IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DATAQUILL LIMITED, Plaintiff, v. AMAZON.COM, INC., AMAZON DIGITAL SERVICES LLC, and AMAZON.COM SERVICES LLC, Defendants.	Case No. 22-cv-610-MN **JURY TRIAL DEMANDED**

SECOND AMENDED COMPLAINT

This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, against Defendants Amazon.com, Inc., Amazon Digital Services LLC, and Amazon.com Services LLC (collectively "Amazon" or "Defendants") that relates to U.S. Patent No. 6,058,304 owned by DataQuill Limited ("DataQuill").

PARTIES

1. Plaintiff DataQuill Limited is a limited company organized under the laws of the British Virgin Islands.

2. Defendant Amazon.com, Inc. is a Delaware corporation with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109. Amazon.com, Inc.'s registered agent for service in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Amazon.com, Inc. does business across the United States, including in the State of Delaware and in the District of Delaware.

3. Defendant Amazon Digital Services LLC is a Delaware limited liability company with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109. Defendant Amazon Digital Services LLC is a wholly-owned subsidiary of Defendant Amazon.com, Inc. Amazon Digital Services LLC 's registered agent for service is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Amazon Digital Services LLC does business across the United States, including in the State of Delaware and in the District of Delaware.

4. Amazon Digital Services LLC's predecessor was Amazon Digital Services, Inc., which filed an Amended Certificate of Authority with the State of Washington in 2016 stating "Amazon Digital Services, Inc. converted to a Delaware limited liability company on December 30, 2015, and its new name is Amazon Digital Services LLC." As indicated on Amazon Digital Services, Inc.'s Certificate of Authority form filed with the State of Washington, Amazon Digital Services, Inc. was a Delaware corporation that was incorporated on December 7, 2004. Amazon Digital Services Inc. did business across the United States, including in the State of Delaware and in the District of Delaware.

5. Defendant Amazon.com Services LLC is a Delaware limited liability company with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109. Defendant Amazon Digital Services LLC is a wholly-owned subsidiary of Defendant Amazon.com, Inc. Amazon.com Services LLC 's registered agent for service is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Amazon Digital Services LLC does business across the United States, including in the State of Delaware and in the District of Delaware.

6. Amazon.com Services LLC's predecessor was Amazon.com Services, Inc., which filed an Application for Transfer of Foreign Entity Registration on Merger or Conversion with the State of Washington in January 2020. As indicated in Amazon.com Services LLC's filing, Amazon.com Services, Inc. converted to a Delaware limited liability company in January 2020 with the new name Amazon.com Services LLC. Amazon.com Services Inc. did business across the United States, including in the State of Delaware and in the District of Delaware.

7. Amazon.com Services, Inc. formerly was named Amazon Fulfillment Services, Inc. Amazon.com Services, Inc. filed a Foreign Registration Amendment with the State of Washington in January 2018. As indicated in Amazon.com Services, Inc.'s filing, the Delaware corporation that was incorporated on January 18, 2002, changed its name from Amazon Fulfillment Services, Inc. to Amazon.com Services, Inc. Amazon Fulfillment Services, Inc. did business across the United States, including in the State of Delaware and in the District of Delaware.

8. For the relevant time periods of this action, Amazon made, used, imported, offered for sale and sold in the United States devices under the brand names including but not limited to Kindle, Kindle DX, Kindle Touch, Kindle Paperwhite, Kindle Voyage, Kindle 7, Kindle Oasis, Kindle Fire, Kindle Fire HD, Kindle Fire HDX, Kindle Fire HDX, Fire HD, Fire HDX, Fire, etc.

JURISDICTION AND VENUE

9. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, et seq., and more particularly 35 U.S.C. § 271.

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

11. Each Amazon Defendant is subject to this Court's jurisdiction because it is organized under Delaware law or incorporated in the State of Delaware.

12. Venue is proper in this District under 28 U.S.C. §1400(b), because each Amazon Defendant is organized under Delaware law or incorporated in Delaware.

BACKGROUND FACTS REGARDING THE DATAQUILL PATENT

13. DataQuill is the owner of record and assignee of U.S. Patent No. 6,058,304 ("the '304 Patent") (the "Patent-in-Suit"). Exs. A, G and H.

14. DataQuill has sought to protect its invention through a licensing program (which has on several occasions required litigation). Many of the largest high-tech companies, including HTC, Nokia, Motorola, LG, Samsung, Palm, Hewlett-Packard, Pantech, and Research in Motion, have purchased a license to DataQuill's patent portfolio. To date, DataQuill has obtained over $128 million in licensing revenue from the Patent-in-Suit and its continuation patents.

15. The value of DataQuill's asserted patent is further demonstrated by DataQuill's repeated success against validity challenges. The Patent-in-Suit has been through two reexaminations and survived a petition for *inter partes* review at the United States Patent and Trademark Office. The first reexamination under Reexamination Control No. 90/008,340 ("the '8,340 reexamination"), presumably requested by Research in Motion, considered hundreds of references.

16. In 2020, TCL filed a petition for *inter partes* review of the '304 patent, but the Patent Trial and Appeal Board denied institution of the IPR an *inter partes* (IPR2020-00745).

17. In 2021, the United States Patent and Trademark Office ("USPTO") ordered a second reexamination of the Patent-in-Suit, Reexamination Control No. 90/014,654 ("the '4,654 reexamination"), presumably by TCL's request.

