

1 Jeffrey Francis Craft SBN 147186
jcraft@devlinlawfirm.com
2 DEVLIN LAW FIRM, LLC
2069 Cold Canyon Road
3 Calabasas, CA 91302

4 Timothy Devlin (*pro hac vice*)
tdevlin@devlinlawfirm.com
5 James M. Lennon (*pro hac vice*)
jlennon@devlinlawfirm.com
6 DEVLIN LAW FIRM, LLC
1306 N. Broom St., 1st Floor
7 Wilmington, DE 19806

8 Telephone: (302) 449-9010
9 Facsimile: (302) 353-4251

10 *Attorneys for Blue Spike, LLC*

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **SOUTHERN DIVISION**

15
16 BLUE SPIKE LLC; BLUE SPIKE
INTERNATIONAL LTD.; and WISTARIA
17 TRADING LTD.

18 Plaintiffs,

19 v.

20 VIZIO, INC.,

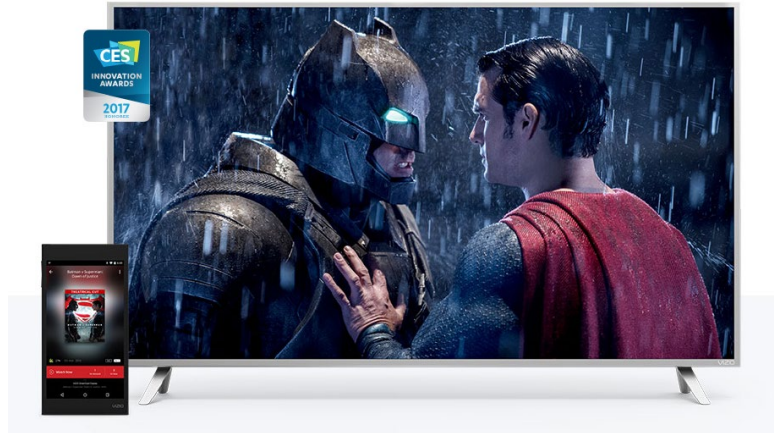
21 Defendant.

Civil Case No.: 8:17-cv-01172-KES

**SUPPLEMENTAL COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10 Plaintiffs Blue Spike LLC (“Blue Spike LLC”), Blue Spike International Ltd. (“Blue Spike
11 Int.”), and Wistaria Trading Ltd. (“Wistaria”) (collectively “Plaintiffs”) file this complaint against
12 VIZIO, Inc. (“VIZIO” or “Defendant”), alleging five (5) counts of infringement of the following
13 Patents-in-Suit, separated for convenience into two groups: (1) Plaintiff’s Secure Server Patents and
14 (2) Plaintiff’s Trusted Transaction Patents:

15 **Plaintiff’s Secure Server Patents:**

- 16 1. U.S. Patent No. 7,475,246, titled “Secure Personal Content Server” (the ‘246 Patent);
17 2. U.S. Patent No. 8,171,561, titled “Secure Personal Content Server” (the ‘561 Patent);
18 3. U.S. Patent No. 8,739,295, titled “Secure Personal Content Server” (the ‘295 Patent)
19 (collectively with U.S. Patent Nos. 7,475,246 and 8,171,561, the “Secure Server Patents”);

20 **Plaintiff’s Trusted Transactions Patents:**

- 21 4. U.S. Patent No. 7,159,116, titled “Systems, Methods and Devices for Trusted Transactions”
22 (the ‘116 Patent); and
23 5. U.S. Patent No. 8,538,011, titled “Systems, Methods and Devices for Trusted Transactions”
24 (the ‘011 Patent) (collectively with U.S. Patent No. 7,159,116, the “Trusted Transactions Patents”)
25 (collectively with the ‘246, ‘561, ‘295, and ‘116 patents the “Patents-in-Suit”).

26 **NATURE OF THE SUIT**

27 This is a claim for patent infringement arising under the patent laws of the United States, 35
28 U.S.C. § 1 *et seq.*

PARTIES

1
2 1. Blue Spike LLC is a limited liability company organized under the laws of the State of Texas
3 with a place of business at 1820 Shiloh Road, Suite 1201-C, Tyler, Texas 75703.

4 2. Blue Spike Int. is a limited liability company established in Ireland with a place of business at 6
5 Mountain View, Sheen Falls Country Club, Kenmare, County Kerry, Ireland V93 XK85.

6 3. Wistaria Trading Ltd. is a Bermuda corporation with a place of business at Clarendon House, 2
7 Church St., Hamilton HM 11, Bermuda.

8 4. The Patents-in-Suit are owned by and assigned to Wistaria. Blue Spike LLC is the exclusive
9 licensee of the Patents-in-Suit. Blue Spike LLC's an exclusive license to the Patents-in-Suit, includes
10 the right to assert infringement under 35 U.S.C. §281 and grant sub-licenses to the Patents-in-Suit.

11 5. Blue Spike Int. is a prior exclusive licensee of the Patents-in-Suit, which license was revoked
12 upon the grant of the exclusive license to Blue Spike LLC; however, Blue Spike Int. retains the right to
13 receive all revenues from Blue Spike LLC's licensing of the Patents-in-Suit.

