

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

WALKER DIGITAL, LLC

Plaintiff,

v.

FANDANGO, INC., EXPEDIA, INC.,
AMAZON.COM, INC., EBAY, INC.,
AMERICAN AIRLINES, INC. and
ZAPPOS.COM, INC.,

Defendants.

Civil Action No. 11-313-SLR

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT¹

Plaintiff, Walker Digital, LLC (“Walker Digital”) files this complaint for patent infringement against Defendants Fandango, Inc. (“Fandango”), Expedia, Inc. (“Expedia”), Amazon.com, Inc. (“Amazon”), eBay, Inc. (“eBay”), American Airlines, Inc. (“American Airlines”), and Zappos.com, Inc. (“Zappos”) (collectively, the “Defendants”) for infringement of U.S. Patent No. 7,831,470 (“the ‘470 patent”) and/or U.S. Patent No. 7,827,056 (“the ‘056 patent”) (collectively, “the Asserted Patents”).

THE PARTIES

1. Walker Digital is a Delaware limited liability company with its principal place of business located at 2 High Ridge Park, Stamford, Connecticut 06905. Walker Digital is a research and development laboratory that has been the genesis for many successful businesses, including Priceline.com and Synapse, Inc.

¹ Plaintiff's First Amended Complaint for Patent Infringement amends allegations only as to Amazon and Zappos pursuant to Fed. R. Civ. P. 15(a)(1)(B). All Defendants who have been dismissed in this matter have been removed from the caption. The filing of this amended pleading in accordance with Fed. R. Civ. P. 15(a)(1)(B), renders moot Amazon's and Zappos' Motion to Dismiss.

2. On information and belief, Defendant Fandango is a Delaware corporation with its principal place of business located at 12200 West Olympic Boulevard, Suite 150, Los Angeles, California 90064.

3. On information and belief, Defendant Expedia is a Delaware corporation with its principal place of business located at 333 108th Avenue NE, Bellevue, WA 98005.

4. On information and belief, Amazon is a Delaware corporation with its principal place of business located at 410 Terry Avenue North, Seattle, Washington 98109-5210.

5. On information and belief, eBay is a Delaware corporation with its principal place of business located at 2145 Hamilton Avenue, San Jose, California 95125.

6. On information and belief, American Airlines is a Delaware corporation with its principal place of business located at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155-2605.

7. On information and belief, Zappos is a Delaware corporation with its principal place of business located at 2280 Corporate Circle, Henderson, Nevada 89074.

JURISDICTION AND VENUE

8. This is an action for patent infringement under Title 35 of the United States Code. Walker Digital is seeking injunctive relief as well as damages.

9. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is a civil action for patent infringement arising under the United States' patent statutes, 35 U.S.C. § 101 *et seq.*

10. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants have committed acts of infringement in this district and/or are deemed to reside in this district.

11. This Court has personal jurisdiction over Defendants and venue is proper in this district because Defendants have committed, and continue to commit, acts of infringement in the State of Delaware, including in this district and/or have engaged in continuous and systematic activities in the State of Delaware, including in this district.

THE ASSERTED PATENTS

12. On December 23, 1998, the application for the '470 patent was filed with the United States Patent and Trademark Office ("USPTO"). The '470 patent is entitled "Method and Apparatus for Facilitating Electronic Commerce Through Providing Cross-Benefits During a Transaction." On November 9, 2010, the USPTO duly and legally issued the '470 patent to Jay S. Walker, Daniel E. Tedesco, John M. Packes, Jr., and James A. Jorasch, who assigned their rights and interests in the '470 patent to Walker Digital. A copy of the '470 patent is attached as Exhibit 1.

13. On June 12, 2006, the application for the '056 patent was filed with the USTPO. The '056 patent is entitled "Method and Apparatus for Facilitating Electronic Commerce Through Providing Cross-Benefits During a Transaction." On November 2, 2010, the USPTO duly and legally issued the '056 patent to Jay S. Walker, Daniel E. Tedesco, John M. Packes, Jr., and James A. Jorasch, who assigned their rights and interests in the '056 patent to Walker Digital. A copy of the '056 patent is attached as Exhibit 2.

