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11 Attorneys for Plaintiffs  
12 JBF Interlude 2009 Ltd. and  
Interlude U.S., Inc. d/b/a eko

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **WESTERN DIVISION**  
16

17 QUIBI HOLDINGS, LLC

18 Plaintiff,

19 v.

20 INTERLUDE U.S., INC. d/b/a eko; and  
21 JBF INTERLUDE 2009 LTD. -  
ISRAEL,

22 Defendants.  
23  
24  
25  
26

Case No. 2:20-cv-2250-CAS(SKx)-  
LEAD

**FIFTH AMENDED COMPLAINT  
FOR:**

- 1) **BREACH OF IMPLIED  
CONTRACT**
- 2) **MISAPPROPRIATION OF  
TRADE SECRETS**
- 3) **PATENT INFRINGEMENT**
- 4) **CORRECTION OF PATENT  
INVENTORSHIP**
- 5) **DECLARATORY  
JUDGMENT OF PATENT  
OWNERSHIP**

**DEMAND FOR JURY TRIAL**

1 JBF INTERLUDE 2009 LTD, and  
2 INTERLUDE U.S., INC. d/b/a eko

3 Plaintiffs,

4 v.

5 QUIBI HOLDINGS, LLC, WNDRCO  
6 HOLDINGS, LLC, QBI HOLDINGS,  
7 LLC, NEW QBI, LLC, CLIFTON L.  
8 SMITH, JR., JOSEPH BURFITT,  
9 ROBERT A. POST, JR., BLAKE  
10 BARNES, ERIC BUEHL, AND  
11 JEFFREY KATZENBERG,

12 Defendants.

Case No. 2:20-cv-2299-CAS(SKx)-  
CONSOLIDATED

1 Plaintiffs JBF Interlude 2009 Ltd. and Interlude U.S., Inc. d/b/a eko  
 2 (collectively, “Plaintiffs” or “eko”), bring this Fifth Amended Complaint against  
 3 Defendants Quibi Holdings, LLC (“Quibi”), QBI Holdings, LLC (“QBI  
 4 Holdings”), New QBI, LLC (“New QBI”), WndrCo Holdings, LLC (“WndrCo”),  
 5 Quibi employees Clifton L. Smith Jr., (“Smith”), Joseph Burfitt (“Burfitt”), Robert  
 6 A. Post, Jr. (“Post”), Blake Barnes (“Barnes”), Eric Buehl (“Buehl”), and Quibi  
 7 founder Jeffrey Katzenberg (“Katzenberg”) (collectively, “Defendants”), for breach  
 8 of implied contract, misappropriation of trade secrets, patent infringement,  
 9 correction of patent inventorship, and declaratory judgment of patent ownership, as  
 10 follows.

### 11 **NATURE OF THE ACTION**

12 1. This is a case to stop the on-going irreparable harm to eko based on  
 13 Quibi’s theft of eko’s ideas, trade secrets and proprietary technology effected  
 14 through Smith, Burfitt, Katzenberg and others. Defendants have attempted to steal  
 15 a number of ideas core to eko’s business, and have launched a business claiming the  
 16 ideas and technologies as their own.

### 17 **THE PARTIES**

18 2. Plaintiff JBF Interlude 2009 Ltd. (“JBF”) is an Israeli corporation with  
 19 its principal and usual place of business located in Tel Aviv, Israel. JBF Interlude  
 20 2009 Ltd. is the parent corporation of Plaintiff Interlude U.S., Inc. (“Interlude  
 21 U.S.”), a Delaware corporation with its principal and usual place of business  
 22 located at 235 Park Avenue South, New York, New York. The two companies  
 23 collectively do business as eko, a media and technology company that specializes in  
 24 the distribution of interactive multimedia videos on its proprietary technology  
 25 platform.

26 3. Upon information and belief, Defendant Quibi is a Delaware  
 27 corporation with its principal place of business located at 6555 Barton Avenue, Los  
 28 Angeles, California. Quibi, which was formerly known as WCI One, LLC, is also a

1 media and technology company that focuses on distributing short-form mobile  
2 videos.

3 4. Upon information and belief, Defendant WndrCo is a Delaware  
4 corporation with its principal place of business located at 9355 Wilshire Boulevard,  
5 Beverly Hills, California 90210. WndrCo's operations including acting as a holding  
6 company that invests in and acquires consumer technology businesses.

7 5. Upon information and belief, Defendant QBI Holdings is a Delaware  
8 limited liability company, with its principal place of business located at 6555 West  
9 Barton Avenue, Los Angeles, California. QBI Holdings is [REDACTED].

10 6. Upon information and belief, Defendant New QBI is a Delaware  
11 limited liability company, with its principal place of business located at 6555 West  
12 Barton Avenue, Los Angeles, California. Following Quibi's transaction with a  
13 subsidiary of Roku, Inc., New QBI [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] Upon information and belief, QBI Holdings and New  
17 QBI have stepped into the shoes of Quibi Holdings, LLC, pursuant to that  
18 company's reorganization (QBI Holdings, New QBI, and Quibi Holdings, LLC,  
19 collectively hereinafter to the extent appropriate for successor liability, "Quibi").

20 7. Upon information and belief, Defendant Clifton L. Smith, Jr.  
21 ("Smith") is an individual employed by Quibi in Content Innovation, and a resident  
22 of this District.

23 8. Upon information and belief, Defendant Joseph Burfitt ("Burfitt") is  
24 an individual employed by Quibi holding the title of Product Manager, and a  
25 resident of this District.

26 9. Upon information and belief, Defendant Robert A. Post, Jr. ("Post") is  
27 an individual employed by Quibi holding the title of Chief Technology Officer, and  
28 a resident of this District.

10. Upon information and belief, Defendant Blake Barnes (“Barnes”) is an individual previously employed by Quibi as Chief Product Officer, and a resident of San Francisco, California.

11. Upon information and belief, Defendant Eric Buehl (“Buehl”) is an individual employed by Quibi as an engineer, and a resident of this District.

12. Upon information and belief, Defendant Jeffrey Katzenberg (“Katzenberg”) is the founder of Quibi, and a resident of this District.

### **JURISDICTION AND VENUE**

13. This is a civil action for breach of implied contract ; misappropriation of trade secrets under the Defend Trade Secrets Act, 18 U.S.C. § 1836, *et seq.*; patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*; for correction of inventorship under 35 U.S.C. § 256; and for Declaratory Judgment of patent ownership, 28 U.S.C. §§ 2201 and 2202.

14. This Court has original subject matter jurisdiction over eko’s claims for patent infringement and correction of inventorship pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 35 U.S.C. §§ 256 and 271 *et seq.* Subject matter jurisdiction exists for eko’s federal trade secret claim pursuant to 18 U.S.C. § 1836(c) and 28 U.S.C. § 1331, because eko has asserted a claim for misappropriation of trade secrets under the Defend Trade Secrets Act of 2016 (“DTSA”). The Court also has subject matter jurisdiction over eko’s Declaratory Judgment claim under 28 U.S.C. §§ 2201 and 2202.

15. This Court has supplemental jurisdiction over eko’s claim for breach of implied contract pursuant to 28 U.S.C. § 1367.

16. This Court has personal jurisdiction over Quibi because its headquarters are in Los Angeles, California, and it therefore resides in this District.

17. This Court has personal jurisdiction over WndrCo because its headquarters are located in Beverly Hills, California, and therefore it resides in this District.

1           18. This Court has personal jurisdiction over Burfitt, Smith, Post, Buehl,  
 2 and Katzenberg because, on information and belief, each resides in this District and  
 3 a substantial portion of their acts committed in furtherance of the violations alleged  
 4 herein, took place within this District. This Court has personal jurisdiction over  
 5 Barnes because, on information and belief, he resides within the State of California,  
 6 he had been employed by Quibi which is based in this District, and a substantial  
 7 portion of the acts alleged herein took place within this District.

8           19. Venue is proper in this judicial district for eko's claims for patent  
 9 infringement and correction of inventorship pursuant to 28 U.S.C. §§ 1391(c) and  
 10 1400(b). Quibi's headquarters are in Los Angeles, California, and it therefore  
 11 resides in this judicial district pursuant to 28 U.S.C. § 1400(b). Venue is proper in  
 12 this judicial district for eko's federal trade secret misappropriation claim under the  
 13 DTSA, breach of implied contract claim, and claims for correction of inventorship  
 14 and ownership, under 28 U.S.C. § 1391(b)(2), because a substantial part of the  
 15 events giving rise to the claim occurred in the State of California and within this  
 16 District.

### 17                           **FACTS COMMON TO ALL CAUSES OF ACTION**

#### 18   *eko's Groundbreaking Innovation*

19           20. Eko is an innovative media and technology company that, since 2010,  
 20 has been developing and obtaining intellectual property protection for its inventions  
 21 in streaming and interactive media, seamless video streaming, video player  
 22 technology, user experience and video authoring. Eko provides, for example, an  
 23 interactive video platform in which consumers can optimize video viewing on a  
 24 mobile device, such as a mobile phone.

25           21. Eko has invested substantially in research and development of the  
 26 technologies of its platform, including spending tens of millions of dollars and  
 27 thousands of man-hours to develop groundbreaking technology related to its  
 28 seamless horizontal-to-vertical switching technology for mobile devices. The

1 sensitive, confidential, and proprietary information and trade secrets developed  
2 through this investment enable eko to succeed in its business.

3 22. At all times, eko has taken reasonable measures to protect the  
4 confidentiality of its proprietary trade secret information, including storing its  
5 source code on password-protected servers and disclosing it only on a need-to-  
6 know or protected NDA basis. Eko requires, for example, that all employees and  
7 third parties with access to eko's proprietary information execute confidentiality  
8 and non-disclosure agreements before being granted access.

9 23. Eko also protects its technology through patent protection. To date,  
10 eko has over 18 pending patent applications and 15 issued patents, including the  
11 eko patents asserted in this lawsuit.

12 24. Plaintiff JBF Interlude 2009 Ltd. is the owner by assignment of all  
13 right, title and interest, including the right to sue for damages, in and to United  
14 States Patent No. 10,460,765 ("the eko '765 Patent"), entitled "Systems and  
15 Methods for Adaptive and Responsive Video," which was duly and legally issued  
16 on October 29, 2019. The '765 Patent issued from U.S. Patent Application No.  
17 14/835,857, filed on August 26, 2015. The '857 application published as U.S.  
18 Patent Publication No. 2017/0062012 on March 2, 2017. A true and correct copy  
19 of the '765 Patent is attached hereto as **Exhibit 1**.

20 25. Plaintiff JBF Interlude 2009 Ltd. is the owner by assignment of all  
21 right, title and interest, including the right to sue for damages, in and to United  
22 States Patent No. 8,600,220 ("the eko '220 Patent"), entitled "Systems and methods  
23 for loading more than one video content at a time," which was duly and legally  
24 issued on December 3, 2013. The '220 Patent issued from U.S. Patent Application  
25 No. 13/437,164, filed on April 2, 2012. The '164 application published as U.S.  
26 Patent Publication No. 2013/0259442 on October 3, 2013. A true and correct copy  
27 of the '220 Patent is attached hereto as **Exhibit 2**.

