UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

AUDIO MPEG, INC., U.S. PHILIPS CORPORATION, TDF SAS, AND INSTITUT FÜR RUNDFUNKTECHNIK GMBH **Plaintiffs,** **v.** **DELL, INC.,** **Defendant.**	**Civil Action No.:** 1:15cv1674 **COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

COMPLAINT FOR PATENT INFRINGEMENT

1. Plaintiffs Audio MPEG, Inc., U.S. Philips Corporation, TDF SAS (formerly Telediffusion de France), and Institut für Rundfunktechnik GmbH (collectively, the "Plaintiffs"), by their counsel and pursuant to Federal Rule of Civil Procedure 8(a), allege the following in support of their Complaint against Dell, Inc. ("Defendant" or "Dell") for patent infringement:

SUMMARY OF CLAIMS

2. This case arises as a result of Defendant's intentional and persistent infringement of patented technologies developed by U.S. Philips Corporation, TDF SAS, and Institut für Rundfunktechnik GmbH (collectively, the "Patent Owners") that enable consumers to enjoy high quality music and other audio on electronic devices. Because Defendant's products include the Patent Owners' inventions, those products can appeal to consumers who seek devices that incorporate the functionality that the patented technologies provide. Defendants' competitors have recognized the significant value in the Patent Owners' inventions and have licensed and

employed those inventions in millions of consumer devices. Defendant, too, has recognized the value of the Patent Owners' inventions, and by employing those inventions in its products, Defendant has made its devices competitive with products similar to those manufactured by licensees in good standing.

3. Yet unlike virtually all of its competitors, Defendant refuses to "play fair," and has rejected numerous opportunities to license the patented inventions at issue in this case. Faced with Defendant's infringement and refusals to license the patents as the vast majority of its competitors have, Plaintiffs have been forced to bring this action seeking damages for past use of the technologies. In addition, and because Defendant's infringing conduct constitutes, among other things, intentional infringement and disregard of patent rights, Plaintiffs seek enhanced damages and an award of their fees and costs.

4. This action asserts infringement of the same three patents as in *Audio MPEG, Inc.* v. *Hewlett-Packard Co.*, 2:15-cv-00073 (E.D. Va.) (the "HP Action"). On September 15, 2015, the Honorable Henry Coke Morgan, Jr., the judge presiding in the HP Action, stayed that case pending a determination by the Patent and Trademark Appeal Board of whether to institute *inter partes* review based on a petition filed by HP. Concerned about the running of the damages period, Plaintiffs contacted Defendant on November 24, 2015 and sought agreement to toll the statute and avoid filing this complaint. Although Plaintiffs agreed to edits requested by Defendant to the tolling agreement Plaintiffs had proposed, Defendant refused to enter into any such agreement unlike several similarly situated infringers. Consequently, Plaintiffs filed this complaint to preserve their claims for damages.

NATURE OF THE ACTION

5. This is a civil action for infringement of a patent arising under the laws of the United States relating to patents, including 35 U.S.C. § 281.

SUBJECT MATTER JURISDICTION

6. This civil action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

PARTIES

7. Plaintiff Audio MPEG, Inc. ("Audio MPEG") is a corporation organized under the laws of Virginia having its headquarters and its sole U.S. place of business at 66 Canal Center Plaza, Suite 750, Alexandria, Virginia 22314.

8. Plaintiff U.S. Philips Corporation ("Philips") is a corporation organized under the laws of Delaware with its principal place of business at 3000 Minuteman Road, M/S 1203, Andover, MA 01810.

9. Plaintiff TDF SAS ("TDF") is a corporation organized under the laws of France having an address at 106 Avenue Marx Dormoy, 92120 Montrouge, France.

10. Plaintiff Institut für Rundfunktechnik GmbH ("IRT") is a corporation organized under the laws of Germany having an address at Floriansmuehlstrasse 60, D-80939 Munich, Germany.

