

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
TOUCHSTREAM TECHNOLOGIES, INC.	:	
Plaintiff,	:	CIVIL ACTION NO. 17-CV-6247-PGG
-against-	:	FIRST AMENDED COMPLAINT
VIZBEE, INC.	:	DEMAND FOR JURY TRIAL
Defendant.	:	
-----	X	

FIRST AMENDED COMPLAINT

Plaintiff Touchstream Technologies, Inc., for its complaint of patent infringement against Defendant Vizbee, Inc., alleges as follows:

THE PARTIES

1. Plaintiff Touchstream Technologies, Inc., d/b/a Shodogg (“Touchstream” or “Plaintiff”) is a New York corporation with its principal place of business in New York, New York.
2. On information and belief, Defendant Vizbee, Inc., f.k.a. Clasp.TV Inc. (“Vizbee” or “Defendant”) is a corporation with its principal place of business in New York, New York.

NATURE OF THE ACTION

3. This is a civil action against Vizbee for patent infringement arising under the patent statutes of the United States, 35 U.S.C. § 271 *et seq.* for the infringement of United States Patent Nos. 8,356,251 (the “’251 patent”), 8,782,528 (the “’528 patent”), and 8,904,289 (the “’289 patent”). True and correct copies of the ’251 patent, the ’528 patent, and the ’289 patent are attached as Exhibits #1, #2, and #3, respectively, to this Complaint.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b). On information and belief, Vizbee has transacted business in this district; has committed acts of patent infringement in this district; and has a regular and established place of business in this district.

BACKGROUND

Touchstream's '251 Patent, '528 Patent, and '289 Patent

6. Touchstream is a technology company that develops software and media platforms that enable, *inter alia*, the control, sharing, and streaming of media to and/or from various devices connected through Touchstream's platforms.

7. On January 15, 2013, the U.S. Patent and Trademark Office duly and legally issued the '251 patent, entitled "Play control of content on a display device," to inventor David Strober.

8. Touchstream is the owner, by assignment, of all rights, title, and interest in the '251 patent.

9. On July 15, 2014, the U.S. Patent and Trademark Office duly and legally issued the '528 patent, entitled "Play control of content on a display device," to inventor David Strober.

10. Touchstream is the owner, by assignment, of all rights, title, and interest in the '528 patent.

11. On December 2, 2014, the U.S. Patent and Trademark Office duly and legally issued the '289 patent, entitled "Play control of content on a display device," to inventor David Strober.

12. Touchstream is the owner, by assignment, of all rights, title, and interest in the '289 patent.

Vizbee and the Vizbee Platform

13. On information and belief, Vizbee is a technology company that designs, produces, and licenses software technology directed towards casting media content to connected devices through Vizbee's software platforms.

14. On information and belief, Vizbee has designed and produced software applications that enables users to display and control media content from a mobile phone to a connected device (*e.g.*, a television) using a cloud based system (the "Vizbee Platform"). For example, on information and belief, Vizbee has designed a Vizbee Software App for Android devices that utilizes the Vizbee Platform, released and made available through Amazon's Appstore for Android as early as March 16, 2016, that allows a user to "[e]njoy the best movies and videos by casting from your phone!" *See* Exhibit #4, Vizbee Software App Details on Amazon's Appstore for Android, accessed on August 15, 2017 at <https://www.amazon.com/Clasp-TV-Vizbee/dp/B01D0TY0V2>.

15. On information and belief, the Vizbee Platform includes an Vizbee Remote SDK (software development kit) that is integrated into the Vizbee Software App; a Vizbee Screen SDK that is integrated with a corresponding TV application; and a Vizbee's Cloud service, which is a collection of cloud services that facilitate communication between the Vizbee Remote SDK and the Vizbee Screen SDK. The Vizbee Platform operates by exchanging communications between a mobile phone, a connected device (*e.g.*, a television), and Vizbee's cloud service, which enables, *inter alia*, mobile-to-TV and TV-to-mobile synchronization and control.