14 6. Blue Spike LLC, Blue Spike Int., and Wistaria are each exclusively and entirely owned and
15 controlled by Scott Moskowitz.

16 7. Collectively, all rights to the Patents-in-Suit reside with Plaintiffs, including the rights to grant
17 sublicenses, to exclude others from practicing the inventions taught therein, and to sue and obtain
18 damages and other relief for past and future acts of infringement.

19 8. On information and belief, VIZIO, Inc. is a company organized and existing under the laws of
20 California, with a principal place of business at 39 Tesla, Irvine, California 92618. VIZIO, Inc. may
21 be served through its registered agent, Registered Agent Solutions, Inc., at 1220 S Street, Suite 150,
22 Sacramento, California 95811.

JURISDICTION AND VENUE

23
24 9. This lawsuit is a civil action for patent infringement arising under the patent laws of the United
25 States, 35 U.S.C. § 101 *et seq.* The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§
26 1331, 1332, 1338(a), and 1367.

1 10. The Court has personal jurisdiction over VIZIO has it requested to be transferred to this district
2 and purports to have its principal place of business here.

3 11. Venue is proper in this judicial district under 28 U.S.C. §1400(b) because Defendant is
4 incorporated in this state. *See* 28 U.S.C § 1400 (b); *TC Heartland LLC v. Kraft Foods Group Brands*
5 *LLC*, 137 S. Ct. 1514, 1521 (2017). Venue is also proper because Defendant is headquartered in this
6 district. *See* 28 U.S.C. § 1400(b) (“Any civil action for patent infringement may be brought in the
7 judicial district where the defendant . . . has a regular and established place of business.”). Defendant
8 also does business in this state and has committed acts of infringement in this state. The Plaintiffs
9 have all the necessary rights to exploit the patents-in-suit in patent infringement litigation and also
10 has the right to import and manufacture the products.

11 **FACTUAL BACKGROUND**

12 12. Protection of intellectual property is a prime concern for creators and publishers of digitized
13 copies of copyrightable works, such as musical recordings, movies, video games, and computer
14 software. Plaintiffs’ founder Scott Moskowitz pioneered and continues to invent technology that
15 makes such protection possible.

16 13. Moskowitz is a senior member of the Institute of Electrical and Electronics Engineers (IEEE),
17 a member of the Association for Computing Machinery, and the International Society for Optics and
18 Photonics (SPIE). As a senior member of the IEEE, Moskowitz has peer-reviewed numerous
19 conference papers and has submitted his own publications.

20 14. Moskowitz is an inventor of more than 100 patents in the areas of forensic watermarking,
21 signal abstracts, data security, software watermarks, product license keys, deep packet inspection,
22 license code for authorized software, and bandwidth securitization, among others.

23 15. The National Security Agency (NSA) even took interest in his work after he filed one of his
24 early patent applications. The NSA made the application classified under a “secrecy order” while it
25 investigated his pioneering innovations and their impact on national security.

26 16. As an industry trailblazer, Moskowitz has been a public figure and an active author on
27 technologies related to protecting and identifying software and multimedia content. A 1995 *New York*

1 *Times* article, “TECHNOLOGY: DIGITAL COMMERCE; 2 plans for watermarks, which can bind
2 proof of authorship to electronic works,” recognized Moskowitz’s company as one of two leading
3 software start-ups in this newly created field. *Forbes* also interviewed Moskowitz for an excerpt in
4 “Cops Versus Robbers in Cyberspace,” September 9, 1996. The article discussed the emergence of
5 digital watermarking and rights-management technology. He has also testified before the Library of
6 Congress regarding the Digital Millennium Copyright Act.

7 17. Moskowitz has spoken to the RSA Data Security Conference, the International Financial
8 Cryptography Association, Digital Distribution of the Music Industry, and many other organizations
9 about the business opportunities that digital watermarking creates. Moskowitz also authored *So This*
10 *Is Convergence?*, the first book of its kind about secure digital-content management. This book has
11 been downloaded over a million times online and has sold thousands of copies in Japan, where
12 Shogakukan published it under the name *Denshi Skashi*, literally “electronic watermark.” Moskowitz
13 was asked to author the introduction to *Multimedia Security Technologies for Digital Rights*
14 *Management*, a 2006 book explaining digital-rights management. Moskowitz authored a paper for the
15 2002 International Symposium on Information Technology, titled “What is Acceptable Quality in the
16 Application of Digital Watermarking: Trade-offs of Security, Robustness and Quality.” He also wrote
17 an invited 2003 article titled “Bandwidth as Currency” for the *IEEE Journal*, among other
18 publications.

19 18. Moskowitz and Plaintiffs continue to invent technologies that protect intellectual property from
20 unintended use or unauthorized copying.

21 **THE ACCUSED PRODUCTS**

22 19. The Defendant VIZIO designs, develops, manufactures and/or provides products, services
23 and/or software applications that employ features or components that infringe one or more claims of
24 the Patents-in-Suit (collectively the “Accused TV Products”).