18. On October 20, 2021, the USPTO issued an office action expressly confirming that the '304 Patent's claims 62 and 64 are patentable over art cited in the '4,564 reexamination request.

19. On April 29, 2022, the USPTO mailed the Notice of Intent to Issue *Ex Parte* Reexamination Certificate for the '304 patent and again confirmed the patentability of claims 62 and 64.

20. The USPTO declined reexamination of the claims-in-suit. On May 31, 2022, the USPTO issued an ex parte reexamination certificate for the Patent-in-Suit confirming the patentability of claims 62 and 64 and certifying that claims 6-8, 12-13, 33, 39, 41-42, 44-47, 52, 65-96, 99-112 and 118 were not reexamined.

21. In prior litigations, the Patent-in-Suit withstood heavy scrutiny, including motions for summary judgment of anticipation, obviousness, inequitable conduct, lack of enablement, and lack of an adequate written description—all of which were resolved in DataQuill's favor. In a case against ZTE, a jury returned a verdict finding the asserted claims of the '304 Patent valid and infringed and awarded damages of $31,500,000 and ZTE was ordered complete denial of its motions against the verdict for judgment as a matter of law.

THE PATENT-IN-SUIT AND CLAIMS-IN-SUIT

22. DataQuill has the exclusive right to sue and the exclusive right to recover damages for infringement of the Patent-in-Suit during all relevant time periods.

23. On May 2, 2000, the '304 Patent entitled "Data Entry Systems" was duly and legally issued by the USPTO. On April 13, 2010, the USPTO issued an Ex Parte Reexamination Certificate for the '304 Patent. On May 31, 2022, the USPTO issued a second ex parte reexamination certificate for the Patent-in-Suit.

AMAZON'S INFRINGING PRODUCTS

24. Amazon made, used, offered for sale, sold, and imported into the United States devices in the Kindle product line.

25. Amazon first offered the Kindle for sale as a wireless reading device in November 2007. From 2009 to 2011, Amazon continued its offerings of the Kindle product line and announced sales of the Kindle 2, Kindle DX, and Kindle Keyboard wireless reading devices. Each device in the Kindle product line, including these devices, have at least one claimed reading sensor, including a navigation pad (e.g. a "5-way controller" or "nav-pad") with directional, highlighting entry, and/or selection capabilities, capable of sensing, detecting and/or reporting commands and/or data, including by sensing a selection from the device screen by a user of a command or data with a press command and/or sensing data such as a press or sequence of presses (up, down, left, right, and/or select) of the nav-pad to navigate the device screen to produce input signals.

26. In addition, in 2011, Amazon continued its offerings of the Kindle product line and announced sales of the Kindle Touch and the Kindle Fire. With the Kindle Touch and the Kindle Fire, Amazon continued its group of Kindle products with another infringing embodiment of the claimed reading sensor in the form of a touchscreen. The claimed "reading sensor" has been repeatedly construed by several courts to cover any sensor capable of detecting and reporting commands or data. The claimed "reading sensor" also has been repeatedly construed by several courts to cover a touchscreen. The touchscreen is a reading sensor for sensing commands and/or data. The touchscreen produces input signals in response to the commands and/or data.

27. From 2011 onward, the Kindle Fire and Fire product in the Kindle product group included access to the Amazon Appstore, for e-books, apps, video, and other digital media and the Kindle Store for e-books and other digital content. In September 2014, when Amazon began selling the fourth generation of the Kindle Fire product, Amazon merely rebranded part of its Kindle product line by dropping the word "Kindle" from those products. The change of name from "Kindle Fire" to "Fire" did not alter any of the infringing features of the Kindle product and the re-named Fire products were the same or substantially similar to previously accused Kindle products and the Fire products also continued to infringe the Patent-in-Suit.

28. Since Amazon's original introduction of the Kindle product line, Amazon has sold more than 22 generations of Kindle devices, e.g. Kindle, Kindle 2, Kindle DX, Kindle Keyboard, Kindle 4, Kindle Touch, Kindle Fire, Kindle 5, Kindle Fire HD, Kindle Paperwhite, Kindle Fire HDX, Kindle Paperwhite 2, Kindle7, Fire HD 7, Kindle Voyage, Kindle Paperwhite 3, Kindle Oasis, Kindle 8, Kindle Oasis 2, Kindle 10, Kindle Oasis 3, Kindle Paperwhite 5, Kindle 11, Fire HD, Fire HDX, Fire, etc.

29. All of the Amazon devices in the Kindle product line, including but not limited to the models described in paragraphs 24-27 above, enable users to browse, buy, download, and read e-books, newspapers, magazines, and other digital merchandise and items via access to the Kindle Store and websites such as amazon.com and, for Kindle Fire products (and later generations rebranded as Fire products), from 2011 onward also to do the same via access to the Amazon Appstore and websites such as amazon.com. The devices in the Kindle product line are collectively referred to as the "Infringing Products."

