

1 Robert F. McCauley (SBN 162056)  
2 robert.mccauley@finnegan.com  
3 FINNEGAN, HENDERSON, FARABOW,  
4 GARRETT & DUNNER, LLP  
5 3300 Hillview Avenue, Second Floor  
6 Palo Alto, California 94304  
7 Telephone: (650) 849-6600  
8 Facsimile: (650) 849-6666

9 Steve D. Smit (*pro hac vice pending*)  
10 ssmmit@gdhm.com  
11 William G. Christian (*pro hac vice pending*)  
12 wchristian@gdhm.com  
13 Matthew C. Powers (*pro hac vice pending*)  
14 mpowers@gdhm.com  
15 GRAVES, DOUGHERTY, HEARON & MOODY, P.C.  
16 401 Congress Ave., Suite 2700  
17 Austin, Texas 78701  
18 Telephone: (512) 480-5653  
19 Facsimile: (512) 480-5853

20 Attorneys for Plaintiff  
21 MONKEYMEDIA, INC.

22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA

24 MONKEYMEDIA, INC.,

25 Plaintiff,

26 vs.

27 TIVO CORPORATION,

28 Defendant.

CASE NO. \_\_\_\_\_

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

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**COMPLAINT FOR PATENT INFRINGEMENT**

MONKEYmedia, Inc. brings this suit against TiVo Corporation (“TiVo” or “Defendant”) and alleges as follows:

**PARTIES**

1. Plaintiff MONKEYmedia, Inc. (“MONKEYmedia”) is a Texas corporation with its principal place of business in Austin, Texas.

2. Defendant TiVo is a corporation organized and existing under the laws of Delaware, with its principal place of business located at 2160 Gold Street, Alviso, CA 95002. TiVo is a leading manufacturer and seller of digital video recording and streaming devices and related software in the United States.

**I. JURISDICTION AND VENUE**

3. Plaintiff MONKEYmedia asserts causes of action under 35 U.S.C. § 271 for infringement of United States Patents owned by MONKEYmedia. This Court has original and exclusive subject matter jurisdiction over these claims under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over TiVo because its principal place of business is in this judicial district and, as explained below and upon information and belief, has infringed the Patents-in-Suit in this judicial district and in the State of California.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because, among other reasons, TiVo has a regular and established place of business in this judicial district, and upon information and belief has infringed the Patents-in-Suit in this judicial district.

**II. MONKEYmedia’s ASSERTED PATENTS**

**A. Overview**

6. Eric Gould Bear, the founder of MONKEYmedia, (<https://monkey.com>) is a prolific inventor and is named as the first inventor in over 100 patents and patent applications. These include the patents (now expired) in the “Seamless Expansion” patent family. The inventions in the Seamless Expansion patent family were conceived by Bear and his co-inventor at least as early as 1994 while experimenting with concepts for then-future video

1 distribution formats such as DVD and interactive TV. MONKEYmedia is the owner by  
2 assignment of all right, title and interest in and to the Seamless Expansion patent family,  
3 including the Patents-in-Suit.

4 7. Generally speaking, the applicable claims in the Patents-in-Suit are directed  
5 towards devices, computer readable storage media, and methods used in connection with these  
6 devices, to perform “Seamless Expansion,” wherein the device plays a “main” audio/visual  
7 stream and determines whether an optional content expansion is desired when a cue or prompt  
8 is activated. The optional content is commonly “bonus content,” such as behind-the-scenes  
9 footage; “Advertainments,” such as long-form advertisements, network previews, or product  
10 details; and “Calls to Action” where the viewer can request materials, vote, or purchase  
11 products. If playing the optional content expansion is desired, the main content stream  
12 “pauses” and the content expansion is played. After the viewer finishes with the optional  
13 expansion, the main content stream resumes at or near the point at which the main content  
14 stream paused.

15 **B. The Patents-in-Suit**

16 8. On February 21, 2013, the United States Patent and Trademark Office duly and  
17 legally issued a reexamination certificate for claims in U.S. Patent No. 6,393,158 (’158) to  
18 MONKEYmedia in the Seamless Expansion patent family. The re-examined claims in the ’158  
19 Patent, which expired in April 2019, have a priority date of April 23, 1999. A true and correct  
20 copy of the ’158 Patent, including the reexamination certificate and new claims 35-41, is  
21 attached as Exhibit A.

