

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FLATFROG LABORATORIES AB,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 19-2246-MN
)	
PROMETHEAN LTD. and PROMETHEAN)	JURY TRIAL DEMANDED
INC.,)	
)	
Defendants.)	

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff FlatFrog Laboratories AB (“FlatFrog” or “Plaintiff”), by way of Complaint against Defendants Promethean Ltd. and Promethean Inc. (together “the Promethean Defendants”), alleges as follows:

THE PARTIES

1. FlatFrog is a Swedish corporation with its principal place of business Alfa 2 Scheelevägen 15 A, 223 63 Lund, Sweden.

2. FlatFrog is a pioneer and technology leader for large screen interactive displays, often referred to as “touch screens,” which allow multiple users to work together on a large display, in person or through real time collaboration across the globe. FlatFrog’s award-winning InGlass™ touch technology, when embedded within large displays, allows multiple users to touch and write on display screens with a passive pen or finger and with no annoying lag or latency (unlike conventional touch screens). FlatFrog’s patented InGlass™ experience is as natural as writing on paper, and the user can erase with a finger or fist.

3. FlatFrog’s patented InGlass™ technology also provides the lowest contact detection height (“CDH”) in the touch screen industry. Touch screens enabled with FlatFrog’s

patented InGlass™ technology, including its low CDH configuration, prevent the touch screen from picking up user interactions near the touch screen which are not intended by the user to register with the touch screen. Visual artifacts caused by conventional touch screens sold by competitors are noticeable by, for example, hooks at the end of a character or line as the user raises his or her finger (or stylus) from a touch screen. Because of its advantages over conventional touch screen technologies, FlatFrog's InGlass™ technology has been adopted by the world's leading touch screen display companies, including Samsung, Sharp, Dell, NEC, Smart, and ViewSonic. FlatFrog and products containing FlatFrog's InGlass™ technology have won many industry awards, including Aragon Research Hot Vendor 2019, Rapidus Company of the Year 2018, ISTE Best of Show Award 2017, and Rave Best of Infocomm 2016.

4. FlatFrog's considerable research and development investments in InGlass™ and related touch screen technologies are also protected by more than 120 patents worldwide and more than 110 pending patent families.

5. Upon information and belief, Defendant Promethean Ltd. is a United Kingdom corporation having a principal place of business at Promethean House, Lower Philips Road, Blackburn, BB1 5TH, United Kingdom.

6. Upon information and belief, Defendant Promethean Inc. is a Delaware corporation having a principal place of business at 720 Olive Way Suite 1500, Seattle, Washington 98101.

7. On information and belief, the Promethean Defendants are both subsidiaries of immediate parent company Promethean (Holdings) Ltd., a United Kingdom corporation that is itself a subsidiary of Promethean World, Ltd., a United Kingdom Corporation.

NATURE OF THE ACTION

8. This is an action for patent infringement of U.S. Patent No. 10,775,935 (“the ’935 patent”) and U.S. Patent No. 10,739,916 (“the ’916 patent”) arising under the patent laws of the United States, Title 35, United States Code, §§ 100 *et seq.*, including 35 U.S.C. § 271. This action relates to the Promethean Defendants’ infringing activities related to their ActivPanel 7 (AP7) Titanium and Nickel products and all reasonably similar products (“Accused Products”), which are accused of infringing these patents.

JURISDICTION AND VENUE

9. FlatFrog realleges, and incorporates in full herein, each preceding paragraph.

10. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

11. Upon information and belief, venue is proper for this proceeding.

12. This Court also has personal jurisdiction over the Promethean Defendants because, on information and belief, the Promethean Defendants have worked as a team and in concert to establish promotion and sales channels for the Accused Products in the United States (including Delaware), and have worked as a team and in concert, together and with Promethean Partners, to promote, offer for sale, sell, and/or import the Accused Products in the United States and in Delaware.

13. This Court has personal jurisdiction over Promethean Inc. because it is a Delaware corporation.

14. Upon information and belief, Defendant Promethean Ltd. operates the website www.prometheanworld.com.

15. The prometheanworld.com website promotes and markets the Accused Products in the United States, including in Delaware, as further described below.