30. The Infringing Products sold by Amazon since 2009, including products sold in 2016 and 2017, are the same or substantially the same in the relevant respects to the "Kindle

product line" repeatedly identified in DataQuill's notice letters from 2009-2011.[1] The Infringing Products sold by Amazon since 2009, including products sold in 2016 and 2017, also are of the same or substantially the same group of products as the "Kindle product line" repeatedly identified in DataQuill's notice letters from 2009-2011. The "Accused Kindle Products" in the infringement count below are later versions of Kindle products, are substantially the same group of products as, and are members of the Kindle product line. Any differences in Amazon's practice of the Patent-in-Suit's claimed features between the members of the Kindle product line at the time of the 2009-2011 notice letters and the later Accused Kindle Products, for example by implementing in the Accused Kindle Products different embodiments of same claimed features, did not obviate that Amazon continued to infringe the Patent-in-Suit with substantially similar products.

31. Amazon continued to infringe the Patent-in-Suit after it was repeatedly notified of infringement by Plaintiff. Indeed, Amazon was indisputably aware of the Patent-in-Suit and its claims by not later than December 2009 and continued to infringe by implementing additional embodiments of the Patent-in-Suit specifically identified by Plaintiff no later than its second notice letter to Amazon in August 2010, wherein Plaintiff specifically pointed to, among others, reexamined (now twice reexamined) claim 62 that includes "a touch sensitive screen forming said reading sensor . . ." By the time of Plaintiff's last notice letter, Amazon already had made a Kindle product (e.g., Kindle Touch) with a claimed reading sensor in the form of a touchscreen and was preparing for its launch the same year. Any differences between the later Accused Kindle Products and the members of the Kindle product line that existed at the time of the 2009-

[1] One of DataQuill's letters also referenced the "Kindle line of wireless reading devices." Amazon's Associate General Counsel also referenced the "Kindle e-book reader device."

2011 notice letters did not create any differences relevant to infringement of DataQuill's patent, or the notices of infringement.

32. Amazon's implementations of the claimed reading sensor are substantially the same. Both a nav-pad-based reading sensors and a reading sensor in the form of a touchscreen as implemented in the Infringing Products (including the later Accused Kindle Products) are covered by the same claimed reading sensor. Several of the asserted claims do not require a reading sensor in the form of a touch screen. The claimed "reading sensor" has been repeatedly construed by several courts to cover any sensor capable of detecting and reporting commands or data. The claimed "reading sensor" also has been repeatedly construed by several courts to cover a touchscreen. The touchscreen is a reading sensor for sensing commands and/or data. The touchscreen produces input signals in response to the commands and/or data. Asserted claim 62, for example, requires a reading sensor in the form of a touch screen.

33. In addition to several claim construction orders of the district courts, that the claimed reading sensor also includes a reading sensor in the form of a touch screen is supported by reference to the specification and surrounding claims. The Patent-in-Suit's specification explicitly states that a touchscreen can be a reading sensor such that a processor can be arranged to display a menu of user selectable items and to be responsive to a location at which the screen is touched for input of a user selection of a menu item. (E.g., 13:10-21).

34. Put differently, where the Patent-in-Suit's claims recite a "reading sensor," unless specifically claimed in another form (such as "a touch sensitive screen forming said reading sensor . . ." as claimed in claim 62), the claims do not claim require more than a any sensor (e.g., a nav-pad) capable of detecting and reporting commands or data.

35. Also, in addition to numerous prior claim construction orders confirming that the

claimed reading sensor covers a touchscreen, this construction is supported by the specification and surrounding claims. For example, claim 40 makes clear that a reading sensor can include a touchscreen, claiming "a touch sensitive screen forming a said reading sensor." Indeed, asserted claim 62 claims "a touch sensitive screen forming said reading sensor . . ." For example, the specification of the Patent-in-Suit itself explained to the public that a touchscreen can form the reading. In an example embodiment, the specification discusses the hand held unit comprising "a reading sensor" for sensing commands and/or data. (Col. 2:15-16.) The specification also describes the use of a touch sensitive screen where a processor can be arranged to display a menu of user selectable items and to be responsive to a location at which the screen is touched for input of a user selection of a menu item. (E.g., Col. 13:10-21; e.g., claim 40 and asserted claim 62, claiming "a touch sensitive screen forming a said reading sensor".)

36. DataQuill's notice letters were sufficient to provide actual notice for all Kindle products, including all Kindle products (including later so-called Fire products) in the Kindle product line having a touchscreen because a touchscreen is a reading sensor in the form of touch sensitive screen. A touchscreen is the claimed reading sensor, a touchscreen meets the same limitation of claimed reading sensor the same as any Kindle product implementing a nav-pad reading sensor, and a touchscreen is substantially the same as the nav-pad on the prior Kindle models as explained above. Whether in the form of a touchscreen or a nav-pad, the reading sensor in the Infringing Products (including the later Accused Kindle Products) infringe the Patent-in-Suit and they are substantially the same as to infringement of the DataQuill patent and both implement the claimed "reading sensor." Indeed by the time of Plaintiff's second notice letter in August 2010, Plaintiff already had accused any Kindle product in the Kindle product line that implemented the reading sensor in the form of a touchscreen of infringing the Patent-in-

Suit by specifically pointing to reexamined claim 62 (now twice reexamined and unchanged an having a claimed reading sensor in the form of a touchscreen) as relevant to the Kindle product line and thus relevant to the Accused Kindle Products and other earlier Infringing Products. Thus, with respect to notice of infringement, there are no relevant differences between the Accused Kindle Products (which are the same or substantially the same in the relevant respects to) and the "Kindle product line" repeatedly identified in DataQuill's notice letters from 2009-2011.

