

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BAMA GAMING, LLC,

Plaintiff,

v.

HARMONIX MUSIC SYSTEMS, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Bama Gaming, LLC (“Bama” or “Plaintiff”), for its Complaint against Defendant Harmonix Music Systems, Inc., (“Harmonix” or “Defendant”), alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Bama is a limited liability company organized under the laws of the State of Alabama with a place of business at 212 W. Troy Street, Suite B, Dothan, Alabama 36303.

3. Upon information and belief, Harmonix is a corporation incorporated and existing under the laws of Delaware, with a place of business at 3100 Ocean Park Boulevard, Santa Monica, California, 90405, and can be served through its registered agent Corporation Service Company at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).
Upon information and belief, Defendant is incorporated in the State of Delaware.

7. Upon information and belief, Defendant is subject to this Court's general and specific jurisdiction because Defendant has sufficient minimum contacts within the State of Delaware, pursuant to due process and/or the Delaware Long Arm Statute because Defendant purposefully availed itself of the privileges of conducting business in the State of Delaware, and because Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Delaware.

8. Further, this Court has personal jurisdiction over Defendant because it is incorporated in Delaware and has purposefully availed itself of the privileges and benefits of the laws of the State of Delaware.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,098,392

9. The allegations set forth in the foregoing paragraphs 1 through 8 are incorporated into this First Claim for Relief.

10. On August 26, 2006, U.S. Patent No. 7,098,392 (the "'392 patent"), entitled *Electronic Image Visualization System and Communication Methodologies*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '392 patent is attached as Exhibit 1.

11. The inventions of the '392 patent relate to a network architecture system, and resolve logistical and analytical problems associated with laypersons and musicians learning and

performing new compositional data simultaneously at one or multiple locations by processing real time performances, and communicating musical data and performances. For example, the inventions enable several users performing together, at various remote locations, to view and received analytical feedback of the multiple performances simultaneously using a networked arrangement of each user station.

12. The '392 patent does not merely recite performance of a musical composition via a network. Moreover, what is claimed goes beyond simply communicating performances by performances over a network.

13. The technology claimed in the '392 patent does not preempt all ways of simultaneous music performance or analysis of said performance.

14. An exemplary figure showing one embodiment of a musical workstation network architecture system is included below:

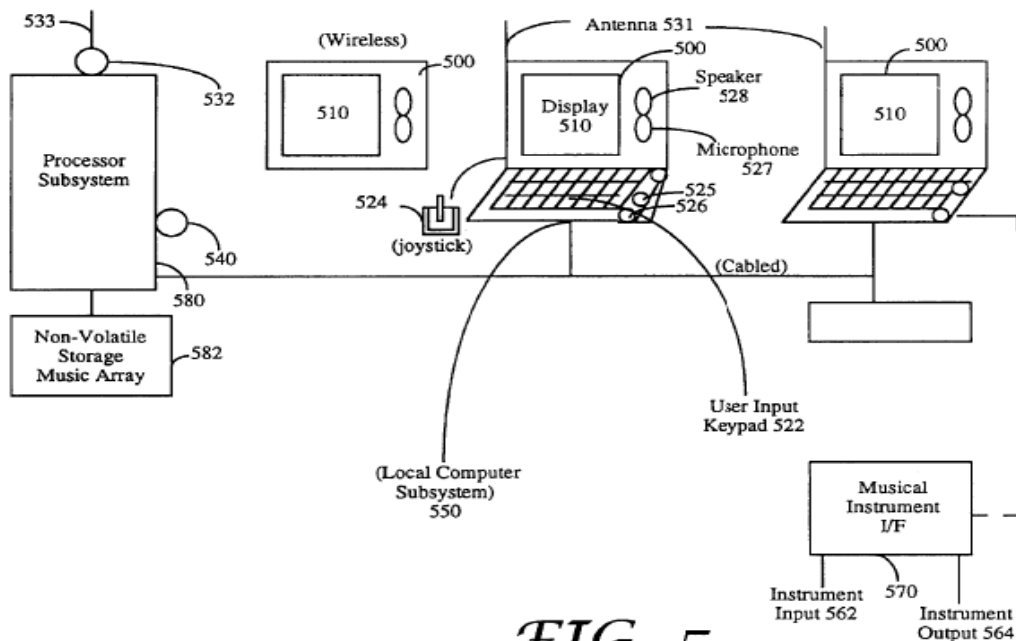


FIG. 5

15. Accordingly, each claim of the '392 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

16. Plaintiff is the assignee and owner of the right, title and interest in and to the '392 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

17. Upon information and belief, each Defendant has and continues to directly infringe at least claims 1-5, 19-23, 33-38, and 45-46, and 48-49 of the '392 patent by making, using, selling, importing and/or providing and causing to be used Rock Band Rivals (the "Infringing Instrumentalities"). The Infringing Instrumentalities include but are not limited to Defendants' Rock Band Rivals game expansion.

18. In particular, claim 1 of the '392 patent recites a method for providing for a video display responsive to image data related to a visual presentation, stored in an image database, the method comprising: defining a selected page of image data from the image database; preparing display data to generate the visual presentation responsive to the image data for the selected page; defining first slices of the display data for a first orientation; defining in a second orientation second slices of the first slices, grouping the second slices to define logical sections; ordering the first slices from beginning to end; ordering the second slices from beginning to end; mapping the first slices, the second slices, the logical sections, and the ordering of the first slices and of the second slices; storing the mapping in a memory for selective retrieval of selected display data; and providing for the video display of the visual presentation responsive to the mapping and the selected display data.