16. The prometheanworld.com website includes a “How to Buy” button invites and instructs the user how to buy a Promethean product (including the Accused Products) through any of several methods.

17. For example, the prometheanworld.com website invites the user to “Contact Us By Phone” to “Speak to a Promethean representative by calling 678-336-8189,” which on information and belief connects the caller to a sales team member at Promethean Inc. in the State of Georgia, who answers product questions and encourages callers to purchase Promethean products, including the Accused Products, from Promethean’s Partners and/or distributors.

18. The prometheanworld.com website also alternatively invites the user to provide his/her name and contact information in a “How to Buy” form that, on information in belief, will also be answered by a representative of Promethean Inc. who will provide product and sales information for the Accused Products and assist the buyer in purchasing the Accused Products from Promethean Partners and/or distributors.

19. The prometheanworld.com website also alternatively invites the user to “Find a Promethean Partner Near You” using its “Partner Locator.” The Partner Locator includes a drop-down menu that identifies Promethean Partners in or near a particular state of interest. When Delaware is entered in the drop-down menu, the website identifies a “Featured Partner” in Waldorf, MD, and a “National Partner” in Illinois.

20. The prometheanworld.com website and Partner Locator provide the names and contact information for authorized Promethean Partners in the United States who, upon information and belief, will complete the final steps of the sale of the Accused Products and arrange shipment to the end customer in the United States, pursuant to terms and agreements with the Promethean Defendants.

21. Thus, upon information and belief, the Promethean Defendants have acted in concert to: import and sell the Accused Products to Promethean Partners and/or end customers in the United States (including Delaware) and induce the importation and sale of the Accused Products in the United States (including Delaware) by at least their designated Promethean Partners.

22. Upon information and belief, the Promethean Defendants have also acted in concert with their authorized Promethean Partners to import, offer for sale, and sell the Accused Products to customers in the United States.

23. In addition, Defendant Promethean Ltd. is identified as the manufacturer on the labels on ActivPanel 7 (AP7) Titanium and Nickel products, and on information and belief either manufacturers or has those products manufactured to its specifications and with the express knowledge and intent that at least some of the products will be sold in the United States.

24. For example, on information and belief Defendant Promethean Ltd. commissioned an FCC Test Report for the Promethean WIFI Module (Titanium) for the express purpose of obtaining FCC approval to sell the accused ActivPanel Titanium product in the United States. Similarly, on information and belief Defendant Promethean Ltd. has also tested or had tested the Nickel products for FCC compliance in the United States, as stated in the ActivPanel Promethean Wi-Fi Module (Nickel/Cobalt) Quick Install Guide.

BACKGROUND

25. Starting in late 2015, FlatFrog confidentially introduced its InGlass™ technology to Promethean. Promethean was impressed with the performance of FlatFrog's InGlass™ technology and, specifically, the benefits it offered over other touch screen technologies on the market. Promethean expressed that it was looking for new technology that would allow

Promethean to differentiate its touch screen products in the market. Promethean agreed that FlatFrog would supply InGlass™ for Promethean's ActivPanel 5 (AP5) product in 2017-18.

26. From late 2015 through 2018, FlatFrog worked closely with Promethean to implement FlatFrog's InGlass™ specifications into Promethean's ActivPanel 5 and ActivPanel 6 (AP6) products. During this time, FlatFrog conveyed, and Promethean understood, that FlatFrog's innovative use of a concave parabolic touch screen is critical to achieving the low CDH and performance benefits of FlatFrog's InGlass™ technology. Promethean further understood that FlatFrog worked with a specific glass supplier who custom made concave parabolic glass for FlatFrog and its customers pursuant to FlatFrog's unique design specifications. FlatFrog and Promethean made specific arrangements for that concave parabolic glass from FlatFrog's supplier to be included in Promethean's AP5 and AP6 products as a critical part of FlatFrog's InGlass™ technology.