37. Amazon directly infringed claims of the Patent-in-Suit under 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing Infringing Products (including the later Accused Kindle Products) in this District and elsewhere in the United States that include the systems claimed in the Patent-in-Suit.

38. Amazon indirectly infringed claims of the Patent-in-Suit, inducing direct infringement pursuant to U.S.C. § 271(b) in this District and elsewhere in the United States at least by: (i) its subsidiaries and/or its customers of Infringing Products (including the later Accused Kindle Products) having directly infringed the Patent-in-Suit by making, using, selling, offering for sale, and/or importing Infringing Products (including the later Accused Kindle Products) in this District and elsewhere in the United States in direct infringement of the Patent-in-Suit; (ii) Amazon having knowingly induced with the intent to encourage the subsidiaries and/or the customers' direct infringement, for example, by providing user guides and other support materials and services for Infringing Products (including the later Accused Kindle Products) to its customers and by advertising features and benefits of Infringing Products (including the later Accused Kindle Products) to customers that were made, used, and/or sold intending customers to make, use, and/or sell those features and/or achieve those benefits while

Amazon knew that Infringing Products (including the later Accused Kindle Products) infringed the Patent-in-Suit.

39. Despite Amazon's awareness of the Patent-in-Suit, Amazon continued these acts of inducement with specific intent to infringe the Patent-in-Suit with knowledge or willful blindness that such activities occurred and constituted direct infringement of the Patent-in-Suit.

AMAZON'S KNOWLEDGE OF THE PATENT-IN-SUIT, HOW AMAZON INFRINGES IT, AND AMAZON'S CONTINUED INFRINGEMENT DESPITE THAT KNOWLEDGE

40. On December 21, 2009, DataQuill, through counsel, provided a notice letter to Amazon.com Legal Department, Amazon.com's agent, regarding the '304 Patent. Ex. B.

41. DataQuill's December 21, 2009 letter was a "violation notice" to Amazon. The letter was "Re: ***U.S. Patent no. 6,058,304***, no. 7,139,591, and no. 7,505,785/re ***viol. Notice***" and "Communication relating to settlement subject to FRE 408."[2]

42. To resolve Amazon's violation of the'304 patent, DataQuill's December 21, 2009 letter offered Amazon either a license or convenient not to sue: "You may wish to have your patent counsel examine the claims of the referenced patents relative to your device and system to determine whether a non-exclusive license or appropriate covenant not to sue is needed."

43. In addition to repeatedly referencing litigation, "DataQuill prefers to engage in discussions concerning an appropriate compromise settlement and license arrangement."

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[2] "Infringement" A breaking into; a trespass or encroachment upon; a ***violation*** of a law, regulation, contract, or right. Used especially of invasions of the rights secured by patents, copyrights, and trademarks. Goodyear Shoe Machinery Co. v. Jackson, 112 Fed. 140, 50 C. C. A. 159, 55 L. R. A. 092; Thomson-Houston Electric Co. v. Ohio Brass Co., 80 Fed. 721, 20 C. C. A. 107. *Black's Law Dictionary, 2nd Ed.;* https://thelawdictionary.org/infringement/

44. DataQuill's December 21, 2009 violation notice stated: "We believe that a license would benefit Amazon by providing it the ability to practice claims of Data Quill's patents ***without violating rights under the patents***, and any relevant rights which may vest under the pending application."

45. DataQuill's notice letters followed longstanding Federal Circuit law about notice established in *Gart v. Logitech, Inc.,* 254 F.3d 1334, 1346 (Fed. Cir. 2001).

46. For example, in *Gart*, the letter stated that the defendant "may wish to have [its] patent counsel examine the ... Patent ... to determine whether a non-exclusive license under the patent is needed." DataQuill's first notice letter to Amazon stated: "You may wish to have your patent counsel examine the claims of the referenced patents relative to your device and system to determine whether a non-exclusive license or appropriate covenant not to sue is needed."

47. Responding for Amazon.com, Amazon's Associate General Counsel replied in a letter December 22, 2009, acknowledging receipt of the letter and DataQuill's allegations that Amazon's Kindle devices infringed the '304 patent, stating:

> We are in receipt of your letter dated December 21, 2009, alleging that the U.S. patents listed above may relate to Amazon.com's Kindle e-book reader device. ***We are in the process of evaluating those allegations*** and the patents at this time. Please be advised that Amazon.com respects the intellectual property rights of third parties and will take appropriate steps based on the outcome of our evaluation.

48. On August 2, 2010, DataQuill provided a second letter to Amazon.com's legal department. This letter was again "RE: DataQuill Ltd.: U.S. Patent Nos. 6,058,304…"

49. DataQuill's August 2, 2010 letter included the first re-examination certificate, issued April 13, 2010, for U.S. 6,058,304. The letter specifically cited the '304 Patent's claims 62, 80, 81, 95, 98, 104, 107, and 115, among others, as relevant to the Kindle product line's violation (i.e., infringement) of the Patent-in-Suit. Ex. B. At least reexamined claims 81 and

107, which were specifically pointed to by Plaintiff in the August 2010 letter to Amazon, are claims-in-suit asserted in this action.

50. DataQuill's August 2, 2010 letter stated: "Amazon should have its patent counsel include the above patents and the pending U.S. application in its study relative to the Kindle™ product line."