22 9. On November 10, 2015, the United States Patent and Trademark Office duly  
23 and legally issued U.S. Patent No. 9,185,379 (’379) to MONKEYmedia in the Seamless  
24 Expansion patent family. The claims in the ’379 Patent, which expired in April 2019, have a  
25 priority date of April 23, 1999. A true and correct copy of the ’379 Patent is attached as Exhibit  
26 B.

27 10. On January 26, 2016, the United States Patent and Trademark Office duly and  
28 legally issued U.S. Patent No. 9,247,226 (’226) to MONKEYmedia in the Seamless Expansion

1 patent family. A true and correct copy of the '226 Patent is attached as Exhibit C. The '226  
2 Patent became the subject of an IPR Proceeding that was initiated by Unified Patents  
3 (IPR2018-00059). The Board instituted review only as to independent Claims 1 and 7 of the  
4 '226 Patent but denied institution as to the dependent claims. To quickly resolve the IPR  
5 (which was filed in the midst of litigation against Samsung), the parties to the IPR agreed that  
6 an adverse judgment would be rendered as to Claims 1 and 7 of the '226 Patent and that the  
7 claims upon which the IPR Proceeding was not instituted would be withdrawn. As a result,  
8 Claims 1 and 7 of the '226 Patent are not asserted or at issue in this lawsuit. The claims that  
9 are at issue in the '226 Patent, which expired in April 2019, have a priority date of April 23,  
10 1999.

11 11. On August 14, 2018, the United States Patent and Trademark Office duly and  
12 legally issued U.S. Patent No. 10,051,298 ('298) to MONKEYmedia in the Seamless  
13 Expansion patent family. The claims in the '298 Patent, which expired in April 2019, have a  
14 priority date of April 23, 1999. A true and correct copy of the '298 Patent is attached as  
15 Exhibit D.

### 16 III. INFRINGEMENT BY TiVo

17 12. On information and belief, TiVo develops, offers for sale, and sells to  
18 distributors, retailers and end users in California and elsewhere in the United States a variety of  
19 standalone DVR models that are often referred to as Set Top Boxes (STBs). The user  
20 interfaces of TiVo's STBs, across multiple operating system versions, have been designed  
21 around a philosophy of providing ubiquitous access to optional content on the fly – from  
22 “interactive tags” and “pause menu” expansions to “swivel search,” “explore this show,” and  
23 the newer “more info” user experience that affords access to details about the cast, behind-the-  
24 scenes content, and related shows. These types of features allow TiVo STBs to access and  
25 play multimedia content in a manner that infringes the Patents-in-Suit as explained below.

26 13. TiVo has also developed and licenses to third-party manufacturers and cable  
27 operators in the United States a software platform that operates across a variety of hardware  
28 platforms (“TiVo Platform Software”). The TiVo Platform Software includes a modular front-

1 end that allows the basic platform to be used by hardware manufacturers to build STBs that  
2 support digital and analog broadcast, cable, IPTV, OTT and VOD services. In addition, TiVo's  
3 cloud-based TiVo Service Platform allows its hardware partners' devices and the internet to  
4 connect with third-party consumer devices and services to enable existing and future  
5 functionality. Upon information and belief, the TiVo Platform Software and Service Platform  
6 provide significant features found on TiVo STBs to the third-party STBs that allow the third-  
7 party STBs to access and play multimedia content in a manner that infringes the Patents-in-  
8 Suit.

9 14. TiVo has also released apps for the iPhone and Android devices that, upon  
10 information and belief, have been downloaded by users in California and elsewhere in the  
11 United States ("TiVo Apps"). As noted on the TiVo Website in referencing the TiVo Apps:  
12 "You're a few taps away from watching live TV, recorded shows, and shows available(sic)  
13 from streaming providers (like Netflix) wherever you are – even if you're away from home."  
14 <https://explore.tivo.com/how-to/stream-download>.

15 15. The TiVo Apps offer control over management and program selection and a  
16 multi-touch remote for TiVo STBs that features gestures-based navigation. The TiVo Apps,  
17 among other things, also allow users to remotely manage and navigate programming on the  
18 user's TiVo STB and to watch this programming on the user's phone, tablet or other device,  
19 including accessing optional information about cast, crew and similar shows without  
20 interrupting the TV experience. In summary, the TiVo Apps allow a user's phone, tablet or  
21 other device to be used as a virtual TiVo remote and also to remotely access and play  
22 multimedia content from a user's TiVo STB in a manner that infringes the Patents-in-Suit.