27. From 2016 until approximately the summer of 2019, the Promethean Defendants purchased and proudly touted FlatFrog's InGlass™ technology in Promethean's AP5 and AP6 products, and FlatFrog considered Promethean a valued customer and business ally during that time.

28. For example, as recently as January 2018, Promethean issued a press release stating "The ActivPanel continues to offer the industry's most natural writing experience using InGlass™ technology, enabling both teachers and students to collaborate in front of the class with ease. . . . Powered with innovative InGlass technology, the ActivPanel automatically detects differences between pen, touch, and palm erase – allowing teachers to teach efficiently without switching between tools. The new instant whiteboard brings the InGlass technology to life through free-form writing with practically no script-lag, pinch-zoom navigation, and pre-loaded teaching tools to

enhance productivity.” <https://www.prometheanworld.com/news-article/promethean-expands-education-display-portfolio/>

29. In 2017, Promethean’s ActivPanel, also powered with FlatFrog’s InGlass™ technology, won the Best of Show award at the International Society for Technology in Education (ISTE) annual conference, which recognizes technologies that could have the most impact in the classroom.

30. In touting the ISTE Best of Show award on its website, Promethean stated “[t]he ActivPanel with InGlass™ touch and writing technology provides a natural and smooth writing experience.” <https://www.prometheanworld.com/press-release/activpanel-wins-iste-2017-best-of-show-award/>

31. The Promethean Defendants have long been well aware that FlatFrog has invested considerable time, effort, and money into research and development for its InGlass™ technology, and that FlatFrog has diligently pursued and obtained broad international patent protection for same, including patent protection for FlatFrog’s concave parabolic touch surface and sealing window technology covered by the patents asserted in this action.

32. For example, on or about March 7, 2018, FlatFrog employee Anders Krook sent an email to several Promethean executives (Ravi Angadi, Paul Edmond, and Enron Usow) specifically advising Promethean that FlatFrog’s patent portfolio then exceeded 90 patents with “significant[ly] more in the pipeline.” Promethean’s Mr. Angadi responded “Congratulations Anders and the FlatFrog team. Well done.” Mr. Usow asked Mr. Krook whether he would identify patents that applied to “the technology we are currently implementing with the P and C lines?” FlatFrog’s outside counsel, Mr. Dominic Davies, replied by email to Mr. Usow and also to Ms. Allyson Krause. Ms. Krause is identified on the Promethean World website as “responsible for

all commercial matters globally,” and that she became “Head of Legal for Promethean, globally in 2014.” (<https://www.prometheanworld.com/about-us/leadership/allyson-krause/>)

33. On or about October 15, 2018, Mr. Davies responded to Mr. Usow’s email, copying Ms. Krause, and attached an IP Summary document providing “a selection of FlatFrog’s most important IP” that “include[d] both granted patents and patent applications for newer technologies that FlatFrog pioneered and expects to obtain protection for.” Mr. Davies’s IP Summary specifically identified twelve of FlatFrog’s granted and pending patents.

34. More specifically, Mr. Davies’ IP Summary identified FlatFrog’s PCT application publication number WO2018106176 titled “An Improved Touch Device,” which the IP Summary described as “applicable for all systems that use *glass warp to improve touch performance*” (emphasis added). Mr. Davies’s IP Summary description of this also included the following Figure 11a, showing a touchscreen having the concave parabolic shape pioneered by FlatFrog:

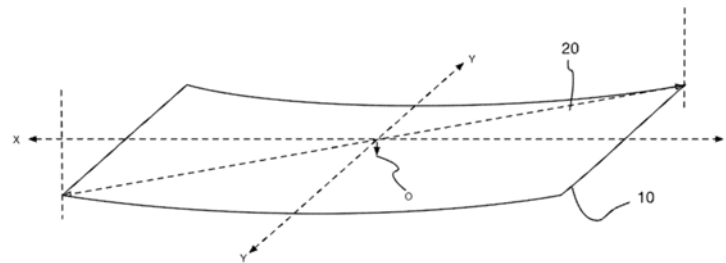


Figure 11a

35. Figure 11a above is included in the '935 patent, a continuation of U.S. Patent Application No. 16/403,283, which is a continuation of U.S. Patent No. 10,282,035, which is a child of the PCT WO2018106176 application (which corresponds to PCT application number PCT/SE2017/051233 from which U.S. Patent No. 10,282,035 is a continuation).