11. On information and belief, Defendant Dell is a corporation organized and existing under the laws of Delaware, with its principal place of business located at One Dell Way, Round Rock, Texas.

PERSONAL JURISDICTION AND VENUE

12. Defendant has made, used, sold, offered for sale, and/or imported into the United States products that comply with the ISO/IEC 11172-3 and/or 13818-3 standards (the "MPEG Standards"). Such products include capabilities and functionalities required by the MPEG Standards in order to be compliant with the Standards.

13. Upon information and belief, Defendant regularly transacts business in this judicial district and division by offering products and services to customers, business affiliates and/or partners located in this judicial district and division. In addition, Defendant has committed acts of infringement of one or more claims of the patents-in-suit in this judicial district and division by the sale of infringing devices.

14. Upon information and belief, Defendant voluntarily placed products which incorporate capabilities and functionalities required by the MPEG Standards into the stream of United States commerce, conscious that Virginia, including this judicial district, was the likely destination of a substantial quantity of such devices.

15. Upon information and belief, a substantial part of the events giving rise to these claims for patent infringement occurred in Virginia and in this judicial district.

16. Upon information and belief, Defendant is subject to personal jurisdiction in this district because it purposefully engaged in activities that gave rise to these claims for patent infringement and which were directed at residents of Virginia and this judicial district.

17. Defendant is a corporation and resides in this district for purposes of 28 U.S.C. §§ 1391(c) and 1400(b).

18. Venue for this civil action in this judicial district is proper under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because Defendant is subject to personal jurisdiction in this judicial district and the infringing activity has occurred in this judicial district.

BACKGROUND

Development of MP3 Technology

19. The Patent Owners are industry leaders in the development of high-tech audio technology. Philips is a leader in research relating to consumer electronics products, IRT is a leader in broadcast technology, and TDF is a leader in telecommunication, communication

networks, and multimedia applications. To develop the technology claimed in the patents, the Patent Owners formed a research team that merged the strengths of their research laboratories.

20. Together the Patent Owners developed technology that was adopted as the industry standard for audio compression. The International Organization for Standardization ("ISO") created the MPEG/Audio Working Group ("MPEG/Audio Group") in 1988 to create a standardized audio coder to be used in conjunction with a planned standardized video coder. The ISO invited interested parties to contribute their expertise to the standardization effort. The Patent Owners participated in this process and the ISO selected their technology as the basis for the audio compression standard.

21. The work of the MPEG/Audio Group was embodied in two standards (known as ISO 11172-3 and ISO 13818-3) directed to MPEG Audio Layers 1, 2, and 3 technology. These standards were finalized in 1991.

22. The MPEG Standards include the well-known "MP3" technology, which allows audio signals to be compressed and stored using much less storage space than previous technologies. The process of compressing and storing the audio signal is known as "encoding." Later the compressed data can be converted into an audio signal and played back, through a process known as "decoding." To be capable of decoding MP3 files, a device must comply with the essential elements of the MPEG Standards.

23. Before MP3 technology was conceived, recorded music and other audio files were typically stored on a CD, DVD, or hard drive. The technology developed by the Patent Owners allows audio files to be compressed and stored using much less space—as a result of the Asserted Patents (defined below) a user can store thousands of songs in a small portable device rather than needing hundreds of CDs or DVDs. The MP3 player, and the patented technology it

incorporates, revolutionized the transmission and storage of digital audio files, and allows consumers to listen to the music of their choice on-demand in a way that was not possible with CDs and DVDs

The Asserted Patents

24. The Patent Owners own patents that claim inventions relating to the MPEG Standards, including U.S. Patent Nos. 5,777,992 (the "'992 Patent"), 5,323,396 (the "'396 Patent"), and 5,539,829 (the "'829 Patent") (collectively, the "Asserted Patents").