23 16. An example of the functionality of the TiVo STBs, TiVo Platform Software and  
24 TiVo Apps to play, among other things, seamless expansion multimedia content in the  
25 advertising space was recently explained by TiVo in its Form 10-K filing for the year ending  
26 December 31, 2018:

27 We provide advertisers with nationwide or regionally targeted advertising on our UX  
28 Solutions. Advertisers place ads in a variety of display formats, seamlessly  
incorporated into the user interface. Advertisements can trigger a variety of actions  
when selected via a remote control, including video advertisement playback, DVR

1 recordings and direct response. Media and conventional advertisers are interested in the  
2 value proposition of utilizing display advertising in television interfaces to reach  
3 consumers with an interactive experience or guide them to related media content.  
4 Utilizing our Personalized Content Discovery platform, we also target content  
5 promotions as ‘paid search’ by directly including the sponsored content in user  
6 interface’s recommended content carousel. We work with service providers bundling  
7 their non-TiVo advertising inventory with our native inventory giving us a more  
8 significant national footprint.

9 17. TiVo has had actual notice of the Patents-in-Suit long before the filing of this  
10 action. In fact, MONKEYmedia has been in negotiations with TiVo for years regarding a  
11 license to the Seamless Expansion family of patents. Prior to filing this lawsuit,  
12 MONKEYmedia continued to be interested in negotiating an amicable resolution, but TiVo  
13 reneged on its agreement to enter into a tolling agreement regarding MONKEYmedia’s  
14 infringement claims, leaving MONKEYmedia little choice but to file this action for  
15 infringement. Despite having actual knowledge of the Patents-in-Suit and MONKEYmedia’s  
16 allegations of infringement, TiVo continued to offer for sale and sell the TiVo STBs, TiVo  
17 Platform Software and TiVo Apps, and to encourage performance of claimed methods by users  
18 in the California and the United States, during the parties’ negotiations and the terms of the  
19 Patents-in-Suit.

#### 20 IV. CAUSES OF ACTION

##### 21 A. Count I - Infringement of the ’158 Patent

22 18. MONKEYmedia reincorporates by reference and realleges paragraphs 1  
23 through 17 above as if fully set forth herein.

24 19. MONKEYmedia has not licensed or otherwise authorized TiVo to make, use,  
25 offer for sale, sell, or import any products that embody the inventions of the ’158 Patent.

26 20. TiVo indirectly infringed claims 37, 40 and/or 41 of the ’158 Patent during the  
27 term of the ’158 Patent, in violation of 35 U.S.C. § 271.

28 21. TiVo indirectly infringed the ’158 Patent, by, among other things, using,  
offering for sale, selling, licensing and/or importing within California and elsewhere in the  
United States, without license or authority, the TiVo STBs, TiVo Platform Software and TiVo  
Apps (when used in conjunction with Tivo STBs) that perform the methods falling within the  
scope of claims 37, 40 and/or 41 of the ’158 Patent.

1           22. To name two examples, the TiVo Roamio OTA HD DVR and the TiVo Bolt are  
2 TiVo STBs that have been offered for sale and sold by TiVo in the United States and  
3 California during the term of the '158 Patent. By way of example only, these STBs are  
4 configured to perform each of the steps claimed for playing a stored content when desired by a  
5 user, and thus infringe, at least Claim 37 of the '158 Patent, as follows:

6           a. The TiVo Roamio OTA HD DVR and TiVo Bolt STBs are configured to provide a  
7 plurality of segments of content having a temporal flow from the first terminus to the  
8 second terminus of the segments, wherein at least one segment is associated with a  
9 plurality of links to a corresponding plurality of other of said segments.

10           b. The TiVo Roamio OTA HD DVR and TiVo Bolt STBs are configured to play at  
11 least one segment with the temporal flow and determine prior to reaching the second  
12 terminus of the segment whether a content expansion was desired and linked to an  
13 expansion segment and played the expansion segment if the content expansion is  
14 desired, where there is an additional link from the expansion segment to the continuing  
15 segment such that the continuing segment is played after the expansion segment has  
16 been played. If the content expansion is not desired, the TiVo STBs link to a  
17 continuing segment and play the continuing segment.