36. Mr. Davies's IP summary also identified FlatFrog's PCT application publication number WO2018182476 titled "Touch sensing apparatus and method for assembly," which corresponds to PCT application number PCT/SE2018/050109, from which U.S. Patent No. 10,606,416 is a continuation, from which the '916 patent is a continuation. Mr. Davies's IP summary described this patent application as "applicable for systems that use a sealing window pressed against the glass."

37. Thus, by October 15, 2018, Promethean had requested and received from Mr. Davies a list of FlatFrog's most important intellectual property that Promethean was using in its products, and this list included and described by number and subject matter the applications for the patents asserted in this Third Amended Complaint.

38. In that same email, Mr. Davies reminded Promethean that as of October 15, 2018, "FlatFrog has over 90 granted patents and more than 100 pending patent families," and that "New engineering solutions and feature opportunities for its InGlass™ technology are continually identified and patented." Mr. Davies's email stated he was "happy to answer questions you have." No one from Promethean ever took up Mr. Davies on that offer. Additional patents have issued to FlatFrog since October 15, 2018, and FlatFrog has continued to file additional patent applications to protect its intellectual property and investments in InGlass™ and related touch screen technologies since that date.

39. Despite Promethean's knowledge that the concave parabolic glass was critical to low CDH and InGlass's™ superior performance, and that FlatFrog had filed patent applications covering that and other InGlass™ technologies, Promethean engineers advised FlatFrog in 2018 that Promethean was developing an InGlass™ replacement, with a lower cost supplier from China, that had a specification very similar to InGlass™. Promethean was aware that InGlass™ was an

innovative, advanced technology—one that Promethean had itself touted in its own marketing materials—that would be valuable in the United States market and worldwide.

40. In or about 2019, Promethean dropped FlatFrog and its InGlass™ products. Promethean’s infringing Accused Products continue to use a concave parabolic touch surface which, on information and belief, Promethean obtains from the same custom glass maker who previously supplied the concave parabolic glass for Promethean’s AP5 and AP6 products pursuant to FlatFrog’s InGlass™ specifications.

41. By the time Promethean made the decision to drop FlatFrog’s InGlass™ products, Promethean had already received the list it requested of FlatFrog’s most important IP that Promethean was using, which advised Promethean that FlatFrog was seeking patent protection for the concave parabolic glass and other technologies that are asserted in this Third Amended Complaint.

42. On August 20, 2020, Mr. Davies emailed Ms. Krause and notified her that U.S. Patent Application No. 16/706,438 (“Touch Device”) had received a notice of allowance from the Patent Office, and that Promethean’s AP7 Titanium and Nickel products infringe the allowed claims. On September 15, 2020, that application issued as the ’935 patent. In the same email on August 20, 2020, Mr. Davies also confirmed that U.S. Patent No. 10,739,916 (“Touch sensing apparatus and method for assembly”) had issued on August 11, 2020, and that Promethean’s AP7 Titanium product infringes the claims of the ’916 patent. Mr. Davies’s email also attached the Notice of Allowance and allowed claims for the ’935 patent and a copy of the ’916 patent.

43. On information and belief, the Promethean Defendants have done nothing to cease their infringing activities with respect to the Accused Products.

FIRST COUNT FOR PATENT INFRINGEMENT

44. FlatFrog realleges, and incorporates in full herein, each preceding paragraph.

45. The U.S. Patent and Trademark Office issued the '935 patent on September 15, 2020, titled "Touch Device." A copy of the '935 patent is attached hereto as Exhibit A.

46. The '935 patent is a continuation of U.S. Patent Application No. 16/403,283, filed on May 3, 2019, which is a continuation of U.S. Patent 10,282,035, filed on November 14, 2018, which is a continuation of PCT application number PCT/SE2017/051233, filed on December 7, 2017, as stated on the face of the '935 patent. The U.S. continuation application (U.S. Patent Application No. 16/706,438) which matured into the '935 patent was filed on December 6, 2019.