14. Walker Digital is therefore the owner of the '470 and '056 patents.

FACTUAL BACKGROUND

15. Walker Digital is a research and development laboratory that has invested many millions of dollars in its intellectual property. Walker Digital is comprised of a diverse group of inventors who solve business problems by studying human behavior and designing innovative

solutions utilizing modern information technologies. Walker Digital's invention team has created a portfolio of more than 200 U.S. and international patents in a wide range of industries that includes retail, vending, credit cards, security, gaming, educational testing, and entertainment. Jay Walker, the chairman of Walker Digital, is best known as the founder of Priceline.com, which brought unprecedented technology and a new level of value to the travel industry. The business processes that guide Priceline.com's success were created in the invention lab of Walker Digital. As an inventor, Mr. Walker is named on more than 450 issued and pending U.S. and international patents.

16. Walker Digital has invested large sums of money to develop the inventions of Mr. Walker and its team of innovators. This investment was used for many things, including the development of laboratory facilities to assist with the development and testing of new inventions which, in turn, generated additional new inventions. Many of these new inventions have been the genesis for successful businesses, including Priceline.com and Synapse, Inc. Revolutionary technologies, including the methods and apparatus for facilitating electronic commerce through providing cross-benefits during a transaction described and claimed in the Asserted Patents, were a direct result of that investment.

17. The Asserted Patents represent breakthroughs in electronic commerce.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,831,470)

18. Walker Digital incorporates paragraphs 1 through 17 herein by reference.

19. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

20. Walker Digital is the owner of the '470 patent, entitled "Method and Apparatus for Facilitating Electronic Commerce Through Providing Cross-Benefits During a Transaction," with ownership of all substantial rights in the '470 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement.

21. The '470 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

INFRINGEMENT OF THE '470 PATENT BY FANDANGO

DIRECT INFRINGEMENT BY FANDANGO

22. On information and belief, Fandango has and continues to directly infringe one or more claims of the '470 patent in this judicial district and/or elsewhere in the United States, including at least claims 16 and 21, by, among other things, making, using, offering for sale, selling and/or importing apparatuses and/or practicing methods that provide cross-benefits during a transaction including, without limitation, that provide Fandango's users / customers the ability to get discounted or free tickets via the "Get Tickets FREE! See How" button.

23. Fandango is thereby liable for direct infringement of the '470 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT BY FANDANGO

24. On information and belief, Fandango has and continues to indirectly infringe one or more claims of the '470 patent in this judicial district and/or elsewhere in the United states, including at least claims 16 and 21, by, among other things, actively inducing users and/or customers to use apparatuses that provide cross-benefits during a transaction, including without limitation, that provide Fandango's users / customers the ability to get discounted or free tickets via the "Get Tickets FREE! See How" button.

25. Fandango has been aware of the '470 patent since at least service of this action.

26. On information and belief, Fandango has and continues to indirectly infringe one or more claims of the '470 patent by inducing others (e.g., end users of Fandango) to infringe and/or contributing to the infringement of others in violation of 35 U.S.C. §§ 271 (b) and (c).

27. On information and belief, Fandango has had knowledge of the '470 patent since at least the inception of this action and, despite such knowledge, Fandango has specifically intended that its users and/or customers use the accused apparatuses in such a way that infringes the '470 patent by, at minimum, providing instructions to its users and/or customers on how to use the accused apparatuses in such a way that infringes the '470 patent and knew or should have known that its actions, including providing such instructions, were inducing infringement.

28. On information and belief, Fandango has been aware, since at least the service of this action, that its products accused of infringement including, but not limited to, its apparatuses that provide cross-benefits during a transaction, including without limitation, that provide Fandango's users / customers the ability to get discounted or free tickets via the "Get Tickets FREE! See How" button, are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '470 patent.

29. Fandango committed these acts of infringement without license or authorization.

30. Despite having actual notice of the '470 patent since at least the inception of this action, Fandango continues to willfully, wantonly and deliberately infringe the '470 patent in disregard of Walker Digital's rights.

31. Walker Digital has been damaged as a result of Fandango's infringing conduct described in this Count. Fandango is therefore liable to Walker Digital in an amount that

adequately compensates Walker Digital for Fandango's infringing conduct, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 25 U.S.C. § 284. Walker Digital will continue to suffer damages in the future unless Fandango's infringing activities are enjoined by this Court.

32. Walker Digital has suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Fandango, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '470 patent.

INFRINGEMENT OF THE '470 PATENT BY AMAZON

DIRECT INFRINGEMENT BY AMAZON

33. Amazon has and continues to directly infringe one or more claims of the '470 patent in this judicial district and/or elsewhere in the United States, including at least claims 16, 21 and 22, by, among other things, making, using, offering for sale, selling and/or importing apparatuses and/or practicing methods that provide cross-benefits during a transaction including, but not limited to, that provide Amazon's users/customers the ability to receive a benefit in connection with a purchase via a cross-promotion as seen in the screen shots included as Exhibit 3.