25 20. The Accused TV Products include VIZIO smart televisions, which utilize features or
26 components capable of streaming secured content such as Netflix, YouTube, Google Play, HBO Go,
27 Fox Now, and other such services. Such products include, the following model numbers:

- 1 . D70-F3
- 2 . D43F-F1
- 3 . D43-E2
- 4 . D43F-E1
- 5 . DF0F-E1
- 6 . D40F-F1
- 7 . D39F-E1
- 8 . D24F-F1
- 9 . D24H-E1
- 10 . P65-E1
- 11 . P55-E1
- 12 . M75-E1
- 13 . M70-E3
- 14 . M65-F0
- 15 . M65-E0
- 16 . M55-F0
- 17 . M55-E0
- 18 . M50-E1
- 19 . E75-E3
- 20 . E75-E1
- 21 . E70-E3
- 22 . E65-E1
- 23 . E60-E3
- 24 . E55-E2
- 25 . E50-E1
- 26 . E50-F2
- 27 . E43-E2
- 28

1 E80-E3.

2 21. The Accused Products employ features or components that infringe on Plaintiffs' Secure Server
3 Patents and Trusted Transactions Patents. When end users use Defendant's Accused Products,
4 Defendant causes them to directly infringe on Plaintiffs' patented ASLR security technique. However,
5 this infringement claim is not limited to the memory component and the Secure Server and Trusted
6 Transaction features and components embedded within the memory. Defendant also directly
7 infringes by its testing and quality control practices.

8 22. Plaintiffs' Secure Server patented technique creates a secure environment for the disclosure of
9 digital content, whereby a local content server system (LCS) is provided with rules and procedures
10 for accepting and transmitting content data.

11 23. Plaintiffs' Trusted Transaction patented technique provides an integrated multivalent system
12 for enhancing trust across a variety of data transactional categories.

13 24. Defendant has not obtained a license for any of Plaintiffs' patented technologies.

14 25. Yet the Accused Products are using methods, devices, and systems taught by Plaintiffs' Patents-
15 in-Suit.

16 26. Each count of patent infringement contained herein is accompanied by a representative claim.
17 *See Atlas IP LLC v. P. Gas and Electric Co.*, 15-CV-05469-EDL, 2016 WL 1719545, at *5 (N.D.
18 Cal. Mar. 9, 2016) ("*Iqbal* and *Twombly* only require Plaintiffs to state a plausible claim for relief,
19 which can be satisfied by adequately pleading infringement of one claim.).

20 **COUNT 1:**

21 **INFRINGEMENT OF U.S. PATENT 7,475,246**

22 27. Plaintiffs incorporate by reference the allegations in the paragraphs above.

23 28. The '246 Patent is valid, enforceable, and was duly and legally issued by the USPTO.

24 29. Without a license or permission from Plaintiffs, Defendant has infringed and continue to
25 infringe on one or more claims of the '246 Patent directly or by inducement by importing, making,
26 using, offering for sale, or selling products and devices that embody the patented invention, including,
27 without limitation, one or more of the Accused TV Products, in violation of 35 U.S.C. § 271.

1 30. Defendant has been and now is directly infringing by, among other things, practicing all the
2 steps of the '246 Patent and/or directing, controlling, and obtaining benefits from its subsidiaries,
3 partners, distributors, and retailers practicing all the steps of the '246 Patent. Specifically, Defendant
4 imports the Accused TV Products into the United States, operates a website that offers for sale the
5 Accused TV Products (*see, e.g.*, Ex. A & B), has partnered with resellers to offer for sale and sell the
6 Accused TV Products in the United States (*see, e.g.*, Ex. C & D), generates revenue from sales of the
7 Accused TV Products to U.S. customers via said channels (*see id.*); and has attended trade shows in
8 the United States where it has demonstrated the Accused Products (*see, e.g.*, Ex. F).

9 31. For instance, the Accused TV Products infringe claim 17 of the '246 Patent which teaches:

10 A method for creating a secure environment for digital
11 content for a consumer, comprising the following steps:
12 sending a message indicating that a user is requesting a copy of a
13 content data set;
14 retrieving a copy of the requested content data set;
15 embedding at least one robust open watermark into the copy of the
16 requested content data set, said watermark indicating that the
17 copy is authenticated;
18 embedding a second watermark into the copy of the requested
19 content data set, said second watermark being created based
20 upon information transmitted by the requesting user;
21 transmitting the watermarked content data set to the requesting
22 consumer via an electronic network;
23 receiving the transmitted watermarked content data set into a Local
24 Content Server (LCS) of the user;
25 extracting at least one watermark from the transmitted watermarked
26 content data set;

1 permitting use of the content data set if the LCS determines that use
2 is authorized; and
3 permitting use of the content data set at a predetermined quality
4 level, said predetermined quality level having been set for
5 legacy content if the LCS determines that use is not authorized.