28 26. Plaintiff JBF Interlude 2009 Ltd. is the owner by assignment of all



1 right, title and interest, including the right to sue for damages, in and to United  
 2 States Patent No. 10,418,066 (“the eko ’066 Patent”), entitled “System and Method  
 3 for Synchronization of Selectably Presentable Media Streams,” which was duly and  
 4 legally issued on September 17, 2019. The ’066 Patent issued from U.S. Patent  
 5 Application No. 14/984,821, filed on December 30, 2015. The ’821 application  
 6 published as U.S. Patent Publication No. 2016/0217829 on July 28, 2016, and is a  
 7 continuation of U.S. Patent Application No. 13/838,830, filed on March 15, 2013,  
 8 now U.S. Patent No. 9,257,148. A true and correct copy of the ’066 Patent is  
 9 attached hereto as **Exhibit 3**.

10 27. The ’765 Patent, the ’220 Patent and the ’066 Patent, are referred to  
 11 herein collectively as the “Patents in Suit.”

### 12 *Eko’s Technology Platform*

13 28. Smart phones and mobile devices are typically rectangular in shape,  
 14 and held in users’ hands in “portrait” orientation such that the longer sides are  
 15 roughly upright, perpendicular to the ground. But when used to view video  
 16 presentations, users often hold the phones in “landscape” orientation such that the  
 17 longer sides are roughly parallel to the ground. “Portrait” orientation is sometimes  
 18 referred to as “vertical” orientation, and “landscape” orientation is sometimes  
 19 referred to as “horizontal” orientation.

20 29. Beginning in at least 2012, eko began developing technology to take  
 21 optimal advantage of the two orientations. The result is a technology platform  
 22 especially suitable for mobile devices that permits seamless transitions from one  
 23 orientation to the other and back, while still utilizing full screen space in either  
 24 orientation. Eko’s technology platform furthermore allows users to customize their  
 25 viewing experiences in real time by providing different video content for portrait  
 26 and landscape viewing. While viewing a crowd scene in landscape orientation, for  
 27 example, a user can turn the phone to portrait orientation and focus on one of the  
 28 characters within the crowd, or see the scene from that character’s individual



1 perspective. Or, the portrait-oriented scene could provide entirely different content,  
2 such as a flashback to a character's past, or even the unrelated real-time broadcast  
3 of a sporting event. The creative combinations are endless, and allow content-  
4 creators and users alike to take advantage of the ease at which mobile devices may  
5 rotated to provide a unique and customized viewing experience for the user.

6 30. Eko sought and obtained protection of its ground-breaking technology  
7 via patents, while retaining certain optimizations as trade secrets. Eko's '765  
8 Patent (the "Portrait/Landscape Adaptive Video Patent"), for example, is directed to  
9 video that is seamlessly transitioned from one video to another, based on the  
10 orientation of the phone, such as rotation from portrait to landscape. Eko's  
11 '220 Patent is directed to allowing a user to create their own video experience in  
12 real time through user interaction, e.g., by turning the phone's orientation (the  
13 "Selective Video Presentation Patent"). Eko's '066 Patent is directed to  
14 maintaining audio synchronization when two or more videos are selectably  
15 presented (the "AV Sync Patent").

16 31. One way of seamlessly transitioning video from portrait to landscape  
17 is by way of eko's Optimized Real Time Switching ("ORTS") trade secret method  
18 of [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]. This enables the mobile device [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]. Using ORTS results in a visually unique user

25 experience, allowing the optimized real time switching between portrait and  
26 landscape videos. Not visible from viewing the finished result is the underlying  
27 ORTS technology. ORTS is maintained as a trade secret, and is not disclosed in  
28 eko's '765 Patent or its other patents.

*Eko's Interactions With Katzenberg, WndrCo, and Quibi*

32. Eko's co-founder, Jonathan ("Yoni") Bloch, demonstrated certain non-confidential aspects of eko's technology platform in a meeting with Jeffrey Katzenberg in March 2017, and as more fully set forth below, non-public aspects and ideas as well. During the meeting, Katzenberg stated that he was interested in obtaining an ownership stake in four to five companies that would be held by WndrCo, where he is a founding partner.

33. Relatedly, on March 23, 2017 following that meeting, Katzenberg reached out to Bloch via email, and stated that he was "happy to continue the conversation in LA or NYC." Katzenberg further stated that "[I] would like to begin to get my partners up to speed" and requested that Bloch send him "a deck and any materials I can share with them[.]" In this email, Katzenberg not only copied his partners using the address "[team@wndrco.com](mailto:team@wndrco.com)," Katzenberg used his official WndrCo email address to communicate with Bloch. A true and correct copy of this email is attached hereto as **Exhibit 4**.

34. In response, and with both sides understanding that he was doing so as part of the same pitch begun during the earlier meeting, Bloch forwarded Katzenberg and WndrCo certain non-confidential materials including a link to an eko "sizzle" reel that demonstrated a mobile phone playing different cuts of eko's show, "That Moment When," whose video stream switched between landscape and portrait orientations in accordance with the rotation between landscape and portrait orientations of the mobile phone playing the video, and while still filling the screen, starting at around the 1:10 time mark (eko's "portrait-to-landscape rotation technology"). As more fully set forth below, Quibi now touts this very feature as its own under the name, "Turnstyle."

35. Instead of entering into a business deal with eko or investing in eko, Katzenberg and WndrCo, either individually or together, founded Quibi a few months later on or about October 18, 2017. Quibi's corporate filings make clear

1 that WndrCo played a substantial role in Quibi's formation. Initially named WCI  
2 One, LLC ("WCI One"), the company changed its name to Quibi Holdings, LLC,  
3 on May 16, 2019. Before the name change, however, WCI One reported WndrCo  
4 as its official manager in a filing with the California Secretary of State. Further,  
5 according to its filing, WCI One, WndrCo, and Quibi's CEO Margaret Whitman,  
6 all shared the same business address at 9355 Wilshire Blvd., Suite 400 Beverly  
7 Hills, California 90210. Attached hereto as **Exhibit 5** is a true and correct copy of  
8 WCI One's Statement of Information filed with the California Secretary of State on  
9 July 23, 2018.

10 36. In addition to managing Quibi and sharing an address with Quibi,  
11 WndrCo contributed capital to Quibi. On information and belief, WndrCo invested  
12 about \$100 million in Quibi.

13 37. Quibi's stated goals include the creation of videos that take advantage  
14 of the portrait and landscape orientations of mobile devices. Katzenberg wanted to  
15 make these videos, in his words, "beautiful," but did not have any technology with  
16 which to do so.

17 38. Eko, however, did have such technology, including the technology of  
18 the patents-in-suit and ORTS trade secret technology. From time to time  
19 throughout 2019, eko engaged in good faith discussions to sell Quibi on using  
20 Eko's technology platform to host Quibi's "quick bite" videos. Eko understood,  
21 based on Quibi's statements to them, that Quibi did not have its own technology  
22 capable of seamlessly transitioning multiple videos from portrait to landscape.

23 39. In February 2019, for example, eko met in Los Angeles with Quibi and  
24 explored, among other things, whether Quibi wished to license eko's interactive  
25 technology platform for Quibi's proposed business, which would focus on short  
26 form video for mobile devices (i.e. "quick bites"). Quibi informed eko that as of  
27 that time, Quibi had not yet built any applications for that business focus.

28 40. Another of these meetings occurred in March 2019 at eko's offices in

1 New York. During the meeting, Quibi showed Eko a demonstration where videos  
2 on mobile devices would appear to transition from landscape mode to portrait mode  
3 while still using the full screen. Quibi explained these as non-operable, mere  
4 simulations used to “wow” investors, and gave Eko assurances that Quibi did not  
5 actually have the technology. While the Eko representatives in attendance could not  
6 determine from the simulation whether Eko’s ORTS trade secret was being used,  
7 the demo appeared to utilize the invention claimed in the Eko ’765 Patent. Eko  
8 reminded Quibi that it had pending patent applications covering Eko’s technology  
9 platform and Quibi would need a license to use it. This included a patent  
10 application that had been filed August 26, 2015, and resulted in the issuance of the  
11 Eko ’765 Patent. Eko thus persisted throughout 2019 in seeking to license its  
12 technology platform to Quibi, and would have had no incentive to do so had it  
13 known Quibi had its own technology with identical functionality.

14 41. It thus came as a shock to Eko in January 2020 that Quibi not only had  
15 portrait-to-landscape rotation technology it touted as Quibi’s own “Turnstyle”  
16 feature, but that Turnstyle infringed Eko’s patented technology and misappropriated  
17 Eko’s ORTS trade secret. The revelation came about via Quibi’s keynote  
18 presentation of Turnstyle at the January 2020 CES trade show in Las Vegas. For  
19 the centerpiece of its keynote, Quibi touted Turnstyle as its own, but it was the  
20 exact same technology Eko had previously disclosed under NDA to certain Quibi  
21 employees (as more fully set forth below), and the technology Quibi told Eko it was  
22 not actually pursuing. Quibi continued the ruse up until the day prior to Quibi’s  
23 CES presentation, when during a meeting with Eko and despite Eko’s requests that  
24 he preview for them Quibi’s presentation, Defendant Smith would not say what  
25 Quibi intended to demonstrate the next day.

26 42. Subsequent review of a video of Quibi’s presentation revealed to Eko  
27 for the first time Quibi’s misappropriation of Eko’s ORTS trade secret and Quibi’s  
28 patent infringement. [REDACTED]

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[REDACTED]

[REDACTED]

***Quibi’s Misappropriation Of Eko’s ORTS Trade Secret***

43. Defendants Smith and Burfitt, two employees of Quibi, are where Quibi’s theft began. Both Burfitt and Smith previously worked for Snapchat, Inc. (“Snapchat”)<sup>1</sup>, which on or about December 9, 2015, entered into a non-disclosure agreement with eko (the “Snapchat NDA”). The Snapchat NDA defined “confidential information” as including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Snapchat NDA required Snapchat and its employees, including Burfitt and Smith, to maintain the confidentiality of information disclosed as eko’s confidential technology, which Burfitt and Smith understood was valuable as well as proprietary to eko. The Snapchat NDA specified that either party receiving confidential information from the disclosing party would protect it against unauthorized use or disclosure, and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>1</sup> Snapchat, Inc. later changed its name to Snap, Inc.

1 [REDACTED]  
2 [REDACTED]  
3 44. This approach was consistent with eko's approach to protection of its  
4 technology trade secrets, which includes storage of code on password protected  
5 servers, requiring non-disclosure agreements with third parties, and training of its  
6 employees not to use or disclose its confidential, commercially valuable  
7 information.

8 45. In the course of their employment at Snapchat, and under the  
9 Snapchat NDA, Burfitt and Smith had not only been provided access to eko's  
10 ORTS trade secret and other confidential and proprietary aspects of eko's  
11 technology platform, but were each copied on emails and other communications,  
12 and participated in workshops by which eko disclosed and taught them eko's trade  
13 secret ORTS, as well as other confidential and proprietary technology underlying  
14 eko's technology platform. The purpose of the workshops and disclosures was to  
15 permit integration of eko's video content onto Snapchat's platform. In addition to  
16 having received instruction in such trade secrets, Burfitt and Smith had been  
17 provided with "debugging links" to demo videos that enabled them and other  
18 Snapchat employees to obtain, understand and use eko's ORTS trade secret. All of  
19 Snapchat's employees who participated, including Burfitt and Smith, were each  
20 required under the Snapchat NDA to maintain the confidentiality of that  
21 information and not use it for any purpose other than as expressly permitted by eko.

