

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

MAX BLU TECHNOLOGIES, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:15-cv-1400-JRG
	§	
WELL GO USA, INC. d/b/a Well Go USA	§	JURY TRIAL DEMANDED
Entertainment,	§	
	§	
Defendant.	§	

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff Max Blu Technologies, LLC (hereinafter, “Plaintiff” or “Max Blu”), by and through its undersigned counsel, files this First Amended Complaint for Patent Infringement against Defendant Well Go USA, Inc. d/b/a Well Go USA Entertainment (hereinafter, “Defendant” or “Well Go”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of the following patents (collectively, the “Patents-in-Suit”), which were duly and legally issued by the United States Patent and Trademark Office (hereinafter, the “USPTO”), copies of which are attached hereto as **Exhibits A through E**, respectively.

	Patent No.	Title
A.	7,352,685	REVERSE OPTICAL MASTERING FOR DATA STORAGE DISK REPLICAS
B.	7,801,016	REVERSE OPTICAL MASTERING FOR DATA STORAGE DISK REPLICAS
C.	8,593,931	REPLICA DISK FOR DATA STORAGE
D.	RE44633	REVERSE OPTICAL MASTERING FOR DATA STORAGE DISK REPLICAS
E.	8,705,334	REPLICA DISK FOR DATA STORAGE

2. Each of the Patents-in-Suit traces its priority date back to Application No. 09/055,825 (hereinafter, “the ’825 Application”), which was filed with the USPTO on April 6, 1998, and was the parent to Application No. 09/730,246 (hereinafter, “the ’246 Application”), which was filed with the USPTO on December 5, 2000 and issued as United States Patent No. 6,890,704. Application No. 09/850,252 (hereinafter, “the ’252 Application”) was a continuation-in-part application of the ’246 Application, which was filed with the USPTO on May 7, 2001 and issued as United States Patent No. 6,728,196 on April 27, 2004.

3. Plaintiff is the owner of the Patents-in-Suit and possesses all right, title and interest in the Patents-in-Suit, including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

4. Max Blu is a limited liability company organized and existing under the laws of the State of Texas and maintains its principal place of business at 104 East Houston Street, Suite 150, Marshall, Texas, 75670 (Harrison County).

5. Based on public information, Well Go is a corporation duly organized and existing under the laws of the State of Texas since April 11, 1994 and having its principal place of business located at 1601 E. Plano Parkway, Suite 110, Plano, Texas, 75074 (Collin County).

Defendant may be served through its registered agent, Terence K. Leung, who is located at 1750 North Collins Boulevard, Suite 210, Richardson, Texas, 75080.

6. Defendant ships, distributes, makes, uses, offers for sale, sells, and/or advertises Blu-ray disk products and services, with such disks including, but not limited to, *The Lookalike* (the “Blu-ray Disks”).

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

8. The Court has personal jurisdiction over Defendant because: Defendant has minimum contacts within the State of Texas and in 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.

9. More specifically, Defendant, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and affiliated services in the United States, the State of Texas, and the Eastern District of Texas. Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who use Defendant’s products in the State of Texas and in the Eastern District of Texas.

10. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND INFORMATION

11. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office after full and fair examinations. Plaintiff is the owner of the Patents-in-Suit, and possesses all right, title and interest in the Patent-in-Suit including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages.

12. Defendant sells, advertises, offers for sale, uses, or otherwise provides the Blu-ray Disks (collectively, the “Accused Products”). A picture of the representative packaging for the Accused Products is attached as **Exhibit F** (packaging for *The Lookalike*).

13. Based on public information, Defendant owns, operates, advertises, and/or controls the website www.wellgousa.com, through which Defendant advertises, sells, offers to sell, provides and/or educates customers about the Accused Products. Evidence obtained from Defendant’s website regarding these products is provided in **Exhibit G** (sale of *The Lookalike*) and **Exhibit H** (sale of other Blu-ray disks).

14. A representative analysis of the physical characteristics of the Accused Products is attached as **Exhibit I** (analysis of *The Lookalike*).

COUNT I **INFRINGEMENT OF U.S. PATENT NO. 7,352,685**

15. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-14 above.

16. United States Patent No. 7,352,685 (hereinafter, the “685 Patent”) was duly and legally issued by the USPTO on April 1, 2008 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Imation Corporation. See Ex. A.

17. The '685 Patent was issued after full and fair examination of application number 10/790,970 which was filed with the USPTO on March 2, 2004 as a continuation of application number 09/850,252 (which itself issued as United States Patent No. 6,728,196). See Ex. A.

18. A Certificate of Correction was issued for the '685 Patent on February 16, 2010. See Ex. A.

19. Defendant has infringed and continues to infringe the '685 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. More specifically, Defendant has infringed and continues to infringe one or more claims of the '685 Patent, including at least Claims 1, 2-4, 7, 19-28, 29, and 30-35, (the "'685 Patent Claims") because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant's Accused Products infringe the '685 Patent Claims by providing to its customers optical disks with the physical characteristics as claimed in the '685 Patent Claims. See, e.g., Ex. F; Ex. I. Defendant's Accused Products are available for sale on its website and through various retailers located in this district and throughout the United States. See, e.g., Ex. G; Ex. H.