6 Defendant's Accused TV Products include features or components which allow playback,
7 upon request and proper authorization, of secured content via Netflix and other streaming services
8 (*digital content for a consumer; sending message; retrieving a copy of the requested content;*
9 *transmitting the watermarked content data set; receiving the transmitted watermarked content data*
10 *set into a Local Content Server (LCS) of the user; extracting at least one watermark; permitting use*
11 *of the content data set if the LCS determines that it is authorized*). *See, e.g., Ex. A & L.*

12 32. Defendant has been and now is indirectly infringing by way of inducing infringement by others
13 of the '246 Patent in California, in the Central District, and elsewhere in the United States, by, among
14 other things, making, using, importing, offering for sale, and/or selling, without license or authority,
15 products for use in systems that fall within the scope of one or more claims of the '246 Patent. Such
16 products include, without limitation, one or more of the Accused TV Products. By making, using,
17 importing offering for sale, and/or selling such products, Defendant has injured Blue Spike LLC and
18 is thus liable to Blue Spike LLC for infringement of the '246 Patent under 35 U.S.C. § 271. It is not
19 necessary for Plaintiffs to indicate specific customers directly infringing the Patents-in-Suit through
20 the use of Defendant's Accused TV Products. *See In re Bill of Lading*, 681 F.3d at 1336. Even so,
21 Defendant induces the infringement of its customers, who use the infringing functionality, and its
22 partners and resellers, who offer for sale and sell the Accused TV Products. *See, e.g., Ex. C & D;*
23 *supra*, at 19-20, n. 2. Those whom Defendant induces to infringe are the end users of the Accused TV
24 Products.

25 33. Defendant had knowledge of the '246 Patent at least as early as the service of Blue Spike LLC's
26 complaint against Defendant in the Eastern District of Texas, filed on January 30, 2017. *See Case No.*
27 *6:17-cv-00060, Dkt. No. 1.* That complaint also notified Defendant that the Accused TV Products
28

1 infringe the Patents-in-Suit and employ features or components that cannot be used without infringing
2 the technology claimed by the Patents-in-Suit. Even so, Defendant has continued to induce its
3 customers and partners to infringe. *See, supra*, at 19-20, n. 2. Thus, Defendant is liable for
4 infringement of one or more claims of the ‘246 Patent by actively inducing infringement of one or
5 more claims of the ‘246 Patent under 35 U.S.C. § 271.

6 34. Defendant’s acts of infringement of the ‘246 Patent have damaged Blue Spike LLC. Thus, Blue
7 Spike LLC is entitled to recover from Defendant the damages sustained as a result of Defendant’s
8 wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271. Defendant’s
9 infringement of the ‘246 Patent will continue to damage Blue Spike LLC, causing it irreparable harm,
10 for which there is no adequate remedy at law. This warrants an injunction from the Court.

11 35. On information and belief, the infringement of the ‘246 Patent by Defendant has been willful
12 and continues to be willful. Defendant had knowledge of the ‘246 Patent, including but not limited to
13 at least one or more of the following:

- 14 a. The filing of Blue Spike LLC’s complaint against Defendant in the Eastern District of Texas
15 on January 30, 2017 (Case No. 6:17-cv-00060, Dkt. No. 1).
- 16 b. In the course of its due diligence and freedom to operate analysis.
- 17 c. And due diligence in relation to its prior litigation with Blue Spike LLC.

18 On information and belief, Defendant has, at a minimum, been given constructive notice of the
19 ‘246 Patent by operation of law.

20 **COUNT 2:**

21 **INFRINGEMENT OF U.S. PATENT 8,171,561**

22 36. Plaintiffs incorporate by reference the allegations in the paragraphs above.

23 37. The ‘561 Patent is valid, enforceable, and was duly and legally issued by the USPTO.

24 38. Without a license or permission from Plaintiffs, Defendant has infringed and continue to
25 infringe on one or more claims of the ‘561 Patent directly or by inducement, by importing, making,
26 using, offering for sale, or selling products and devices that embody the patented invention, including,
27 without limitation, one or more of the Accused TV Products, in violation of 35 U.S.C. § 271.

1 39. Defendant has been and now is directly infringing by, among other things, practicing all the
2 steps of the '561 Patent and/or directing, controlling, and obtaining benefits from its subsidiaries,
3 partners, distributors, and retailers practicing all the steps of the '561 Patent. Specifically, Defendant
4 imports the Accused Products into the United States, operates a website that offers for sale the
5 Accused Products (*see, e.g.*, Ex. A & B), has partnered with resellers to offer for sale and sell the
6 Accused TV Products in the United States (*see, e.g.*, Ex. C & D), generates revenue from sales of the
7 Accused TV Products to U.S. customers via said channels (*see id.*); and has attended trade shows in
8 the United States where it has demonstrated the Accused Products (*see, e.g.*, Ex. F).

9 40. For instance, the Accused TV Products infringe claim 9 of the '561 Patent which teaches:

10 A method for using a local content server (LCS), said LCS comprising
11 an LCS communications port; an LCS storage unit for storing digital
12 data; an LCS domain processor for processing digital data; and an LCS
13 identification code uniquely associated with said LCS, said method
14 comprising:

15 said LCS storing in said LCS storage unit a plurality of rules for
16 processing a data set;

17 said LCS receiving via said communications port a first data set that
18 includes data defining first content;

19 said LCS using said domain processor to determine from inspection
20 of said first data set for a watermark, a first data set status value
21 of said first data set to be at least one of unsecure, secure, and
22 legacy;

23 said LCS using said first data set status value to determine which
24 of a set of rules to apply to process

25 said first data set prior to storage of a processed second data set
26 resulting from processing of said first data set, in said LCS
27 storage unit;

1 42. Defendant had knowledge of the ‘561 Patent at least as early as the service of Blue Spike LLC’s
2 complaint against Defendant in the Eastern District of Texas, filed on January 30, 2017. *See* Case No.
3 6:17-cv-00060, Dkt. No. 1. That complaint also notified Defendant that the Accused TV Products
4 infringe the Patents-in-Suit and cannot be used without infringing the technology claimed by the
5 Patents-in-Suit. Thus, Defendant is liable for infringement of one or more claims of the ‘561 Patent
6 by actively inducing infringement of one or more claims of the ‘561 Patent under 35 U.S.C. § 271.