22 46. Included in eko's trade secret technology provided to Burfitt, Smith,  
23 and others at Snapchat, were trade secrets key to the ability of a video streamed to a  
24 mobile device to seamlessly transition from vertical (or "portrait") orientation, to  
25 horizontal (or "landscape") orientation, while filling the entirety of the screen.  
26 Portions of that technology have issued to eko as patents, including the Patents in  
27 Suit. Other aspects of eko's technology platform remain protected as trade secrets,  
28 including ORTS.

1           47. In addition to being taught eko's ORTS trade secret and other  
2 confidential and proprietary technologies underlying eko's technology platform,  
3 Smith signed up for eko's technology platform, Eko Studio (previously known as  
4 "Treehouse"), and used it, including its "parallel node" feature, to experiment with  
5 videos that used eko's real-time switching technology after eko had conveyed its  
6 capabilities to the Snapchat team. Smith later mysteriously tried to eliminate  
7 records of his doing so.

8                   ***Quibi's Development Of Turnstyle Using Eko's ORTS***

9           48. Smith announced his intent to join Quibi in September 2018, and his  
10 official start date was October 15, 2018.

11           49. Quibi's Chief Technology Officer, Robert A. Post, Jr., had joined  
12 Quibi only a short time earlier, as of September 10, 2018. At the time of Post's  
13 arrival, Quibi had only one other engineer.

14           50. Burfitt joined Quibi officially as of October 29, 2018, but even before  
15 that, at least as early as October 16, 2018, was engaged in technology discussions  
16 with Quibi.

17           51. Prior to Burfitt's and Smith's engagement with Quibi, Quibi lacked the  
18 Turnstyle technology and at most only had a handful of concepts being considered  
19 as possibilities.

20           52. Very shortly following Burfitt's and Smith's arrival at and interaction  
21 with Quibi, however, Quibi had narrowed its focus to a concept that became  
22 Turnstyle, demonstrated a mock-up of the concept to Quibi's board of directors at  
23 its November 8, 2018 board meeting, and after the holidays, by February 2019, had  
24 a working prototype of the concept.

25           53. Quibi's incredibly rapid development and implementation of Turnstyle  
26 was through misappropriation and use of eko's ORTS trade secret, which Burfitt  
27 and Smith had been taught under the Snapchat NDA.

28           54. Smith and Burfitt, who by that time were Quibi employees, visited



1 eko's offices in New York in March 2019 and engaged in discussions whereby eko  
2 continued to seek Quibi as a customer to license eko's technology platform. To  
3 protect the confidentiality of eko's proprietary technology during its licensing  
4 discussions with Quibi, Quibi entered into non-disclosure agreements with eko via  
5 Smith and Burfitt (the "Quibi NDA"), promising confidentiality and non-use of  
6 eko's disclosed trade secrets and confidential information. A true and correct copy  
7 of the NDA signed by Smith is attached as **Exhibit 6**. A true and correct copy of  
8 the NDA signed by Burfitt is attached as **Exhibit 7**.

9 55. Among other obligations, Quibi, through Smith and Burfitt, committed  
10 that they:

- 11 • "Shall not, without the express prior written consent of the Discloser,  
12 exploit or make use, directly or indirectly, and/or copy, duplicate or  
13 reproduce such Confidential Information, for any other purpose other than  
14 the purpose of evaluating from the possibility of entering into a business  
15 transaction with the Discloser; and for fulfilling its obligations under any  
16 agreement entered between The Discloser and the Recipient in connection  
17 thereto;"
- 18 • "Shall refrain, either by itself or through any third party, from analyzing  
19 or attempting to analyze the Confidential Information or any part of it,  
20 including by way of disassembly, decompiling or reverse engineering any  
21 samples, prototypes, software or other tangible objects, in order to  
22 determine the composition, design or specifications thereof;"
- 23 • "Shall protect and safeguard the Confidential Information against any  
24 unauthorized use, disclosure, transfer or publication with at least the same  
25 degree of care as it uses for its own confidential or proprietary  
26 information, but in no event with less than reasonable care;"
- 27 • "Shall not use any Confidential Information to compete or obtain any  
28 competitive or other advantage with respect to the Discloser;"

- 1 • “Shall restrict disclosure of the Confidential Information to those of its  
2 directors, officers, employees or representatives who clearly have a need-  
3 to-know such Confidential Information, and then only to the extent of  
4 such need-to-know for of the specific purposes of this Agreement;”
- 5 • “Shall assume full responsibility for enforcing this Agreement and shall  
6 take appropriate measures with all persons acting on its behalf to ensure  
7 that such persons are bound by a like covenant of confidentiality, and  
8 informing such persons that such Confidential Information shall not be  
9 disclosed except as provided herein;” and
- 10 • “Shall notify Discloser upon discovery of any unauthorized use or  
11 disclosure of the Confidential Information and take reasonable steps to  
12 regain possession of the Confidential Information and prevent further  
13 unauthorized actions or other breach of this Agreement.”

14 56. Burfitt’s and Smith’s disclosure to Quibi and use of eko’s trade secrets  
15 for Turnstyle were in breach and violation not only of their obligations under the  
16 Snapchat NDA, but also the NDAs they each signed with eko.

17 57. Unbeknownst to eko, Quibi had secretly applied for a patent on the  
18 Turnstyle feature depicted in the simulation they claimed was only for use in  
19 gaining investors’ attention. The application led to the issuance of U.S. Patent  
20 No. 10,554,926 (“the Quibi ’926 Patent”), a true and correct copy of which is  
21 attached hereto as **Exhibit 8**. The Quibi ’926 Patent is directed to the same  
22 technology eko had previously disclosed under NDA to Snapchat, including to  
23 Burfitt, Smith, and others there. By that time, Burfitt and Smith worked for Quibi  
24 and were listed as inventors on the Quibi ’926 Patent, in addition to Post, Barnes,  
25 and Buehl. Despite the stunning similarity between the Quibi ’926 Patent and eko’s  
26 earlier-filed ’765 Patent, of which Quibi was aware, including Burfitt’s and Smith’s  
27 knowledge of Eko’s patent applications as to the same technologies, Quibi did not  
28 refer anywhere to eko’s patents or applications.

1           58. On information and belief, on or about July 16, 2019, Post, Barnes,  
2 Burfitt, Buehl, and Smith assigned their interests in the application that led to the  
3 issuance of the Quibi '926 Patent to WCI One, LLC. On information and belief, on  
4 or about October 22, 2019, WCI One, LLC assigned its interest in the same  
5 application to Quibi Holdings, LLC. On information and belief, on or about  
6 January 6, 2021, Quibi Holdings, LLC assigned the Quibi '926 Patent to New QBI,  
7 LLC.

8                           ***Eko's Attempts To Get Quibi To Cease And Desist***

9           59. On January 28, 2020, within weeks after Quibi's presentation of  
10 Turnstyle at CES, eko wrote to Quibi demanding that Quibi cease and desist from  
11 any unauthorized use of eko's proprietary technology. **Exhibit 9** (January 28 Letter  
12 from eko). However, before Quibi responded, Quibi obtained issuance of its '926  
13 Patent on February 4, 2020. When eko examined the claims and disclosures of the  
14 Quibi '926 Patent, which claimed priority to a provisional application Quibi filed  
15 only as early as March 2019, eko was shocked to discover that they corresponded  
16 almost exactly with eko's '765 Patent disclosures, filed years earlier in August  
17 2015.

18           60. Quibi dismissively responded to eko's letter on February 10, 2020,  
19 denying any infringement by Quibi. **Exhibit 10** (February 10 Letter from Quibi).  
20 Quibi claimed that Smith was a non-technical person and disputed Quibi's  
21 infringement allegations.

22           61. Quibi's statements were false. Smith is a listed inventor on the Quibi  
23 '926 Patent, as is Burfitt. And the very noninfringement argument put forward by  
24 Quibi in **Exhibit 10** was inconsistent with Quibi's own statements to the press and  
25 in the Quibi '926 Patent with respect to how Quibi's Turnstyle technology worked.  
26 In fact, the press statements and the Quibi '926 Patent only confirmed that Quibi's  
27 Turnstyle was infringing.

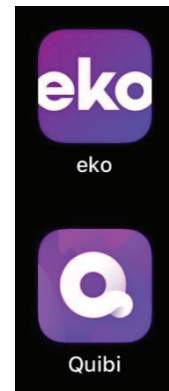
28           62. As a result, eko replied to Quibi's February 10 letter on March 6,

2020, reiterating its concerns and providing Quibi’s counsel with additional facts that eko had uncovered. **Exhibit 11** (March 6, 2020 Letter to Quibi). In the letter, eko requested that Quibi respond to eko’s concerns. Instead of replying by letter, Quibi responded by filing suit solely against Interlude U.S., despite the eko ’765 Patent being held by JBF as assignee.

63. Adding insult to injury, even in the face of eko’s complaint, Quibi knowingly proceeded on April 6, 2020, with the launch of its infringing products and services. Quibi did so not only using the trade secret technology it had misappropriated from eko and that is infringing eko’s patents, but also using eko’s distinctive white letter-on-purple color scheme in its logo. As shown below, Quibi previously used a blue-to-red “fade” motif with its stylized “Q” mark against a black background. Quibi’s post-launch logo color scheme, however, mimics eko’s white letter-on-purple background color scheme.



Quibi’s pre-launch logo



Quibi’s post-launch logo, compared to eko’s logo

64. Because Quibi refused to cooperate with eko or voluntarily rectify its blatant and egregious violation of eko’s intellectual property rights, and has taken that one step further by using eko’s color scheme as well as copying its technology, eko seeks relief from this Court to enjoin Quibi from using eko’s ORTS trade secret, from infringing the Patents in Suit, and to require Quibi to assign the Quibi ’926 Patent to eko because any innovation underlying the Quibi ’926 Patent is

1 eko's, not Quibi's. Eko further seeks an award of damages and attorneys' fees for  
2 the injury it has incurred as a result of Defendants' breaches, trade secret  
3 misappropriation and willful infringement of the Patents in Suit.

4 ***Sale to Roku, Inc.***

5 65. On January 8, 2021, Quibi announced that it entered into a transaction  
6 with a wholly-owned subsidiary of Roku, Inc. ("Roku"). Specifically, "[f]ollowing  
7 an internal restructuring by Quibi, Roku acquired Quibi Holdings, LLC, the  
8 company that holds all of Quibi's content distribution rights."<sup>2</sup>

9 66. As part of the internal restructuring, Quibi formed a new holding  
10 company ("QBI Holdings"), which became [REDACTED].

11 67. Thereafter, Quibi was divided into two companies: (a) Quibi Holdings,  
12 LLC, which [REDACTED]

13 [REDACTED] and (b) New QBI, which [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 68. As Quibi represented to the Court in filings, QBI Holdings and New  
18 QBI have consented to being named as defendants in this lawsuit.

19 **CAUSES OF ACTION**

20 **COUNT I – BREACH OF IMPLIED CONTRACT**

21 ***(Against Katzenberg and WndrCo)***

22 69. Eko incorporates by reference the allegations contained in paragraphs  
23 1-10, 11-19, 26-27, and 30-34 of this Complaint, as if fully set forth herein.