19. The Infringing Instrumentalities comprise a musical display system for producing a display presentation comprising a network architecture system, wherein users can perform new compositional data simultaneously at one or multiple locations by processing real time performances, and communicating musical data and performances via a networked system, the features of the system collectively practice each limitation of claim 1 of the '392 patent, the combined features comprising means for providing for a video display responsive to image data related to a visual presentation, stored in an image database (evidenced by at least *Fig. 1, 14-15*), the method comprising: defining a selected page of image data from the image database; preparing display data to generate the visual presentation responsive to the image data for the selected page; defining first slices of the display data for a first orientation; defining in a second orientation second slices of the first slices, grouping the second slices to define logical sections; ordering the first slices from beginning to end; ordering the second slices from beginning to end; mapping the first slices, the second slices, the logical sections, and the ordering of the first slices and of the second slices; storing the mapping in a memory for selective retrieval of selected display data; and providing for the video display of the visual presentation responsive to the mapping and the selected display data (evidenced at least by *Fig. 14-15*).



Progression display of the presentation in response to upcoming musical composition data

Fig. 1



Fig. 14



Fig. 15

20. Claim 2 of the '392 patent recites the method as in claim 1, wherein the first orientation equals vertical, wherein the second orientation equals horizontal, wherein the beginning equals top for vertical, wherein the end equals bottom for vertical, wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal.

21. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of claim method of claim 2 of the '392 patent, wherein the first orientation equals vertical, wherein the second orientation equals horizontal, wherein the beginning equals top for vertical, wherein

the end equals bottom for vertical, wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal (evidenced at least by *Fig. 1, 14-15*).

22. Claim 3 of the '392 patent recites the method as in claim 1, wherein the step of providing for the display of the image is further comprised of: defining a display width and display height for the windows to be used for display of the image; and selecting from the logical sections to determine a best fit to the display width and the display height responsive to the mapping and the display data; and displaying selected ones of the logical sections on the video display to provide a best fit responsive to the selecting .

23. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of claim method of claim 3 of the '392 patent, wherein the step of providing for the display of the image is further comprised of: defining a display width and display height for the windows to be used for display of the image; and selecting from the logical sections to determine a best fit to the display width and the display height responsive to the mapping and the display data; and displaying selected ones of the logical sections on the video display to provide a best fit responsive to the selecting (evidenced at least by *Fig. 1, 14-15*).

24. Claim 4 of the '392 patent recites the method as in claim 1, further comprising: providing user-defined page-display parameters for viewing the selected display data; ordering the logical sections responsive to the user-selected page display parameters; generating a user mapping data file comprising the ordering of the logical sections; and providing for the video display of the selected display data responsive to the mapping.

25. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of

claim method of claim 4 of the '392 patent, further comprising providing user-defined page-display parameters for viewing the selected display data; ordering the logical sections responsive to the user-selected page display parameters; generating a user mapping data file comprising the ordering of the logical sections; and providing for the video display of the selected display data responsive to the mapping (evidenced at least by *Fig. 1, 14-15*).

26. Claim 5 of the '392 patent recites the method as in claim 1, further comprising: selecting portions of the selected display data and the respective selected logical section, as a first logical section for bookmarking a first bookmark; selecting a specific location within the portions; associating an associated identification (ID) with the specific locations; providing bookmark information; associating the bookmark information with the associated ID and the specific location; providing for video display of the specific location responsive to user input based selection of the respective bookmark information.

27. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of claim method of claim 5 of the '392 patent, further comprising selecting portions of the selected display data and the respective selected logical section, as a first logical section for bookmarking a first bookmark; selecting a specific location within the portions; associating an associated identification (ID) with the specific locations; providing bookmark information; associating the bookmark information with the associated ID and the specific location; providing for video display of the specific location responsive to user input based selection of the respective bookmark information (evidenced at least by *Fig. 1, 14-15*).

28. Claim 19 of the '392 patent recites an image display system comprising: a source of an image database providing image data representative of visual images; providing display

data for generating a video presentation responsive to the image data; a video display providing a video presentation having a definable display size; a processing subsystem comprised of a processor, memory providing instruction data and other data; and a user input providing at least for user selection of the display size, wherein the processor is responsive to the user selection of the display size and to the instruction data, providing for successive sub-sectioning of a composition of the display data providing for definition of a page of display data; definition of first slices of the display data for a first orientation; and definition of a second orientation of second slice of the first slices to define logical sections; wherein the processor provides for ordering the first slices from beginning to end; and then ordering the second slices from beginning to end; wherein the processor provides for storing in the memory a mapping of the first slices and of the second slices for selective retrieval; and wherein the video display provides a visual presentation of the visual images responsive to the mapping.

29. The Infringing Instrumentalities comprise a image display system as in claim 19 of the '392 patent, wherein the system comprises: a source of an image database providing image data representative of visual images; providing display data for generating a video presentation responsive to the image data; a video display providing a video presentation having a definable display size; a processing subsystem comprised of a processor, memory providing instruction data and other data; and a user input providing at least for user selection of the display size, wherein the processor is responsive to the user selection of the display size and to the instruction data, providing for successive sub-sectioning of a composition of the display data providing for definition of a page of display data; definition of first slices of the display data for a first orientation; and definition of a second orientation of second slice of the first slices to define logical sections; wherein the processor provides for ordering the first slices from beginning to

end; and then ordering the second slices from beginning to end; wherein the processor provides for storing in the memory a mapping of the first slices and of the second slices for selective retrieval; and wherein the video display provides a visual presentation of the visual images responsive to the mapping (evidenced at least by *Fig. 1, 14-15*).

30. Claim 20 of '392 patent recites the system as in claim 19, wherein the visual images are representative of visual images of music notation.

