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25 **IN THE UNITED STATES DISTRICT COURT**  
26 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

27 CYWEE GROUP LTD.,  
28 *Plaintiff,*  
APPLE INC.,  
*Defendant.*

CASE NO. 3:14-cv-01853-HSG  
CYWEE'S SECOND AMENDED  
COMPLAINT FOR PATENT  
INFRINGEMENT  
DEMAND FOR JURY TRIAL

1 Plaintiff CyWee Group Ltd. (“Plaintiff” or “CyWee”) by and through its  
2 undersigned counsel, files this Second Amended Complaint against Defendant  
3 Apple, Inc. (“Defendant” or “Apple) as follows:

4 **THE PARTIES**

5 1. CyWee Group Ltd. is a corporation existing under the laws of the  
6 British Virgin Islands with a principal place of business at 3F, No.28, Lane 128, Jing  
7 Ye 1st Road, Taipei, Taiwan 10462.

8 2. CyWee is a world leading technology company that focuses on building  
9 products and services for consumers and businesses. CyWee is widely known as  
10 having one of the most significant patent portfolios in the industry, and is considered  
11 a market leader in its core development areas of motion processing, wireless high  
12 definition video delivery, and facial tracking technology.

13 3. Defendant Apple Inc. is a corporation organized under the laws of  
14 California, and its principal place of business is 1 Infinite Loop, Cupertino,  
15 California 95014. Apple’s registered agent for service of process is CT Corporation  
16 System, 818 West Seventh St., 2<sup>nd</sup> Floor, Los Angeles, California 90017.

17 **JURISDICTION AND VENUE**

18 4. This action arises under the patent laws of the United States, 35 U.S.C.  
19 § 1 *et seq.*, including 35 U.S.C. § 271, 281, 283, 284, and 285. This Court has  
20 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

21 5. This Court has personal jurisdiction over Defendant because Defendant  
22 resides and has its primary place of business in Cupertino, California, within this  
23 District. This Court also has personal jurisdiction over Defendant because Defendant  
24 has purposefully and voluntarily availed themselves the privilege of doing business  
25 in the United States, the State of California, and the Northern District of California  
26 by continuously and systematically placing goods into the stream of commerce with  
27 the expectation that they will be purchased by consumers in the Northern District of  
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1 California. Upon information and belief, Defendant has committed acts of patent  
2 infringement within the State of California and, more particularly, within the  
3 Northern District of California.

4 6. Venue is proper in the Northern District of California pursuant to 28  
5 U.S.C. §§ 1391(b) and 1400(b), in that, Defendant resides in this District, has a  
6 regular and established place of business in this District, and has committed acts of  
7 infringement in this District.

8 **PATENT INFRINGEMENT OF U.S. PATENT NO. 8,552,978**

9 7. Plaintiff repeats and re-alleges each and every allegation of paragraphs  
10 1-6 as though fully set forth herein.

11 8. U.S. Patent No. 8,552,978 (the '978 Patent"), titled "3D Pointing  
12 Device and Method for Compensating Rotations of the 3D Pointing Device  
13 Thereof," was duly and legally issued by the United States Patent and Trademark  
14 Office on October 8, 2013 to CyWee Group Limited, as assignee of named inventors  
15 Zhou Ye, Chin-Lung Li, Shun-Nan Liou. A true and correct copy of the '978 Patent  
16 is attached hereto as Exhibit A.

17 9. CyWee is the owner of all right, title, and interest in and to the '978  
18 Patent with full right to bring suit to enforce the patent, including the right to recover  
19 for past infringement damages.

20 10. Each and every claim of the '978 Patent is valid and enforceable and  
21 each enjoys a statutory presumption of validity separate, apart, and in addition to the  
22 statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. §  
23 282.

24 11. Apple has at no time, either expressly or impliedly, been licensed under  
25 the '978 Patent.

26 12. The '978 Patent describes and claims, *inter alia*, 3D pointing devices  
27 and methods for compensating rotations of the 3D pointing device.

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1           13. CyWee is informed and believes, and thereupon alleges, that Apple,  
2 without authorization or license, has been, and is currently directly or indirectly  
3 infringing one or more claims of the '978 Patent in violation of 35 U.S.C. § 271,  
4 including as stated below.