25. The Asserted Patents cover inventions that are essential—required—for implementation of the MPEG Standards ("Patented Essential Technologies"). Products using MPEG Audio compression by compliance with the MPEG Standards necessarily use the technology of the Asserted Patents in order to be in compliance with the Standards and achieve the benefits of the Standards. Products compliant with the MPEG Standards therefore practice the technology claimed by the Asserted Patents.

A. The '396 Patent

26. The '396 Patent, entitled "Digital Transmission System, Transmitter and Receiver for Use in the Transmission System," was issued on June 21, 1994 and is attached as Exhibit A. The '396 Patent generally relates to encoding and decoding digital audio signals. It expired on June 21, 2011.

27. The '396 Patent describes decoders and receivers that decode compressed signals, which represent a wideband digital audio signal. One method for reducing the number of digital "bits" required to store and/or transmit such a signal (thereby saving transmission bandwidth, memory space and battery life) involves breaking down the wideband signal into frequency sub-band samples, and then quantizing and coding each sub-band using a smaller number of bits. The sub-bands can then be transmitted to a receiver in a defined digital format and decoded to

produce a high-quality replica of the original signal while saving transmission bandwidth, memory space and battery life.

28. The '396 Patent further describes decoders and receivers in which information is transmitted to, and decoded by, the decoder/receiver in "frames" at a particular rate. Each frame comprises a specified number of information packets that contain the quantized sub-band information, as well as other information needed to decode and recombine the sub-bands properly. According to the patent specification, the decoder can best reproduce the original wideband signal when the number of information packets in one frame ("P") complies with the formula $P = \frac{BR}{N} \times \frac{n_s}{F_s}$ where BR is the bit rate of the encoded digital signal, N is the number of bits per information packet, n_s is the number of samples in one frame, and Fs is the sampling frequency. If P is an integer, the number of information packets in one frame is P. If P is not an integer, the number of information packets in some number of the frames is P' where P' is the highest integer less than P, and the number of information packets in the other frames is P'+1. The fraction of the frames with P' information packets is selected so that the average rate at which frames are transmitted to the decoder/receiver is equal to $\frac{F_s}{n_s}$. This formula is found in each of the claims of the '396 Patent.

29. Claim 26 of the '396 Patent claims a formula for calculating the number of information packets in one frame, and it claims the ability to decode content that is structured according to the formula. A version of that formula is present in Section 2.4.3.1 of ISO/IEC 11172-3, and is essential to that standard, such that any encoded audio file that complies with the MPEG Standards must utilize an arrangement of packets per frame that complies with the formula. Accordingly, products capable of decoding an audio signal that has been encoded in compliance with the MPEG Standards (*e.g.*, an MP3 file) necessarily infringe the '396 Patent.

B. The '992 Patent

30. The '992 Patent, entitled "Decoder for Decoding and Encoded Digital Signal and a Receiver Comprising the Decoder," was issued on July 7, 1998, and is attached as Exhibit B. The '992 Patent generally relates to decoding digital audio signals. It expired on June 21, 2011.

31. The '992 Patent describes decoders and receivers that decode compressed signals, which represent a wideband digital audio signal in which information is transmitted to, and decoded by, the decoder/receiver in "frames" at the particular rate specified in the patent claims.

32. Claim 1 of the '992 Patent claims a decoder or receiver that includes a specified number of information packets in one frame. The same claim elements are present in at least Section 2.4.3.1 of ISO/IEC 11172-3, and that Section is essential to that standard. Accordingly, products capable of decoding an audio signal that has been encoded in compliance with the MPEG Standards (*e.g.*, an MP3 file) necessarily infringe the '992 Patent.

33. Claim 2 of the '992 Patent claims a decoder with a "first frame portion [that] comprises further information relating to the number of information packets in the frame." The decoder also "comprises retrieval means to retrieve said further information from the first frame portion in said frame upon reception of the encoded digital signal." The elements of this claim are also essential to the MPEG Standards, including without limitation ISO/IEC 11172-3 § 2.4.2.3 and ISO/IEC 11172-3 § 0.4.