24 70. As alleged above, on or about March 22, 2017, Bloch met with  
25 Katzenberg in Los Angeles, California, at which meeting Katzenberg expressed a  
26 desire to acquire eko and/or its technology. Katzenberg stated that he was  
27

28 <sup>2</sup> <https://ir.roku.com/news-releases/news-release-details/roku-acquires-quibis-global-content-distribution-rights>

1 interested in obtaining an ownership stake in four to five companies that would be  
2 held by his company, WndrCo. Bloch's presentation included an animation  
3 showing an evolution of people watching content in a linear fashion to people  
4 watching in an engaged, interactive fashion on mobile devices (a plot line similar to  
5 how Quibi later promoted itself). Bloch's presentation also included what were at  
6 the time non-public aspects of eko's technology platform, including aspects of  
7 eko's interactive storytelling technology, and how the ability to switch between  
8 videos could be used to provide non-linear story plots that varied with a user's  
9 selections. A story could diverge to telling it from a different character's point of  
10 view, or using one of two or more different videos to show a flashback to a  
11 different or earlier aspect of a character's life, or to alter the plot line entirely. The  
12 presentation included Bloch showing Katzenberg several then non-public videos  
13 that embodied eko's interactive storytelling technology, showing, for example,  
14 sports cars and articles of clothing that could change colors or accessories  
15 interactively; musical performances interactively switching among performers and  
16 musical numbers; and a "one-on-one" interactive demonstration featuring a  
17 professional basketball team. These features were not disclosed in the patent  
18 application published on March 2, 2017, which later issued as the '765 Patent.  
19 Eko's filing of said patent application manifested its intent that users of eko's  
20 technology would have to pay for such use. In addition, eko's patent filing was not  
21 intended to pre-empt protection of its technology that was not publicly disclosed or  
22 claimed by such patent or its related application. Rather, it was to make clear eko  
23 had valuable technology that it sought to protect so that only authorized users could  
24 make use of its technology. Publication of the patent put the public on notice that  
25 eko was seeking to protect its technology, and that others should not use it without  
26 paying for it. Bloch's mention of eko's pending patent applications to Katzenberg  
27 served a similar purpose. If Katzenberg and WndrCo wanted to use eko's non-  
28 public ideas and concepts, they would need to pay for them.



1           71. Relatedly, Katzenberg reached out to Bloch following the meeting,  
2     inviting him to pitch Katzenberg and his partners at WndrCo to consider a business  
3     deal with eko related to its mobile device video concepts. Katzenberg stated in an  
4     email, “I was excited to learn about your business and get the chance to see some of  
5     the amazing products you’ve already created.” So inspired was Katzenberg that he  
6     went on to say, “As discussed, given what my partners and I are building at  
7     WndrCo and assuming it makes sense to you, I’m happy to continue the  
8     conversation in LA or NYC. If so, i [sic] would like to begin to get my partners up  
9     to speed. If you have a deck and any materials I can share with them, that would be  
10    great.” Katzenberg corresponded with Bloch using his WndrCo email address and  
11    copied his partners at the address “team@wndrco.com.” A true and correct copy of  
12    this email is attached hereto as **Exhibit 4**. Thereafter in response, Bloch provided  
13    additional materials to WndrCo and Katzenberg, including those supporting the  
14    non-public ideas and concepts previously discussed.

15           72. In light of the above facts, including Katzenberg’s statement that he  
16    and WndrCo were interested in acquiring some or all of eko, and/or aspects of its  
17    technology, his March 22, 2017 request for additional materials to share with his  
18    WndrCo partners, the fact that he and WndrCo were shown non-public aspects of  
19    eko’s technology platform and interactive storytelling technology, and his long  
20    involvement with the entertainment industry, Katzenberg and WndrCo knew or  
21    should have known that eko was sharing its materials and technology with the  
22    understanding that Katzenberg and WndrCo would need to compensate eko for any  
23    use that they or their companies, including Quibi, would make of them. Katzenberg  
24    and WndrCo knew or should have known that their use (and that of the company  
25    that they later formed to take advantage of these ideas, Quibi) of eko’s non-public  
26    ideas was conditioned on Katzenberg’s and WndrCo’s agreement to pay for them,  
27    e.g., by entering into a business deal with eko.

28           73. Instead of providing eko with compensation, however, Katzenberg and



1 WndrCo accepted and used eko's non-public ideas and concepts for interactive  
2 storytelling and founded Quibi around them, including them in its business and  
3 what he and Quibi call "Turnstyle." For example, in a promotional Wall Street  
4 Journal video titled "In the Elevator With Jeffrey Katzenberg," and released on  
5 October 17, 2017<sup>3</sup>, Joanna Stern, a technology journalist, inquired of Katzenberg  
6 about his new venture, "NewTV" (a placeholder name until the company was  
7 formally named Quibi), which focuses on content for smartphones. At around the  
8 0:39 time mark in the video, Ms. Stern asks Katzenberg whether she will need to  
9 view this content either in portrait or landscape mode, and Katzenberg informs  
10 Ms. Stern that his new company will allow her to view media on her smartphone in  
11 any orientation she prefers, and view "different content, different ways."  
12 Katzenberg's statement reflected at least the portrait to landscape rotation idea and  
13 technology concept provided at his request by Bloch, yet Katzenberg was in the  
14 video claiming it as his own. Katzenberg has in addition used and claims as his  
15 own, or as Quibi's, other of the non-public aspects of eko's interactive storytelling  
16 technology.

17 74. Neither Katzenberg nor WndrCo informed eko about the plans, and  
18 eko was unaware of the promotional Wall Street Journal video or other uses of  
19 eko's technology at least until after January 2020. Moreover, upon information and  
20 belief, Katzenberg did not implement eko's technology concepts and ideas in any  
21 feature or functional application until Quibi's "Turnstyle" feature, which Quibi  
22 announced and publicized as the centerpiece of its keynote on January 8, 2020 at  
23 CES. Thus, not only did Katzenberg and WndrCo consider eko's concept  
24 commercially valuable, but Katzenberg and WndrCo took and used eko's concept  
25 as their own, without compensation to eko.

26 75. Katzenberg, WndrCo, and Bloch had an implied understanding that  
27

28 <sup>3</sup> Available at <https://www.wsj.com/video/series/in-the-elevator-with/in-the-elevator-with-jeffrey-katzenberg/89E08C27-F36D-40C4-AC92-41F2EB6DF5C5>.

any exchanges between eko on the one hand, and Katzenberg and WndrCo on the other, were for the purpose of Katzenberg and/or WndrCo acquiring eko's technology or an ownership stake in eko. WndrCo was aware that Katzenberg held himself out to Bloch as negotiating on WndrCo's behalf, and did nothing to disaffirm Katzenberg's solicitation of non-public ideas from eko. Instead, WndrCo participated in the formation of Quibi, which in turn took and touted as Quibi's own, eko's non-public ideas that Bloch shared with the understanding that eko would be compensated for them. Despite the implied agreement to pay for using eko's non-public ideas, WndrCo participated in Quibi's founding and invested at least \$100 million in Quibi. Either through Katzenberg or in collaboration with him, WndrCo breach the implied contract with eko, and thereby was unjustly enriched, by developing and promoting, without compensation to eko, Turnstyle's features as Quibi's own intellectual property in accordance with the ideas and concepts that eko provided to Katzenberg and WndrCo.

76. As a result of Katzenberg and WndrCo's breach of implied contract, eko is entitled to the disgorgement of profits earned as a result of the breach and/or damages sufficient to compensate eko for the reasonable value of the work to Katzenberg and WndrCo and/or the worth of the technology based on the custom in the industry.

**COUNT II – MISAPPROPRIATION OF TRADE SECRETS UNDER THE**  
**DEFEND TRADE SECRETS ACT ("DTSA")**

***(Against Quibi, QBI Holdings, New QBI, Smith, and Burfitt)***

77. Eko incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint, as if fully set forth herein.

78. Eko owns and possesses confidential and trade secret information, including with respect to its ORTS trade secret as alleged above.

79. Eko's ORTS trade secret relates to products and services used, sold, and ordered in, or intended to be used, sold, and/or ordered in, interstate and foreign

1 commerce. Specifically, eko's ORTS trade secret is used by eko and customers  
2 throughout the United States.

3 80. Eko has taken reasonable measures to keep such information secret  
4 and confidential by, among other steps, limiting access to such information, storing  
5 eko's source code on password-protected servers, and requiring employees and  
6 third parties to abide by confidentiality agreements and observe eko's policy on  
7 protecting eko's proprietary and confidential information.

8 81. Eko's proprietary and confidential information derives independent  
9 economic value from not being generally known to and not being readily  
10 ascertainable through proper means by another person who could obtain economic  
11 value from the disclosure or use of the information. For example, a competitor  
12 such as Quibi with access to eko's trade secrets could and did in fact avoid having  
13 to invest the tens of millions of dollars and thousands of man-hours to research and  
14 develop its technology that eko invested in its technology platform, including eko's  
15 ORTS trade secret.

16 82. In violation of eko's rights, Defendants have willfully misappropriated  
17 eko's ORTS trade secret. Burfitt and Smith knowingly and deliberately disclosed  
18 eko's ORTS to their current employer, Quibi, which knew or should have known  
19 that Burfitt and Smith were using eko's trade secret information and technology for  
20 Quibi's benefit. In addition, Burfitt and Smith knowingly and deliberately  
21 disclosed other aspects of eko's then-confidential and trade secret technology to  
22 Quibi, enabling Quibi to apply for and claim such technology as its own, including  
23 that set forth in the Quibi '926 Patent.

24 83. Quibi, through at least Smith and Burfitt, and via the Quibi NDA,  
25 knew or should have known that the eko technology it received did not belong to  
26 Quibi and instead was owned by eko. In addition, Quibi knew or should have  
27 known this because it is well-known in the electronics and software industry that  
28 another company's technological information relating to a software platform are

1 often the confidential trade secrets and intellectual property of the platform's  
2 creator and protected by NDAs.

3 84. Quibi knew or should have known that prior to joining Quibi, Burfitt  
4 and Smith were employed at Snapchat where they had access to confidential  
5 information subject to non-disclosure obligations, including those under the  
6 Snapchat NDA.

7 85. Quibi thus knew or should have known that the trade secret  
8 information it received from eko, including through Burfitt and Smith, was derived  
9 from or through a person or persons who had used improper means to acquire it,  
10 was acquired under circumstances giving rise to a duty to maintain its secrecy or  
11 limit its use, and/or was derived from or through a person who owed a duty to eko  
12 to maintain its secrecy.

13 86. Defendants' misappropriation of eko's trade secrets has been  
14 intentional, knowing, willful, malicious, fraudulent, and oppressive.

15 87. Defendants have been unjustly enriched as a result of Defendants'  
16 misappropriation of trade secrets.

17 88. If Defendants' conduct is not remedied, Quibi will continue to  
18 misappropriate, disclose, and use eko's trade secret information for its own benefit,  
19 and to eko's detriment.

20 89. As a result of Quibi's, QBI Holdings', New QBI's, Smith's and  
21 Burfitt's misappropriation of trade secrets, eko has suffered damages, including  
22 actual, exemplary, and/or unjust enrichment damages to eko.

23 90. As the direct and proximate result of Defendants' conduct, eko has  
24 suffered and will continue to suffer irreparable injury. Because eko's remedy at  
25 law is inadequate, eko seeks, in addition to damages, permanent injunctive and  
26 other equitable relief, including unjust enrichment, to recover and protect its trade  
27 secrets and other legitimate business interests.

