

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

GROOVE DIGITAL, INC.,

Plaintiff,

v.

JAM CITY, INC.,

Defendant.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Groove Digital, Inc. (“Groove Digital”) files this complaint for patent infringement against Defendant Jam City, Inc. (“Jam City”).

**PARTIES**

1. Plaintiff Groove Digital is a corporation organized and existing under the laws of Delaware with its principal place of business at 455 Minnesota Street, Suite 1500, St. Paul, Minnesota 55101. Groove Digital’s principals include Sam Gaidemak and Paul Chachko, the named inventors on U.S. Patent No. 9,454,762, titled “System and Method for the Delivery of Content to a Networked Device” (“the ’762 Patent”). Groove Digital is the owner of the ’762 Patent by assignment.

2. Upon information and belief, Defendant Jam City, Inc. is a Delaware corporation with its principal place of business at 3525 Eastham Drive, Culver City, California 90232.

3. Jam City directly and/or indirectly makes, imports, distributes, markets, sells and/or offers to sell throughout the United States, including in this judicial district, products and/or services (“the Accused Products”) that infringe one or more claims of the ’762 Patent as

described below. The Accused Products include the games Cookie Jam, Family Guy: Another Freakin' Mobile Game, and Harry Potter: Hogwarts Mystery.

**JURISDICTION AND VENUE**

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

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

6. This Court has personal jurisdiction over Jam City because it is incorporated in this judicial district. Further, upon information and belief, Jam City has substantial, continuing, and ongoing contacts with this judicial district, and sells, distributes, and/or offers to sell into this judicial district the Accused Products through the jamcity.com website and through third-party vendors such as the iTunes App Store, the Google Play app, Amazon.com, the Amazon Appstore app, and Facebook.

7. Upon information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b)-(c) and § 1400(b) because Jam City transacts business in this judicial district and because it is subject to personal jurisdiction in this judicial district.

**U.S. PATENT NO. 9,454,762**

8. Sam Gaidemak has had an inventive nature since childhood, coming up with innovative concepts since as far back as 1979. In 2004, he first had the groundbreaking idea that eventually matured into the '762 Patent. Over the course of the next year, Mr. Gaidemak and co-inventor Paul Chachko worked diligently to refine the concept. They filed a provisional patent application on March 18, 2005, then filed a non-provisional application on March 17, 2006. They prosecuted the application for over ten and a half years before the United States Patent and

Trademark Office (“USPTO”) duly and legally issued the ’762 Patent on September 27, 2016. Groove Digital is the owner by assignment of all right, title and interest in and to the ’762 Patent, including the right to sue, enforce and recover damages for all past, present, and future infringement of the patent. A true and correct copy of the ’762 Patent is attached as Exhibit A.

9. The ’762 Patent generally claims improvements in the delivery and display of digital content to computer systems by using applet applications (colloquially known as “apps”). The improvements include the use of app-based alerts known as “push notifications” to provide (i) content directly to a device, and (ii) browser links to specific web pages known as “deep-link URLs.” Additional improvements include the ability of the apps to passively deploy and terminate operation without requiring any input from the user of the device and to deliver content independent of the browser used. Each of those features represents a use of technology that was unconventional as of March 18, 2005, when Mr. Gaidemak and Mr. Chachko submitted their provisional patent application to the USPTO. For example, Apple’s App Store, the first widely-available digital distribution platform for such apps, did not open until July 2008, more than three years after the ’762 Patent’s provisional application date.

10. As a result of the improvements provided by the ’762 Patent, the overall functionality of computer systems’ content delivery has been improved to the extent that passively-deployed browser-independent app-based content accounts for an increasingly substantial portion of content delivery in the smartphone and tablet market. Apple’s App Store, for example, has increased its available applications from 500 in 2008 to more than 2 million in 2017. Similarly, Google’s app store, known as Google Play, launched in 2008 as Android Market, now offers almost 3 million apps which, collectively, have been downloaded over 82 billion times. This explosion in passively-deployed, browser-independent, app-based content

delivery and display would not have been possible without the technology claimed by the '762 Patent.

11. The application for the '762 Patent spent over ten and a half years in prosecution before the patent issued on September 27, 2016. In that time, it overcame numerous prior art references as well as a rejection under 35 U.S.C. § 101. The examiner thus considered the patentability of the claimed inventions and allowed them under the stricter § 101 standard set by the Supreme Court in *Alice Corp. v. CLS Bank Int'l*, 573 U.S. \_\_\_, 134 S. Ct. 2347 (2014) and its progeny.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 9,454,762**

12. Groove Digital re-alleges and incorporates herein by reference the allegations stated in paragraphs 1-15 of this Complaint.

13. Jam City has infringed and is continuing to infringe, literally or through the doctrine of equivalents, directly, jointly, or indirectly, contributorily and/or through the inducement of others, one or more claims of the '762 Patent, by making, using, offering to sell and/or selling in this judicial district and elsewhere within the United States and/or importing into the United States its Accused Products, constituting infringement under 35 U.S.C. § 271 (a), (b), (c) and/or (g).