18           c. In playing the segments, the TiVo Roamio OTA HD DVR and TiVo Bolt STBs are  
19 also configured to highlight an expansion cue corresponding to one of the expansion  
20 links and determine prior to reaching said second terminus of the segment whether a  
21 content expansion is desired by, at least in part, determining whether the expansion  
22 segment cue is selected, wherein the expansion segment cue is one of a plurality of  
23 expansion cues in an expansion cue container.

24           23. Upon information and belief, the TiVo Software Platform incorporated into  
25 third-party STBs and the TiVo Apps (when used in conjunction with the TiVo STB) are also  
26 configured to perform the above-described claimed method in the same manner.

27           24. TiVo has, upon information and belief, infringed the '158 Patent during the  
28 term of the '158 Patent, in violation of 35 U.S.C. § 271(b) by actively inducing direct

1 infringement of the '158 Patent, literally and/or under the doctrine of equivalents, with  
2 knowledge of the '158 Patent and knowledge that it was inducing the direct infringement of the  
3 '158 Patent, by, among other things, taking affirmative steps that encouraged, aided and  
4 abetted direct infringement by others (including without limitation, customers and end users of  
5 TiVo STBs, STBs utilizing TiVo Platform Software, and TiVo Apps (when used in  
6 conjunction with Tivo STBs)) in California and elsewhere the United States, and TiVo knew  
7 that its induced acts constituted infringement or was been willfully blind to the infringement.

8 25. On information and belief, TiVo infringed the '158 Patent in an egregious and  
9 willful manner, with knowledge of the '158 Patent and its infringement, or was willfully blind  
10 to the risk of infringement.

11 26. Additionally and alternatively, on information and belief, TiVo also offered for  
12 sale, sold, and/or imported into the United States features incorporated into its TiVo STBs and  
13 into TiVo Platform Software used in third-party STBs, such as features relating to “interactive  
14 tags,” “pause menu” expansions, “swivel search,” “explore this show,” and the “more info”  
15 user experience, that allow for performance of one or more of the method claims in the '158  
16 Patent, knowing that one or more of such features are especially made and adapted for use in  
17 infringing the claimed method(s), and not a staple article or commodity of commerce suitable  
18 for substantial non-infringing use. On information and belief, end users directly infringed one  
19 or more of the claims in the '158 Patent by carrying out the claimed method(s) on the STBs in  
20 California and elsewhere the United States. This conduct by TiVo constitutes contributory  
21 infringement under 35 U.S.C. §271(c).

22 27. As a consequence of TiVo's infringement, MONKEYmedia is entitled to  
23 recover damages adequate to compensate it for the infringement complained of herein, but in  
24 no event less than a reasonable royalty.

25 **B. Count 2 - Infringement of the '379 Patent**

26 28. MONKEYmedia reincorporates by reference and realleges paragraphs 1  
27 through 17 above as if fully set forth herein.  
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1           29.     MONKEYmedia has not licensed or otherwise authorized TiVo to make, use,  
2 offer for sale, sell, or import any products that embody the inventions of the '379 Patent.

3           30.     TiVo has infringed one or more of claims 21-22, 24-25 and/or 27 of the '379  
4 Patent during the term of the '379 Patent, in violation of 35 U.S.C. § 271.

5           31.     TiVo infringed the '379 Patent literally and/or under the doctrine of equivalents  
6 during the term of the '379 Patent, by, among other things, using, offering for sale, selling,  
7 and/or importing within California and elsewhere in the United States, without license or  
8 authority, TiVo STBs, TiVo Platform Software and TiVo Apps (when used in conjunction with  
9 Tivo STBs) falling within the scope of one or more of claims 21-22, 24-25 and/or 27 of the  
10 '379 Patent.

11          32.     To name two examples, the TiVo Roamio OTA HD DVR and the TiVo Bolt are  
12 TiVo STBs that were offered for sale and sold by TiVo during the term of the '379 Patent.

13          33.     The TiVo Roamio OTA HD DVR and Bolt STBs infringed at least Claim 21 of  
14 the '379 Patent because they comprise computer readable storage media storing instructions  
15 that when executed by the TiVo STBs are capable of causing the STBs to:

16           a. begin receiving a main content continuous play media stream comprising a stream of  
17 audio, video and/or still image(s);

18           b. generate a signal to play a first subset of the main content continuous play media  
19 stream, wherein a visual portion of said first subset substantially fills a first visual  
20 display space during play of said first subset, and wherein a highlighted discernible  
21 entity is presented during play of the first subset as a visual expansion cue that invites a  
22 user to elect insertion of an expansion, and wherein the visual expansion cue is one of  
23 a plurality of expansion cues that are presented simultaneously in a visually  
24 distinguished subset of the first visual display space during playing of the first subset;