34. Amazon is thereby liable for direct infringement of the '470 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT BY AMAZON

35. Amazon had knowledge of the '470 patent and Walker Digital's infringement contentions since at least April 11, 2001 or before but has continued since that time to cause others to use the infringing apparatuses and continues to instruct others how to use the infringing

apparatuses in accord with one or more claims of the '470 patent, including at least claims 21 and 22.

36. It is believed Amazon was on notice of the '470 patent and Walker Digital's claims prior to April 11, 2011 through Amazon's interactions with representatives of Walker Digital. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

37. In the alternative to direct infringement, since Amazon has been on notice of the '470 patent, Amazon has and continues to indirectly infringe one or more claims of the '470 patent in this judicial district and/or elsewhere in the United States, including at least claims 21 and 22, by inducing Amazon's users and/or customers (direct infringers) to use apparatuses that provide cross-benefits during a transaction including, but not limited to, that provide Amazon's users and/or customers the ability to receive a benefit in connection with a purchase via a cross-promotion as shown in the screenshots included as Exhibit 3. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

38. Since Amazon was on notice of the '470 patent, Amazon knowingly induced infringement of one or more claims of the '470 patent, including at least claims 21 and 22, and possessed specific intent to encourage others' infringement as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

39. Since Amazon was on notice of the '470 patent, Amazon knew or should have known that its actions alleged herein would induce actual infringement of one or more claims of

the '470 patent, including at least claims 21 and 22. For example, Amazon knew of the '470 patent, which is presumed valid, since at least April 11, 2011 or before, and undoubtedly Amazon knows its business actions. Therefore, Amazon knew or should have known their actions would induce actual infringements by Amazon's users and/or customers using the infringing apparatuses.

40. Since Amazon was on notice of the '470 patent, Amazon intended to cause the acts of others that constitute the direct infringement of the '470 patent. As noted in *Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d 683 (Fed. Cir. 2008), this intent can be established through circumstantial evidence. In addition, "this intent may be established where an alleged infringer who 'knew or should have known his actions would induce actual infringement,' is shown to have induced infringing acts through [its] actions." *Broadcom*, 543 F.3d at 699.

41. Since Amazon was on notice of the '470 patent, Amazon knew or should have known that its actions would cause direct infringement by others, and Amazon induced the underlying infringing acts of Amazon's users and/or customers through Amazon's actions, as alleged herein.

42. Amazon has and continues to indirectly infringe at least claims 21 and 22 of the '470 patent by inducing others including Amazon's users and/or customers to infringe in violation of 35 U.S.C. § 271 (b) by using an infringing apparatus.

43. Amazon instructs its users and/or customers on using the infringing apparatuses in a manner that is accused herein to infringe.

44. To date, Amazon has not produced or relied upon an opinion of counsel related to the '470 patent. The lack of any exculpatory opinion of counsel is circumstantial evidence that can establish the requisite intent. *Broadcom*, 543 F.3d at 699-700. In accordance with Fed. R.

Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

45. Amazon makes, uses, offers for sale, sells, imports and/or develops and supports the infringing apparatuses that are used by Amazon's users and/or customers.

46. To date, Amazon has not made any changes to the relevant operation of the infringing apparatuses and has not provided Amazon's users and/or customers instruction on how to avoid infringement since Amazon had notice of the patent. *Broadcom*, 543 F.3d at 700.

47. To date, Amazon has produced no evidence as to any investigation, design around or remedial actions with respect to the '470 patent. A failure to investigate, explore design around approaches, or take remedial action can establish the requisite intent. *Broadcom*, 543 F.3d at 700. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

48. Amazon has and continues to indirectly infringe at least claims 21 and 22 of the '470 patent by contributing to the indirect infringement of others, including Amazon's users and/or customers in violation of 35 U.S.C. § 271(c).

49. The infringing apparatuses comprise software or hardware and software that provide cross-benefits during a transaction including, but not limited to, that provide Amazon's users and/or customers the ability to receive a benefit in connection with a purchase via a cross-promotion as shown in the screenshots included as Exhibit 3. Amazon has been aware, since at least April 11, 2011 or before, that its products accused of infringement including, but not limited to, the infringing apparatuses, are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '470 patent.