31. The Infringing Instrumentalities comprise an image display system as in claim 20 of the '392 patent, wherein the visual images are representative of visual images of music notation (*evidenced at least by Fig. 2, 9*)

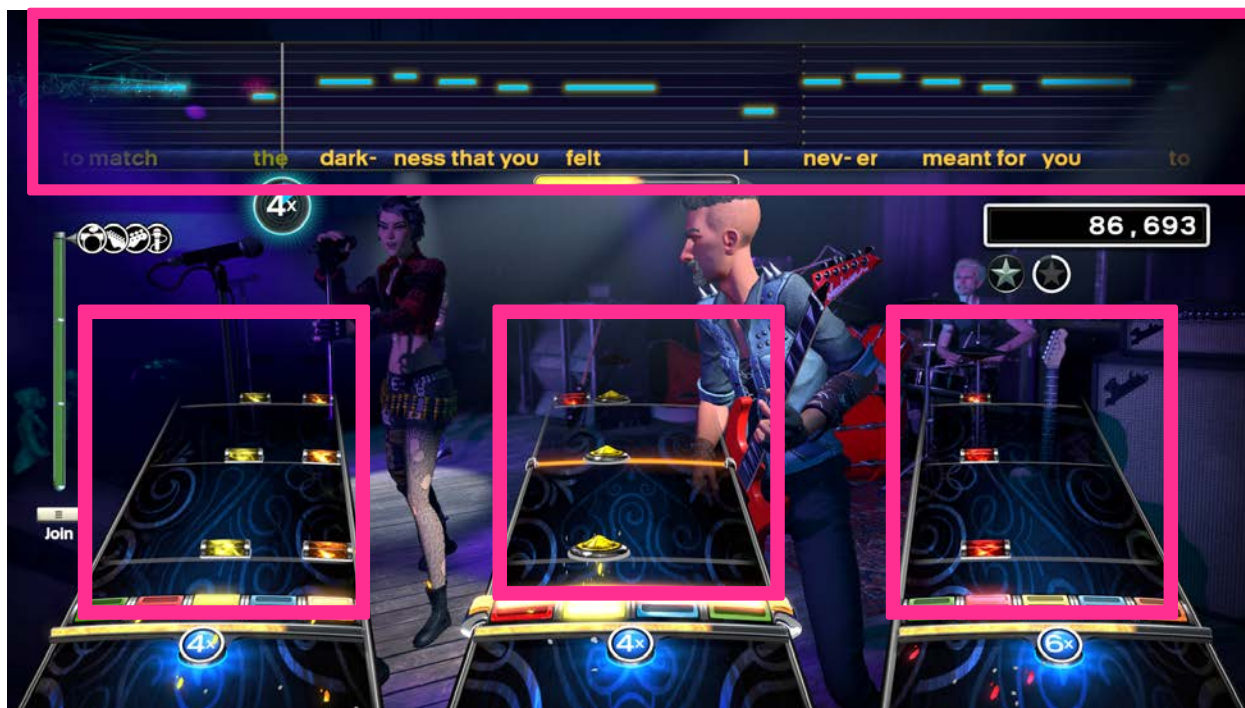
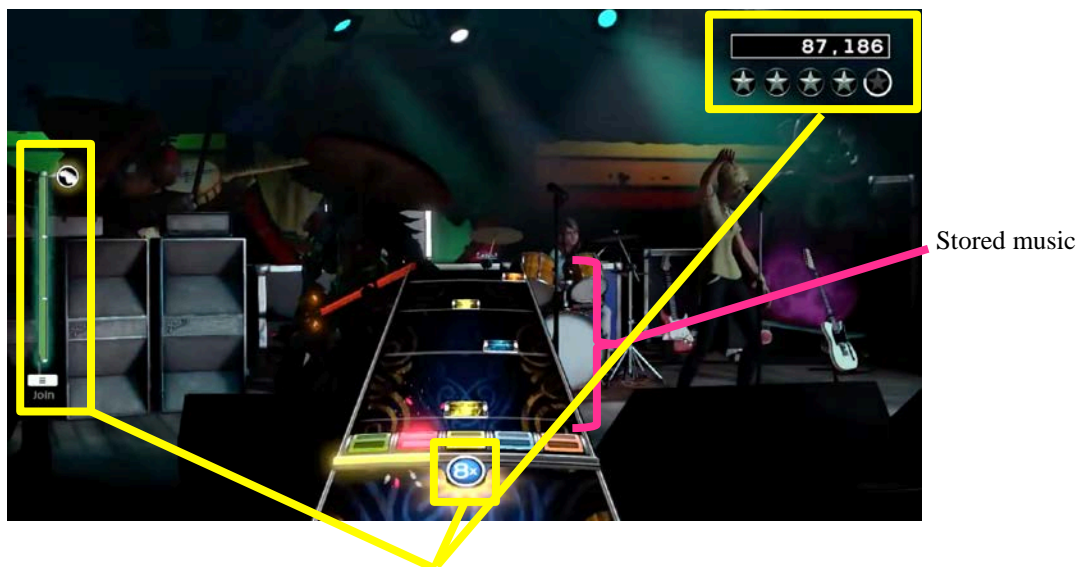


Fig. 2



The performance data output from the individual music subsystem

Fig. 9

32. Claim 21 of the '392 recites the system as in claim 19, wherein the visual images are representative of visual images of text.

33. The Infringing Instrumentalities comprise an image display system as in claim 21 of the '392 patent, wherein the visual images are representative of visual images of text (evidenced at least by *Fig. 1-2*).

34. Claim 22 of the '392 patent recites the system as in claim 19, wherein the first orientation equals vertical and the second orientation equals horizontal; wherein the beginning equals top for vertical; wherein the end equals bottom for vertical; and wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal.

35. The Infringing Instrumentalities comprise a image display system as in claim 22 of the '392 patent, wherein the first orientation equals vertical and the second orientation equals horizontal; wherein the beginning equals top for vertical; wherein the end equals bottom for vertical; and wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal (evidenced at least by *Fig. 1, 14-15*).