20. Defendant has intentionally induced and continues to induce infringement of the '685 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products in an infringing manner. Defendant had actual knowledge of the '685 Patent and specific intent to encourage its customers' direct infringement through their use of the Accused Products. Despite knowledge of the '685 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in

a manner which infringes the '685 Patent.¹ See Ex. G, Ex. H. Defendant's source of revenue and business focus is the provision of and sale of the Accused Products. Defendant has specifically intended its customers to use its systems and methods in such a way that infringes the '685 Patent by, at a minimum, providing and supporting the Accused Products and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See id. Defendant knew that its actions, including, but not limited to any of the aforementioned systems and methods, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products. *Id.*

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

22. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of 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.

23. Defendant's infringement of Plaintiff's rights under the "'685 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

¹ *See InMotion Imagery Technologies v. Brain Damage Films*, No. 2:11-CV-414-JRG, 2012 WL 3283371, at *3 (E.D. Tex. Aug. 10, 2012) (noting that "there can be no dispute that [defendant] ha[d] actual notice of the [patent] at least as of the time of the filing of this lawsuit," and further holding that "[w]hile the [c]omplaint does not explicitly plead facts to show that [defendant] had a specific intent to induce infringement, it is not necessary to provide detailed factual support for each and every element of inducement."); *see also, Patent Harbor LLC v. Dreamworks Animation SKG, Inc.*, 6:11-cv-229 (E.D. Tex. July 27, 2012); *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1336 (Fed. Cir. 2012)

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 7,801,016

24. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-14 above.

25. United States Patent No. 7,801,016 (hereinafter, the “’016 Patent”) was duly and legally issued by the USPTO on September 21, 2010 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Imation Corporation. See Ex. B.

26. The ’016 Patent was issued after full and fair examination of application number 12/584,454 which was filed with the USPTO on September 4, 2009 as a continuation of application number 10/790,965 (which itself issued as United States Patent No. 7,600,992). See Ex. B.

27. Defendant has infringed and continues to infringe the ’016 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. Defendant has infringed and continues to infringe one or more claims of the ’016 Patent, including at least Claims 1 and 5 (the “’016 Patent Claims”) because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant’s Accused Products infringe the ’016 Patent Claims by providing to its customers optical disks with the physical characteristics as claimed in the ’016 Patent Claims. See, e.g., Ex. F; Ex. I. Defendant’s Accused Products are available for sale on its website and through various retailers located in this district and throughout the United States. See, e.g., Ex. G; Ex. H.

28. Defendant has intentionally induced and continues to induce infringement of the ’016 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant’s customers to use the Accused Products in an infringing manner. Defendant

had actual knowledge of the '016 Patent and specific intent to encourage its customers' direct infringement through their use of the Accused Products. Despite knowledge of the '016 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '016 Patent.² See Ex. G, Ex. H. Defendant's source of revenue and business focus is the provision of and sale of the Accused Products. Defendant has specifically intended its customers to use its systems and methods in such a way that infringes the '016 Patent by, at a minimum, providing and supporting the Accused Products and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See id. Defendant knew that its actions, including, but not limited to any of the aforementioned systems and methods, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products. *Id.*

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

30. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of 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.

² *See InMotion*, 2012 WL 3283371, at *3; *see also, Patent Harbor*, 6:11-cv-229; *In re Bill of Lading*, 681 F.3d at 1336.

31. Defendant's infringement of Plaintiff's rights under the '016 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,593,931

32. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-31 above.

33. United States Patent No. 8,593,931 (hereinafter, the "'931 Patent") was duly and legally issued by the USPTO on November 26, 2013 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Legger Col. A.B. LLC. See Ex. C.

34. The '931 Patent was issued after full and fair examination of application number 13/730,733 which was filed with the USPTO on December 28, 2012 as a continuation of application number 13/089,994 (which itself issued as United States Patent No. 8,363,534). See Ex. C.

35. Defendant has infringed and continues to infringe the '931 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. Defendant has infringed and continues to infringe one or more claims of the '931 Patent, including at least Claims 1, 4, 5, 7, 9, 10, and 11 (the "'931 Patent Claims") because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant's Accused Products infringe the '931 Patent Claims by providing to its customers optical disks with the physical characteristics as claimed in the '931 Patent Claims. See, e.g., Ex. F; Ex. I. Defendant's Accused Products are available for sale on its website and through various retailers located in this district and throughout the United States. See, e.g., Ex. G; Ex. H.

36. Defendant has intentionally induced and continues to induce infringement of the '931 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products in an infringing manner. Defendant had actual knowledge of the '931 Patent and specific intent to encourage its customers' direct infringement through their use of the Accused Products. Despite knowledge of the '931 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '931 Patent.³ See Ex. G, Ex. H. Defendant's source of revenue and business focus is the provision of and sale of the Accused Products. Defendant has specifically intended its customers to use its systems and methods in such a way that infringes the '931 Patent by, at a minimum, providing and supporting the Accused Products and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See id. Defendant knew that its actions, including, but not limited to any of the aforementioned systems and methods, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products. *Id.*

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

38. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law,

³ *See InMotion*, 2012 WL 3283371, at *3; *see also, Patent Harbor*, 6:11-cv-229; *In re Bill of Lading*, 681 F.3d at 1336.

cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

39. Defendant's infringement of Plaintiff's rights under the '931 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT IV
INFRINGEMENT OF U.S. PATENT NO. RE44633

40. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-39 above.