34. Claim 7 of the '992 Patent claims a decoder with a "first frame portion [that] further includes system information, and the decoder comprises retrieval means for retrieving said system information from the first frame portion in said frame upon reception of the encoded digital signal." The elements of this claim are also essential to the MPEG Standards, including without limitation ISO/IEC 11172-3 §§ 0.4 and 2.4.2.3. Accordingly, products capable of

decoding an audio signal that has been encoded in compliance with MPEG Standards (*e.g.*, an MP3 file) necessarily infringe the '992 Patent.

35. Claim 10 of the '992 Patent claims a decoder with "system information [that] identifies a frame as having one information packet more than other packets." The elements of this claim are also essential to the MPEG Standards, including without limitation ISO/IEC 11172-3 § 2.4.2.3. Accordingly, products capable of decoding an audio signal that has been encoded in compliance with MPEG Standards (*e.g.*, an MP3 file) necessarily infringe the '992 Patent.

C. The '829 Patent

36. The '829 Patent, entitled "Subband Coded Digital Transmission System Using Some Composite Signals," was issued on July 23, 1996, and is attached as Exhibit C. The '829 Patent generally relates to encoding and decoding digital audio signals. It expired on July 23, 2013.

37. The '829 Patent claims transmitters and receivers that encode and decode, respectively, compressed signals which represent a wideband digital audio signal, where that audio signal includes, for example, signals for the left and right channel of a stereo audio input. One method for reducing the number of digital "bits" required to transmit such a signal (thereby saving transmission bandwidth, memory space and battery life) involves breaking down the wideband signal into frequency sub-bands, and then quantizing and coding each sub-band using a smaller number of bits. The sub-bands can then be transmitted to a receiver in a defined digital format and decoded to produce a high-quality replica of the original signal.

38. The '829 Patent claims an invention known as an "intensity stereo" which includes an apparatus configured to make the signal replica more accurate. The technology

claimed in the '829 Patent does this by combining certain related sub-bands (such as those that correspond to the left and right channel in the same frequency sub-band) and using the bits thus saved to more accurately quantize the other sub-bands. As its specification explains, "[b]y selectively combining subsignals which have a correspondence or relationship to each other, and quantizing only one composite sub-signal," the invention "make[s] more bits available for quantizing of those sub-signals which are transmitted," which reduces distortion and "may more than compensate for the slight loss of information." The patent discloses methods and apparatus for analyzing, selecting, and encoding the sub-bands; selecting the sub-bands to be combined; generating signals that let a receiver know which sub-bands have been combined; appropriately re-quantizing the remaining sub-bands for transmission; and creating the replica from the transmitted sub-bands.

39. Claim 19 of the '829 Patent claims "[a] receiver for producing a replica of a digital signal including a first component and a second component from digital signal components comprising at least one composite sub-signal, an indicator signal indicating that at least a first and a second sub-signal are combined, and a plurality of subsignals not including said first and second sub-signal, said digital signal components being representative of said digital signal." The elements of this claim are essential to the MPEG Standards, which require the ability to decode audio signals encoded in "intensity stereo" mode. (ISO/IEC 11172-3 § 2.1.76.) Accordingly, products capable of decoding an audio signal that has been encoded in compliance with MPEG Standards (*e.g.*, MP3 files) necessarily infringe the '829 Patent.

40. Claim 20 of the '829 Patent claims "[a] receiver as claimed in claim 19, characterized in that said first and second components are respective stereo audio signals." This

additional element is essential to the MPEG Standards, including without limitation at least ISO/IEC 11172-3 § 2.1.138.

Audio MPEG's Licensing Program

41. Audio MPEG has the exclusive rights to license and to sue for and collect fees, costs, and damages, including past damages for past infringement of U.S. patents owned by Philips, TDF, and IRT covering essential elements of the ISO/IEC 11172-3 and 13818-3 MPEG Standards directed to MPEG Audio Layers I, II, and III technology, including the Asserted Patents.

