA, Inc. (“Hologram USA”) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business in Beverly Hills, California.

3. On information and belief, Defendant Musion Das Hologram Limited (“MDH”) is a corporation organized and existing under the laws of the United Kingdom, having a principal place of business in London, UK.

4. On information and belief, Defendant Uwe Maass (“Maass”) is a citizen of Germany and an individual residing in Dubai, United Arab Emirates.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367 in that this action involves substantial claims arising under the United States Patent Act, 35 U.S.C. § 1, *et seq.*, along with related state law claims.

6. Hologram is a Delaware corporation. Hologram, on its website, identifies Maass and Giovanni Palma, the sole owner of MDH, as members of Hologram’s management.

7. Venue is proper in this district under 28 U.S.C. §1391(b) and (c).

PATENTS-IN-SUIT

8. U.S. Patent No. 5,865,519 (“the ‘519 patent”) titled “Device For Displaying Moving Images In The Background Of A Stage,” was issued on February 2, 1999. A copy of the ‘519 Patent is attached hereto as Exhibit A.

9. U.S. Patent No. 7,883,212 (“the ‘212 patent”), titled “Projection Apparatus And Method For Pepper’s Ghost Illusion,” was issued on February 8, 2011. A copy of the ‘212 Patent is attached hereto as Exhibit B.

10. The ‘519 patent and ‘212 patent are collectively referred to herein as “the Patents-in-Suit.”

DEFENDANTS SEND NOTICE OF INFRINGEMENT

11. Crypton is a small technology company, located in Sapporo, Japan, that develops and sells products for the music industry including sampling CDs and DVDs, sound effect and background music libraries, and musical synthesizer applications.

12. *Hatsune Miku* is fictional humanoid persona for which fans can create songs in “her voice” utilizing Crypton’s vocaloid software; fans have created over one hundred thousand songs in *her voice* to date.

13. A visual animated projection of *Hatsune Miku* has “performed” in shows around the world, backed by a live band, to sizable live audiences.

14. *Hatsune Miku*’s network television debut in the United States occurred on October 8, 2014 on *The Late Show with David Letterman*.

15. *Hatsune Miku* performed in concerts in the United States on October 11, 12, 17 and 18, 2014.

16. *Hatsune Miku* performed as the opening act for a portion of Lady Gaga’s 2014 ARTPOP tour.

17. *Hatsune Miku* performed in July 2011 at NOKIA Theater in Los Angeles.

18. *Hatsune Miku* performed in January 2015 in Las Vegas.

19. Defendants, through counsel, sent a letter September 25, 2014, sent a cease and desist letter to Crypton, CBS Television Studios, Inc. (“CBS”), Worldwide Pants, Inc. (“Worldwide Pants”), and Crypton’s publicists, entitled “Notice of Infringement of U.S. Patent Nos. 5,865,519 and 7,883,212”. A copy of the cease and desist letter is attached as Exhibit C.

20. CBS is the network that broadcasts *The Late Show with David Letterman*.

21. Worldwide Pants is David Letterman’s production company and is responsible for the production of *The Late Show with David Letterman*.

22. Defendants addressed their letter to CBS and Worldwide Pants at the addresses of their respective New York offices.

23. By way of its September 25, 2014 letter, Defendants threatened to take immediate legal action unless Plaintiff complied with Defendants' demands by no later than September 29, 2014, including cancellation of the television appearance on *The Late Show with David Letterman* as well as the concerts scheduled for October 11, 12, 17 and 18, 2014.

24. Defendants, in their cease and desist letter:

- a. stated that Hologram is the exclusive licensee of the '519 and '212 Patents (collectively the "Patents-in-Suit");
- b. stated that MDH licensed one of the Patents-in-Suit to Hologram;
- c. stated that Maass had licensed the other Patent-in-Suit to Hologram;
- d. demanded that Crypton and its business relations immediately "must cease and desist from any and all infringement" of the Patents-in-Suit;
- e. demanded that each recipient of its letter "take all appropriate measures to preserve potentially relevant evidence to the instant dispute",
- f. demanded that each recipient of its letter "document every stage of the construction preparation, testing, operation, and dismantling of all of the tangible property and equipment associated with the display" of any projection of *Hatsune Miku* on *The Late Show with David Letterman* and in *Hatsune Miku's* other October performances; and
- g. notified each recipient that Defendants' rights "include seeking remedies related to any spoliation of evidence."