28 91. In the alternative, eko is entitled to a reasonable royalty for no longer

1 than the period of time the use of the trade secret could have been prohibited.

2 92. Eko is also entitled to an award of exemplary damages, unjust  
3 enrichment damages, and attorneys' fees.

4 **COUNT III – MISAPPROPRIATION OF TRADE SECRETS UNDER THE**  
5 **CALIFORNIA UNIFORM TRADE SECRETS ACT**

6 ***(Against Quibi, QBI Holdings, New QBI, Smith, and Burfitt)***

7 93. Eko incorporates by reference the allegations contained in paragraphs  
8 1 through 68 and 77 through 92 of this Complaint, as if fully set forth herein.

9 94. The conduct alleged as to Quibi, QBI Holdings, New QBI, Smith and  
10 Burfitt violative of the DTSA also constitutes violation of California's version of  
11 the Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426 et seq.

12 95. As a result of Quibi's, QBI Holdings', New QBI's, Smith's and  
13 Burfitt's misappropriation of trade secrets, eko has suffered damages, including  
14 actual, exemplary, and/or unjust enrichment damages to eko.

15 96. As the direct and proximate result of Defendants' conduct, eko has  
16 suffered and will continue to suffer irreparable injury. Because eko's remedy at  
17 law is inadequate, eko seeks, in addition to damages, permanent injunctive and  
18 other equitable relief, including unjust enrichment, to recover and protect its trade  
19 secrets and other legitimate business interests.

20 97. In the alternative, eko is entitled to a reasonable royalty for the  
21 Quibi's, QBI Holdings', New QBI's, Smith's and Burfitt's unauthorized disclosure  
22 or use of eko's trade secret.

23 98. Eko is also entitled to an award of exemplary damages, unjust  
24 enrichment damages, and attorneys' fees.

25 **COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 10,460,765**

26 ***(Against Quibi, QBI Holdings , and New QBI)***

27 99. Eko incorporates by reference the allegations contained in paragraphs  
28 77 through 92 of this Complaint, as if fully set forth herein.

1           100. The eko '765 Patent is valid and enforceable under United States  
2 patent laws.

3           101. The claims of the eko '765 Patent are directed to systems and methods  
4 that improve the technology involved in playing back video presentations. It is  
5 particularly useful for mobile devices, such as handheld phones and tablets which  
6 are easily and often rotated between vertical "portrait" and horizontal "landscape"  
7 views. Rather than crop or letterbox a presentation as did the prior art, eko's  
8 invention advances video display technology by providing seamless transition from  
9 a first state of a video presentation (e.g. vertical or "portrait") to a second state of  
10 video presentation (e.g. horizontal or "landscape"). In particular, the eko '765  
11 Patent describes simultaneously receiving two video presentations, playing the first  
12 video based on properties of a playback device, providing a mapping of media  
13 player height and width ranges, determining that a playback window has changed  
14 dimensions (e.g., from vertical to horizontal), and, using the mapping, seamlessly  
15 transitioning from the first video to the second video. The properties can include,  
16 for example, physical orientation, physical screen size, screen resolution, and/or  
17 window size of the device; the second video may include, for example, different  
18 video or audio content, different dimensional ratios, and/or different video quality;  
19 and the transition from the first video to the second may include changing the  
20 position, the shape, and/or the size of a viewing region.

21           102. Claim 1 of the '765 Patent is exemplary and recites as follows:

22           A computer-implemented method comprising:  
23           identifying one or more properties associated with a user device;  
24           receiving video from a first video presentation;  
25           receiving, simultaneously with the video from the first video  
26           presentation, video from a second, different video presentation;  
27           configuring a first state of the video from the first video presentation  
28           based on at least one of the properties associated with the user device;



1 presenting the video from the first video presentation according to the  
2 first state;

3 providing a mapping of video presentations to media player window  
4 height ranges and media player window width ranges; and

5 during playback of the video from the first video presentation:

6 determining that a media player window in which the video is  
7 playing has been resized to change from first dimensions comprising a  
8 first height and a first width to second, different dimensions  
9 comprising a second height and a second width;

10 determining that the second height is included in a particular one  
11 of the media player window height ranges;

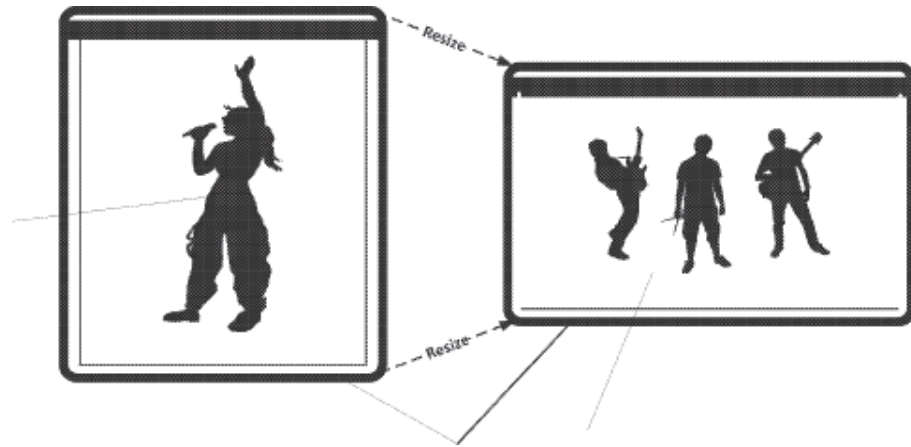
12 determining that the second width is included in a particular one  
13 of the media player window width ranges;

14 evaluating the mapping to determine that the second video  
15 presentation is mapped to both the particular media player window  
16 height range and the particular media player window width range; and

17 in response to the evaluating, seamlessly transitioning from the  
18 video from the first video presentation to the video from the second  
19 video presentation based on the change.

20 103. The eko '765 Patent discloses and is directed to responsive videos that  
21 change seamlessly based on device orientation, as depicted in Figure 2 of the eko  
22 '765 Patent (reproduced below):  
23  
24  
25  
26  
27  
28





### *Quibi's Infringement of eko's '765 Patent*

104. Quibi, at all times relevant, infringes at least Claims 1 and 10 of eko's '765 Patent. An exemplary claim chart showing Quibi's infringement of Claim 1 of the '765 Patent by Quibi's Turnstyle was attached as Exhibit A to **Exhibit 11**, and an update is attached hereto as **Exhibit 12**.

105. Quibi has publicly disclosed that Turnstyle features the exact same technology claimed by eko's '765 Patent. For example, Quibi asserted during its 2020 CES keynote that it had "invented a new experience and technology that we call Turnstyle" that allows users to "move at will between full screen portrait and full screen landscape" that "required engineering breakthroughs in technology and user experience."<sup>4</sup>

106. Quibi also publicly stated, numerous times, that Turnstyle is a technology that allows users to seamlessly switch between portrait and landscape viewing modes and experience the same scenes in different perspectives in those two modes. For example:

- "Quibi on Wednesday revealed a new mobile video technique called *Turnstyle that allows mobile video consumers to seamlessly switch between watching the same video on their smartphones either vertically*

<sup>4</sup> See CES 2020 keynote, available at <https://www.youtube.com/watch?v=LXOG9yNRjxk>

1            *or horizontally*. . . . The technology, which was demoed to reporters on  
2            Tuesday at the Consumer Electronics Show (CES) in Las Vegas, is a huge  
3            part of what Quibi thinks will help differentiate its product from other  
4            mobile video experiences, like Snapchat or Instagram. . . . *The new*  
5            *format allows Quibi's users to experience the same scenes from slightly*  
6            *different perspectives*. . . . ‘Vertical feels quite intimate,’ said Catherine  
7            Hardwicke, a veteran Hollywood director and executive producer of the  
8            new Quibi show ‘Don’t Look Deeper.’ ‘You’re quite closer [to the  
9            camera] and you don’t have all the cinema-scope around you. In a  
10          landscape format, you feel more the environment — what the character is  
11          interacting with. It’s interesting — you could watch the whole show  
12          twice.”<sup>5</sup> (emphasis added)

- 13          • “Today at the company's CES keynote, we finally learned about its killer  
14          feature: Turnstyle, a patent-pending technology that lets you *easily switch*  
15          *between portrait and landscape viewing modes*, all the while keeping  
16          what matters in frame. . . . As I watched Tom Conrad, Quibi's chief  
17          product officer (and the founder of Pandora), *effortlessly jump between*  
18          *portrait and landscape modes*, I thought to myself, ‘Why hasn’t anyone  
19          done this before?’”<sup>6</sup> (emphasis added)
- 20          • “Quibi *is* ready to talk about the app’s signature technology, Turnstyle,  
21          however, which *lets users switch between portrait and landscape video*  
22          *instantly when they rotate their phones*.”<sup>7</sup> (emphasis added)

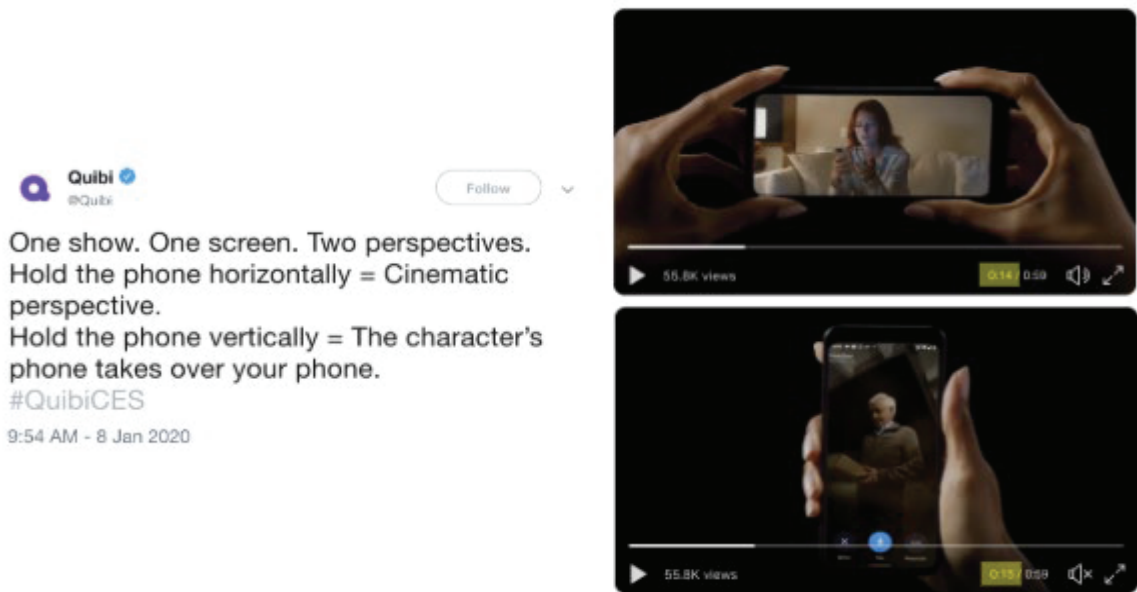
23  
24          <sup>5</sup> <https://www.axios.com/quibi-unveils-turnstyle-its-flagship-mobile-video-format-03a19028-0a7e-4d1a-8173-211cd979ee71.html>

25  
26          <sup>6</sup> <https://www.engadget.com/2020/01/08/quibi-mobile-video-turnstyle/>

27          <sup>7</sup> <https://techcrunch.com/2020/02/20/quibis-streaming-service-app-launches-in-app-stores-for-pre-order/2020/02/20/quibis-streaming-service-app-launches-in-app-stores-for-pre-order/>

- “Specifically, Quibi is using a new engineering technology it’s calling ‘Turnstyle,’ which *allows the viewer to move between portrait mode viewing and landscape viewing, seamlessly* — and without any black bars to fill the rest of the screen when switching to landscape video. *This technology, when demoed, worked very well. The shift from portrait to landscape and back again was smooth and fast — an almost imperceptible transition.*”<sup>8</sup> (emphasis added)

107. To show how the Turnstyle functionality applies the invention of the ’765 Patent, below are screen captures from a recent demonstration of the Turnstyle feature, paired with a tweet which appears to be from Quibi’s Twitter account:



108. Moreover, Quibi has stated in public court filings that during the playback process, based on the orientation of the device that is reported to the Quibi app by the operating system (iOS or Android), the Quibi app determines whether the vertical content or horizontal content should be presented, and sets a viewable

<sup>8</sup> <https://techcrunch.com/2020/01/08/quibi-ces/>

1 region (e.g., a height, width, and X/Y origin coordinate) of the video file  
2 accordingly.