7 43. Defendant’s acts of infringement of the ‘561 Patent have caused damage to Blue Spike LLC,
8 and Blue Spike LLC is entitled to recover from Defendant the damages sustained as a result of
9 Defendant’s wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271.
10 Defendant’s infringement of the ‘561 Patent will continue to damage Blue Spike LLC, causing it
11 irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the
12 Court.

13 44. On information and belief, the infringement of the ‘561 Patent by Defendant has been willful
14 and continues to be willful. Defendant had knowledge of the ‘561 Patent, including but not limited to
15 at least one or more of the following:

- 16 a. The filing of Blue Spike LLC’s complaint against Defendant in the Eastern District of Texas
17 on January 30, 2017 (Case No. 6:17-cv-00060, Dkt. No. 1).
- 18 b. In the course of its due diligence and freedom to operate analysis.
- 19 c. And due diligence in relation to its prior litigation with Blue Spike LLC.

20 On information and belief, Defendant has had at least had constructive notice of the ‘561 Patent
21 by operation of law.

22 **COUNT 3:**

23 **INFRINGEMENT OF U.S. PATENT 8,739,295**

24 45. Plaintiffs incorporate by reference the allegations in the paragraphs above.

25 46. The ‘295 Patent is valid, enforceable, and was duly and legally issued by the United States
26 Patent and Trademark Office.

1 47. Without a license or permission from Blue Spike, Defendant has infringed and continue to
2 infringe on one or more claims of the ‘295 Patent—directly or by inducement—by importing, making,
3 using, offering for sale, or selling products and devices that embody the patented invention, including,
4 without limitation, one or more of the Accused TV Products, in violation of 35 U.S.C. § 271.

5 48. Defendant has been and now is directly infringing by, among other things, practicing all the
6 steps of the ‘295 Patent and/or directing, controlling, and obtaining benefits from its subsidiaries,
7 partners, distributors, and retailers practicing all the steps of the ‘295 Patent. Specifically, Defendant
8 imports the Accused TV Products into the United States, operates a website that offers for sale the
9 Accused TV Products (*see, e.g.*, Ex. A & B), has partnered with resellers to offer for sale and sell the
10 Accused TV Products in the United States (*see, e.g.*, Ex. C & D), generates revenue from sales of the
11 Accused TV Products to U.S. customers via said channels (*see id.*); and has attended trade shows in
12 the United States where it has demonstrated the Accused Products (*see, e.g.*, Ex. F).

13 49. For instance, the Accused TV Products infringe claim 13 of the ‘295 Patent which teaches:

14 A method for using a local content server system (LCS),
15 said LCS comprising an LCS communications port; an LCS storage
16 unit for storing digital data in non-transitory form; an LCS domain
17 processor that imposes a plurality of rules and procedures for content
18 being transferred between said LCS and devices outside said LCS,
19 thereby defining a first LCS domain; and a programmable address
20 module programmed with an LCS identification code uniquely
21 associated with said LCS domain processor; comprising:

22 storing, in said LCS storage unit, a plurality of rules for processing
23 a data set;

24 receiving, via said LCS communications port, a first data set that
25 includes data defining first content;

26 said LCS determining whether said first content belongs to a
27 different LCS domain than said first LCS domain;

1 said LCS excluding from said first LCS domain said first content
2 when said LCS determines that said first content belongs to said
3 different LCS domain;
4 said LCS domain processor determining, from said first data set, a
5 first data set status value of said first data set to be at least one
6 of unsecure, secure, and legacy;
7 said LCS determining, using said first data set status value, which
8 of a set of rules to apply to process said first data set; and
9 said LCS determining, at least in part from rights associated with
10 an identification associated with a prompt received by said LCS
11 for said first content, a quality level at which to transmit said
12 first content, wherein said quality level is one of at least
13 unsecure, secure, and legacy;
14 said LCS transmitting said first content at the determined quality
15 level.

16
17 Defendant's Accused TV Products allow playback of both secured and unsecured content via
18 Netflix and other streaming services (*a method for using a local content server with communications*
19 *port, storage, domain processor, and unique ID; said LCS storing/receiving data sets/content;*
20 *excluding from said first LCS domain said first content when said LCS determines that said first*
21 *content belongs to said different LCS domain; said LCS domain processor determining, from said*
22 *first data set, a first data set status value of said first data set to be at least one of unsecure, secure,*
23 *and legacy*). (See, e.g., Ex. A & L).