50. Amazon committed these acts of infringement without license or authorization.

51. Based on all of the facts alleged herein, despite having actual notice of the '470 patent since at least April 11, 2011 or before, Amazon continues to willfully, wantonly and deliberately infringe the '470 patent in disregard of Walker Digital's rights. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

52. Walker Digital has been damaged as a result of Amazon's infringing conduct described in this Count. Amazon is therefore liable to Walker Digital in an amount that adequately compensates Walker Digital for Amazon's infringing conduct, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 25 U.S.C. § 284. Walker Digital will continue to suffer damages in the future unless Amazon's infringing activities are enjoined by this Court.

53. Walker Digital has suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Amazon, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '470 patent.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 7,827,056)

54. Walker Digital incorporates paragraphs 1 through 62 herein by reference.

55. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

56. Walker Digital is the owner of the '056 patent, entitled "Method and Apparatus for Facilitating Electronic Commerce Through Providing Cross-Benefits During a Transaction,"

with ownership of all substantial rights in the '056 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement.

57. The '056 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

INFRINGEMENT OF THE '056 PATENT BY EXPEDIA

DIRECT INFRINGEMENT BY EXPEDIA

58. On information and belief, Expedia has and continues to directly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 1 and 47, by, among other things, making, using, offering for sale, selling and/or importing apparatuses and/or practicing methods that provide cross-benefits during a transaction including, without limitation, that provide Expedia's customers / users with the ability to get discounted travel by applying for cross-promotions, such as a credit card.

59. Expedia is thereby liable for direct infringement of the '056 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT BY EXPEDIA

60. On information and belief, Expedia has and continues to indirectly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United states, including at least claims 1 and 47, by, among other things, actively inducing users and/or customers to use apparatuses that provide cross-benefits during a transaction, including without limitation, that provide Expedia's customers / users with the ability to get discounted travel by applying for cross-promotions, such as a credit card.

61. Expedia has been aware of the '056 patent since at least service of this action.

62. On information and belief, Expedia has and continues to indirectly infringe one or more claims of the '056 patent by inducing others (e.g., end users of Expedia) to infringe and/or contributing to the infringement of others in violation of 35 U.S.C. §§ 271 (b) and (c).

63. On information and belief, Expedia has had knowledge of the '056 patent since at least the inception of this action and, despite such knowledge, Expedia has specifically intended that its users and/or customers use the accused apparatuses in such a way that infringes the '056 patent by, at minimum, providing instructions to its users and/or customers on how to use the accused apparatuses in such a way that infringes the '056 patent and knew or should have known that its actions, including providing such instructions, were inducing infringement.

64. On information and belief, Expedia has been aware, since at least the service of this action, that its products accused of infringement including, but not limited to, its apparatuses that provide cross-benefits during a transaction, including without limitation, that provide Expedia's customers / users with the ability to get discounted travel by applying for cross-promotions, such as a credit card, are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '056 patent.

65. Expedia committed these acts of infringement without license or authorization.

66. Despite having actual notice of the '056 patent since at least the inception of this action, Expedia continues to willfully, wantonly and deliberately infringe the '056 patent in disregard of Walker Digital's rights.

67. Walker Digital has been damaged as a result of Expedia's infringing conduct described in this Count. Expedia is therefore liable to Walker Digital in an amount that adequately compensates Walker Digital for Expedia's infringing conduct, which, by law, cannot

be less than a reasonable royalty, together with interest and costs as fixed by this Court under 25 U.S.C. § 284. Walker Digital will continue to suffer damages in the future unless Expedia's infringing activities are enjoined by this Court.

68. Walker Digital has suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Expedia, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '056 patent.

INFRINGEMENT OF THE '056 PATENT BY AMAZON

DIRECT INFRINGEMENT BY AMAZON

69. Amazon has and continues to directly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 1, 47 and 48, by, among other things, making, using, offering for sale, selling and/or importing apparatuses and/or practicing methods that provide cross-benefits during a transaction including, but not limited to, that provide Amazon's users and/or customers with the ability to receive a benefit in connection with a purchase via a cross-promotion as seen in the screen shots included as Exhibit 3.

70. Amazon is thereby liable for direct infringement of the '056 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT BY AMAZON

71. Amazon had knowledge of the '056 patent and Walker Digital's infringement contentions since at least April 11, 2001 or before but has continued since that time to cause others to use the infringing apparatuses and continues to instruct others how to use the infringing

apparatuses in accord with one or more claims of the '056 patent, including at least claims 47 and 48.