3 109. The above features, however, are also disclosed and claimed by the  
4 eko '765 Patent. For example, Claim 1 of the eko '765 Patent describes the  
5 following features: (i) “providing a mapping of video presentations to media player  
6 window height ranges and media player window width ranges,” (ii) “during  
7 playback of a video from the first video presentation: determining that a media  
8 player window in which the video is playing has been resized to change from first  
9 dimensions . . . to second, different dimensions,” (iii) “evaluating the mapping to  
10 determine that the second video presentation is mapped to both the particular media  
11 player window height range and the particular media player window width range,”  
12 and (iv) “in response to the evaluating, seamlessly transitioning from the video  
13 from the first video presentation to the video from the second video presentation  
14 based on the change.”

15 110. Referencing Figures 5A and 5B, for example, the eko '765 Patent's  
16 specification describes how these “mapping,” “determining,” and “evaluating”  
17 steps are performed so that users can seamlessly switch between portrait and  
18 landscape modes and get different perspectives of the same scene when they rotate  
19 their phones. It describes in relevant part:

20 FIGS. 5A and 5B depict a change in device property which  
21 results in the viewport 510a to a lecture video 500 changing both  
22 size and location. In the first instance, in FIG. 5A, the viewport  
23 510a allows the user to view the full height (300 units) and width  
24 (450 units) of the video 500, thereby displaying the full  
25 dimensions of the lecture video 500, including the speaker,  
26 presentation screen, and audience. The viewport 510a is a  
27 rectangular shape (although other shapes are contemplated), and  
28 the upper left-hand corner of the viewport 510a is positioned at

1 coordinates (0, 0). Referring now to FIG. 5B, upon detecting a  
2 change in a property of the device (e.g., *the device is rotated from*  
3 *landscape to portrait mode*), the viewport 510b is modified in  
4 size and repositioned to better accommodate the modified state of  
5 the device. Specifically, the viewport 510b is *modified to a size*  
6 *that better fills the screen of the user device* (height=300 units,  
7 width=200 units) and is positioned with the upper left-hand  
8 corner at coordinates (200, 0), to better focus on the speaker. The  
9 video and viewport may be zoomed out or in so that the viewport  
10 fills the height and/or width of the device display.

11 '765 Patent, 6:60-7:13 (emphasis added).

12 111. The Quibi application launched on April 6, 2020, including the  
13 Turnstyle feature, and is designed to be downloaded and run on mobile devices,  
14 such as smartphones. So configured, the Quibi application running on a  
15 smartphone infringes eko's '765 Patent because it performs a computer-  
16 implemented method comprising: identifying one or more properties associated  
17 with a user device; receiving a video for playback on the user device; configuring a  
18 first state of the video based on at least one of the properties associated with the  
19 user device; presenting the video according to the first state; and during playback of  
20 the video: determining that a change in at least one of the properties associated with  
21 the user device has occurred; seamlessly transitioning the video to a second state  
22 based on the change, as recited in Claim 1 of the eko '765 Patent.

23 112. The Quibi application launched on April 6, 2020, including the  
24 Turnstyle feature, is designed to be downloaded and run on mobile devices, such as  
25 smartphones. So configured, the Quibi application running on a smartphone  
26 infringes eko's '765 Patent because it includes a system comprising: at least one  
27 memory storing computer-executable instructions; at least one processor for  
28 executing the instructions stored on the memory, wherein execution of the

1 instructions programs to at least one processor to perform operations comprising:  
2 identifying one or more properties associated with a user device; receiving a video  
3 for playback on the user device; configuring a first state of the video based on at  
4 least one of the properties associated with the user device; presenting the video  
5 according to the first state; and during playback of the video: determining that a  
6 change in at least one of the properties associated with the user device has occurred;  
7 seamlessly transitioning the video to a second state based on the change, as recited  
8 in Claim 10 of the eko '765 Patent.

9 113. Quibi's provision of its application and instructions for its use also  
10 induces infringement of the '765 Patent.

11 114. Quibi's application also constitutes a material part of the invention of  
12 the '765 Patent, knowing the same to be especially made or especially adapted for  
13 use in an infringement of such patent, and not a staple article or commodity of  
14 commerce suitable for substantial noninfringing use.

15 115. Quibi's infringement as described above has injured and continues to  
16 injure eko, and eko is entitled to recover damages adequate to compensate it for  
17 such infringement, but in no event less than a reasonable royalty.

18 116. Quibi has had notice of eko's application that issued as the eko '765  
19 Patent since at least March 2019, and notice of its infringement of the eko  
20 '765 Patent at least since January 28, 2020.

21 117. Quibi's infringement of the eko '765 Patent has been and continues to  
22 be willful and deliberate, as Quibi has acted in an objectively reckless manner in  
23 view of the high likelihood that its acts constituted infringement of the eko  
24 '765 Patent, and with full knowledge of eko's rights in the eko '765 Patent.

25 118. For the reasons stated above, eko is entitled to enhanced damages  
26 pursuant to 35 U.S.C. § 284, and attorneys' fees and costs pursuant to 35 U.S.C.  
27 §285.  
28



**COUNT V – INFRINGEMENT OF U.S. PATENT NO. 8,600,220**

***(Against Quibi, QBI Holdings, and New QBI)***

119. Eko incorporates by reference the allegations contained in paragraphs 99 through 118 of this Complaint, as if fully set forth herein.

120. The eko '220 Patent is valid and enforceable under United States patent laws.

121. The claims of the eko '220 Patent are directed to systems and methods facilitating the selective presentation of video content. For example, the '220 Patent discloses that an object of that invention is to provide systems and methods where several videos are loaded at the same time and played in seamless manner both for audio and video. The '220 Patent further teaches that a video created by the system is an interactive video that offers the user the opportunity to make a choice, as the video is playing (i.e., without pausing/stopping the video), that affects the course of the video in real-time. The user interacts with videos of the invention in real-time while the video is playing, and the patent teaches that users can interact with the video with any known variety of mechanisms, including but not limited to, mouse clicks, mouse movement, eye movement, keyboard and the like. One way a user could effect such interaction and the user's choice is to rotate a mobile device from portrait to landscape orientation, taking advantage of various sensors built into the device.

122. Claim 1 of the '220 Patent is exemplary and recites as follows:

A system for facilitating the selective presentation of video content, wherein the video content is comprised of a collection of segments, the system comprising:

a video loading manager for selectively determining a subset of the collection of segments to download, wherein the determination is based, at least in part, on a download priority.

123. Quibi, at all times relevant, infringes at least Claims 1 and 13 of the



1 eko '220 Patent. An exemplary claim chart showing Quibi's infringement of Claim  
2 1 of the '220 Patent by Quibi's Turnstyle is attached hereto as **Exhibit 13**.

3 124. The Quibi application launched on April 6, 2020, including the  
4 Turnstyle feature, is designed to be downloaded and run on mobile devices, such as  
5 smartphones. So configured, the Quibi application running on a smartphone  
6 facilitates the selective presentation of video content, wherein the video content is  
7 comprised of a collection of segments, the system comprising: a video loading  
8 manager for selectively determining a subset of the collection of segments to  
9 download, wherein the determination is based, at least in part, on a download  
10 priority, as recited in Claim 1 of the eko '220 Patent, but without eko's permission.

11 125. The Quibi application that launched on April 6, 2020, including the  
12 Turnstyle feature, performs, without eko's permission, a method for selectively  
13 presenting video content, wherein the video content is comprised of a collection of  
14 segments, the method comprising the steps of: selectively determining a subset of  
15 the collection of segments to download, wherein the determination is based, at least  
16 in part, on a download priority; and initiating downloading of the subset of video  
17 segments prior to the completion of a currently viewed segment according to the  
18 download priority, as recited in Claim 13 of the eko '220 Patent.

19 126. Quibi's provision of its application and instructions for its use also  
20 induces infringement of the eko '220 Patent.

21 127. Quibi's application also constitutes a material part of the invention of  
22 the '220 Patent, knowing the same to be especially made or especially adapted for  
23 use in an infringement of such patent, and not a staple article or commodity of  
24 commerce suitable for substantial noninfringing use.

25 128. Quibi's infringement as described above has injured and continues to  
26 injure eko, and eko is entitled to recover damages adequate to compensate it for  
27 such infringement, but in no event less than a reasonable royalty.

28 129. Quibi has had notice of the eko '220 Patent since at least March 6,

2020. *See* Exhibit A to **Exhibit 11** (March 6, 2020 letter).

130. Quibi's infringement of the eko '220 Patent has been and continues to be willful and deliberate, as Quibi has acted in an objectively reckless manner in view of the high likelihood that its acts constituted infringement of the eko '220 Patent, and with full knowledge of eko's rights in the eko '220 Patent.

131. For the reasons stated above, eko is entitled to enhanced damages pursuant to 35 U.S.C. § 284, and attorneys' fees and costs pursuant to 35 U.S.C. § 285.

**COUNT VI – INFRINGEMENT OF U.S. PATENT NO. 10,418,066**

***(Against Quibi, QBI Holdings, and New QBI)***

132. Eko incorporates by reference the allegations contained in paragraphs 119 through 130 of this Complaint, as if fully set forth herein.

133. The eko '066 Patent is valid and enforceable under United States patent laws.

134. The claims of the eko '066 Patent are directed to systems and methods facilitating synchronizing audio and video of selectably presentable multimedia content. In particular, the '066 Patent generally determines an audio file and a video file to be played, and an audio engine processes the audio file for playback and a video engine synchronizes playback of the video file with the playback of the audio file.

135. Claim 1 of the '066 Patent is exemplary and recites as follows:

A system comprising:

a memory for storing a plurality of multimedia content segments, each content segment defining a portion of one or more content paths, wherein a particular content segment comprises a decision period during which a subsequent content segment can be selected for playback as the particular content segment is playing;

1 an assembly engine for seamlessly assembling a subset of the content  
2 segments into a multimedia presentation comprising one of the content  
3 paths;  
4 a configuration manager for determining an audio file and a video file to be  
5 played based on a selected subsequent content segment;  
6 an audio engine for: dividing the audio file into a plurality of audio samples,  
7 each audio sample comprising a timestamp indicating a time at which the  
8 audio sample should be played; and upon causing one of the audio samples  
9 to be played, updating a current playback time based on the timestamp of  
10 the played audio sample, wherein the current playback time comprises a  
11 time that is maintained separately from timestamps of the audio samples  
12 and identifies a most recently played audio sample; and  
13 a video engine for synchronizing playback of the video file with playback of  
14 the audio file based on the current playback time.