42. Beginning in 1996, the Patent Owners began to offer a joint license as a convenience to licensees that gave each licensee the ability to obtain a license to all of the Patent Owners' MPEG Audio patents, including the Asserted Patents (prior to their expiration). Each licensee had the opportunity to choose in its discretion whether to exclude any of the offered patents from its license.

43. To date, more than 1,000 manufacturers and sellers of MPEG Audio-enabled products have taken the license offered by the Licensing Companies, including major players in the industry such as Sony, Apple, Lenovo, Samsung, Cisco-Linksys, LG, Panasonic, Sharp, and Bose.

Dell's Infringement of the Asserted Patents

44. Defendant advertises, manufactures and/or sells products that contain unlicensed software that complies with the MPEG Standards (the "MPEG Audio Products"). Such products manufactured and/or sold by Defendant include, but are not limited to, Dell computers and electronic devices containing Cyberlink PowerDVD (such as Latitude D530, Latitude D630, Latitude D830, and Dell Precision M6300) or Roxio Creator (such as Latitude D630). Without discovery from Defendant, Plaintiffs are not able to ascertain at the pleading stage all of

Defendant's MPEG Audio Products. All products, however, that are capable of decoding an audio signal that has been encoded in compliance with the MPEG Standards necessarily infringe the Asserted Patents.

45. Because the MPEG Audio Products comply with the MPEG Audio Standards, they infringe at least the claims referred to above of the Asserted Patents.

46. Audio MPEG notified Defendant that its products infringed the Patent Owners' patents no later than July 1, 2004. Despite this notification and repeated and patient efforts to have Defendant license the Asserted Patents, Defendant has refused. Defendant has never taken a license to any of the Asserted Patents.

FIRST COUNT
(PATENT INFRINGEMENT—'396 PATENT)
35 U.S.C. §§ 271 AND 281

47. On June 21, 1994, United States Patent No. 5,323,396 for a "Digital Transmission System, Transmitter and Receiver for use in the Transmission System" was duly and legally issued to Gerardus C. P. Lokhoff. A true and correct copy of the '396 patent is attached hereto as Exhibit A.

48. Plaintiffs Philips, TDF, and IRT own the '396 patent.

49. Plaintiff Audio MPEG has the exclusive right to license the '396 patent and to sue for and collect fees, costs, and damages, including past damages for past infringement of the '396 patent.

50. The '396 patent generally relates to encoding and decoding digital audio signals as explained in further detail, *supra*.

51. Defendant has directly infringed one or more of the claims of the '396 patent (including the claims referred to above) by manufacturing, using, selling, importing, and/or offering for sale products that include capabilities required by the MPEG Standards, including

but not limited to Dell computers and electronic devices containing Cyberlink PowerDVD (such as Latitude D530, Latitude D630, Latitude D830, and Dell Precision M6300) or Roxio Creator (such as Latitude D630).

52. Defendant also indirectly infringed the '396 patent by inducing infringement by others, such as original equipment manufacturers ("OEMs"), other manufacturers, importers, resellers, customers, and/or end users, in violation of 35 U.S.C. § 271(b). No later than July 1, 2004, Audio MPEG notified Defendant that all Defendant's products incorporating the MPEG Audio encoding and decoding capabilities required by at least one of the MPEG Standards are covered by the '396 patent. Despite having knowledge of such infringement, Defendant continued to instruct and/or encourage OEMs, manufacturers, importers, resellers, customers, and/or end user customers to manufacture, offer for sale, sell, import, and/or use Defendant's products incorporating capabilities required by at least one of the MPEG Standards, which include but are not limited to Dell computers and electronic devices containing Cyberlink PowerDVD (such as Latitude D530, Latitude D630, Latitude D830, and Dell Precision M6300) or Roxio Creator (such as Latitude D630). On information and belief, Defendant has intentionally taken these actions knowing that its acts caused infringement of the patent and specifically intending infringement of the '396 patent. These acts include, but are not limited to, Defendant's offers to sell and sales of Defendant's infringing products in the United States, as well as Dell's promotions on its websites and marketing materials for Defendant's infringing products and their MPEG Audio, MP2, or MP3 capabilities.