72. It is believed Amazon was on notice of the '056 patent and Walker Digital's claims prior to April 11, 2011 through Amazon's interactions with representatives of Walker Digital. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

73. In the alternative to direct infringement, since Amazon has been on notice of the '056 patent, Amazon has and continues to indirectly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 47 and 48, by inducing Amazon's users and/or customers (direct infringers) to use apparatuses that provide cross-benefits during a transaction including, but not limited to, that provide Amazon's users and/or customers the ability to receive a benefit in connection with a purchase via a cross-promotion as shown in the screenshots included as Exhibit 3. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

74. Since Amazon was on notice of the '056 patent, Amazon knowingly induced infringement of one or more claims of the '056 patent, including at least claims 47 and 48, and possessed specific intent to encourage others' infringement as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

75. Since Amazon was on notice of the '056 patent, Amazon knew or should have known that its actions alleged herein would induce actual infringement of one or more claims of

the '056 patent, including at least claims 47 and 48. For example, Amazon knew of the '056 patent, which is presumed valid, since at least April 11, 2011 or before, and undoubtedly Amazon knows its business actions. Therefore, Amazon knew or should have known their actions would induce actual infringements by Amazon's users and/or customers using the infringing apparatuses.

76. Since Amazon was on notice of the '056 patent, Amazon intended to cause the acts of others that constitute the direct infringement of the '056 patent. As noted in *Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d 683 (Fed. Cir. 2008), this intent can be established through circumstantial evidence. In addition, "this intent may be established where an alleged infringer who *'knew or should have known* his actions would induce actual infringement,' is shown to have induced infringing acts through [its] actions." *Broadcom*, 543 F.3d at 699.

77. Since Amazon was on notice of the '056 patent, Amazon knew or should have known that its actions would cause direct infringement by others, and Amazon induced the underlying infringing acts of its users and/or customers through Amazon's actions, as alleged herein.

78. Amazon has and continues to indirectly infringe at least claims 47 and 48 of the '056 patent by inducing others including Amazon's users and/or customers to infringe in violation of 35 U.S.C. § 271 (b) by using an infringing apparatus.

79. Amazon instructs its users and/or customers on using the infringing apparatuses in a manner that is accused herein to infringe.

80. To date, Amazon has not produced or relied upon an opinion of counsel related to the '056 patent. The lack of any exculpatory opinion of counsel is circumstantial evidence that can establish the requisite intent. *Broadcom*, 543 F.3d at 699-700. In accordance with Fed. R.

Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

81. Amazon makes, uses, offers for sale, sells, imports and/or develops and supports the infringing apparatuses that are used by Amazon's users and/or customers.

82. To date, Amazon has not made any changes to the relevant operation of the infringing apparatuses and has not provided Amazon's users and/or customers instruction on how to avoid infringement since Amazon had notice of the patent. *Broadcom*, 543 F.3d at 700.

83. To date, Amazon has produced no evidence as to any investigation, design around or remedial actions with respect to the '056 patent. A failure to investigate, explore design around approaches, or take remedial action can establish the requisite intent. *Broadcom*, 543 F.3d at 700. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

84. Amazon has and continues to indirectly infringe at least claims 47 and 48 of the '056 patent by contributing to the indirect infringement of others, including Amazon's users and/or customers in violation of 35 U.S.C. § 271(c).

85. The infringing apparatuses comprise software or hardware and software that provide cross-benefits during a transaction including, but not limited to, that provide Amazon's users and/or customers the ability to receive a benefit in connection with a purchase via a cross-promotion as shown in the screenshots included as Exhibit 3. Amazon has been aware, since at least April 11, 2011 or before, that its products accused of infringement including, but not limited to, the infringing apparatuses, are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '056 patent.

86. Amazon committed these acts of infringement without license or authorization.

87. Based on all of the facts alleged herein, despite having actual notice of the '056 patent since at least April 11, 2011 or before, Amazon continues to willfully, wantonly and deliberately infringe the '056 patent in disregard of Walker Digital's rights. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

88. Walker Digital has been damaged as a result of Amazon's infringing conduct described in this Count. Amazon is therefore liable to Walker Digital in an amount that adequately compensates Walker Digital for Amazon's infringing conduct, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 25 U.S.C. § 284. Walker Digital will continue to suffer damages in the future unless Amazon's infringing activities are enjoined by this Court.

89. Walker Digital has suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Amazon, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '056 patent.