15 136. Quibi, at all times relevant, infringes at least Claims 1 and 11 of the  
16 eko '066 Patent. An exemplary claim chart showing Quibi's infringement of Claim  
17 1 of the '066 Patent by Quibi's Turnstyle is attached hereto as **Exhibit 14**.

18 137. The Quibi application launched on April 6, 2020, including the  
19 Turnstyle feature, is designed to be downloaded and run on mobile devices, such as  
20 smartphones. So configured, the Quibi application running on a smartphone  
21 includes a memory for storing two or more multimedia content segments, each  
22 content segment defining a portion of one or more content paths, wherein a  
23 particular content segment comprises a decision period during which a subsequent  
24 content segment can be selected for playback as the particular content segment is  
25 playing; an assembly engine for seamlessly assembling a subset of the content  
26 segments into a multimedia presentation comprising one of the content paths; a  
27 configuration manager for determining an audio file and a video file to be played  
28

1 based on a selected subsequent content segment; an audio engine for: dividing the  
2 audio file into two or more audio samples, each audio sample comprising a  
3 timestamp indicating a time at which the audio sample should be played; and upon  
4 causing one of the audio samples to be played, updating a current playback time  
5 based on the timestamp of the played audio sample, wherein the current playback  
6 time comprises a time that is maintained separately from timestamps of the audio  
7 samples and identifies a most recently played audio sample; and a video engine for  
8 synchronizing playback of the video file with playback of the audio file based on  
9 the current playback time, as recited in Claim 1 of the eko '066 Patent, but without  
10 eko's permission.

11 138. The Quibi application launched on April 6, 2020, including the  
12 Turnstyle feature, practices, without eko's permission, a method comprising:  
13 storing, in a memory, two or more multimedia content segments, each content  
14 segment defining a portion of one or more content paths, wherein a particular  
15 content segment comprises a decision period during which a subsequent content  
16 segment can be selected for playback as the particular content segment is playing;  
17 determining, by a configuration manager, an audio file and a video file to be played  
18 based on a selected subsequent content segment; dividing, by an audio engine, the  
19 audio file into two or more audio samples, each audio sample comprising a  
20 timestamp indicating a time at which the audio sample should be played;  
21 seamlessly joining, by an assembly engine, the selected subsequent content segment  
22 to a currently playing content segment; upon causing one of the audio samples to be  
23 played, updating, by the audio engine, a current playback time based on the  
24 timestamp of the played audio sample, wherein the current playback time comprises  
25 a time that is maintained separately from timestamps of the audio samples and  
26 identifies a most recently played audio sample; and synchronizing, by a video  
27 engine, playback of the video file with the playback of the audio file based on the  
28 current playback time, as recited in Claim 11 of the eko '066 Patent.

1 139. Quibi's provision of its application and instructions for its use also  
2 induces infringement of the '066 Patent.

3 140. Quibi's application also constitutes a material part of the invention of  
4 the '066 Patent, knowing the same to be especially made or especially adapted for  
5 use in an infringement of such patent, and not a staple article or commodity of  
6 commerce suitable for substantial noninfringing use.

7 141. Quibi's infringement as described above has injured and continues to  
8 injure eko, and eko is entitled to recover damages adequate to compensate it for  
9 such infringement, but in no event less than a reasonable royalty.

10 142. Quibi has had notice of the eko '066 Patent since at least March 6,  
11 2020. *See* Exhibit A to **Exhibit 11** (March 6, 2020 letter).

12 143. Quibi's infringement of the eko '066 Patent has been and continues to  
13 be willful and deliberate, as Quibi has acted in an objectively reckless manner in  
14 view of the high likelihood that its acts constituted infringement of the eko  
15 '066 Patent, and with full knowledge of eko's rights in the eko '066 Patent.

16 144. For the reasons stated above, eko is entitled to enhanced damages  
17 pursuant to 35 U.S.C. § 284, and attorneys' fees and costs pursuant to 35 U.S.C.  
18 § 285.

19 **COUNT VII – CORRECTION OF INVENTORSHIP**

20 **PURSUANT TO 35 U.S.C. § 256**

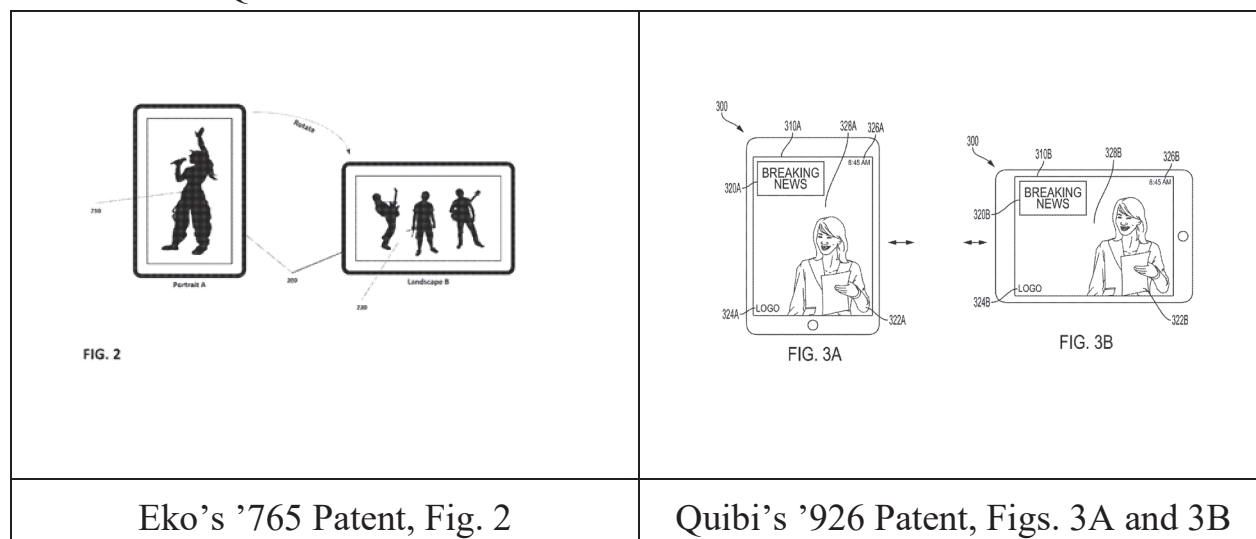
21 ***(Against All Defendants Except QBI Holdings, LLC, Katzenberg, and WndrCo)***

22 145. Eko incorporates by reference the allegations contained in paragraphs  
23 99 through 118 of this Complaint, as if fully set forth herein. In light of Quibi's  
24 representations to eko and the Court that QBI Holdings, LLC is not in the chain of  
25 title to the Quibi '926 Patent, this Count is not directed to that entity, but eko  
26 reserves its right to add QBI Holdings, LLC, should discovery show otherwise.  
27 This Count includes Quibi Holdings, LLC (and New QBI), however, as having  
28 been in the chain of title to the extent necessary to obtain complete relief.

146. Quibi not only copied eko's technology, but applied for a patent on the exact same technology. A provisional application for the Quibi '926 Patent was filed on March 11, 2019, and a nonprovisional application was filed two months later, on May 17, 2019. The Quibi '926 Patent issued on February 4, 2020.

147. The Quibi '926 Patent is titled "Media Content Presentation," and names the following persons as inventors: Robert A. Post, Jr. of Los Angeles, CA; Blake Barnes of San Francisco, CA; Joseph Burfitt of Los Angeles, CA; Eric Buehl of Santa Monica, CA; and Clifton Smith of Santa Monica, CA. The Quibi '926 Patent lists Quibi Holdings, LLC of Los Angeles, CA, as the assignee.

148. Even a cursory examination of the Quibi '926 Patent and eko's '765 Patent reveals a striking resemblance. For example, there is a clear similarity in the aspect ratio solution as between Figure 2 of the eko '765 Patent, and Figures 3A and 3B of the Quibi '926 Patent:



149. Moreover, like eko, Quibi describes the use of "cropping" and "letterboxing" as conventional solutions to fix the problem relating to aspect ratio and the disadvantages of using "cropping" and "letterboxing." The eko '765 Patent describes "seamlessly transitioning from a first to a second video" depending on many different "properties" including "aspect ratio." Eko '765 Patent, 1:35-2:11; 4:46-49. The eko '765 Patent explains in relevant part:



1 Digital videos have fixed resolutions, fixed proportions, and fixed  
2 content. Dynamic changes to digital video are limited to adaptations in  
3 video size and quality to accommodate, for example, different device  
4 screen sizes or available communications bandwidth. *However, such*  
5 *changes have their own disadvantages.* For example, videos scaled to  
6 fit a screen size having a different aspect ratio are typically *cropped*,  
7 which results in a loss of content, or are *letterboxed*, with mattes  
8 abutting the video. . . . In general, the present disclosure describes a  
9 ‘*smart video response*’ technique, in which video content (streaming or  
10 otherwise) can adapt in *real-time*, with targeted, customized, or other  
11 responsive content, to *changes in properties* associated with a user  
12 device, *all without scaling, letterboxing, or other noted disadvantages*  
13 *of the prior art.”)*

14 Eko ’765 Patent, 1:25-33 (emphasis added).

15 150. The eko ’765 Patent expressly mentions “aspect ratio” as one of the  
16 properties that triggers a change in how video is displayed on a mobile device. Eko  
17 ’765 Patent, 4:46-49 (“Other properties of user devices, such as smartphone 200,  
18 can include screen resolution, *aspect ratio*, display proportions, and physical screen  
19 size.”) (emphasis added). The Quibi ’926 Patent similarly explains in relevant part:

20 Such mobile devices place new demands on video content. One such  
21 demand relates to the *aspect ratio* (e.g., the ratio of a display width to a  
22 display height) of the video content. Under desired viewing conditions,  
23 a native aspect ratio of a video asset ( e.g., a source file containing video  
24 content) matches the aspect ratio of the display on which the video asset  
25 is presented. For example, when viewing a video asset on a display  
26 having a 16:9 aspect ratio, it is desirable that the video asset itself have  
27 a 16:9 aspect ratio. If the video asset has an aspect ratio that differs from  
28 the aspect ratio of the display, one of two conventional solutions can be



1 used to format the video asset for the display: either the video asset can  
2 be ***cropped*** to fit the display (e.g., via “pan and scan” techniques); or the  
3 video asset can be ***“letterboxed”*** by adding dummy content (e.g., black  
4 bars) to fill the regions of the display unoccupied by the video asset.  
5 ***Neither solution is desirable: cropping*** the video asset results in the  
6 cropped content being unviewable on the display (which can affect the  
7 viewer's understanding or appreciation of the video asset); and  
8 ***letterboxing*** the video asset results in regions of the display being  
9 effectively unused (which can impair visibility, especially on mobile  
10 devices with limited display space). . . . The present disclosure describes  
11 such one or more solutions, ***which improve on conventional***  
12 ***approaches*** by providing a data-efficient mechanism for quickly and  
13 ***seamlessly changing an aspect ratio of video content*** on a mobile  
14 device display.