24 50. Defendant has been and now is indirectly infringing by way of inducing infringement by others
25 of the '295 Patent in the State of California, in this judicial district, and elsewhere in the United States,
26 by, among other things, making, using, importing, offering for sale, and/or selling, without license or
27 authority, products for use in systems that fall within the scope of one or more claims of the '295

1 Patent. Such products include, without limitation, one or more of the Accused TV Products. By
2 making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike
3 LLC and is thus liable to Blue Spike LLC for infringement of the '295 Patent under 35 U.S.C. § 271.
4 It is not necessary for Plaintiffs to indicate specific customers directly infringing the Patents-in-Suit
5 through the use of Defendant's Accused TV Products. *See In re Bill of Lading*, 681 F.3d at 1336.
6 Even so, Defendant induces the infringement of its customers. *See, supra*, at 19-20, n. 2. Defendant
7 also induces the infringement of its partners and resellers who use, test, and demonstrate the infringing
8 functionality. *See, e.g.*, Ex. C & D. Those whom Defendant induces to infringe are the end users of
9 the Accused TV Products.

10 51. Defendant had knowledge of the '295 Patent at least as early as the service of Blue Spike LLC's
11 complaint against Defendant in the Eastern District of Texas, filed on January 30, 2017. *See* Case No.
12 6:17-cv-00060, Dkt. No. 1. That complaint also notified Defendant that the Accused TV Products
13 infringe the Patents-in-Suit and cannot be used without infringing the technology claimed by the
14 Patents-in-Suit. Nevertheless, Defendant has continued to induce its customers and partners to
15 infringe. *See, supra*, at 19-20, n. 2. Thus, Defendant is liable for infringement of one or more claims
16 of the '295 Patent by actively inducing infringement of one or more claims of the '295 Patent under
17 35 U.S.C. § 271.

18 52. Defendant's acts of infringement of the '295 Patent have caused damage to Blue Spike LLC,
19 and Blue Spike LLC is entitled to recover from Defendant the damages sustained as a result of
20 Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271.
21 Defendant's infringement of the '295 Patent will continue to damage Blue Spike LLC, causing it
22 irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the
23 Court.

24 53. On information and belief, the infringement of the '295 Patent by Defendant has been willful
25 and continues to be willful. Defendant had knowledge of the '295 Patent, including but not limited to
26 at least one or more of the following:
27
28

- 1 a. The filing of Blue Spike LLC’s complaint against Defendant in the Eastern District of Texas
2 on January 30, 2017 (Case No. 6:17-cv-00060, Dkt. No. 1).
3 b. In the course of its due diligence and freedom to operate analysis.
4 c. And due diligence in relation to its prior litigation with Blue Spike LLC.

5 On information and belief, Defendant has had at least had constructive notice of the
6 ‘295 Patent by operation of law.

7 **COUNT 4:**

8 **INFRINGEMENT OF U.S. PATENT 7,159,116**

9 54. Plaintiffs incorporate by reference the allegations in the paragraphs above.

10 55. The ‘116 Patent is valid, enforceable, and was duly and legally issued by the United States
11 Patent and Trademark Office.

12 56. Without a license or permission from Plaintiffs, Defendant has infringed and continue to
13 infringe on one or more claims of the ‘116 Patent—directly or by inducement—by importing, making,
14 using, offering for sale, or selling products and devices that embody the patented invention, including,
15 without limitation, one or more of the Accused TV Products, in violation of 35 U.S.C. § 271.

16 57. Defendant has been and now is directly infringing by, among other things, practicing all the
17 steps of the ‘116 Patent and/or directing, controlling, and obtaining benefits from its subsidiaries,
18 partners, distributors, and retailers practicing all the steps of the ‘116 Patent. Specifically, Defendant
19 imports the Accused TV Products into the United States, operates a website that offers for sale the
20 Accused TV Products (*see, e.g.*, Ex. A & B), has partnered with resellers to offer for sale and sell the
21 Accused TV Products in the United States (*see, e.g.*, Ex. C & D), generates revenue from sales of the
22 Accused TV Products to U.S. customers via said channels (*see id.*); and has attended trade shows in
23 the United States where it has demonstrated the Accused Products (*see, e.g.*, Ex. F).

24 58. The Accused TV Products infringe claims of the ‘116 Patent, such as Claim 14 which teaches:

25 A device for conducting a trusted transaction
26 between at least two parties who have agreed to transact,
27 comprising:

1 means for uniquely identifying information selected from the
2 group consisting of a unique identification of one of the
3 parties, a unique identification of the transaction, a unique
4 identification of value added information to be transacted,
5 a unique identification of a value adding component;
6 a steganographic cipher for generating said unique
7 identification information, wherein the steganographic
8 cipher is governed by at least the following elements: a
9 predetermined key, a predetermined message, and a
10 predetermined carrier signal; and
11 a means for verifying an agreement to transact between the
12 parties.

13 Defendant's Accused TV Products include certain Smart TVs that allow playback of Netflix
14 and other streaming services. For example, Netflix uses a digital rights management system called
15 PlayReady, which is a method for authenticating the transmission of information between two entities
16 by using unique device IDs and cryptographic keys (*conducting a trusted transactions between at
17 least two parties [by using a] means for uniquely identifying information selected from the group
18 consisting of a unique identification of one of the parties [and] a steganographic cipher for
19 generating said unique identification information ... governed by ... a predetermined key*). See Ex. L
20 at 4 ("PlayReady secures content by encrypting data files. ... In order to decrypt these data files, a
21 digital key is required.").