25           c. determine during playing of the first subset whether there is user input electing an  
26 expansion, wherein electing an expansion does not necessitate pushing of a physical  
27 button;

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1 d. if user input electing an expansion is not detected during playing of the first subset,  
2 generate a signal to play a second subset of the main content continuous play media  
3 stream that continues from and is temporally adjacent to the first subset of the main  
4 content continuous play media stream, wherein a visual portion of said second subset  
5 substantially fills the first visual display space during play of the second subset in  
6 spatiotemporal continuity with the first subset;

7 e. if user input electing an expansion is detected during playing of the first subset:

8 i. generate a signal to present a change in said expansion cue;

9 ii. establish a resume point as a landing offset in the main content continuous  
10 play media stream temporally located less than ten seconds from where the user  
11 input was detected in the main content continuous play media stream;

12 iii. fetch the expansion, wherein the expansion comprises expansion content;

13 iv. generate a signal to play the expansion, wherein a visual portion of the second  
14 subset of the main content continuous play media stream fills the first visual  
15 display space, and replaces the visual portion of the expansion content in the first  
16 visual display space less than ten seconds after the expansion content ceases  
17 being played.

18 34. Upon information and belief, the TiVo Software Platform incorporated into  
19 third party STBs and the TiVo App (when used in conjunction with the TiVo STB) also  
20 comprise computer readable storage media storing instructions that when executed are capable  
21 of causing the STBs to perform the above-described steps.

22 35. Additionally and/or alternatively, TiVo has, upon information and belief  
23 infringed the '379 Patent in violation of 35 U.S.C. § 271(b) during the term of the '379 Patent  
24 by actively inducing direct infringement of the '379 Patent, literally and/or under the doctrine  
25 of equivalents, with knowledge of the '379 Patent and knowledge that it was inducing the  
26 direct infringement of the '379 Patent by, among other things, taking affirmative steps that  
27 encouraged, aided and abetted direct infringement by others (including without limitation,  
28 customers and end users of TiVo STBs, STBs incorporating TiVo Platform Software, and

1 TiVo Apps (when used in conjunction with Tivo STBs)) in California and elsewhere the  
2 United States, and TiVo knew that its induced acts constituted infringement or was been  
3 willfully blind to the infringement.

4 36. On information and belief, TiVo infringed the '379 Patent in an egregious and  
5 willful manner, with knowledge of the '379 Patent and its infringement, or was willfully blind  
6 to the risk of infringement.

7 37. Additionally and alternatively, on information and belief, TiVo also offered for  
8 sale, sold, and/or imported into the United States features incorporated into the computer  
9 readable media included in its TiVo Platform Software used in third-party STBs and TiVo  
10 Apps (when used in conjunction with the TiVo STBs), such as features relating to “interactive  
11 tags,” “pause menu” expansions, “swivel search,” “explore this show,” and the “more info”  
12 user experience, knowing that one or more of such features are especially made and adapted  
13 for use in infringing one or more claims of the '379 Patent, and not a staple article or  
14 commodity of commerce suitable for substantial non-infringing use. On information and  
15 belief, TiVo’s customers and end users directly infringe one or more of the claims in the '379  
16 Patent by using TiVo STBs, third-party STBs having TiVo Platform Software, and TiVo Apps  
17 (when used in conjunction with the TiVo STB) in California and elsewhere the United States.  
18 This conduct by TiVo constitutes contributory infringement under 35 U.S.C. § 271(c).

19 38. As a consequence of TiVo’s infringement, MONKEYmedia is entitled to  
20 recover damages adequate to compensate it for the infringement complained of herein, but in  
21 no event less than a reasonable royalty.

22 **C. Count 3 - Infringement of the '226 Patent**

23 39. MONKEYmedia reincorporates by reference and realleges paragraphs 1  
24 through 17 above as if fully set forth herein.

25 40. MONKEYmedia has not licensed or otherwise authorized TiVo to make, use,  
26 offer for sale, sell, or import any products that embody the inventions of the '226 Patent.

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1           41. TiVo has infringed one or more of the computer readable media claims (2-6)  
2 and/or one or more of the method claims (8-12) of the '226 Patent during the term of the '226  
3 Patent, in violation of 35 U.S.C. § 271.