5           14. CyWee is informed and believes, and thereupon alleges, that Apple has  
6 directly infringed, literally and/or under the doctrine of equivalents, and will  
7 continue to directly infringe each patent claim of the '978 Patent by making, using,  
8 selling, offering to sell, and/or importing into the United States products that  
9 embody or practice the apparatus and/or method covered by one or more claims of  
10 the '978 Patent, including but not limited to the Defendant's iPhone 4s, iPhone 5,  
11 iPhone 5c, iPhone 5s, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone  
12 SE, iPad (3<sup>rd</sup>, and 4<sup>th</sup> generations), iPad Air, iPad Air 2, iPad Mini (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and  
13 4<sup>th</sup> generations), iPad Pro 12.9", and iPad Pro 9.7." (collectively referred to as "'978  
14 Accused Products"). '978 Accused Products further include all products alleged to  
15 infringe the '978 patent in CyWee's amended infringement contentions served on  
16 May 12, 2016, and all supplements and amendments thereto.

17           15. Apple has had knowledge of and notice of the '978 Patent and Apple's  
18 infringement of the '978 Patent since at least March 31, 2014. On March 31, 2014,  
19 CyWee disclosed several patents, including the '978 Patent, in pre-suit licensing  
20 discussions with Apple. Apple also has knowledge and notice of its infringement of  
21 the '978 Patent as a result of the complaints filed in this case, and service of  
22 CyWee's infringement contentions. Apple's infringement of the '978 patent has been  
23 and continues to be willful and deliberate.

24           16. Apple has and is continuing to actively and knowingly induce, with  
25 specific intent, infringement of the '978 Patent under 35 U.S.C. § 271(b) by making,  
26 using, offering for sale, importing, and/or selling '978 Accused Products, all with  
27 knowledge of the '978 Patent and its claims. Apple encourages and facilitates  
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1 infringing sales and uses of its products through the creation and dissemination of  
2 promotional and marketing materials, product manuals, instructional manuals,  
3 and/or technical materials to distributors and end users. Apple further encourages  
4 and facilitates infringing uses through its Apple Store employees and/or support  
5 personnel, who provide instruction and training to end users. Apple further  
6 encourages and facilitates infringement by providing application developers with the  
7 Core Motion Framework and Core Location Framework libraries, which may then  
8 be used to develop apps, that, when run on the '978 Accused Products, infringe. For  
9 example, Apple provides its developers with a CMMotionManager object and/or  
10 CMAAttitude class, which may be used to develop apps that infringe when run on the  
11 '978 Accused Products.

12 17. Apple has also contributed to the infringement by others under 35  
13 U.S.C. § 271(c), with knowledge of the '978 Patent and its claims. Apple provides,  
14 along with the '978 Accused Products, an operating system which includes its Core  
15 Motion and Core Location Frameworks. Said Frameworks provide orientation  
16 output(s), such as that available to developers via its CMMotionManager object  
17 and/or CMAAttitude class, which may be used to develop apps that infringe when run  
18 on the '978 Accused Products. Apple provided this functionality to app developers,  
19 knowing that said functionality constitutes a material part of the inventions of the  
20 '978 Patent, knowing that said functionality is especially made or adapted to infringe  
21 the '978 Patent when run on the '978 Accused Products, and knowing that said  
22 functionality is not a staple article or commodity of commerce suitable for  
23 substantial non-infringing use. Therefore, Apple is contributing to direct  
24 infringement of the '978 Patent by end users running said apps.

25 18. Defendant's acts of infringement have caused and will continue to  
26 cause substantial and irreparable damage to CyWee.

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1           19. As a result of the infringement of the '978 Patent by Defendant, CyWee  
2 has been damaged. CyWee is, therefore, entitled to such damages pursuant to 35  
3 U.S.C. § 284 in an amount that presently cannot be pled but that will be determined  
4 at trial.

5                           **PATENT INFRINGEMENT OF U.S. PATENT NO. 8,441,438**

6           20. Plaintiff repeats and re-alleges each and every allegation of paragraphs  
7 1-19 as though fully set forth herein.

8           21. U.S. Patent No. 8,441,438 (the '438 Patent"), titled "3D Pointing  
9 Device and Method for Compensating Movement Thereof," was duly and legally  
10 issued by the United States Patent and Trademark Office on May 14, 2013 to  
11 CyWee Group Limited, as assignee of named inventors Zhou Ye, Chin-Lung Li,  
12 Shun-Nan Liou. A true and correct copy of the '438 Patent is attached hereto as  
13 Exhibit B.

14           22. CyWee is the owner of all right, title, and interest in and to the '438  
15 Patent with full right to bring suit to enforce the patent, including the right to recover  
16 for past infringement damages.

17           23. Each and every claim of the '438 Patent is valid and enforceable and  
18 each enjoys a statutory presumption of validity separate, apart, and in addition to the  
19 statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. §  
20 282.

21           24. Apple has at no time, either expressly or impliedly, been licensed under  
22 the '438 Patent.

23           25. The '438 Patent describes and claims, *inter alia*, 3D pointing devices  
24 and methods for compensating movement.