22 59. Defendant has been and now is indirectly infringing by way of inducing infringement by others
23 of the '116 Patent in the State of California, in this judicial district, and elsewhere in the United States,
24 by, among other things, making, using, importing, offering for sale, and/or selling, without license or
25 authority, products for use in systems that fall within the scope of one or more claims of the '116
26 Patent. Such products include, without limitation, one or more of the Accused TV Products. By
27 making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike
28

1 LLC and is thus liable to Blue Spike LLC for infringement of the ‘116 Patent under 35 U.S.C. § 271.
2 It is not necessary for Plaintiffs to indicate specific customers directly infringing the Patents-in-Suit
3 through the use of Defendant’s Accused TV Products. *See In re Bill of Lading*, 681 F.3d at 1336.
4 Even so, Defendant induces the infringement of its customers. *See, supra*, at 19-20, n. 2. Defendant
5 also induces the infringement of its partners and resellers who use, test, and demonstrate the infringing
6 functionality. *See, e.g.*, Ex. C & D. Those whom Defendant induces to infringe are the end users of
7 the Accused TV Products.

8 60. Defendant had knowledge of the ‘116 Patent at least as early as the service of Blue Spike LLC’s
9 complaint against Defendant in the Eastern District of Texas, filed on January 30, 2017. *See* Case No.
10 6:17-cv-00060, Dkt. No. 1. That complaint also notified Defendant that the Accused TV Products
11 infringe the Patents-in-Suit and cannot be used without infringing the technology claimed by the
12 Patents-in-Suit. Thus, Defendant is liable for infringement of one or more claims of the ‘116 Patent
13 by actively inducing infringement of one or more claims of the ‘116 Patent under 35 U.S.C. § 271.

14 61. Defendant’s acts of infringement of the ‘116 Patent have caused damage to Blue Spike LLC,
15 and Blue Spike LLC is entitled to recover from Defendant the damages sustained as a result of
16 Defendant’s wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271.
17 Defendant’s infringement of the ‘116 Patent will continue to damage Blue Spike LLC, causing it
18 irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the
19 Court.

20 62. On information and belief, the infringement of the ‘116 Patent by Defendant has been willful
21 and continues to be willful. Defendant had knowledge of the ‘116 Patent, including but not limited to
22 at least one or more of the following:

- 23 a. The filing of Blue Spike LLC’s complaint against Defendant in the Eastern District of Texas
24 on January 30, 2017 (Case No. 6:17-cv-00060, Dkt. No. 1).
- 25 b. In the course of its due diligence and freedom to operate analysis.
- 26 c. And due diligence in relation to its prior litigation with Blue Spike LLC.

1 On information and belief, Defendant has had at least had constructive notice of the '116 Patent
2 by operation of law.

3 **COUNT 5:**

4 **INFRINGEMENT OF U.S. PATENT 8,538,011**

5 63. Plaintiffs incorporate by reference the allegations in the paragraphs above.

6 64. The '011 Patent is valid, enforceable, and was duly and legally issued by the United States
7 Patent and Trademark Office.

8 65. Without a license or permission from Plaintiffs, Defendant has infringed and continue to
9 infringe on one or more claims of the '011 Patent—directly or by inducement—by importing, making,
10 using, offering for sale, or selling products and devices that embody the patented invention, including,
11 without limitation, one or more of the Accused TV Products, in violation of 35 U.S.C. § 271.

12 66. Defendant has been and now is directly infringing by, among other things, practicing all the
13 steps of the '011 Patent and/or directing, controlling, and obtaining benefits from its subsidiaries,
14 partners, distributors, and retailers practicing all the steps of the '011 Patent. Specifically, Defendant
15 imports the Accused TV Products into the United States, operates a website that offers for sale the
16 Accused TV Products (*see, e.g.*, Ex. A & B), has partnered with resellers to offer for sale and sell the
17 Accused TV Products in the United States (*see, e.g.*, Ex. C & D), generates revenue from sales of the
18 Accused TV Products to U.S. customers via said channels (*see id.*); and has attended trade shows in
19 the United States where it has demonstrated the Accused Products (*see, e.g.*, Ex. F).

20 67. The Accused TV Products infringe claims of the '011 Patent, such as Claim 36 which teaches:

21 A device for conducting trusted transactions between
22 at least two parties, comprising:
23 a steganographic cipher;
24 a controller for receiving input data or outputting output data; and
25 at least one input/output connection,
26 wherein the device has a device identification code stored in the
27 device;

1 a steganographically ciphered software application;
2 wherein said steganographically ciphered software application
3 has been subject to a steganographic cipher for serialization;
4 wherein said device is configured to steganographically cipher
5 both value-added information and at least one value-added
6 component associated with said value-added information;
7 wherein said steganographic cipher receives said output data,
8 steganographically ciphers said output data using a key, to
9 define steganographically ciphered output data, and transmits
10 said steganographically ciphered output data to said at least one
11 input/output connection.