THE REACTIONS OF CBS AND WORLDWIDE PANTS

25. In response to Defendants' September 25, 2014 letter, CBS and Worldwide Pants immediately threatened to cancel the *Hatsune Miku* performance on *The Late Show with David*

Letterman and indicated that they could not proceed with this performance unless Defendants provided, *inter alia*, CBS and Worldwide Pants with a covenant not to sue.

26. Defendants are in the entertainment industry, and Defendants' counsel describe themselves as entertainment lawyers. Defendants knew or should have known that CBS and Worldwide Pants would threaten to cancel the *Hatsune Miku* performance on *The Late Show with David Letterman* after receiving Defendants' September 25, 2014, letter.

27. Crypton engaged counsel in Japan and the United States to assist Crypton in responding to Defendant' cease and desist letter and to interface with CBS and Worldwide Pants in order to avoid cancellation of the scheduled performance on *The Late Show with David Letterman*.

28. Crypton's counsel negotiated with Defendants to allow the performance to proceed on *The Late Show with David Letterman*.

29. In these negotiations, Defendants demanded, among other things, a sworn declaration from Crypton explaining the factual basis of Crypton's belief that it did not infringe either patent in suit.

30. Defendants also demanded that Crypton, CBS, and Worldwide Pants allow Defendants' counsel to inspect and photograph the October 2014 performances, including *The Late Show with David Letterman*.

31. Crypton's counsel negotiated a confidentiality and non-disclosure agreement ("CNDA") to, *inter alia*, protect the confidential nature of the information in the Declaration and to facilitate Defendants' inspections. This agreement included Defendants' concession that it required such information and inspections with respect to projection system used in the *Hatsune*

Miku performances because such information (*i.e.*, what Crypton was in fact doing) was “not otherwise available to or known by” Defendants.

32. Crypton’s counsel also negotiated with CBS and Worldwide Patents to expedite the preparation of Defendants’ covenant not to sue (a copy of which is appended as Exhibit D), and to gain access to the set for *The Late Show with David Letterman* so that Defendants could inspect the stage set-up and the equipment to be used in the *Hatsune Miku* performance.

33. Crypton and its counsel also undertook efforts to ensure Defendants’ access to the set for the *Hatsune Miku* performance at the Nokia Theater in Los Angeles.

THE TECHNOLOGY USED BY CRYPTON FOR THE HATSUNE MIKU PERFORMANCES

34. The technology employed in at least October 2014 *Hatsune Miku* performances does not include, *inter alia*, at least the following elements of the ‘212 Patent-in-Suit:

- a. a frame, which is “arranged to retain the screen under tension the frame being arranged to retain the screen under tension, such that the tension of the screen can be varied at a plurality of positions along at least one edge of said screen such that the screen is substantially wrinkle free”;
- b. a screen inclined at an angle with respect to a plane of emission of light from the projector;
- c. a screen having a front surface arranged such that light emitted from the projector is reflected therefrom;
- d. the projector being arranged to project an image such that light forming the image impinges upon the screen such that a virtual image is created from light reflected from the screen;
- e. the virtual image appearing to be located behind the screen; or

- f. wherein the screen is foil and the frame comprises first and second retention members.

35. The claims of the '212 Patent are limited to, *inter alia*, a configuration wherein light from the projection source(s) impinges upon the "front surface" of a viewing screen.

36. Any system that does not employ a configuration wherein light from the projection source(s) impinges upon the "front surface" of a screen cannot infringe any claim of the '212 Patent.

37. The term "rear-projection" means light from the projection source(s) impinges upon the rear surface of a projection surface (*e.g.*, a viewing screen) and not the "front surface" as that term is used in the '212 Patent.

38. The technology employed in the October 2014 *Hatsune Miku* performances does not include, *inter alia*, at least the following elements of the '519 Patent-in-Suit:

- a. a reflecting surface;
- b. a transparent smooth foil extending between said floor and said ceiling;
- c. an image source is arranged at the ceiling;
- d. an image source is arranged in front of the upper end of the foil; or
- e. an image source that reflects an image off of the forward surface.