25           26. CyWee is informed and believes, and thereupon alleges, that Apple,  
26 without authorization or license, has been, and is currently directly or indirectly  
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1 infringing one or more claims of the '438 Patent in violation of 35 U.S.C. § 271,  
2 including as stated below.

3       27. CyWee is informed and believes, and thereupon alleges, that Apple has  
4 directly infringed, literally and/or under the doctrine of equivalents, and will  
5 continue to directly infringe each patent claim of the '438 Patent by making, using,  
6 selling, offering to sell, and/or importing into the United States products that  
7 embody or practice the apparatus and/or method covered by one or more claims of  
8 the '438 Patent, including but not limited to the Defendant's iPhone 4s, iPhone 5,  
9 iPhone 5c, iPhone 5s, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone  
10 SE, iPad (2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> generations), iPad Air, iPad Air 2, iPad Mini (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>,  
11 and 4<sup>th</sup> generations), iPad Pro 12.9", iPad Pro 9.7", iPod Touch (5<sup>th</sup> and 6<sup>th</sup>  
12 generations). (collectively referred to as "'438 Accused Products"). '438 Accused  
13 Products further include all products alleged to infringe the '438 patent in CyWee's  
14 amended infringement contentions served on May 12, 2016, and all supplements and  
15 amendments thereto.

16       28. Apple has had knowledge of and notice of the '438 Patent and Apple's  
17 infringement of the '438 Patent since at least March 31, 2014. On March 31, 2014,  
18 CyWee disclosed several patents, including the '438 Patent, in pre-suit licensing  
19 discussions with Apple. Apple also has knowledge and notice of its infringement of  
20 the '438 Patent as a result of the complaints filed in this case, and service of  
21 CyWee's infringement contentions. Apple's infringement of the '438 patent has been  
22 and continues to be willful and deliberate.

23       29. Apple has and is continuing to actively and knowingly induce, with  
24 specific intent, infringement of the '438 Patent under 35 U.S.C. § 271(b) by making,  
25 using, offering for sale, importing, and/or selling '438 Accused Products, all with  
26 knowledge of the '438 Patent and its claims. Apple encourages and facilitates  
27 infringing sales and uses of its products through the creation and dissemination of  
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1 promotional and marketing materials, product manuals, instructional manuals,  
2 and/or technical materials to distributors and end users. Apple further encourages  
3 and facilitates infringing uses through its Apple Store employees and/or support  
4 personnel, who provide instruction and training to end users.

5 30. Defendant's acts of infringement have caused and will continue to  
6 cause substantial and irreparable damage to CyWee.

7 31. As a result of the infringement of the '438 Patent by Defendant, CyWee  
8 has been damaged. CyWee is, therefore, entitled to such damages pursuant to 35  
9 U.S.C. § 284 in an amount that presently cannot be pled but that will be determined  
10 at trial.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as  
13 follows:

14 A. A judgment that Defendant has infringed and continues to infringe the  
15 '978 Patent and '438 Patent, directly and/or indirectly by way of inducing or  
16 contributing to infringement of such patents as alleged herein;

17 B. That Defendant provide to CyWee an accounting of all gains, profits  
18 and advantages derived by Defendant's infringement of the '978 Patent and '438  
19 Patent, and that CyWee be awarded damages adequate to compensate them for the  
20 wrongful infringement by Defendant, including treble damages for willful  
21 infringement, in accordance with 35 U.S.C. § 284;

22 C. That CyWee be awarded any other supplemental damages and interest  
23 on all damages, including, but not limited to attorney fees available under 35 U.S.C.  
24 § 285;

25 D. That the Court permanently enjoin Defendant and all those in privity  
26 with Defendant from making, having made, selling, offering for sale, distributing  
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1 and/or using products that infringe the '978 Patent and '438, including the '978  
2 Accused Products and '438 Accused Products, in the United States; and

3 E. That CyWee be awarded such other and further relief and all remedies  
4 available at law.

5 **DEMAND FOR JURY TRIAL**

6 Pursuant to Federal Rule of Civil Procedure 38(b), CyWee hereby demands a  
7 trial by jury on all issues triable to a jury.  
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9 Dated: May 12, 2016

Respectfully submitted,

/s/ Ari Rafilson

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**COUNSEL FOR PLAINTIFF CYWEE  
GROUP LTD.**

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**CERTIFICATE OF SERVICE**

The undersigned certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court’s CM/ECF system per Local Rules. I, Ari Rafilson, am the ECF User whose ID and password are being used to file this Second Amended Complaint for Patent Infringement.

SHORE CHAN DEPUMPO LLP

By: /s/ Ari Rafilson

*Attorney for Plaintiff CyWee Group Ltd.*