INFRINGEMENT OF THE '056 PATENT BY EBAY

DIRECT INFRINGEMENT BY EBAY

90. On information and belief, eBay has and continues to directly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 1 and 47, by, among other things, making, using, offering for sale, selling and/or importing apparatuses and/or practicing methods that provide cross-benefits during

a transaction including, without limitation, that provide eBay's customers / users with the ability to get a benefit in connection with a purchase via a cross-promotion.

91. eBay is thereby liable for direct infringement of the '056 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT BY EBAY

92. On information and belief, eBay has and continues to indirectly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United states, including at least claims 1 and 47, by, among other things, actively inducing users and/or customers to use apparatuses that provide cross-benefits during a transaction, including without limitation, that provide eBay's customers / users with the ability to get a benefit in connection with a purchase via a cross-promotion.

93. eBay has been aware of the '056 patent since at least service of this action.

94. On information and belief, eBay has and continues to indirectly infringe one or more claims of the '056 patent by inducing others (e.g., end users of eBay) to infringe and/or contributing to the infringement of others in violation of 35 U.S.C. §§ 271 (b) and (c).

95. On information and belief, eBay has had knowledge of the '056 patent since at least the inception of this action and, despite such knowledge, eBay has specifically intended that its users and/or customers use the accused apparatuses in such a way that infringes the '056 patent by, at minimum, providing instructions to its users and/or customers on how to use the accused apparatuses in such a way that infringes the '056 patent and knew or should have known that its actions, including providing such instructions, were inducing infringement.

96. On information and belief, eBay has been aware, since at least the service of this action, that its products accused of infringement including, but not limited to, its apparatuses that

provide cross-benefits during a transaction, including without limitation, that provide eBay's customers / users with the ability to get a benefit in connection with a purchase via a cross-promotion, are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '056 patent.

97. eBay committed these acts of infringement without license or authorization.

98. Despite having actual notice of the '056 patent since at least the inception of this action, eBay continues to willfully, wantonly and deliberately infringe the '056 patent in disregard of Walker Digital's rights.

99. Walker Digital has been damaged as a result of eBay's infringing conduct described in this Count. eBay is therefore liable to Walker Digital in an amount that adequately compensates Walker Digital for eBay's infringing conduct, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 25 U.S.C. § 284. Walker Digital will continue to suffer damages in the future unless eBay's infringing activities are enjoined by this Court.

100. Walker Digital has suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting eBay, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '056 patent.

INFRINGEMENT OF THE '056 PATENT BY AMERICAN AIRLINES

DIRECT INFRINGEMENT BY AMERICAN AIRLINES

101. On information and belief, American Airlines has and continues to directly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 1 and 47, by, among other things, making, using, offering

for sale, selling and/or importing apparatuses and/or practicing methods that provide cross-benefits during a transaction including, without limitation, that provide American Airlines' customers / users with the ability to get discounted travel by applying for cross-promotions, such as a credit card.

102. American Airlines is thereby liable for direct infringement of the '056 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT BY AMERICAN AIRLINES

103. On information and belief, American Airlines has and continues to indirectly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 1 and 47, by, among other things, actively inducing users and/or customers to use apparatuses that provide cross-benefits during a transaction, including without limitation, that provide American Airlines' customers / users with the ability to get discounted travel by applying for cross-promotions, such as a credit card.

104. American Airlines has been aware of the '056 patent since at least service of this action.

105. On information and belief, American Airlines has and continues to indirectly infringe one or more claims of the '056 patent by inducing others (e.g., end users of American Airlines) to infringe and/or contributing to the infringement of others in violation of 35 U.S.C. §§ 271 (b) and (c).

106. On information and belief, American Airlines has had knowledge of the '056 patent since at least the inception of this action and, despite such knowledge, American Airlines has specifically intended that its users and/or customers use the accused apparatuses in such a way that infringes the '056 patent by, at minimum, providing instructions to its users and/or

customers on how to use the accused apparatuses in such a way that infringes the '056 patent and knew or should have known that its actions, including providing such instructions, were inducing infringement.

107. On information and belief, American Airlines has been aware, since at least the service of this action, that its products accused of infringement including, but not limited to, its apparatuses that provide cross-benefits during a transaction, including without limitation, that provide American Airlines' customers / users with the ability to get discounted travel by applying for cross-promotions, such as a credit card, are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '056 patent.