51. DataQuill's August 2, 2010 letter stated: "We believe that a license would benefit Amazon by providing it the ability to practice claims of DataQuill's patents ***without violating rights under the patents***, and rights which may vest under the pending application."

52. On April 13, 2011, DataQuill sent a third violation notice to Amazon. Ex. E. The April 13, 2011 letter was "RE: Data Quill Ltd.: U.S. Patent Nos. **6,058,304Cl**... further re ***viol. notice***." It was also re "Communication relation to Settlement Subject to FRE 408."

53. DataQuill's April 13, 2011 letter stated that "Amazon should have its patent counsel include the above patents in its study relative to the Kindle™ product line."

54. DataQuill's April 13, 2011 letter stated "We believe that a license would benefit Amazon by providing it the ability to practice claims of DataQuill's patents ***without violating rights under the patents***, and rights which may vest under the pending application."

55. On May 25, 2011, DataQuill sent Amazon another violation notice. Ex. F. The May 25, 2011 letter was "RE: DataQuill Ltd.: U.S. Patent Nos. ***6,058,304*** Cl. . . .further re ***viol. notice***." It was also re: "Communication Relating to Settlement Subject to FRE 408."

56. DataQuill's May 25, 2011 letter stated: "Amazon should have its patent counsel include the above patents in its study relative to the Kindle™ product line."

57. DataQuill's May 25, 2011 letter stated: "We believe that a license would benefit Amazon by providing it the ability to practice claims of DataQuill's patents ***without violating rights under the patents***, and rights which may vest under the pending application."

58. Amazon did not enter into a license agreement with DataQuill following any of DataQull's four violation notices discussed above. Despite knowledge of the Patent-in-Suit and knowledge of how the Patent-in-Suit was infringed, Amazon continued to infringe, and induce the infringement of, the Patent-in-Suit.

59. Amazon does not dispute that it received DataQuill's December 21, 2009, August 2, 2010, April 13, 2011, and May 25, 2011 letters.

60. Based on DataQuill's four violation notice letters, Amazon has not, will not and cannot challenge the sufficiency of notice under 35 U.S.C. § 287.

61. Specifically, § 287 provides: "In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, ***except on proof that the infringer was notified of the infringement*** and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice."

62. Because Amazon cannot challenge the sufficiency of notice under 35 U.S.C. § 287, it has agreed that DataQuill's four violation notice letters are proof that the infringer (Amazon) was notified of the infringement.

COUNT I: INFRINGEMENT OF PAT. 6,058,304

63. DataQuill reasserts and realleges paragraphs 1 through 62 of this Complaint as though set forth fully here.

64. Amazon directly infringed the '304 Patent in the State of Delaware, in this judicial district, and elsewhere within the United States by making, using, offering for sale,

selling, and/or importing "Accused Kindle Products" that infringe one or more claims of the '304 Patent. [3]

65. Accused Kindle Products infringed at least claim 100 of the '304 Patent, for example as explained in the following paragraphs.

66. Accused Kindle Products are data entry devices for use in a data entry system.

67. Each Accused Kindle Products contains at least one reading sensor. "Reading sensor" has been repeatedly construed by several courts to cover a touchscreen. Each Accused Kindle Product has a touchscreen. The touchscreen is a reading sensor responsive to commands and/or sensed commands and data. The touchscreen is responsive to commands and/or sensed commands and data to produce input signals.

68. For example, Accused Kindle Products including a touch sensitive screen, which is for sensing commands (e.g., sensing hyper text links, menu selections, refresh or update commands) and/or data (e.g. an X, Y location of touch sensitive screen, or a touch corresponding to, e.g., a hyper text link, menu item, e-book, or app request) and for producing input signals in response to the sensed commands and/or data.

69. Accused Kindle Products contain a controller coupled to the touch sensitive screen to receive and process input signals, e.g., circuitry coupled to the touchscreen including the touchscreen controller and processor.

70. For example, Accused Kindle Products' controller is coupled to a

[3] Plaintiff originally filed this action on May 6, 2022 and, in view of the time limitations under 35 U.S.C. § 286, Plaintiff directs this count of infringement to Infringing Products made, used, imported, offered for sale and sold in the United States on or after May 6, 2016 and through the expiration of the Patent-in-Suit on May 2, 2017 (referred to herein as the "Accused Kindle Products"). This is not an admission by Plaintiff of noninfringement regarding Accused Kindle Products made, used, imported, offered for sale and sold in the United States before May 6, 2016. In fact, as discussed above, Accused Kindle Products made, used, imported, offered for sale and sold in the United States before May 6, 2016 also infringe the Patent-in-Suit and are substantially the same products as described in this count of infringement.

communications interface (e.g., 3G cellular telephone antenna and circuitry) to selectively control transmission over the cellular telephone antenna and circuitry command and/or data signals as determined by said input signals processed by the controller.

71. For example, Accused Kindle Products contain a communications interface (e.g., 3G cellular antenna and circuitry). The communications interface (e.g., 3G cellular antenna and circuitry) is coupled to the controller. The communications interface selectively controls transmission of commands and/or data signals as determined by input signals processed by the controller in several ways including, for example: commands and/or data signals are transmitted over the communications interface when a user navigates menus, pages, or areas of interest in the Kindle Store, for example, and selects to view or browse information about a Kindle book or other product available in the Kindle Store, to rate or review a product in the Kindle Store, to download or update a product purchased from the Kindle Store as determined by the input signals from the touch sensitive screen.