36. Claim 23 of the '392 patent recites the system as in claim 19, wherein the user selection of the display size is utilized in defining a maximum display width and a maximum display height for the video presentation; wherein selected ones of the logical sections are selected to determine a best fit to the maximum display width and the maximum display height responsive to the mapping; and wherein the selected ones of the logical sections are provided as the video presentation on the video display so as to provide a best fit.

37. The Infringing Instrumentalities comprise a image display system as in claim 23 of the '392 patent, wherein the user selection of the display size is utilized in defining a maximum display width and a maximum display height for the video presentation; wherein selected ones of the logical sections are selected to determine a best fit to the maximum display width and the maximum display height responsive to the mapping; and wherein the selected ones of the logical sections are provided as the video presentation on the video display so as to provide a best fit (evidenced at least by *Fig. 1, 14-15*).

38. Claim 33 of the '392 patent recites the system as in claim 19, further comprising: a network interface for communicating the selected display data to a remote system for video display.

39. The Infringing Instrumentalities comprise an image display system as in claim 33 of the '392 patent, comprising a network interface for communicating the selected display data to a remote system for video display (evidenced at least by *Fig. 3-6*).



Fig. 3



Fig. 4

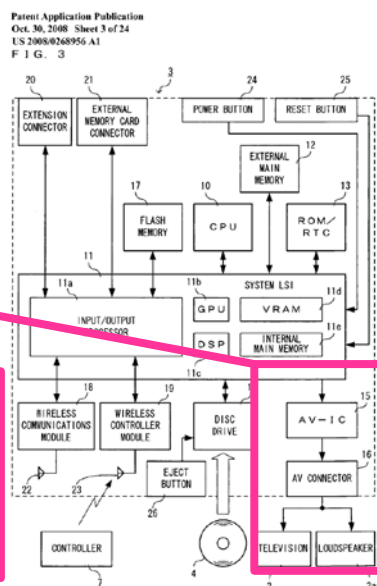




Fig. 5

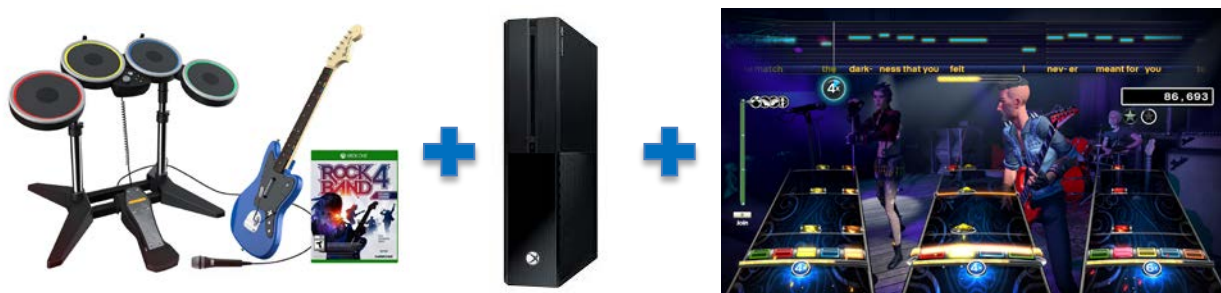


Fig. 6

40. Claim 34 of the '392 patent recites a method of displaying a video presentation of performance notation for performance data comprising: processing a defined page of the performance data to provide display data for generating the video presentation for the displaying of a visual page of the performance notation defining display parameters; selecting logical sections from the display data responsive to the display parameters; determining logical ordering of the logical sections and defining advancement of display of the performance data responsive to the display parameters; displaying the display data as a video display presentation responsive to the logical sections and the defined logical ordering.

41. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 34 of the '392 patent for displaying a video presentation of performance notation for performance data comprising: processing a defined page of the performance data to provide display data for generating the video presentation for the displaying of a visual page of the performance notation defining display parameters; selecting logical sections from the display data responsive to the display parameters; determining logical ordering of the logical sections and defining advancement of display of the performance data responsive to the display parameters; displaying the display data as a video display presentation responsive to the logical sections and the defined logical ordering (evidenced at least by *Fig. 1, 14-15*).

42. Claim 35 of the '392 patent recites the method as in claim 34, wherein the performance notation is music notation, and wherein the performance data is music data.

43. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 35 of the '392 patent, wherein the performance notation is music notation, and wherein the performance data is music data (evidenced at least by *Fig. 1, 14-15*).

44. Claim 36 of the '392 patent recites the method as in claim 34, wherein the performance notation is script and wherein the performance data generates a video display presentation of script pages.

45. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 36 of the '392 patent, wherein the performance notation is script and

wherein the performance data generates a video display presentation of script pages (evidenced at least by *Fig. 2, 12*).