108. American Airlines committed these acts of infringement without license or authorization.

109. Despite having actual notice of the '056 patent since at least the inception of this action, American Airlines continues to willfully, wantonly and deliberately infringe the '056 patent in disregard of Walker Digital's rights.

110. Walker Digital has been damaged as a result of American Airlines' infringing conduct described in this Count. American Airlines is therefore liable to Walker Digital in an amount that adequately compensates Walker Digital for American Airlines' infringing conduct, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 25 U.S.C. § 284. Walker Digital will continue to suffer damages in the future unless American Airlines' infringing activities are enjoined by this Court.

111. Walker Digital has suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting American Airlines, its agents,

servants, employees, representatives, and all others acting in active concert therewith from infringing the '056 patent.

INFRINGEMENT OF THE '056 PATENT BY ZAPPOS

DIRECT INFRINGEMENT BY ZAPPOS

112. Zappos has and continues to directly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 1, 47 and 48, by, among other things, making, using, offering for sale, selling and/or importing apparatuses and/or practicing methods that provide cross-benefits during a transaction including, but not limited to, that provide Zappos' users and/or customers with the ability to receive a benefit in connection with a purchase via a cross-promotion as seen in the screen shots included as Exhibit 4.

113. Zappos is thereby liable for direct infringement of the '056 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT BY ZAPPOS

114. Zappos had knowledge of the '056 patent and Walker Digital's infringement contentions since at least April 11, 2001 or before but has continued since that time to cause others to use the infringing apparatuses and continues to instruct others how to use the infringing apparatuses in accord with one or more claims of the '056 patent, including at least claims 47 and 48.

115. It is believed Zappos was on notice of the '056 patent and Walker Digital's claims prior to April 11, 2011 through Zappos' interactions with representatives of Walker Digital. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

116. In the alternative to direct infringement, since Zappos has been on notice of the '056 patent, Zappos has and continues to indirectly infringe one or more claims of the '056 patent in this judicial district and/or elsewhere in the United States, including at least claims 47 and 48, by inducing Zappos' users and/or customers (direct infringers) to use apparatuses that provide cross-benefits during a transaction including, but not limited to, that provide Zappos' users and/or customers the ability to receive a benefit in connection with a purchase via a cross-promotion as shown in the screenshots included as Exhibit 4. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

117. Since Zappos was on notice of the '056 patent, Zappos knowingly induced infringement of one or more claims of the '056 patent, including at least claims 47 and 48, and possessed specific intent to encourage others' infringement as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

118. Since Zappos was on notice of the '056 patent, Zappos knew or should have known that its actions alleged herein would induce actual infringement of one or more claims of the '056 patent, including at least claims 47 and 48. For example, Zappos knew of the '056 patent, which is presumed valid, since at least April 11, 2011 or before, and undoubtedly Zappos knows its business actions. Therefore, Zappos knew or should have known their actions would induce actual infringements by Zappos' users and/or customers using the infringing apparatuses.

119. Since Zappos was on notice of the '056 patent, Zappos intended to cause the acts of others that constitute the direct infringement of the '056 patent. As noted in *Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d 683 (Fed. Cir. 2008), this intent can be established through

circumstantial evidence. In addition, “this intent may be established where an alleged infringer who ‘*knew or should have known*’ his actions would induce actual infringement,” is shown to have induced infringing acts through [its] actions.” *Broadcom*, 543 F.3d at 699.

120. Since Zappos was on notice of the ‘056 patent, Zappos knew or should have known that its actions would cause direct infringement by others, and Zappos induced the underlying infringing acts of its users and/or customers through Zappos’ actions, as alleged herein.

121. Zappos has and continues to indirectly infringe at least claims 47 and 48 of the ‘056 patent by inducing others including Zappos’ users and/or customers to infringe in violation of 35 U.S.C. § 271 (b) by using an infringing apparatus.

122. Zappos instructs its customers on using the infringing apparatuses in a manner that is accused herein to infringe.

123. To date, Zappos has not produced or relied upon an opinion of counsel related to the ‘056 patent. The lack of any exculpatory opinion of counsel is circumstantial evidence that can establish the requisite intent. *Broadcom*, 543 F.3d at 699-700. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

124. Zappos makes, uses, offers for sale, sells, imports and/or develops and supports the infringing apparatuses that are used by Zappos’ users and/or customers.

125. To date, Zappos has not made any changes to the relevant operation of the infringing apparatuses and has not provided Zappos’ users and/or customers instruction on how to avoid infringement since Zappos had notice of the patent. *Broadcom*, 543 F.3d at 700.