72. Accused Kindle Products' communications interface (e.g., 3G cellular antenna and circuitry) is operable directly to connect the Accused Amazon Product (e.g., a Kindle Paperwhite) to a wireless telecommunications network such as a cellular telephone network.

73. Accused Kindle Products include a display, e.g. a touchscreen display, coupled to a controller to display commands (e.g., menu commands, select a Kindle Store product, or commands "install" or "buy" or select "Amazon 1-click") and/or information (e.g. information for a selected Kindle Store product, item from Amazon Appstore, or item from Amazon.com with the Kindle Web Browser), under control of the input signals processed by the controller. For example, the Kindle Paperwhite displays buttons under the control of input signals processed by the controller to display search, store, and menu commands and/or information about books

available in Kindle Store or in Kindle Library.

74. Accused Kindle Products' touch sensitive screen, controller, and display device comprise a unitary assembly. Accused Kindle Products, e.g., Kindle Paperwhite, are sold as integrated assembled units. Accused Kindle Products' unitary assembly include the controller as well as a touch sensitive screen comprising a reading sensor and a display.

75. Accused Kindle Products include a communications interface that is a cellular telephone network interface (e.g., 3G cellular circuitry). And, for example, Accused Kindle Products, e.g. Kindle Paperwhite, can connect to a wireless telecommunicatoins network which is a cellular telephone network (e.g. 3G cellular network) such as connectivity to Whispernet.

76. Accused Kindle Products' controller is configured to respond to an update command (e.g. responsive to a command sensed by the touchscreen) to cause downloading of information from a remote processing center required for updating information previously stored in the Accused Kindle Products. For example, Accused Kindle Products's software can be updated by selecting Advanced Options. For example, "Update Your Kindle" command causes a download of information from a remote site to update the Kindle's software previously stored in the Kindle. For example, "Sync My Kindle" command causes information previously stored in the Kindle device to snychronize or to be updated by downloading account information from a remote processing center (e.g., an Amazon remote site). Forexample, Sync My Kindle command updates infromation to to the furthest page read, notes, highlights, and/or bookmarks in an e-book previously stored in the Accused Kindle Product, and/or to update a downloaded library of e-books with sample products or purchases.

77. Accused Kindle Products comprise a carrier or a display, including in the form of a touchscreen, that carries data and/or command codes, which is a carrier. The specification does

not restrict the claimed carrier to any particular form and "carrier" has been construed by multiple courts to mean "a medium that carries one or more data and/or command codes." Accused Kindle Products include a display which can also display a plurality of data and/or command codes (e.g., display with multiple active links for selectable e-books, newspapers, magazines, and other products of the Kindle Store) associated with means for displaying a plurality of selectable items, e.g., a Kindle display device which can display a plurality of selectable items (e.g., selectable e-books and other product items). Accused Kindle Products include a display which can also display a plurality of data and/or command codes, for example, display with links for selectable product items of the Kindle Store or product items from amazon.com associated with means for displaying a plurality of selectable items, e.g., Accused Kindle Products display device which is operable for displaying a plurality of selectable items, such as selectable e-books and other selectable product items.

78. Accused Kindle Products' display device carries a plurality of codes representing natural language characters and/or numbers, as well as a plurality of commands for controlling operation of data entry. For example, Accused Kindle Products include a display which also can display a plurality of characters, numbers, and/or data and/or command codes (e.g., display with links for selectable product items of the Kindle Store or product items from amazon.com as well as, for example, natural language and/or numeric characters, such as on a displayed keyboard, that can be displayed and/or entered) and/or commands (e.g. Menu, Update, Search, Store, Shop Kindle Store, and/or Buy). The data and/or command codes (e.g., links for selectable items, such as selectable e-books and other selectable product items from Kindle Store) are also product identifications.

79. Accused Kindle Products infringed at least claim 81 of the '304 Patent, for

example as explained in the following paragraphs.

80. Accused Kindle Products, such as Fire, Fire 7, Fire HD 6, and Fire HD 7 are hand holdable data entry devices for a data entry system.

81. Accused Kindle Products, such as Fire, Fire 7, Fire HD 6, and Fire HD 7, include at least one reading sensor. "Reading sensor" has been repeatedly construed by several courts to cover a touchscreen. Each Accused Kindle Product has a touchscreen. The touchscreen is a reading sensor for sensing commands and/or data and/or sensed commands and data. The touchscreen is responsive to sensed commands and/or data to produce input signals. For example, Accused Kindle Products including a touch sensitive screen, which is for sensing commands (e.g., sensing hyper text links, menu selections, refresh or update commands) and/or data (e.g. an X, Y location of touch sensitive screen, or a touch corresponding to, e.g., a hyper text link, menu item, e-book, or app request) and for producing input signals in response to the sensed commands and/or data.

82. Accused Kindle Products, such as Fire, Fire 7, Fire HD 6, and Fire HD 7, include rewritable storage, such as internal flash memory, programmable with information relating to selectable items (e.g., list of available Store and/or Library items, such books, newspapers, magazines, music, audiobooks, or video or list of Amazon Appstore apps or games, or installed Amazon Appstore apps or games, a cached web page with hyper text links, URLs, multiple cached web pages, notifications items, or bookmark web page addresses).