12 Defendant's Accused TV Products include certain smart TVs that allow playback of Netflix
13 and other streaming services. Netflix uses a digital rights management system called PlayReady is a
14 method for authenticating the transmission of information between two entities by using unique
15 device IDs and cryptographic keys (*conducting trusted transactions between at least two parties [by*
16 *using] a device identification code stored in the device ... a steganographically ciphered software*
17 *application; wherein said steganographically ciphered software application has been subject to a*
18 *steganographic cipher for serialization; wherein said device is configured to steganographically*
19 *cipher both value-added information and at least one value-added component associated with said*
20 *value-added information; wherein said steganographic cipher receives said output data,*
21 *steganographically ciphers said output data using a key, to define steganographically ciphered output*
22 *data, and transmits said steganographically ciphered output data to said at least one input/output*
23 *connection*). See Ex. L at 4 ("PlayReady secures content by encrypting data files. ... In order to
24 decrypt these data files, a digital key is required.").

25 68. Defendant has been and now is indirectly infringing by way of inducing infringement by others
26 of the '011 Patent in the State of California, in this judicial district, and elsewhere in the United States,
27 by, among other things, making, using, importing, offering for sale, and/or selling, without license or
28

1 authority, products for use in systems that fall within the scope of one or more claims of the '011
2 Patent. Such products include, without limitation, one or more of the Accused TV Products. By
3 making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike
4 LLC and is thus liable to Blue Spike LLC for infringement of the '011 Patent under 35 U.S.C. § 271.
5 It is not necessary for Plaintiffs to indicate specific customers directly infringing the Patents-in-Suit
6 through the use of Defendant's Accused TV Products. *See In re Bill of Lading*, 681 F.3d at 1336.
7 Even so, Defendant induces the infringement of its customers. Defendant also induces the
8 infringement of its partners and resellers who use, test, and demonstrate the infringing functionality
9 (*see, e.g.*, Ex. C & D). Those whom Defendant induces to infringe are the end users of the Accused
10 TV Products.

11 69. Defendant had knowledge of the '011 Patent at least as early as the service of Blue Spike LLC's
12 complaint against Defendant in the Eastern District of Texas, filed on January 30, 2017. *See* Case No.
13 6:17-cv-00060, Dkt. No. 1. That complaint also notified Defendant that the Accused TV Products
14 infringe the Patents-in-Suit and cannot be used without infringing the technology claimed by the
15 Patents-in-Suit. Thus, Defendant is liable for infringement of one or more claims of the '011 Patent
16 by actively inducing infringement of one or more claims of the '011 Patent under 35 U.S.C. § 271.

17 70. Defendant's acts of infringement of the '011 Patent have caused damage to Blue Spike LLC,
18 and Blue Spike LLC is entitled to recover from Defendant the damages sustained as a result of
19 Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271.
20 Defendant's infringement of the '011 Patent will continue to damage Blue Spike LLC, causing it
21 irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the
22 Court.

23 71. On information and belief, the infringement of the '011 Patent by Defendant has been willful
24 and continues to be willful. Defendant had knowledge of the '011 Patent, including but not limited to
25 at least one or more of the following:

- 26 a. The filing of Blue Spike LLC's complaint against Defendant in the Eastern District of Texas
27 on January 30, 2017 (Case No. 6:17-cv-00060, Dkt. No. 1).

1 b. In the course of its due diligence and freedom to operate analysis.

2 c. And due diligence in relation to its prior litigation with Blue Spike LLC.

3 On information and belief, Defendant has had at least had constructive notice of the '011 Patent
4 by operation of law.

5 **REQUEST FOR RELIEF**

6 Plaintiffs incorporate each of the allegations in the paragraphs above and respectfully asks the
7 Court to:

8 (a) enter a judgment that Defendant has directly infringed and/or induced infringement of
9 one or more claims of each of the Patents-in-Suit;

10 (b) enter a judgment awarding Blue Spike LLC all damages adequate to compensate it for
11 Defendant's direct infringement and/or inducement to infringe of the Patents-in-Suit, including all
12 pre-judgment and post-judgment interest at the maximum rate permitted by law;

13 (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendant's
14 willful infringement of one or more of the Patents-in-Suit;

15 (d) issue a preliminary injunction and thereafter a permanent injunction enjoining and
16 restraining Defendant, their directors, officers, agents, servants, employees, and those acting in privity
17 or in concert with them, and their subsidiaries, divisions, successors, and assigns, from further acts of
18 infringement or inducement of infringement of the Patents-in-Suit;

19 (e) enter a judgment requiring Defendant to pay the costs of this action, including all
20 disbursements, and attorneys' fees as provided by 35 U.S.C. § 285, together with prejudgment
21 interest; and

22 (f) award Plaintiffs all other relief that the Court may deem just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs demand a jury trial on all issues that may be determined by a jury.
25
26
27

1 DATED: December 11, 2018

Respectfully submitted,

2
3 /s/ Jeffrey Francis Craft
4 Jeffrey Francis Craft SBN 147186
5 jcraft@devlinlawfirm.com
6 DEVLIN LAW FIRM LLC
7 1306 N. Broom St., 1st Floor
8 Wilmington, DE 19806
9 Telephone: (302) 449-9010
10 Facsimile: (302) 353-4251

11 *Attorney for Plaintiffs Blue Spike, LLC, Blue*
12 *Spike International, Ltd. and Wistaria Trading*
13 *Ltd.*

14
15
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the
18 CM/ECF system which will send notification of such filing to the Electronic Service List for this case.
19

20 Executed on December 11, 2018.

21 /s/ Jeffrey Francis Craft
22 Jeffrey Francis Craft SBN 147186