126. To date, Zappos has produced no evidence as to any investigation, design around or remedial actions with respect to the '056 patent. A failure to investigate, explore design around approaches, or take remedial action can establish the requisite intent. *Broadcom*, 543 F.3d at 700. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

127. Zappos has and continues to indirectly infringe at least claims 47 and 48 of the '056 patent by contributing to the indirect infringement of others, including Zappos' users and/or customers in violation of 35 U.S.C. § 271(c).

128. The infringing apparatuses comprise software or hardware and software that provide cross-benefits during a transaction including, but not limited to, that provide Zappos' users and/or customers the ability to receive a benefit in connection with a purchase via a cross-promotion as shown in the screenshots included as Exhibit 4. Zappos has been aware, since at least April 11, 2011 or before, that its products accused of infringement including, but not limited to, the infringing apparatuses, are not staple articles or commodities of commerce suitable for substantial noninfringing use and are especially made and/or adapted for use in infringing the '056 patent.

129. Zappos committed these acts of infringement without license or authorization.

130. Based on all of the facts alleged herein, despite having actual notice of the '056 patent since at least April 11, 2011 or before, Zappos continues to willfully, wantonly and deliberately infringe the '056 patent in disregard of Walker Digital's rights. In accordance with Fed. R. Civ. P. 11(b)(3), Walker Digital will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

131. Walker Digital has been damaged as a result of Zappos' infringing conduct described in this Count. Zappos is therefore liable to Walker Digital in an amount that adequately compensates Walker Digital for Zappos' infringing conduct, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 25 U.S.C. § 284. Walker Digital will continue to suffer damages in the future unless Zappos' infringing activities are enjoined by this Court.

132. Walker Digital has suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Zappos, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '056 patent.

ADDITIONAL ALLEGATIONS AGAINST ALL DEFENDANTS

133. Defendants' actions complained of herein will continue unless Defendants are enjoined by this Court.

134. Fandango's and Amazon's infringement of the '470 patent, since at least April 11, 2011 or before, has been and continues to be willful. Fandango and Amazon have had notice of the '470 patent since at least April 11, 2011, and Fandango and Amazon have continued to infringe the '470 patent despite an objectively high likelihood that their actions constitute infringement of the '470 patent and a subject knowledge or obviousness of such risk.

135. Defendants' infringement of the '056 patent, since at April 11, 2011, has been and continues to be willful. Defendants have had notice of the '056 patent since at least April 11, 2011, and Defendants have continued to infringe the '056 patent despite an objectively high likelihood that their actions constitute infringement of the '056 patent and a subject knowledge or obviousness of such risk.

136. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

JURY DEMAND

Walker Digital hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Walker Digital requests that this Court find in its favor and against Defendants, and that this Court grant Walker Digital the following relief:

- a. Enter judgment for Plaintiff on this Complaint;
- b. Enter judgment that one or more claims of the '470 and/or '056 patents have been infringed, either directly or indirectly by Defendants;
- c. Enter judgment that Defendants account for and pay to Walker Digital all damages to and costs incurred by Walker Digital because of Defendants' infringing activities and other conduct complained of herein;
- d. Award Plaintiff damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- e. Enter a permanent injunction enjoining Defendants and their offices, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from infringing or inducing infringement of each Asserted Patent, or, in the alternative, judgment that Defendants account for and pay to Walker Digital a reasonable royalty and an ongoing post judgment royalty because of Defendants' past, present and future infringing activities and other conduct complained of herein;

- f. That Walker Digital be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- g. Judgment that Defendants' infringement was willful;
- h. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;
- i. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;
- j. That Walker Digital be granted such other and further relief as the Court may deem just and proper under the circumstances.

July 29, 2011

BAYARD, P.A.

OF COUNSEL:

Anthony G. Simon
Timothy E. Grochocinski
The Simon Law Firm, P.C.
800 Market Street, Suite 1700
Saint Louis, Missouri 63101
(314) 241-2929
asimon@simonlawpc.com
teg@simonlawpc.com

/s/ Richard D. Kirk
Richard D. Kirk (rk0922)
Stephen B. Braerman (sb4952)
222 Delaware Avenue, Suite 900
P.O. Box 25130
Wilmington, Delaware 19899
(302) 655-5000
rkirk@bayardlaw.com
sbraerman@bayardlaw.com

Attorneys for Plaintiff Walker Digital, LLC