14. Jam City's direct infringement includes using the systems and methods of claims 1-37 of the '762 Patent. Specifically, Jam City's direct infringement includes making, using, selling, offering to sell and/or importing a system and method by which it delivers the Accused Products to a networked device that in turn delivers and displays content in the manner claimed in the above-identified claims.

15. For example, the Accused Products are configured to deliver information, such as upgrades, in-app purchases, or promotional material, to game players by passively deploying push notifications that display content by opening a notification window in a predesignated location on the game player's device, such as a smartphone or tablet. The content is transmitted from a remote server to the game player's device and the delivery of the content is triggered when the Accused Products' comparison of information contained in multiple databases meets predetermined criteria for the delivery of a push notification. Further, the delivery of a push notification does not interrupt the game player's interaction with the device. The Accused Products are configured to deliver additional content to the game player based on the game player's response (or lack of a response) to the push notification.

16. As a result of the activities described above, Jam City is liable for direct infringement of the above-identified claims of the '762 Patent under 35 U.S.C. § 271(a).

17. To the extent any factfinder concludes that Jam City does not literally satisfy any element of the claims of the '762 Patent, those elements are met under the Doctrine of Equivalents.

18. Alternatively and in addition to its liability for direct infringement of the above-identified claims of the '762 Patent, Jam City is also liable for indirectly infringing the above-identified claims of the '762 Patent in this judicial district and elsewhere in the United States by inducing direct infringement in violation of 35 U.S.C. § 271(b) and by contributing to direct infringement in violation of 35 U.S.C. § 271(c).

19. Upon information and belief, Jam City monitors patent litigation filings against its competitors and has thus been aware of the '762 Patent and the infringing nature of its Accused Products since June 4, 2018 when Groove Digital filed its complaint against mobile app game

developer King.com, Ltd. At a minimum, Jam City has been aware of the '762 Patent and the infringing nature of the Accused Products since service of the complaint in this action and its infringement is ongoing.

20. The direct infringement induced or contributed to by Jam City includes at least the continued use of the Accused Products by game players acting in combination with Jam City.

21. Jam City encourages continued direct infringement of the above-identified claims of the '762 Patent by at least widely publicizing its Accused Products and providing on its website and in the Accused Products themselves instructions for conducting the directly infringing use.

22. Jam City induces continued infringement by at least encouraging and instructing game players to perform some or all of the claimed steps, while in certain instances performing certain of the steps itself in coordination with such performance by game players.

23. Jam City's specific intent to cause game players to directly infringe can be inferred by its knowledge of the '762 Patent and from the striking similarity between the Accused Products and the claims of the '762 Patent. Both the '762 Patent and the Accused Products use applet applications to deliver and display browser-independent content on a networked device.

24. Jam City contributes to direct infringement of the asserted claims of the '762 Patent by providing game players with the necessary software and instructions to operate the Accused Products, including the downloading of applet applications for the delivery and display of browser-independent content. The software and instructions are not staple articles of commerce and have no substantial non-infringing uses. They are specifically designed to work

with the Accused Products and their only purpose is to operate in a manner that directly infringes the asserted claims of the '762 Patent.

25. Jam City's acts of infringement have caused damage to Groove Digital and Groove Digital is entitled to recover from Jam City the damages it has sustained as a result of Jam City's wrongful acts in an amount subject to proof at trial. Jam City's infringement of Groove Digital's exclusive rights under the '762 Patent will continue to damage Groove Digital, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court. Jam City's ongoing infringement is willful and deliberate, as Jam City became aware of the infringing nature of its Accused Products at the latest when it received a copy of this complaint, entitling Groove Digital to increased damages and reasonable attorneys' fees for post-complaint infringement pursuant to 35 U.S.C. §§ 284 and 285.

#### **PRAYER FOR RELIEF**

WHEREFORE, Groove Digital prays that it have judgment against Defendant Jam City, Inc. for the following:

- (1) Adjudging that Defendant Jam City, Inc. has infringed the '762 Patent;
- (2) Permanently enjoining and restraining Defendant Jam City, Inc. and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association, active concert or participation with any of them, from further acts of infringement, contributory infringement or inducement of infringement of any asserted claim of the '762 Patent;
- (3) Awarding damages to Groove Digital, together with both pre-judgment and post-judgment interest;
- (4) Awarding increased damages pursuant to 35 U.S.C. § 284;
- (5) Finding this action constitutes an exceptional case pursuant to 35 U.S.C. § 285;

(6) Awarding Groove Digital all of its costs in this action, including attorneys' fees and expenses; and

(7) Awarding such other and further relief, at law or in equity, to which Groove Digital is justly entitled.

**JURY DEMAND**

Groove Digital hereby demands a jury trial on all issues so triable.

Dated: August 27, 2018

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