53. Defendant also indirectly infringed the '396 patent by contributing to the infringement by others, such as OEMs, other manufacturers, importers, resellers, customers, and/or end users, in violation of 35 U.S.C. § 271(c). No later than July 1, 2004, Audio MPEG

notified Defendant of Defendant's infringing activity. Defendant has contributed to direct infringement of the patent by supplying an important component of the infringing products to others in the United States. Specifically, Defendant supplied, sold, and/or offered to sell in the United States components providing the capabilities required by the MPEG Standards, including but not limited to software such as Cyberlink PowerDVD and Roxio Creator, for use with computers and electronic devices, including but not limited to Dell computers and electronic devices. The components providing the capabilities required by the MPEG Standards are not common components suitable for substantial non-infringing use. Upon information and belief, Defendant supplied the components with knowledge of the patent and knowledge that the components were specially made or adapted for use in an infringing manner and that others directly infringed the patent in the United States.

54. Defendant had actual knowledge of the '396 patent and has willfully and intentionally committed said infringing activities in disregard of Plaintiffs' patent rights. No later than July 1, 2004, Audio MPEG notified Defendant of Defendant's infringing activity. With actual knowledge, Defendant continued to manufacture, use, sell, import, and/or offer for sale products that include capabilities required by the MPEG Standards. Defendant did so despite an objectively high likelihood that it was infringing the '396 patent. Furthermore, the risk of infringement was obvious such that, even if Defendant did not know of the risk of infringement, it should have known of the risk. Under all relevant circumstances, Defendant has willfully ignored and infringed upon Plaintiffs' valid patent rights.

55. As a consequence of the infringing activities by Defendant, Plaintiffs have been damaged in an amount not yet determined.

SECOND COUNT
(PATENT INFRINGEMENT—'992 PATENT)
35 U.S.C. §§ 271 AND 281

56. On July 7, 1998, United States Patent No. 5,777,992 for a "Decoder for Decoding an Encoded Digital Signal and a Receiver Comprising the Decoder" was duly and legally issued to Gerardus C. P. Lokhoff. A true and correct copy of the '992 patent is attached hereto as Exhibit B.

57. Plaintiffs Philips, TDF, and IRT own the '992 patent.

58. Plaintiff Audio MPEG has the exclusive right to license the '992 patent and to sue for and collect fees, costs, and damages, including past damages for past infringement of the '992 patent.

59. The '992 patent generally relates to decoding digital audio signals as explained in further detail, *supra*.

60. Defendant has directly infringed one or more of the claims of the '992 patent (including the claims referred to above) by manufacturing, using, selling, importing, and/or offering for sale products that include capabilities required by the MPEG standards, including but not limited to Dell computers and electronic devices containing Cyberlink PowerDVD (such as Latitude D530, Latitude D630, Latitude D830, and Dell Precision M6300) or Roxio Creator (such as Latitude D630).

61. Defendant also indirectly infringed the '992 patent by inducing infringement by others, such as OEMs, manufacturers, importers, resellers, customers, and/or end users, in violation of 35 U.S.C. § 271(b). No later than July 1, 2004, Audio MPEG notified Defendant that all products incorporating the MPEG Audio encoding and decoding capabilities required by at least one of the MPEG standards are covered by the '992 patent. Despite having knowledge of such infringement, Defendant continued to instruct and/or encourage OEMs, other

manufacturers, importers, rescuers, customers, and/or end user customers to manufacture, offer for sale, sell, import, and/or use Defendant's products incorporating capabilities required by at least one of the MPEG standards, which include but are not limited to Dell computers and electronic devices containing Cyberlink PowerDVD (such as Latitude D530, Latitude D630, Latitude D830, and Dell Precision M6300) or Roxio Creator (such as Latitude D630). On information and belief, Defendant has intentionally taken these actions knowing that its acts caused infringement of the patent and specifically intending infringement of the '992 patent. These acts include, but are not limited to, Defendant's offers to sell and sales of Defendant's infringing products in the United States, as well as Defendant's promotions on its websites and marketing materials for Defendant's infringing products and their MPEG Audio, MP2, or MP3 capabilities.