15 Quibi '926 Patent, 1:30-2:10 (emphasis added).

16 151. The claims of both patents are also strikingly similar. The eko  
17 '765 Patent's Claim 1 recites “receiving video from a first video presentation [and]  
18 . . . video from a second, different video presentation,” and “during playback of the  
19 video from the first video presentation,” “seamlessly transitioning from the video  
20 from the first video presentation to the video from the second video presentation  
21 based on the change” in a “height” and “width” of a “window in which the video is  
22 playing.” This “seamlessly transitioning” language (similar to the “seamlessly  
23 changing” language in the Quibi '926 Patent's specification cited above) also  
24 appears in multiple claims of the eko '765 Patent.

25 152. In language similar to that of eko's '765 Patent, the Quibi '926  
26 Patent's Claim 1 recites “receiving . . . a first video asset . . . with a first aspect  
27 ratio; and a second video asset . . . with a second aspect ratio, different from the  
28 first aspect ratio,” “determining . . . a desired aspect ratio,” and “presenting . . . the

1 selected video asset at the desired aspect ratio,” based on “a width” and “a height”  
2 of “a frame” of the respective first and second video assets.

3 153. The face of the Quibi ’926 Patent does not disclose any consideration  
4 of eko’s patents—even though Quibi was on notice of eko’s patents and  
5 applications at least as early as March 2019.

6 154. The Quibi ’926 Patent includes subject matter and one or more claims  
7 to which Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and/or Barak Feldman made an  
8 inventive contribution. The Quibi ’926 Patent fails to name any of them as  
9 inventors.

10 155. Prior to the filing of the application for the Quibi ’926 Patent, Yoni  
11 Bloch, Tal Zubalsky, Yuval Hofshy, and/or Barak Feldman conceived of subject  
12 matter claimed in the Quibi ’926 Patent. Their inventions are present in multiple  
13 claims, including at least Claim 1.

14 156. Prior to the filing of the application for the Quibi ’926 Patent, Burfitt  
15 and Smith obtained the inventive concept(s) for that patent while employed at  
16 Snapchat through eko’s collaboration with Snapchat under the Snapchat NDA.

17 157. Prior to the filing of the application for the Quibi ’926 Patent, Burfitt  
18 and Smith left their employment with Snapchat and joined Quibi.

19 158. By virtue of Yoni Bloch’s, Tal Zubalsky’s, Yuval Hofshy’s, and/or  
20 Barak Feldman’s conception of the idea, and Quibi subsequently obtaining the idea  
21 through Burfitt and Smith, Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and/or Barak  
22 Feldman are, and should rightfully be named as, inventors of the Quibi ’926 Patent.

23 159. Through error, none of Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and  
24 Barak Feldman were listed as inventors of the Quibi ’926 Patent. Instead, the  
25 named inventors of the Quibi ’926 Patent are Robert A. Post, Jr., Blake Barnes,  
26 Joseph Burfitt, Eric Buehl, and Clifton Smith. On information and belief, Robert A.  
27 Post, Jr., Blake Barnes, Joseph Burfitt, Eric Buehl, and Clifton Smith are or were  
28 employees of Quibi, and Quibi claimed ownership of the Quibi ’926 Patent in its

1 entirety. On information and belief, on or about January 6, 2021, Quibi then  
2 assigned the Quibi '926 Patent to New QBI.

3 160. One or more of Robert A. Post, Jr., Blake Barnes, Joseph Burfitt, Eric  
4 Buehl, and Clifton Smith are improperly named as inventors of the Quibi '926  
5 Patent because one or more of them did not conceive of the subject matter claimed  
6 in the Quibi '926 Patent.

7 161. The omission of Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and/or  
8 Barak Feldman arose without deceptive intent by any of them or by eko.

9 162. JBF Interlude 2009 Ltd., as assignee of the relevant rights held by  
10 Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and/or Barak Feldman, is entitled to an  
11 undivided interest in all rights, title, and interest as at least a co-owner, if not sole  
12 owner, of the Quibi '926 Patent, and any U.S. or foreign application or issued  
13 patents claiming priority therefrom or related thereto.

14 163. Pursuant to 35 U.S.C. § 256, eko is entitled to a judgment that one or  
15 more of Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and Barak Feldman are  
16 inventors of the Quibi '926 Patent.

17 164. Pursuant to 35 U.S.C. § 256, eko is entitled to a judgment that one or  
18 more of Robert A. Post, Jr., Blake Barnes, Joseph Burfitt, Eric Buehl, and Clifton  
19 Smith are improperly named as inventors on the face of the Quibi '926 Patent and,  
20 to the extent that all of Robert A. Post, Jr., Blake Barnes, Joseph Burfitt, Eric  
21 Buehl, and Clifton Smith are improperly named as inventors, that New QBI's  
22 ownership interest in the Quibi '926 Patent and any and all U.S. or foreign  
23 applications or issued patents claiming priority therefrom or relating thereto is null  
24 and void.

25 165. Accordingly, eko requests that the Court order correction of, and enter  
26 judgment regarding, the Quibi '926 Patent in accordance with the above and  
27 according to proof.  
28

**COUNT VIII – DECLARATORY JUDGMENT OF OWNERSHIP**  
**OF THE '926 PATENT**

*(Against Quibi Holdings, LLC and New QBI)*

166. Eko incorporates by reference the allegations contained in paragraphs 99 through 118 of this Complaint, as if fully set forth herein. In light of Quibi's representations to eko and the Court that QBI Holdings, LLC is not in the chain of title to the Quibi '926 Patent, this Count is not directed to that entity, but eko reserves its right to add QBI Holdings, LLC, should discovery show otherwise. This Count includes Quibi Holdings, LLC (and New QBI), however, as having been in the chain of title to the extent necessary to obtain complete relief.

167. Based on the foregoing, one or more of Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and Barak Feldman are inventors of the Quibi '926 Patent. As inventors, Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and/or Barak Feldman presumptively own a pro-rata undivided interest in the the Quibi '926 Patent.

168. The invention disclosed in the Quibi '926 Patent was, in relevant part, conceived by, invented by, derived from, or acquired by its named inventors (who are Quibi employees) from eko employees, including Yoni Bloch, Tal Zubalsky, Yval Hofshy, and Barak Feldman.

169. As eko's employees, Yoni Bloch, Tal Zubalsky, Yuval Hofshy, and Barak Feldman have a contractual obligation to assign their inventions to eko. Thus, JBF Interlude 2009 Ltd and/or Interlude U.S. is or are at least a co-owner(s), if not sole owner, of the Quibi '926 Patent, and any and all U.S. or foreign applications or issued patents claiming priority therefrom or relating thereto.

170. An actual and justiciable controversy has arisen and exists between eko and Quibi and New QBI concerning Quibi's and New QBI's ownership of the '926 Patent. In various court filings, Quibi has claimed to have the sole ownership interest in the '926 Patent. On information and belief, on or about January 6, 2021, Quibi assigned the Quibi '926 Patent to New QBI.

171. As the named inventors have no legitimate claim of ownership right to the invention claimed in the Quibi '926 Patent, all rights in the Quibi '926 Patent should be assigned to eko.

**PRAYER FOR RELIEF**

WHEREFORE, eko respectfully demands judgment in its favor and against Defendants as follows:

- a. Finding that Quibi, QBI Holdings, New QBI, Burfitt and Smith have misappropriated eko's trade secrets pursuant to the Defend Trade Secrets Act and/or California Uniform Trade Secrets Act, and that their misappropriation has been willful and malicious;
- b. Finding that Quibi, QBI Holdings, and New QBI have infringed the Patents in Suit, and that Quibi's infringement has been willful and presents an exceptional case within the meaning of 35 U.S.C. § 285;
- c. Finding that Katzenberg and WndrCo have breached an implied contract to compensate eko for use of eko's ideas and technology concepts.
- d. Enjoining Quibi, QBI Holdings, New QBI, Burfitt, Smith, and their respective officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with them, from using eko's ORTS trade secret and from selling, offering for sale, marketing or using the Turnstyle feature and any other feature using or embodying eko's ORTS trade secret;
- e. Enjoining Quibi, QBI Holdings, New QBI, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with Quibi, QBI Holdings, and New QBI who receive actual notice of the order by personal service or otherwise, from selling, offering for sale, marketing, or using the Turnstyle feature and any other infringement of the Patents in Suit;

- 1 f. Enjoining Katzenberg and WndrCo, and their respective officers, agents,  
2 servants, employees, attorneys, and those persons in active concert or  
3 participation with Katzenberg and WnderCo who receive actual notice of  
4 the order by personal service or otherwise, from selling, offering for sale,  
5 marketing, or using eko's ideas and technology concepts;
- 6 g. Awarding damages, including but not limited to actual, exemplary, and/or  
7 unjust enrichment damages, and/or a reasonable royalty, as appropriate as  
8 to each of the above claims, in favor of eko and against Defendants in  
9 amounts to be determined at trial;
- 10 h. Awarding equitable relief, as appropriate as to each of the above claims,  
11 in favor of eko and against Defendants, and as appropriate, in amounts to  
12 be determined;
- 13 i. Ordering the disgorgement of any profits earned by Quibi and WndrCo  
14 due to their breach of implied contract, and/or damages sufficient to  
15 compensate eko for the reasonable value of the work to Katzenberg and  
16 WndrCo and/or the worth of the technology based on the custom in the  
17 industry.
- 18 j. Awarding eko its reasonable attorneys' fees and damages enhancements  
19 as appropriate for each of the above claims due to Defendants' willful  
20 and/or malicious conduct.
- 21 k. Declaring that one or more of Yoni Bloch, Tal Zubalsky, Yuval Hofshy,  
22 and Barak Feldman are inventors of the Quibi '926 Patent;
- 23 l. Declaring that one or more of Robert A. Post, Jr., Blake Barnes, Joseph  
24 Burfitt, Eric Buehl, and Clifton Smith are improperly named as inventors  
25 of the Quibi '926 Patent and that Quibi's ownership of the Quibi '926  
26 Patent is null and void;
- 27 m. Declaring that JBF Interlude 2009 Ltd is at least a co-owner, if not sole  
28 owner, of the Quibi '926 Patent, and any and all U.S. or foreign

1 applications or issued patents claiming priority therefrom or relating  
2 thereto;

- 3 n. Ordering that all right, title and interest, or at least a portion thereof, in the  
4 Quibi '926 Patent, and any and all U.S. or foreign applications or issued  
5 patents claiming priority therefrom or relating thereto, be assigned or  
6 otherwise transferred to or declared owned by eko;
- 7 o. Ordering the Director of the USPTO, pursuant to 35 U.S.C. § 256, to  
8 issue a Certificate of Correction to name one or more of Yoni Bloch, Tal  
9 Zubalsky, Yuval Hofshy, and Barak Feldman as inventors of the Quibi  
10 '926 Patent and to remove one or more of Robert A. Post, Jr., Blake  
11 Barnes, Joseph Burfitt, Eric Buehl, and Clifton Smith as named inventors  
12 of the Quibi '926 Patent; and
- 13 p. For such other and further relief as this Court deems fair and just.
- 14

15 **JURY DEMAND**

16 Eko respectfully demands a jury trial pursuant to Fed. R. Civ. P. 38 on all  
17 issues so triable.

18

19 Dated: January 28, 2021

/s/ Darryl M. Woo  
Darryl M. Woo

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