47. The technology claimed in the '935 patent enables FlatFrog's revolutionary InGlass™ technology (including low CDH) and the natural writing experience touted by Promethean, and is the subject of numerous awards from the education and touch screen industries.

48. FlatFrog is the owner of the '935 patent by virtue of assignment.

49. The Promethean Defendants had actual knowledge of the '935 patent and FlatFrog's allegations of infringement by the ActivPanel 7 Titanium and Nickel and reasonably similar products prior to the filing of this Third Amended Complaint.

50. Promethean was aware of the publication of the patent application that led to the '935 patent after FlatFrog identified it to Promethean on October 15, 2018 in response to Promethean's request for a list of FlatFrog patents that Promethean was "currently implementing" in its AP5 and AP6 products. Moreover, the '935 patent relates to touch panel "systems that use glass warp to improve touch performance." On information and belief, Promethean knew the use of parabolic concave glass in its AP5 and AP6 products improved the touch performance of those

devices, and knowingly used substantially similar parabolic concave glass in its infringing AP7 products.

51. At the very latest, Promethean knew by August 20, 2020 that the USPTO had allowed the claims of the FlatFrog patent application which matured into the '935 patent, and knew of FlatFrog's allegation that Promethean infringed same. On that date, counsel for FlatFrog, Dominic Davies, sent an email to Ms. Krause, Promethean's Global Head of Legal, specifically advising that the ActivPanel 7 Titanium and Nickel products infringe at least claim 1 of the allowed claims of the application which matured into the '935 patent, and asking the Promethean Defendants to cease their infringing activities. The Promethean Defendants have continued their infringing behavior.

52. Upon information and belief, the ActivPanel 7 Titanium products, ActivPanel 7 Nickel, and all reasonably similar Promethean products ("the '935 Accused Products") are assembled by the method claimed in claim 1 of the '935 patent, and meet all the elements of claim 1 of the '935 patent, which recites:

- a. A method for assembling a touch sensing apparatus, the touch sensing apparatus comprising a display panel, a plate including a touch surface, and a frame assembly,
- b. wherein the frame assembly includes:
- c. a first edge extending between a first end point and an opposite second end point: and
- d. a second edge extending between the second end point and a third end point:
- e. the method comprising:
- f. configuring the frame assembly to support the display panel;

- g. arranging a plurality of emitters adjacent to a periphery of the plate, said plurality of emitters configured to emit light to propagate over the touch surface;
- h. arranging a plurality of detectors arranged adjacent to the periphery of the plate, said plurality of detectors configured to receive light from the set of emitters; and
- i. configuring the frame assembly to support the plate;
- j. wherein configuring the frame assembly to support the plate includes inducing a parabolic curvature in the touch surface relative to a first axis and relative to a second axis perpendicular to the first axis, said first axis is parallel to a line between the first end point and the second end point and said second axis is parallel to a line between the second end point and the third end point.

53. The '935 Accused Products made by the infringing method that are used, caused to be used, imported, caused to be imported, offered for sale, caused to be offered for sale, and/or caused to be sold by the Promethean Defendants meet each and every element of claim 1 of the '935 Patent.

54. Upon information and belief, the '935 Accused Products meet all the elements of, for example, claim 7 of the '935 patent, which recites:

- a. A touch sensing apparatus comprising:
- b. a display panel;
- c. a plate having a width, a length and a periphery, the plate further including a touch surface;

- d. one or more emitters arranged adjacent to the periphery of the plate and configured to emit light across the touch surface of the plate;
- e. a set of detectors arranged adjacent to the periphery of the plate and configured to receive light from the set of emitters, and
- f. a frame assembly, the frame assembly comprising:
- g. a first frame element configured to support the display panel; and
- h. a second frame element arranged around at least a portion of the periphery of the plate, the second frame element having a first portion extending along an edge of the plate and a second portion opposed to the touch surface;
- i. wherein the plate has a first curvature in the touch surface when not installed in the frame assembly, and wherein the plate has a second curvature along the width and along the length in the touch surface when the plate is installed in the frame assembly, said second curvature is parabolic; and wherein the first curvature is concave.