62. Defendant also indirectly infringed the '992 patent by contributing to the infringement by others, such as OEMs, other manufacturers, importers, resellers, customers, and/or end users, in violation of 35 U.S.C. § 271(c). No later than July 1, 2004, Audio MPEG notified Defendant of Defendant's infringing activity. Defendant has contributed to direct infringement of the patent by supplying an important component of the infringing products to others in the United States. Specifically, Defendant supplied, sold, and/or offered to sell in the United States components providing the capabilities required by the MPEG standards, including but not limited to software such as Cyberlink PowerDVD and Roxio Creator, for use with computers and electronic devices, including but not limited to Dell computers and electronic devices. The components providing the capabilities required by the MPEG standards are not common components suitable for substantial non-infringing use. Upon information and belief, Defendant supplied the components with knowledge of the patent and knowledge that the

components were specially made or adapted for use in an infringing manner and that others directly infringed the patent in the United States.

63. Defendant had actual knowledge of the '992 patent and has willfully committed said infringing activities in disregard of Plaintiffs' patent rights. No later than July 1, 2004, Audio MPEG notified Defendant of Defendant's infringing activity. With actual knowledge, Defendant continued to manufacture, use, sell, import, and/or offer for sale products that include capabilities required by the MPEG standards. Defendant did so despite an objectively high likelihood that it was infringing the '992 patent. Furthermore, the risk of infringement was obvious such that, even if Defendant did not know of the risk of infringement, it should have known of the risk. Under all relevant circumstances, Defendant has willfully ignored and infringed upon Plaintiffs' valid patent rights.

64. As a consequence of the infringing activities by Defendant complained of herein, Plaintiffs have been damaged in an amount not yet determined.

THIRD COUNT
(PATENT INFRINGEMENT—'829 PATENT)
35 U.S.C. §§ 271 AND 281

65. On July 23, 1996, United States Patent No. 5,539,829 for a "Subband Coded Digital Transmission System Using Some Composite Signals" was duly and legally issued to Gerardus C. P. Lokhoff, Yves-Francois Dehery, Gerhard J. Stoll, and Günther Theile. A true and correct copy of the '829 patent is attached hereto as Exhibit C.

66. Plaintiffs Philips, TDF, and IRT own the '829 patent.

67. Plaintiff Audio MPEG has the exclusive right to license the '829 patent and to sue for and collect fees, costs, and damages, including past damages for past infringement of the '829 patent.

68. The '829 patent generally relates to encoding and decoding digital audio signals as explained in further detail, *supra*.

69. Defendant has directly infringed one or more of the claims of the '829 patent (including those claims referred to above) by manufacturing, using, selling, importing, and/or offering for sale products that include capabilities required by the MPEG standards, including but not limited to Dell computers and electronic devices containing Cyberlink PowerDVD (such as Latitude D530, Latitude D630, Latitude D830, and Dell Precision M6300) or Roxio Creator (such as Latitude D630).