4           42. TiVo infringed the '226 Patent literally and/or under the doctrine of equivalents  
5 during the term of the '226 Patent, by, among other things, using, offering for sale, selling,  
6 and/or importing within California and elsewhere in the United States, without license or  
7 authority, TiVo STBs, TiVo Platform Software incorporated into third-party STBs and TiVo  
8 Apps (when used in conjunction with Tivo STBs) falling within the scope of claims of the  
9 '226 Patent.

10           43. To name two examples, the TiVo Roamio OTA HD DVR and the TiVo Bolt are  
11 TiVo STBs that were offered for sale and sold by TiVo during the term of the '226 Patent.

12           44. The TiVo Roamio OTA HD DVR and TiVo Bolt STBs infringed at least Claim  
13 2 of the '226 Patent because they comprise computer readable storage media storing  
14 instructions that when executed by the TiVo STBs are configured to cause the STBs to:

- 15           a. begin fetching a primary content comprising a primary content continuous play  
16 media stream,
- 17           b. generate a signal to display a first portion of the primary content continuous media  
18 stream comprising a first stored audio and/or visual content of the primary content  
19 continuous play media stream, wherein the first stored content comprises video,  
20 wherein an interruption terminus of the first portion and a resume-point terminus of a  
21 continuing portion of the primary content continuous media stream that continues the  
22 primary content continuous play media stream from the interruption terminus of the  
23 first portion in the primary content continuous play media stream are established during  
24 display of the first portion at an expansion decision point if a content expansion is  
25 selected by a user;
- 26           c. provide a highlighted expansion cue to the user during display of the first portion  
27 indicating an option for the user to elect to access the content expansion comprising an  
28

1 optional content continuous play media stream, whereby the display of the expansion  
2 cue is distinct from the display of the first portion;

3 d. determine whether the content expansion is selected and establish the expansion  
4 decision point and a beginning of the content expansion based on when the user elected  
5 the content expansion;

6 e. generate a signal to display a change in the expansion cue if the content expansion is  
7 elected by the user during display of the first portion;

8 f. interrupt the display of the first portion at the interruption terminus of the first portion  
9 if the content expansion is elected by the user during display of the first portion;

10 g. provide an expansion link from the first portion to an expansion portion of the  
11 optional content continuous play media stream comprising a second stored audio and/or  
12 visual content, and generate a signal to display the second stored audio and/or visual  
13 content of the expansion portion if the content expansion is selected, wherein the  
14 displayed second stored audio and/or visual content is spatiotemporally continuous with  
15 the displayed first stored audio and/or visual content and with a displayed third stored  
16 audio and/or visual content of the continuing portion whereby the display of the second  
17 stored audio and/or visual content replaces the display of the first stored audio and/or  
18 visual content after at most a small amount of time and whereby the display of the third  
19 stored audio and/or visual content replaces the display of the second stored audio  
20 and/or visual content after at most a small amount of time, and wherein a transition is  
21 played from the displayed first stored audio and/or visual content to the displayed  
22 second stored audio and/or visual content;

23 h. provide a continuity link from the expansion portion to the continuing portion and  
24 generate a signal to display a third stored audio and/or visual content of the continuing  
25 portion after finishing the display of the expansion if the content expansion is elected;  
26 and

27 i. provide a continuity link from the first portion to the continuing portion and generate  
28 a signal to display the third stored audio and/or visual content of the continuing portion

1 if the content expansion is not elected, wherein the displayed third stored audio and/or  
2 visual content is spatiotemporally continuous with the displayed first stored audio  
3 and/or visual content whereby the display of the third stored audio and/or visual content  
4 replaces the display of the first stored audio and/or visual content after at most a small  
5 amount of time.

6 45. Upon information and belief, the TiVo Software Platform incorporated into  
7 third party STBs and the TiVo App (when used in conjunction with the TiVo STB) also  
8 comprise computer readable storage media storing instructions configured to cause the STBs to  
9 perform the above-described steps.

10 46. Additionally and/or alternatively, TiVo has, upon information and belief  
11 infringed the '226 Patent during the term of the '226 Patent in violation of 35 U.S.C. § 271(b)  
12 by actively inducing direct infringement of the '226 Patent, literally and/or under the doctrine  
13 of equivalents, with knowledge of the '226 Patent and knowledge that it was inducing the  
14 direct infringement of the '226 Patent by, among other things, taking affirmative steps that  
15 encouraged, aided and abetted direct infringement by others (including without limitation,  
16 customers and end users of TiVo STBs, STBs incorporating TiVo Platform Software, and  
17 TiVo Apps (when used in conjunction with Tivo STBs)) in California and elsewhere the  
18 United States, and TiVo knew that its induced acts constituted infringement or was been  
19 willfully blind to the infringement.