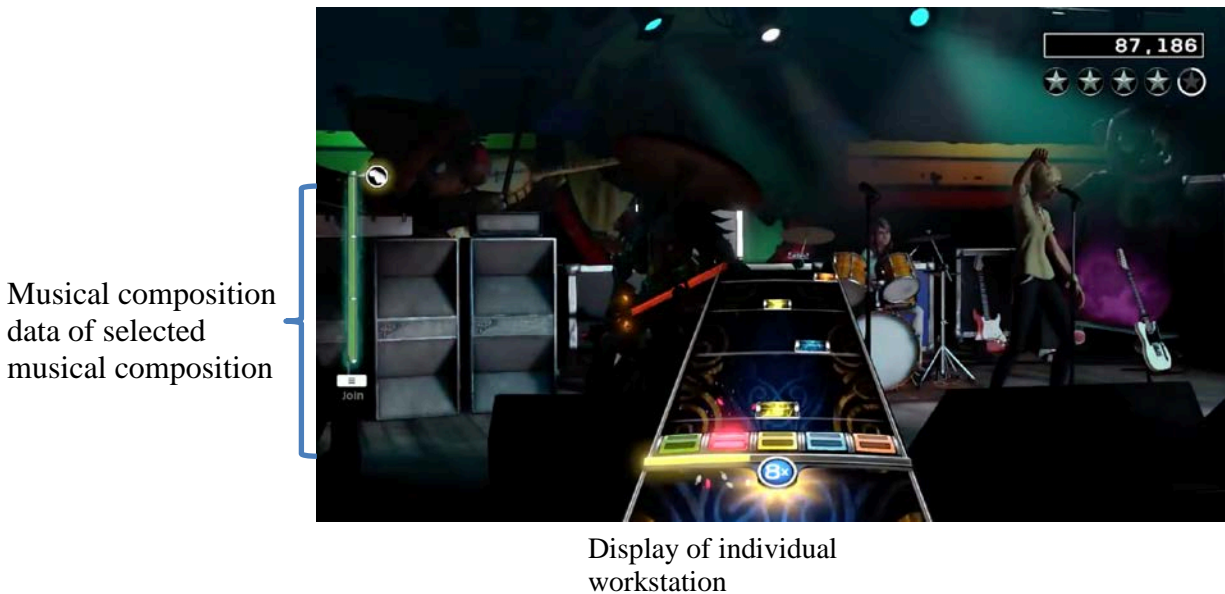


Fig. 12

46. Claim 37 of the '392 patent recites the method as in claim 34, further comprising: evaluating the performance data to find a largest logical section, responsive to the display parameters, and utilizing the largest logical section to define a scale utilized in providing the video presentation for other ones of the logical sections to be displayed; and providing a video display presentation responsive to the evaluating.

47. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 37 of the '392 patent, and further comprises: evaluating the performance data to find a largest logical section, responsive to the display parameters, and utilizing the largest logical section to define a scale utilized in providing the video presentation

for other ones of the logical sections to be displayed; and providing a video display presentation responsive to the evaluating (evidenced at least by *Fig. 6-8, 11*).

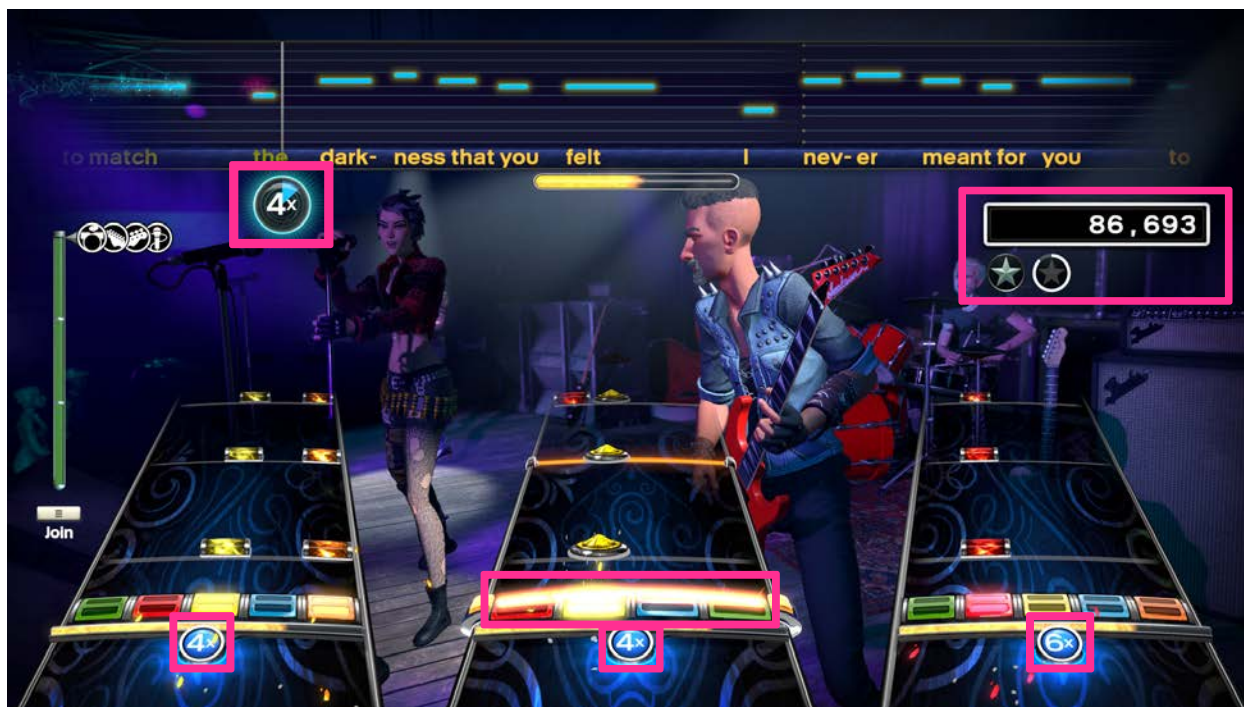


Fig. 7



Fig. 8



Fig. 11

48. Claim 38 of the '392 patent recites the method as in claim 34, further comprising: providing for user definition of at least some of the display parameters.

49. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 38 of the '392 patent, and further comprise: providing for user definition of at least some of the display parameters (evidenced at least by *Fig. 1, 14-15*).

50. Claim 45 of the '392 patent recites a method for processing and structuring data to provide for video display presentation thereof, the method comprising: providing a database comprising at least one data file having plurality of pages of presentation data each having a corresponding video presentation which can be generated; processing the presentation data for a selected one of the pages to generate respective display data for the respective corresponding video presentation; defining the display data into defined pages having a given display resolution and a given size; defining first slices, for each of the defined pages, of the display data for a first orientation; defining second slices of each of the first slices to define logical sections; ordering

the first slices from beginning to end, ordering the second slices from beginning to end; and displaying a best-fit number of logical sections on each of the defined pages of the video presentation at the given display resolution and the given size.

51. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 38 of the '392 patent, and further comprise: providing a database comprising at least one data file having plurality of pages of presentation data each having a corresponding video presentation which can be generated; processing the presentation data for a selected one of the pages to generate respective display data for the respective corresponding video presentation; defining the display data into defined pages having a given display resolution and a given size; defining first slices, for each of the defined pages, of the display data for a first orientation; defining second slices of each of the first slices to define logical sections; ordering the first slices from beginning to end, ordering the second slices from beginning to end; and displaying a best-fit number of logical sections on each of the defined pages of the video presentation at the given display resolution and the given size (evidenced at least by *Fig. 1, 14-15*).

52. Claim 46 of the '392 patent recites the method as in claim 45, further comprising: mapping of the first slices and the second slices, respectively, to the ordering of the first slices and the second slices, respectively.

53. The Infringing Instrumentalities comprise a musical display system as in claim 45 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 46 of the '392 patent, and further comprise: mapping of the first slices

and the second slices, respectively, to the ordering of the first slices and the second slices, respectively (evidenced at least by *Fig. 1, 14-15*).

54. Claim 48 of the '392 patent recites the method as in claim 45, wherein: the first orientation equals vertical, and the second orientation equals horizontal, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals left side for horizontal, and where the end equals the right side for horizontal.

55. The Infringing Instrumentalities comprise a musical display system as in claim 45 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 48 of the '392 patent, wherein: the first orientation equals vertical, and the second orientation equals horizontal, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals left side for horizontal, and where the end equals the right side for horizontal (evidenced at least by *Fig. 1, 14-15*).

56. Claim 49 of the '392 patent recites the method as in claim 45, wherein: the first orientation equals horizontal, and the second orientation equals vertical, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals right side for horizontal, and where the end equals the left side for horizontal.

57. The Infringing Instrumentalities comprise a musical display system as in claim 45 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 49 of the '392 patent, wherein the first orientation equals horizontal, and the second orientation equals vertical, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals right side for horizontal, and where the end equals the left side for horizontal (evidenced at least by *Fig. 1, 14-15*).

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,074,999

58. The allegations set forth in the foregoing paragraphs 1 through 57 are incorporated into this Second Claim for Relief.

59. On July 11, 2006, U.S. Patent No. 7,074,999 (the “’999 patent”), entitled *Electronic Image Visualization System and Management and Communication Methodologies*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’999 patent is attached as Exhibit 2.

60. The inventions of the ’999 patent related to a network architecture system, apparatus and methodology relating to the construction and utilization of a subsystem (or a plurality of subsystems) for displaying musical compositions, and processing and communicating music data and/or user performances. For example, the inventions enabled several users performing together, at various remote locations, to view and receive analytical feedback of the multiple performances simultaneously using a networked arrangement of each user station.

61. The ’999 patent did not merely recite performance of a musical composition via a network. Moreover, what was claimed went beyond simply communicating performances by performances over a network.

62. The technology claimed in the ’999 patent did not preempt all ways of simultaneous music performance or analysis of said performance.

63. Accordingly, each claim of the ’999 patent recited a combination of elements sufficient to ensure that the claim in practice amounted to significantly more than a patent on an ineligible concept.

64. Plaintiff is the assignee and owner of the right, title and interest in and to the ’999 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

65. Upon information and belief, each Defendant has directly infringed at least claims 16 and 31-32 of the '999 patent by making, using, selling, importing and/or providing and causing to be used Rock Band Rivals (the "Infringing Instrumentalities"). The Infringing Instrumentalities include but are not limited to Defendants' Rock Band Rivals game expansion.

66. In particular, claim 16 of the '999 patent recited a musical image display system comprising: a processing subsystem comprised of a processor, a communications interface, and memory providing instruction data and other data; a composition database providing composition data for a selected composition corresponding to a video display of the selected composition: wherein the processing subsystem, responsive to the instruction data, generates an image database providing image data for use in directly generating a video display of the selected composition, and wherein the processing subsystem further provides for mapping and sectioning of the image data into a plurality of addressable defined portions of grouping of the image data representative of visual images for the selected composition; a video display providing a video presentation having a defined display size; means for providing for a user output responsive to a user input wherein the processor is responsive to the image database, the mapping and sectioning, and to the instruction data for use in directly generating a video display, wherein responsive to the user input of selecting portions of the image data for bookmarking, and selecting a specific location within the portions and providing bookmark information, the system associates an associated identification (ID) with the specific location, wherein the system further provides for associating the bookmark information with the associated ID and the specific location; and wherein thereafter the processor subsystem is responsive to the user input, to provide for selective video display of the specific locations responsive to user input based on the respective bookmark information.

67. The Infringing Instrumentalities comprised a musical display system for displaying and processing musical data and compositions performed by the user comprising a network architecture system, producing a display presentation comprising a network architecture system, wherein the system comprises a processing subsystem comprised of a processor, a communications interface, and memory providing instruction data and other data; a composition database providing composition data for a selected composition corresponding to a video display of the selected composition: wherein the processing subsystem, responsive to the instruction data, generates an image database providing image data for use in directly generating a video display of the selected composition, and wherein the processing subsystem further provides for mapping and sectioning of the image data into a plurality of addressable defined portions of grouping of the image data representative of visual images for the selected composition; a video display providing a video presentation having a defined display size; means for providing for a user output responsive to a user input wherein the processor is responsive to the image database, the mapping and sectioning, and to the instruction data for use in directly generating a video display, wherein responsive to the user input of selecting portions of the image data for bookmarking, and selecting a specific location within the portions and providing bookmark information, the system associates an associated identification (ID) with the specific location, wherein the system further provides for associating the bookmark information with the associated ID and the specific location; and wherein thereafter the processor subsystem is responsive to the user input, to provide for selective video display of the specific locations responsive to user input based on the respective bookmark information (evidenced at least by *Fig. 3-6*).