83. Accused Kindle Products, such as Fire, Fire 7, Fire HD 6, and Fire HD 7, include a controller connected to receive and process input signals from, e.g., touch sensitive screen. to receive and process input signals, e.g., circuitry coupled to the touchscreen including the touchscreen controller and processor. The controller (e.g. circuitry connected to the touchscreen)

responds to commands to control the device and to the data to select an item (e.g., one of the available Store and/or Library items, such books, newspapers, magazines, music, audiobooks, or video or list of Amazon Appstore apps or games, or installed Amazon Appstore apps or games, a cached web page with hyper text links, URLs, multiple cached web pages, notifications items, or bookmark web page addresses).

84. Accused Kindle Products, such as Fire, Fire 7, Fire HD 6, and Fire HD 7, include a display, e.g. a touchscreen display, which is for displaying a user readable representation of the commands (e.g., menu selections, refresh or update commands, select a Store product, or commands "install" or "buy" or select "Amazon 1-click") and the stored information for the selected item (e.g., information about items in Store, Library, Appstore, and other available, rented, or purchased items, hyper text link, URL, web page, bookmark web page address,).

85. Accused Kindle Products, such as Fire, Fire 7, Fire HD 6, and Fire HD 7, include a telecommunications interface for telephonic transmission and telephonic reception. For example, Fire HD utilizing a VoIP app such as Alexa Voice or Skype is enabled as a phone. Fire HD's WiFi radio, e.g., utilized by VoIP app, transmits information related to a selected item from its storage, e.g., a user's photo from his or her profile, or user's status such as "Do not disturb". Such information is transmitted to a remote processing center (for example one or more remote servers, e.g., one or more Amazon servers) via a telecommunications network (e.g., the Internet). (Also, for example, WiFi radio transmits information re user's identity or status information, e.g., to SkypeWeb site, to indicate online presence status to other users.) For example, Fire HD's WiFi radio utilizing a VoIP app such as Skype receives information relating to the selectable profiles, e.g., a current photo for profile of a called contact from, e.g., the remote server or the called contact's computer via the wireless WiFi network. (Also, for

example, WiFi radio receives information from SkypeWeb site to indicate online presence status of contacts in Skype Contacts.)

86. Accused Kindle Products', such as in Fire, Fire 7, Fire HD 6, and Fire HD 7 controller is responsive to a command (see, e.g., touch sensitive screen is responsive to sensed command as discussed above) to cause downloading of information from a remote processing center as required (e.g., where user needs Store, Library, and/or Appstore item or a webpage link update using command to update) for updating information previously stored in the Fire HD (e.g., refresh Store, Library, and/or Appstore item or cached web page by downloading current content from the remote processing center, e.g., one or more Amazon servers).

87. Accused Kindle Products, such as Fire, Fire 7, Fire HD 6, and Fire HD 7, include a speaker and microphone and can be used as a telephone handset. See, e.g., https://manuals.plus/amazon/a48444-fire-7-kids-tablet-manual#axzz7lzAGOXx4 (showing "speaker" "microphone" and "headphone jack.")

88. For example, Fire HD utilizing a VoIP app such as Alexa calling or Skype is enabled as a telephone handset. For example, Amazon invites users to " ask Alexa to make video calls to friends and family": e.g. https://www.amazon.com/dp/B096WKKK2K?tag=googhydr-20&hvadid=365188745977&hvpos=&hvnetw=g&hvrand=9837230137244497428&hvpone=&hvptwo=&hvqmt=p&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9021441&hvtargid=kwd-

89. Fire HDs were sold with Skype pre-installed. "Amazon Kindle Fire HD, Kindle Fire HDX, and the Fire HD tablet now come with Skype preinstalled so you can enjoy all the great Skype features such as free Skype-to-Skype voice and video calls, instant messaging and calling mobiles and landlines at great Skype rates."
https://support.skype.com/en/faq/FA12157/how-do-i-use-skype-on-my-kindle-fire-hd-and-hdx

90. In addition to Alexa already included on Fire HDs, Amazon's Appstore provides VoIP apps, e.g., such as Skype apps, for free to load onto Fire and Fire HD.

91. For example, Accused Kindle Products', including Fire HD 6, and Fire HD 7, touch sensitive screen additionally utilized to read coded data (e.g., menu selections, refresh or update commands, hyper text links, URL addresses). Fire HD controller is arranged to access stored information for selectable items (e.g., to access menu instructions, hyper text instructions, e.g., URL, from a cached web page, or, e.g., to access URL addresses in browsing history, bookmarks, address bar, or hyper link info feature) to determine natural language characters or images corresponding to the coded data for display (e.g., displayable content for a selected item, web page content, or a URL address name or details for display corresponding to a selected item, hyper text link or URL address). For example, the coded data (e.g., the hyper text link, or URL address) has written text which is user visible (e.g., a visible hyper text, or visible text of a URL address). For example, in response to a user utilizing the touch sensitive screen to select the user visible written text (e.g., visible hyper text, or visible text of URL address), the coded data is read via controller processing text (e.g., HTML and/or URL address) of the coded data.