20 47. On information and belief, TiVo infringed the '226 Patent in an egregious and  
21 willful manner, with knowledge of the '226 Patent and its infringement, or was willfully blind  
22 to the risk of infringement.

23 48. Additionally and alternatively, on information and belief, TiVo also offered for  
24 sale, sold, and/or imported into the United States features incorporated into its TiVo STBs,  
25 TiVo Platform Software used in third-party STBs, and TiVo Apps (when used in conjunction  
26 with Tivo STBs) such as features relating to “interactive tags,” “pause menu” expansions,  
27 “swivel search,” “explore this show,” and the “more info” user experience, knowing that one  
28 or more of such features are especially made and adapted for use in infringing one or more

1 claims of the '226 Patent, and not a staple article or commodity of commerce suitable for  
2 substantial non-infringing use. On information and belief, TiVo's customers and end users  
3 directly infringed one or more of the claims in the '226 Patent by using TiVo STBs, third-party  
4 STBs having TiVo Platform Software, and TiVo Apps (when used in conjunction with Tivo  
5 STBs) in California and elsewhere the United States. This conduct by TiVo constitutes  
6 contributory infringement under 35 U.S.C. § 271(c).

7 49. As a consequence of TiVo's infringement, MONKEYmedia is entitled to  
8 recover damages adequate to compensate it for the infringement complained of herein, but in  
9 no event less than a reasonable royalty.

10 **D. Infringement of the '298 Patent**

11 50. MONKEYmedia reincorporates by reference and realleges paragraphs 1  
12 through 17 above as if fully set forth herein.

13 51. MONKEYmedia has not licensed or otherwise authorized TiVo to make, use,  
14 offer for sale, sell, or import any products that embody the inventions of the '298 Patent.

15 52. TiVo infringed one or more of claims 1-10, 13 and/or 14 of the '298 Patent  
16 during the term of the '298 Patent, in violation of 35 U.S.C. § 271.

17 53. TiVo infringed the '298 Patent literally and/or under the doctrine of equivalents,  
18 during the term of the '298 Patent by, among other things, using, offering for sale, selling,  
19 and/or importing within California and elsewhere in the United States, without license or  
20 authority, TiVo STBs falling within the scope of one or more of claims 1-10, 13 and/or 14 of  
21 the '298 Patent.

22 54. To name two examples, the TiVo Roamio OTA HD DVR and the TiVo Bolt are  
23 TiVo STBs that were offered for sale and sold by TiVo during the term of the '298 Patent.

24 55. The TiVo Roamio OTA HD DVR and TiVo Bolt STBs are set-top media  
25 players for capturing and playing continuous play media streams, the media player comprising  
26 a display circuit, a selector interface coupled to a digital controller, memory caching storage,  
27 and an interface circuit comprising an external interface circuit.  
28

1           56.     The interface circuit of the TiVo Roamio OTA HD DVR and TiVo Bolt STBs  
2 are capable of wirelessly receiving, from a remote server, a main content continuous play  
3 media stream comprising a stream of audio, video, and/or still image(s) and a promotional  
4 expansion comprising promotional expansion content.

5           57.     The digital controller of the TiVo Roamio OTA HD DVR and TiVo Bolt STBs  
6 are capable of causing the display circuit to generate a signal to play the main content  
7 continuous play media stream, wherein a visual portion of the main content continuous play  
8 media stream substantially fills a first visual display space during play, and wherein a  
9 highlighted discernible entity is presented during play as a visual expansion cue that invites a  
10 user to elect insertion of the promotional expansion;

11           58.     The selector interface of the TiVo Roamio OTA HD DVR and TiVo Bolt STBs  
12 are capable of detecting user input electing the promotional expansion during playing of the  
13 main content continuous play media stream without the user pushing a physical button on a  
14 selector device.