68. Claim 31 of the '999 patent recited the system as in claim 16, wherein the image data is comprised of at least one of information data and control data, the system further providing for navigating to a defined location in the image data responsive to the control data, and providing for a video display presentation responsive to the image data at the defined location.

69. The Infringing Instrumentalities comprised a musical image display system as in claim 16 of the '999 patent, wherein the image data is comprised of at least one of information data and control data, the system further providing for navigating to a defined location in the image data responsive to the control data, and providing for a video display presentation responsive to the image data at the defined location (evidenced at least by *Fig. 3-6*).

70. Claim 32 of the '999 patent recited the system as in claim 31, wherein the selection of the defined location is made responsive to the control data to effect transition as relates to the respective video display presentation responsive to the image data at the defined location.

71. The Infringing Instrumentalities comprised a musical image display system as in claim 31 of the '999 patent, wherein the selection of the defined location is made responsive to the control data to effect transition as relates to the respective video display presentation responsive to the image data at the defined location (evidenced at least by *Fig. 3-6*).

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 7,612,278

72. The allegations set forth in the foregoing paragraphs 1 through 71 are incorporated into this Third Claim for Relief.

73. On November 3, 2009, U.S. Patent No. 7,612,278 (the “'278 patent”), entitled *System and Methodology for Image and Overlaid Annotation Display, Management and Communication*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '278 patent is attached as Exhibit 3.

74. The inventions of the '278 patent relate to a network architecture, system, apparatus and methodology relating to the construction and utilization of a subsystem (or a plurality of subsystems) for displaying musical compositions, either batch or in a real time environment, and processing and communicating music data and/or user performances.

75. The '278 patent does not merely recite performance of a musical composition via a network. Moreover, what is claimed goes beyond simply communicating performances by performances over a network.

76. The technology claimed in the '278 patent does not preempt all ways of simultaneous music performance or analysis of said performance.

77. Accordingly, each claim of the '278 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

78. Plaintiff is the assignee and owner of the right, title and interest in and to the '278 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

79. Upon information and belief, each Defendant has and continues to directly infringe at least claims 1, 4, 6-7, 9, 11-16, and 19-21 of the '278 patent by making, using, selling, importing and/or providing and causing to be used Rock Band Rivals (the "Infringing Instrumentalities"). The Infringing Instrumentalities include but are not limited to Defendants' Rock Band Rivals game expansion.

80. In particular, claim 1 of the '278 patent recites a system comprising: a database configured to store a video presentation of a composition to be performed by at least one performer; and a subsystem comprising: selection logic configured to select a plurality of

segments of the video presentation of the composition as selected segments that pertain to an assignment of the at least one performer; reordering logic configured to reorder the selected segments to display according to the selection of segments; annotation logic responsive to a user input and configured to add annotations to the selected segments of the video presentation, to be overlaid atop the selected segments of the video presentation, wherein the annotations have annotation data associated with the location within the selected segments; association logic configured to provide mapping data to map the annotation data to the location within the selected segments; and memory for storing the video presentation, the annotation data and the mapping data.

81. The Infringing Instrumentalities comprise: a database configured to store a video presentation of a composition to be performed by at least one performer; and a subsystem comprising: selection logic configured to select a plurality of segments of the video presentation of the composition as selected segments that pertain to an assignment of the at least one performer; reordering logic configured to reorder the selected segments to display according to the selection of segments; annotation logic responsive to a user input and configured to add annotations to the selected segments of the video presentation, to be overlaid atop the selected segments of the video presentation, wherein the annotations have annotation data associated with the location within the selected segments; association logic configured to provide mapping data to map the annotation data to the location within the selected segments; and memory for storing the video presentation, the annotation data and the mapping data (evidenced at least by *Fig. 1-2, 13*).



Virtual music performance by a plurality of users providing a plurality of display presentations of a selected musical composition where the individual performance data is shown as timed, synchronized data.

Fig. 13

82. Claim 4 of the '278 patent recites the system of claim 1, wherein the annotation data includes a media component; and wherein a presentation is provided responsive to the media component for the location.

83. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the annotation data includes a media component; and wherein a presentation is provided responsive to the media component for the location (evidenced at least by *Fig. 1-2, 13, 15*).

84. Claim 6 of the '278 patent recites the system of claim 4, wherein the location is a first location, the media component is at least one of an audio component, a video still component, a movie, a graphic image overlay and a link providing for a display presentation for a second location in the database.

85. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the location is a first location, the media component is at least one of an audio component, a video still component, a movie, a graphic image overlay and a link providing for a display presentation for a second location in the database (evidenced at least by *Fig. 3-6*).

86. Claim 7 of the '278 patent recites the system of claim 1, further comprising: mapping logic for associating an object with the annotation data; associating the location of annotation data with the respective object; and wherein the video presentation is provided as a video presentation of the object concurrently with the presentation display for the location of the annotation data responsive to the object.

87. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, further comprising: mapping logic for associating an object with the annotation data; associating the location of annotation data with the respective object; and wherein the video presentation is provided as a video presentation of the object concurrently with the presentation display for the location of the annotation data responsive to the object (evidenced at least by *Fig. 3-6*).

88. Claim 9 of the '278 patent recites the system of claim 1, wherein the annotation data comprises display content and annotation mapping data; and wherein the annotation data is mapped to appear atop the location responsive to the annotation mapping data.

89. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the annotation data comprises display content and annotation mapping data; and wherein the annotation data is mapped to appear atop the location responsive to the annotation mapping data (evidenced at least by *Fig. 1-2, 13, 15*).