41. United States Reissued Patent No. RE44633 (hereinafter, the "'633 Patent") was duly and legally issued by the USPTO on December 10, 2013 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Ledger Col. A.B. LLC. See Ex. D. The '633 Patent was filed with the USPTO on September 23, 2011 as application number 13/243,939. *Id.*

42. The reexamination that resulted in the issuance of the '633 Patent was based on United States Patent No. 7,952,986 (the "'986 Patent"), which issued on May 31, 2011 from Application No. 12/852,139 and was filed with the USPTO on August 6, 2010, as a continuation of application number 12/ 584,454 (which itself issued as United States Patent No. 7,801,016) See Ex. D.

43. Defendant has infringed and continues to infringe the '633 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. Defendant has infringed and continues to infringe one or more claims of the '633 Patent, including at least Claims 1, 2, 15, 16, 18, and 19 (the "'633 Patent Claims") because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant's Accused Products infringe the '633 Patent Claims by providing to its

customers optical disks with the physical characteristics as claimed in the '633 Patent Claims. See, e.g., Ex. F; Ex. I. Defendant's Accused Products are available for sale on its website and through various retailers located in this district and throughout the United States. See, e.g., Ex. G; Ex. H.

44. Defendant has intentionally induced and continues to induce infringement of the '633 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products in an infringing manner. Defendant had actual knowledge of the '633 Patent and specific intent to encourage its customers' direct infringement through their use of the Accused Products. Despite knowledge of the '633 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '633 Patent.⁴ See Ex. G, Ex. H. Defendant's source of revenue and business focus is the provision of and sale of the Accused Products. Defendant has specifically intended its customers to use its systems and methods in such a way that infringes the '633 Patent by, at a minimum, providing and supporting the Accused Products and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See id. Defendant knew that its actions, including, but not limited to any of the aforementioned systems and methods, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products. *Id.*

⁴ *See InMotion*, 2012 WL 3283371, at *3; *see also, Patent Harbor*, 6:11-cv-229; *In re Bill of Lading*, 681 F.3d at 1336.

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

46. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of 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.

47. Defendant's infringement of Plaintiff's rights under the '633 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT V
INFRINGEMENT OF U.S. PATENT NO. 8,705,334

48. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-48 above.

49. United States Patent No. 8,705,334 (hereinafter, the "'334 Patent'") was duly and legally issued by the USPTO on April 22, 2014 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Legger Col. A.B. LLC. See Exhibit E.

50. The '334 Patent was issued after full and fair examination of application number 14/065,337, which was filed with the USPTO on October 28, 2013 as a continuation of application number 13/730,733 (which itself issued as United States Patent No. 8,593,931). See Exhibit E.

51. Defendant has infringed and continues to infringe the '334 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. Defendant has infringed and continues to infringe one or more claims of the '334 Patent, including at least Claims 1 and 18 (the "'334 Patent Claims'") because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically,

Defendant's Accused Products infringe the '334 Patent Claims by providing to its customers optical disks with the physical characteristics as claimed in the '334 Patent Claims. See, e.g., Ex. F; Ex. I. Defendant's Accused Products are available for sale on its website and through various retailers located in this district and throughout the United States. See, e.g., Ex. G; Ex. H.

52. Defendant has intentionally induced and continues to induce infringement of the '334 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products in an infringing manner. Defendant had actual knowledge of the '334 Patent and specific intent to encourage its customers' direct infringement through their use of the Accused Products. Despite knowledge of the '334 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '334 Patent.⁵ See Ex. G, Ex. H. Defendant's source of revenue and business focus is the provision of and sale of the Accused Products. Defendant has specifically intended its customers to use its systems and methods in such a way that infringes the '334 Patent by, at a minimum, providing and supporting the Accused Products and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See id. Defendant knew that its actions, including, but not limited to any of the aforementioned systems and methods, would induce, have induced, and will

⁵ *See InMotion*, 2012 WL 3283371, at *3; *see also, Patent Harbor*, 6:11-cv-229; *In re Bill of Lading*, 681 F.3d at 1336.

continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products. *Id.*

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

54. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of 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.

55. Defendant's infringement of Plaintiff's rights under the '334 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

56. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

57. Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;
- B. An adjudication that Defendant has induced infringement of one or more claims of the Patents-in-Suit;
- C. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary

to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further acts of infringement with respect to any one or more of the claims of the Patents-in-Suit;
- E. 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,
- F. Any further relief that this Court deems just and proper.

Dated: August 6, 2015

Respectfully submitted,

/s/ William E. Davis, III

William E. Davis, III

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Admission papers forthcoming

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