15           59.     If the selector interface of the TiVo Roamio OTA HD DVR and TiVo Bolt  
16 STBs detects the user input electing the promotional expansion during playing of the main  
17 content continuous play media stream, the selector interface is further capable of transmitting  
18 detection of the user input to the digital controller, wherein the digital controller is further  
19 capable of (a) causing the display circuit to generate a signal to present an apparent change in  
20 size of said expansion cue, (b) causing the media player to store in memory a resume point as a  
21 landing offset in the main content continuous play media stream, (c) causing the interface  
22 circuit to receive the promotional expansion, (d) causing the display circuit to cease generating  
23 the signal to play the main content continuous play media stream at the resume point, (e)  
24 causing the display circuit to generate a signal to play the promotional expansion, wherein a  
25 visual portion of the promotional expansion content substantially fills the first visual display  
26 space in spatiotemporal continuity with the visual portion of the main content continuous play  
27 media stream after a transition from playing the main content continuous play media stream to  
28 playing the promotional expansion, (f) causing the memory caching storage to temporarily



1 store a portion of the main content continuous play media stream during play of the  
2 promotional expansion, (g) causing the media player to retrieve the resume point from  
3 memory, (h) causing the media player to retrieve the temporarily stored portion of the main  
4 content continuous play media stream from the memory caching storage, (i) causing the  
5 display circuit to cease generating the signal to play the promotional expansion; and (j) causing  
6 the display circuit to generate a signal to play the temporarily stored portion of the main  
7 content continuous play media stream from the resume point, wherein a visual portion of the  
8 temporarily stored portion of the main content continuous play media stream fills the first  
9 visual display space in spatiotemporal continuity with the visual portion of the promotional  
10 expansion content by replacing the visual portion of the promotional expansion content in the  
11 first visual display space.

12 60. Additionally and/or alternatively, TiVo has, upon information and belief  
13 infringed the '298 Patent during the term of the '298 Patent in violation of 35 U.S.C. § 271(b)  
14 by actively inducing direct infringement of the '298 Patent, literally and/or under the doctrine  
15 of equivalents, with knowledge of the '298 Patent and knowledge that it was inducing the  
16 direct infringement of the '298 Patent by, among other things, taking affirmative steps that  
17 encouraged, aided and abetted direct infringement by others (including without limitation, end  
18 users of TiVo STBs and OEMs, manufacturers and cable companies that incorporate the TiVo  
19 Platform Software into their STBs) in California and elsewhere the United States, and TiVo  
20 knew that its induced acts constituted infringement or was been willfully blind to the  
21 infringement.

22 61. On information and belief, TiVo infringed the '298 Patent in an egregious and  
23 willful manner, with knowledge of the '298 Patent and its infringement, or was willfully blind  
24 to the risk of infringement.

25 62. As a consequence of TiVo's infringement, MONKEYmedia is entitled to  
26 recover damages adequate to compensate it for the infringement complained of herein, but in  
27 no event less than a reasonable royalty.  
28

**VII. PRAYER**

WHEREFORE, MONKEYmedia respectfully requests that this Court enter judgment in its favor and award the following relief against TiVo:

- (a) That this Court find TiVo infringed the '158, '379, '226 and '298 Patents (directly, contributorily, and by inducement) in violation of the Patent Act, 35 U.S.C. § 271;
- (b) That this Court enter judgment that:
  - (i) MONKEYmedia is the owner of the MONKEYmedia '158, '379, '226 and '298 Patents and all rights of recovery thereunder;
  - (i) the claims at issue in the MONKEYmedia '158, '379, '226 and '298 Patents were not invalid;
- (c) That this Court award MONKEYmedia damages of no less than a reasonable royalty that were incurred as a result of TiVo's patent infringement, with pre-judgment interest on all damages awarded, as well as supplemental damages;
- (d) That damages be increased under 35 U.S.C. § 284 to three times the amount found or measured based on TiVo's willful infringement;
- (e) That this Court award MONKEYmedia its costs and disbursements in this action;
- (f) That this Court award MONKEYmedia post-judgment interest on all amounts awarded to it, at the maximum rate allowed by law;
- (g) That this Court find this to be an exceptional case and award MONKEYmedia its costs and attorney's fees under 35 U.S.C. § 285; and
- (h) That this Court grant MONKEYmedia all further relief to which it may be entitled.

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a jury in this matter on all issues triable by jury.

Dated: August 8, 2019

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP

By: /s/ Robert F. McCauley  
Robert F. McCauley

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.

Steve D. Smit (*pro hac vice pending*)  
William G. Christian (*pro hac vice pending*)  
Matthew C. Powers (*pro hac vice pending*)

***Attorneys for Plaintiff MONKEYmedia, Inc.***