39. The claims of the '519 Patent are limited to, *inter alia*, a configuration wherein light from the projection source(s) impinges upon the "front" of a semi-transparent foil.

40. Any system that does not employ a configuration wherein light from the projection source(s) impinges upon the "front" of a semi-transparent foil cannot infringe the '519 Patent.

41. The term “rear-projection” means light from the projection source(s) impinges upon the rear surface of a projection surface (*e.g.*, a viewing screen) and not the front of the foil as that term is used in the ‘519 patent.

42. The technology employed in at least the October 2014 *Hatsune Miku* performances included, *inter alia*, “rear-projection” of an animated video of the Hatsune Miku character.

43. Defendants admitted to the Court that the use of rear-projection does not infringe the Patents-in-Suit.

44. Defendants did not perform any pre-threat infringement analysis of Crypton’s activities prior to demanding Crypton cease and desist nor did they have a good faith basis for accusing Crypton of infringing the Patents-in-Suit.

45. Defendants did not know what technology Crypton used in its *Hatsune Miku* performances prior to accusing Crypton of infringing the Patent-in-Suit and demanding Crypton cease and desist.

46. Prior to accusing Crypton of infringing the Patent-in-Suit and demanding Crypton cease and desist, Defendant’s did not know what technology Crypton intended to use in its October 2014, *Hatsune Miku* performances.

47. Defendants admitted to this Court that when they sent their cease and desist letter, in which they accused Crypton of infringing the Patent-in-Suit, Defendants did not know how Crypton employed their system in the United States.

48. Defendants have demonstrated preparedness, intent, and willingness to file suit as they have followed through with respect to similar prior threats and filed patent infringement cases in at least three different jurisdictions. MDH and Maass have joined these lawsuits as co-

plaintiffs, and MDH and Maass have alleged in those lawsuits that they, along with exclusive licensee Hologram, have the right to bring suit for injunctive relief and damages.

49. Despite having inspected the rear-projection technology employed in the accused performances and having concluded Crypton does not infringe the Patents-in-Suit, Defendants have refused to provide a covenant not to sue or similar release. Defendants' actions have caused actual damage to Crypton and its rightful business activities. Thus, there is a case of actual controversy within this Court's jurisdiction and therefore the Court may declare the rights and other legal relations of the parties and award further relief under 28 U.S.C. § 2201 and § 2202.

FIRST COUNT

(Declaratory Judgment of Non-Infringement of the '519 Patent)

50. Plaintiff repeats and repleads each of the allegations contained above as if fully set forth at length herein.

51. Plaintiff has not infringed and does not infringe the '519 Patent, directly or indirectly, literally or under the doctrine of equivalents.

SECOND COUNT

(Declaratory Judgment of Non-Infringement of the '212 Patent)

52. Plaintiff repeats and repleads each of the allegations contained above as if fully set forth at length herein.

53. Plaintiff has not infringed and does not infringe the '212 Patent, directly or indirectly, literally or under the doctrine of equivalents.

THIRD COUNT

(Declaratory Judgment of Invalidity of the '519 Patent)

54. Plaintiff repeats and repleads each of the allegations contained above as if fully set forth at length herein.

55. The claims of the '516 Patent are invalid under the Patent Laws of the United States, 35 U.S.C. §§ 101 *et seq.* (Pre-AIA).

56. The claims of the '516 Patent are invalid as anticipated by the prior art under 35 U.S.C. § 102 (Pre-AIA).

57. The claims of the '516 Patent are invalid as obvious in view of the prior art under 35 U.S.C. § 103 (Pre-AIA).

58. The claims of the '516 Patent are invalid under 35 U.S.C. § 112, ¶1 (Pre-AIA).

59. The claims of the '516 Patent are invalid as indefinite under 35 U.S.C. § 112, ¶2 (Pre-AIA).

FOURTH COUNT

(Declaratory Judgment of Invalidity of the '212 Patent)

60. Plaintiff repeats and repleads each of the allegations contained above as if fully set forth at length herein.

61. The claims of the '516 Patent are invalid under the Patent Laws of the United States, 35 U.S.C. §§ 101 *et seq.* (Pre-AIA).