70. Defendant also indirectly infringed the '829 patent by inducing infringement by others, such as OEMs, manufacturers, importers, resellers, customers, and/or end users, in violation of 35 U.S.C. § 271(b). No later than July 1, 2004, Audio MPEG notified Defendant that all Defendant's products incorporating the MPEG Audio encoding and decoding capabilities required by at least one of the MPEG standards are covered by the '829 patent. Despite having knowledge of such infringement, Defendant continued to instruct and/or encourage OEMs, other manufacturers, importers, resellers, customers, and/or end user customers to manufacture, offer for sale, sell, import, and/or use Defendant products incorporating capabilities required by at least one of the MPEG standards, which include but are not limited to Dell computers and electronic devices containing Cyberlink PowerDVD (such as Latitude D530, Latitude D630, Latitude D830, and Dell Precision M6300) or Roxio Creator (such as Latitude D630). On information and belief, Defendant has intentionally taken these actions knowing that its acts caused infringement of the patent and specifically intending infringement of the '829 patent. These acts include, but are not limited to, Defendant's offers to sell and sales of Defendant's infringing products in the United States, as well as Defendant's promotions on its websites and

marketing materials for Defendant's infringing products and their MPEG Audio, MP2, or MP3 capabilities.

71. Defendant also indirectly infringed the '829 patent by contributing to the infringement by others, such as OEMs, other manufacturers, importers, resellers, customers, and/or end users, in violation of 35 U.S.C. § 271(c). No later than July 1, 2004, Audio MPEG notified Defendant of Defendant's infringing activity. Defendant has contributed to direct infringement of the patent by supplying an important component of the infringing products to others in the United States. Specifically, Defendant supplied, sold, and/or offered to sell in the United States components providing the capabilities required by the MPEG standards, including but not limited to software such as Cyberlink PowerDVD and Roxio Creator, for use with computers and electronic devices, including but not limited to Dell computers and electronic devices. The components providing the capabilities required by the MPEG standards are not common components suitable for substantial non-infringing use. Upon information and belief, Defendant supplied the components with knowledge of the patent and knowledge that the components were specially made or adapted for use in an infringing manner and that others directly infringed the patent in the United States.

72. Defendant had actual knowledge of the '829 patent and has willfully and intentionally committed said infringing activities in disregard of Plaintiffs' patent rights. No later than July 1, 2004, Audio MPEG notified Defendant of Defendant's infringing activity. With actual knowledge, Defendant continued to manufacture, use, sell, import, and/or offer for sale products that include capabilities required by the MPEG standards. Defendant did so despite an objectively high likelihood that it was infringing the '829 patent. Furthermore, the risk of infringement was obvious such that, even if Defendant did not know of the risk of

infringement, it should have known of the risk. Under all relevant circumstances, Defendant has willfully ignored and infringed upon Plaintiffs' valid patent rights.

73. As a consequence of the infringing activities by Defendant complained of herein, Plaintiffs have been damaged in an amount not yet determined.

REQUESTED RELIEF

WHEREFORE Plaintiffs pray for judgment against Defendant as follows:

A. Declare that Defendant has infringed, actively induced infringement, and/or committed acts of contributory infringement with respect to the claims of the '396 patent, the '992 patent, and/or the '829 patent.

B. Declare that Defendant's infringement of the '396 patent, the '992 patent, and/or the '829 patent was deliberate and/or willful.

C. Order Defendant to account for and pay to Plaintiffs all damages caused to Plaintiffs by reason of infringement of the '396 patent, the '992 patent, and/or the '829 patent, and order that such damages attributable to willful infringement and intentional disregard of Plaintiffs' patent rights be trebled by reason of the deliberate and willful infringement of the '396 patent, the '992 patent, and/or the '829 patent pursuant to 35 U.S.C. § 284.

D. Grant Plaintiffs prejudgment and post judgment interest on the damages caused to them by reason of Defendant's infringement of the '396 patent, '992 patent, and/or the '829 patent.

E. Grant Plaintiffs' reasonable attorney's fees pursuant to 35 U.S.C. § 285.

F. Grant Plaintiffs such other and further relief as the case may require and the Court may deem just and proper, together with costs in this action.

DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully request trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure of all issues in this action so triable.

Dated: December 21, 2015

Respectfully submitted,

By _____

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