55. Accordingly, on information and belief the Promethean Defendants are liable for infringement of the '935 patent under 35 U.S.C. § 271(a) and (g) by, without authority, acting in concert to use, offer for sale and/or sell the '935 Accused Products within the United States and/or importing the '935 Accused Products into the United States directly and/or through their designated Preferred Partners acting as their agents for same.

56. The Promethean Defendants have knowingly continued these infringing activities unabated despite receiving Mr. Davies's IP Summary in 2018, and despite receiving notice of the issued patent claims and FlatFrog's infringement allegations on August 20, 2020.

57. On information and belief, the Promethean Defendants are liable for induced infringement under 35 U.S.C. § 271(b) by intentionally taking action that has actually induced and continues to induce infringement of the '935 patent by Promethean Partners who act in concert with and assist the Promethean Defendants in offering for sale, selling and/or importing the '935 Accused Products in the United States, which the Promethean Defendants know infringe the '935 patent, or have been willfully blind to their infringement (i.e., believed there was a high probability that the Accused Products were patented but nevertheless took deliberate steps to avoid learning that fact and willfully blinded themselves to the infringing nature of their continuing acts).

58. On information and belief, the Promethean Defendants have infringed the '935 patent in an egregious and willful manner and with knowledge of the '935 patent, and at a minimum have been willfully blind to their infringement of that patent.

59. The Promethean Defendants' infringement of the '935 patent has caused and continues to cause damages and irreparable harm to FlatFrog, which has invested significantly in developing its market-leading and patented InGlass™ technology.

SECOND COUNT FOR PATENT INFRINGEMENT

60. FlatFrog realleges, and incorporates in full herein, each preceding paragraph.

61. The U.S. Patent and Trademark Office issued the '916 patent on August 11, 2020, titled "Touch Sensing Apparatus and Method for Assembly." A copy of the '916 patent is attached hereto as Exhibit B.

62. The '916 patent is a continuation of U.S. Patent No. 10,606,416, which is a continuation of PCT application number PCT/SE2018/050109, as stated on the face of the '916 patent. The U.S. continuation application (U.S. Patent Application No. 16/834,905) which

matured into the '916 patent was filed on March 30, 2020. The U.S. Patent Application was published on July 16, 2020 as U.S. Patent Application Pub. No. 2020/0225807.

63. The technology claimed in the '916 patent builds on FlatFrog's revolutionary InGlass™ technology (including low CDH) and enables the natural writing experience touted by Promethean through an innovative sealing window that enables FlatFrog's industry-leading low CDH.

64. FlatFrog is the owner of the '916 patent by virtue of assignment.

65. The Promethean Defendants had actual knowledge of the '916 patent and FlatFrog's allegations of infringement by the ActivPanel 7 Titanium and reasonably similar products prior to the filing of this Third Amended Complaint.

66. Promethean was aware of the publication of the patent application that led to the '916 patent after FlatFrog identified it to Promethean on October 15, 2018 in response to Promethean's request for a list of FlatFrog patents that Promethean was "currently implementing" in its AP5 and AP6 products. Moreover, the '916 patent relates to touch panel "systems that use a sealing window pressed against the glass." On information and belief, Promethean knew the invention disclosed therein was relevant to its AP5 and AP6 products, and knowingly used substantially similar technology in its infringing AP7 products.

67. At the very latest, Promethean was aware by August 20, 2020 of the '916 patent and of FlatFrog's infringement allegations regarding same when counsel for FlatFrog, Dominic Davies, sent an email on that date to Ms. Krause, Promethean's Global Head of Legal, specifically advising that the ActivPanel 7 Titanium products infringe at least claim 1 of the '916 patent and asking the Promethean Defendants to cease selling same in the United States. The Promethean Defendants have not ceased their infringing behavior.

68. Upon information and belief, the ActivPanel 7 Titanium products and all reasonably similar products (“the ’916 Accused Products”) infringe, either literally or under the doctrine of equivalents, at least claim 1 of the ’916 patent.