COUNT I: INFRINGEMENT OF THE '251 PATENT

16. Touchstream adopts and incorporates by reference the allegations set forth in paragraphs 1-15, inclusive.

17. On information and belief, Vizbee infringes at least claims 1-5, 7-9, and 11-20 of the '251 patent by making, using, selling, and offering to sell products, including the Vizbee Platform, that control content on a display device (*see, e.g.*, Exhibit #5 that compares the limitations of claim 1 of the '251 patent to the Vizbee Platform, based on Touchstream's current investigation).

18. On information and belief, Vizbee will continue to infringe the claims of the '251 patent unless enjoined by this Court.

19. Touchstream has been and will continue to be irreparably harmed by Vizbee's infringing acts, requiring the entry of a permanent injunction to prevent Vizbee's further infringement of the '251 patent because Touchstream does not have another adequate remedy at law.

COUNT II: INFRINGEMENT OF THE '528 PATENT

20. Touchstream adopts and incorporates by reference the allegations set forth in paragraphs 1-15, inclusive.

21. On information and belief, Vizbee infringes at least claims 1-12, 14, 16-25, and 28-30 of the '528 patent by making, using, selling, and offering to sell products, including the Vizbee Platform, that control content on a display device (*see, e.g.*, Exhibit #5 that compares the limitations of claim 1 of the '528 patent to the Vizbee Platform, based on Touchstream's current investigation).

22. On information and belief, Vizbee will continue to infringe claims patent unless enjoined by this Court.

23. Touchstream has been and will continue to be irreparably harmed by Vizbee's infringing acts, requiring the entry of a permanent injunction to prevent Vizbee's further infringement of the '528 patent because Touchstream does not have another adequate remedy at law.

COUNT III: INFRINGEMENT OF THE '289 PATENT

24. Touchstream adopts and incorporates by reference the allegations set forth in paragraphs 1-15, inclusive.

25. On information and belief, Vizbee infringes at least claims 1-2, 4-8, 10-12, 14-15, and 16-17 of the '289 patent by making, using, selling, and offering to sell products, including the Vizbee Platform, that control content on a display device (*see, e.g.*, Exhibit #5 that compares the limitations of claim 1 of the '289 patent to the Vizbee Platform, based on Touchstream's current investigation).

26. On information and belief, Vizbee will continue to infringe the claims of the '289 patent unless enjoined by this Court.

27. Touchstream has been and will continue to be irreparably harmed by Vizbee's infringing acts, requiring the entry of a permanent injunction to prevent Vizbee's further infringement of the '289 patent because Touchstream does not have another adequate remedy at law.

JURY DEMAND

28. Touchstream demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Touchstream pray the Court to:

- a) grant a permanent injunction against Vizbee's continued infringement;
- b) award damages of not less than a reasonable royalty;
- c) award prejudgment and postjudgment interest;
- d) find that this case is an exceptional case under 35 U.S.C. § 285 and award attorneys' fees;
- e) award costs; and
- f) grant all other relief to which Touchstream is entitled.

Dated: New York, New York
October 19, 2017

NORTON ROSE FULBRIGHT US LLP

By: /s/ Paul B. Keller

Paul B. Keller
Michelle Wang
James Reed
1301 Avenue of the Americas
New York, New York 10019-6022
(212) 318-3000

*Attorneys for Plaintiff Touchstream
Technologies, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2017, a true and correct copy of the foregoing document was served by CM/ECF to the following parties registered to the Court's CM/ECF system:

Calvin E. Wingfield, Jr.
GOODWIN PROCTER LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attorneys for Defendant Vizbee, Inc.

VIA ECF AND ELECTRONIC MAIL

David L. Simson
GOODWIN PROCTER LLP
Three Embarcadero Center
San Francisco, CA 94111
Attorneys for Defendant Vizbee, Inc.

VIA ECF AND ELECTRONIC MAIL

/s/ Paul B. Keller
Paul B. Keller