62. The claims of the '516 Patent are invalid as anticipated by the prior art under 35 U.S.C. § 102 (Pre-AIA).

63. The claims of the '516 Patent are invalid as obvious in view of the prior art under 35 U.S.C. § 103 (Pre-AIA).

64. The claims of the '516 Patent are invalid under 35 U.S.C. § 112, ¶1 (Pre-AIA).

65. The claims of the '516 Patent are invalid as indefinite under 35 U.S.C. § 112, ¶2 (Pre-AIA).

FIFTH COUNT

(Injurious Falsehood)

66. Plaintiff repeats and repleads each of the allegations contained above as if fully set forth at length herein.

67. The statements to CBS, Worldwide Pants, and to Crypton's publicists in Defendants' September 25, 2014, letter were false or misleading.

68. The statements to CBS, Worldwide Pants, and to Crypton's publicists in Defendants' September 25, 2014, letter were reckless and made without regard to the consequences.

69. A reasonably prudent person in the position of Defendants and their counsel would have expected CBS' and/or Worldwide Pants' reaction to Defendants' September 25, 2014, would include cancellation of the *Hatsune Miku* performance on *The Late Show with David Letterman*.

70. Crypton suffered special damages as a result of Defendants' conduct, including but not limited to the expenditure of fees and expenses for its advisors and representatives to prepare the Declaration, prepare and negotiate the CNDA, and negotiate with CBS, Worldwide Pants, and Defendants in order to avoid cancellation of the *Hatsune Miku* performance on *The Late Show with David Letterman*.

SIXTH COUNT

(Prima Facie Tort)

71. Plaintiff repeats and repleads each of the allegations contained above as if fully set forth at length herein.

72. Defendants acted intentionally and without justification or mistake in sending their September 25, 2014, letter to CBS and Worldwide Pants.

73. Defendants have admitted that, at the time Defendants' sent their September 25, 2014, letter to CBS and Worldwide Pants, Defendants did not know what projection system Crypton intended to use for *Hatsune Miku* performance on *The Late Show with David Letterman*.

74. The act of sending the September 25, 2014 letter to CBS and Worldwide Pants was not lawful or reasonable absent knowledge of how Crypton's projection system for *Hatsune Miku* operated and, as such, could not have formed a good faith basis for asserting the claims of the Patents-in-Suit were infringed thereby.

75. Crypton suffered special damages as a result of Defendants' conduct, including but not limited to the expenditure of fees and expenses for its advisors and representatives to negotiate with CBS, Worldwide Pants, and Defendants in order to avoid cancellation of the *Hatsune Miku* performance on *The Late Show with David Letterman*.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

WHEREFORE Plaintiff respectfully requests entry of judgment in its favor and against Defendants as follows:

- a) declaring that the '519 Patent is not infringed by Plaintiff;
- b) declaring that the '212 Patent is not infringed by Plaintiff;
- c) declaring that claims of the '519 Patent are invalid;
- d) declaring that claims of the '212 Patent are invalid;
- e) awarding Crypton its damages;

- f) enjoining Defendants from asserting the Patents-in-Suit against any of Plaintiff's products and/or activities;
- g) awarding Plaintiff its costs;
- h) awarding Plaintiff its attorneys' fees;
- i) finding that this is an exceptional case;
- j) awarding pre- and post-judgment interest; and
- k) awarding Plaintiff any other relief to which the Court deems Plaintiff is entitled.

/s/ John W. Shaw
John W. Shaw (No. 3362)
SHAW KELLER LLP
300 Delaware Ave., Suite 1120
Wilmington, DE 19801
(302) 298-0700
jshaw@shawkeller.com

– and –

Marc R. Labgold, Ph.D.
Patrick J. Hoeffner
LAW OFFICES OF MARC R. LABGOLD, P.C.
12007 Sunrise Valley Dr., Suite 110
Reston, VA 20191
(703) 901-8860
Attorneys for Plaintiff

Dated: April 7, 2015