69. The ’916 Accused Products are rectangular-shaped touch sensing apparatuses that include, among other things, a glass panel, a frame assembly, and a sealing window fitted in the space between the panel and the frame assembly.

70. Claim 1 of the ’916 patent recites, and the ’916 Accused Products include, the following elements:

- a. A touch sensing apparatus, comprising:
- b. a panel that defines a touch surface;
- c. a plurality of light emitters and detectors arranged along a perimeter of the panel;
- d. a support structure comprising a first portion that is parallel to the touch surface and separated by a space from the panel, said first portion including a first projection extending downwards from said first portion and a second projection extending downwards from said first portion, wherein a gap between the first projection and the second projection forms a receptacle having a first cross-sectional shape; and
- e. an optical element fitted in the space between the panel and the first portion and configured to seal the plurality of light emitters from contaminants from the touch surface, said optical element comprises a mating portion having a second cross-section shape that is substantially reciprocal to the first cross-

sectional shape, said mating portion engaged with the receptacle of the first portion.

71. On information and belief, the Promethean Defendants are liable for direct infringement under 35 U.S.C. § 271(a) by, without authority, acting in concert to use, offer for sale, and/or sell the '916 Accused Products within the United States and/or importing the '916 Accused Products into the United States directly and/or through their designated Preferred Partners acting as their agents for same. On information and belief, the Promethean Defendants have knowingly continued these activities unabated despite receiving Mr. Davies's IP Summary in 2018 and notice of FlatFrog's allegations on August 20, 2020.

72. On information and belief, the Promethean Defendants are liable for induced infringement under 35 U.S.C. § 271(b) by intentionally taking action that has actually induced and continues to induce direct infringement of the '916 patent by Promethean Partners who act in concert with and assist the Promethean Defendants in offering for sale, selling and/or importing the '916 Accused Products in the United States, which the Promethean Defendants know infringe the '916 patent, or have been willfully blind to their infringement (i.e., believed there was a high probability that the Accused Products were patented but nevertheless took deliberate steps to avoid learning that fact and willfully blinded themselves to the infringing nature of their continuing acts). The Promethean Defendants have knowingly continued these activities unabated despite receiving notice of FlatFrog's allegations on August 20, 2020.

73. On information and belief, the Promethean Defendants have infringed the '916 patent in an egregious and willful manner and with knowledge of the '916 patent, and at a minimum have been willfully blind to their infringement of that patent.

74. The Promethean Defendants' infringement of the '916 patent has caused and continues to cause damages and irreparable harm to FlatFrog, which has significantly invested in developing its market-leading and patented InGlass™ technology.

REQUEST FOR RELIEF

WHEREFORE, FlatFrog respectfully requests that the Court enter judgment in FlatFrog's favor and against each of the Promethean Defendants on the patent infringement claim set forth above and respectfully requests that this Court:

1. Enter a judgment in favor of FlatFrog that the Promethean Defendants have infringed, individually and together, and directly and by inducement, at least claims 1 and 7 of the '935 patent and claim 1 of the '916 patent;
2. Preliminary and permanently enjoin the Promethean Defendants, individually and together, and their officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from further infringing the '935 patent and '916 patent;
3. Award FlatFrog actual damages adequate to compensate for infringement by the Promethean Defendants (individually and together) pursuant to 35 U.S.C. § 284, in an amount to be determined at trial, as a result of their infringement of the '935 patent and '916 patent;
4. Award FlatFrog pre- and post-judgment interest on all damages awarded, as well as supplemental damages;
5. Find this to be an exceptional case and award FlatFrog its costs and attorneys' fees under 35 U.S.C. § 285;

6. Find that infringement by the Promethean Defendants (individually and together) has been and continues to be egregious and willful misconduct, and award FlatFrog enhanced damages for willful patent infringement under 35 U.S.C. § 284; and

7. Award and grant FlatFrog such other and further relief as the Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

FlatFrog respectfully requests a jury trial on all issues and matters triable by jury.

ASHBY & GEDDES

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Dated: October 16, 2020