90. Claim 11 of the '278 patent recites the system of claim 1, wherein the database includes a video presentation of at least one of sheet music, medical images, audiovisual content, text, graphics, photographs, still video, at least a portion of a person, and a video movie.

91. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the database includes a video presentation of at least one of sheet music, medical images, audiovisual content, text, graphics, photographs, still video, at least a portion of a person, and a video movie (evidenced at least by *Fig. 1-2, 14-15*).

92. Claim 12 of the '278 patent recites the system of claim 1, further comprising: a plurality of separate subsystems, each further comprising means for communicating between selected ones of the plurality of subsystems.

93. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent further comprising: a plurality of separate subsystems, each further comprising means for communicating between selected ones of the plurality of subsystems (evidenced at least by *Fig. 1-2, 13, 15*).

94. Claim 13 of the '278 patent recites the system of claim 12, further comprising: means for communicating the annotation data from a first subsystem, as a communicated annotation data sent to a second subsystem; and means for providing a display presentation comprising the video presentation of the composition, with the annotations simultaneously displayed as integrated to appear aligned as a layer on top of the video presentation of the composition.

95. The Infringing Instrumentalities comprise a musical image display system as in claim 12 of the '278 patent further comprising: means for communicating the annotation data from a first subsystem, as a communicated annotation data sent to a second subsystem; and means for providing a display presentation comprising the video presentation of the composition, with the

annotations simultaneously displayed as integrated to appear aligned as a layer on top of the video presentation of the composition (*evidenced at least by Fig. 4-6*).

96. Claim 14 of the '278 patent recites the system of claim 1, wherein the video presentation of the composition forms an underlying image layer; wherein the video presentation for the annotation data for the location forms an overlying image layer associated with the underlying image layer, the system further comprising: means for mapping the underlying image layer and overlying image layer to define an integration mapping; and wherein the system generates the video presentation responsive to the underlying image layer and overlying image layer, responsive to the integration mapping.

97. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the video presentation for the annotation data for the location forms an overlying image layer associated with the underlying image layer, the system further comprising: means for mapping the underlying image layer and overlying image layer to define an integration mapping; and wherein the system generates the video presentation responsive to the underlying image layer and overlying image layer, responsive to the integration mapping (*evidenced at least by Fig. 4-6*).

98. Claim 15 of the '278 patent recites the system of claim 1, further comprising: means for generating a display presentation responsive to the annotation data and the mapping data.

99. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent further comprising: means for generating a display presentation responsive to the annotation data and the mapping data (*evidenced at least by Fig. 4-6*).

100. Claim 16 of the '278 patent recites the system of claim 1, wherein each selected segment has annotations that appear within the video presentation to be atop the selected

segment of the display presentation; and wherein the annotations have associated annotation data associated with the location within the selected slice.

101. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein each selected segment has annotations that appear within the video presentation to be atop the selected segment of the display presentation; and wherein the annotations have associated annotation data associated with the location within the selected slice (evidenced at least by *Fig. 4-6*).

102. Claim 19 of the '278 patent recites the system of claim 1 wherein the composition is a musical composition, and wherein the assignment comprises at least one of a musical instrument assignment or a player assignment within the composition.

103. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the composition is a musical composition, and wherein the assignment comprises at least one of a musical instrument assignment or a player assignment within the composition (evidenced at least by *Fig. 10*).



The note highways and vocal highway provide for synchronized display presentation of the musical composition as it applies to each type of music input (i.e., guitar, vocals)

Fig. 10

104. Claim 20 of the '278 patent recites the system of claim 19 wherein the plurality of players comprise a musical orchestra.

105. The Infringing Instrumentalities comprise a musical image display system as in claim 19 of the '278 patent wherein the plurality of players comprise a musical orchestra (evidenced at least by *Fig. 8*).

106. Claim 21 of the '278 patent recites the system of claim 19 wherein the selected slices are reordered linearly such that each slice is played once according to the assignment.

107. The Infringing Instrumentalities comprise a musical image display system as in claim 19 of the '278 patent wherein the selected slices are reordered linearly such that each slice is played once according to the assignment (evidenced at least by *Fig. 1-2, 13, 15*).

108. Defendants' aforesaid activities have been without authority and/or license from Plaintiff.

109. Each Defendant was made aware of the patents in issue, and its infringement thereof at least as early as the filing of this complaint by Bama Gaming providing notice of the patents in issue and each Defendant's infringement thereof.

110. Upon information and belief, since at least the time they received notice, each Defendant has induced, and continues to induce, others to infringe at least one claim of the patents in issue under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to each Defendant's partners and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least one claim of the '168 patent.

111. In particular, each Defendant's actions that aid and abet others such as their partners and customers to infringe include advertising and distributing the Infringing

Instrumentalities and providing instruction materials, training, and services regarding the Infringing Instrumentalities. On information and belief, each Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because each Defendant has had actual knowledge of the patents in issue and that their acts were inducing infringement of the said patents since at least the date each Defendant received notice that such activities infringed the patents in issue.

112. Upon information and belief, each Defendant is liable as a contributory infringer of the patents in issue under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States musical video games to be especially made or adapted for use in an infringement of the patents in issue. The Infringing Instrumentalities are material components for use in practicing the patents in issue and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use.

113. Bama Gaming has been harmed by each Defendant's infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Bama Gaming demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bama Gaming demands judgment for itself and against Defendant as follows:

- A. An adjudication that Defendant has infringed the '999, and '278 patents;
- B. An award of damages to be paid by Defendant adequate to compensate Bama Gaming for Defendant's past infringement of the '392, '999, and '278 patents, and any continuing or future infringement through the date such judgment is entered, including interest,

costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D. An award to Bama Gaming of such further relief at law or in equity as the Court deems just and proper.

Dated: June 15, 2017

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