92. In addition to independent claims 100 and 81, by way of example, Accused Kindle Products sold by Amazon infringed at least claims 85, 107, 108, 109, 110, and 111 and at least the following dependent claims (as depending from the corresponding dependent or independent claims to the right of the slash marks): 33/81, 39/81, 44/81, 45/44/81, 47/81; 6/85, 7/85, 8/85, 12/85, 13/12/85; 6/100, 7/100, 8/100, 12/100, 13/12/100; 33/107, 39/107, 44/107, 45/44/107, 47/107 ; 33/108, 39/108, 44/108, 45/44/108, 47/108; 33/109, 39/109, 44/109, 45/44/109, 47/109; 33/109, 39/110, 44/110, 45/44/110, 47/110; 33/111, 39/111, 44/111, 45/44/111, 47/111.

93. For example, with respect to claim 85, at least some of the Accused Kindle Products is programmable to cause captured data to be displayed on said display either in a first orientation suitable for reading displayed data when said data entry device is held in a user's right hand, or in a second orientation suitable for reading displayed data when said data entry device is held in a user's left hand in response to user programming. For example for Kindle Oasis, "**Page Turn Buttons**: Allows you to configure the buttons at the side of the screen to match how you hold your Kindle. Note that your settings will apply even if you rotate your Kindle." See, e.g., https://customerdocumentation.s3.us-west 2.amazonaws.com/kug/kindle_all_new_oasis_v2/v1/en-US/html/kug.html

94. For example, with respect to claims 107-111, at least some of the Accused Kindle Products, including Fire HD 6, Fire HD 7, have a separate display (e.g., a display with Amazon Fire TV Stick or an Amazon Fire TV) for displaying a selectable item with associated data sources for user selection of an item by operation of an Accused Kindle Product (e.g. a Fire device along with a display with Amazon Fire TV Stick or an Amazon Fire TV), and a remote processing center (e.g., an Amazon remote site to stream, watch, download, and/or purchase a video from Amazon Prime) for processing user selections (e.g., select watch, download, rent, and/or purchase a video from Amazon Prime from Fire device) transmitted from an Accused Kindle Product (e.g. from a Fire device operable with a TV display with Amazon Fire TV Stick or an Amazon Fire TV). For example, a Fire device and Fire TV Stick with TV display or Fire TV device logged into an amazon.com account, select "Store" from "Videos" tab and select from "Watch Now" or "Watch on Fire TV" or "Watch on Fire TV Stick" options and/or "Download" and "More Purchase Options" on the Accused Kindle Product from the Amazon remote site, such as Amazon Prime remote site. Additionally for example, an Accused Kindle Product, e.g. a

Fire device and Fire TV Stick with TV display or Fire TV device, select "Display Mirroring" and a Fire device is mirrored to the TV device and, for example selections, as discussed in the paragraphs above, available on the Accused Kindle Product, e.g., Fire device, are also selectable from the mirrored to the TV device (e.g., Fire TV Stick with TV display or Fire TV device) on the Accused Kindle Product from the Amazon remote site, such as, for example, amazon.com remote site, Kindle Store remote site, Store remote site, and/or Amazon Prime remote site.

95. Amazon has induced infringement of the '304 patent. With knowledge of the '304 Patent and knowledge of the infringing nature of Accused Kindle Products (or, at a minimum, willful blindness thereto), Amazon has encouraged third-party retailers to directly infringe the '304 Patent by offering to sell and selling these devices to end user consumers. Amazon knew of and intended to cause its retailers' direct infringement and is therefore liable for actively inducing their infringement of the '304 Patent under 35 U.S.C. § 271(b).

96. Additionally, with knowledge of the '304 Patent and knowledge of the infringing nature of Accused Kindle Products (or, at a minimum, willful blindness thereto), Amazon has encouraged end users to directly infringe the '304 Patent by using these devices. Amazon has marketed, promoted, and instructed users to use these devices in an infringing manner. This marketing, promotion, and instruction has specifically included instructions to use the devices' functionality to download apps, games, music, videos, books, magazines, and ringtones. Amazon knew of and intended to cause its end users' direct infringement and is therefore liable for actively inducing their infringement of the '304 Patent under 35 U.S.C. § 271(b). *See, e.g.*, Ex. C at 11, 14, 27, 57, 73-83 (advertising features of the Accused Amazon Products including downloading and purchasing e-books, apps, music, video, shopping selections, and updating apps and other selections); Ex. D at 13-16, 25-26, 29-30 (advertising features of the Kindle

Paperwhite (7th Gen) including downloading and purchasing books, newspapers, etc.).[4]

97. These retailers and end users, of Accused Amazon devices have directly infringed the Patent-in-Suit by using, selling, offering for sale, and/or importing Accused Kindle Products in this District and elsewhere in the United States in direct infringement of the Patent-in-Suit *inter alia* for the same reasons alleged in paragraphs 39-52, 54-85.

98. Amazon was aware of the '304 patent by at least 2009, as discussed in detail above. DataQuill sent a letter on December 21, 2009, by facsimile and U.S. mail to Amazon's Legal Department:

> It has come to our attention that your company has manufactured, offers for sale and/ or sells, etc. a system including the Kindle™ line of wireless reading devices. You may wish to have your patent counsel examine the claims of the referenced patents relative to your device and system to determine whether a non-exclusive license or appropriate covenant not to sue is needed. See, for example, '304 patent dependent claim 21 (as depending from claim 1) . . .
>
> In any event, Amazon should include the above patents and pending U.S. application in its study relative to Amazon's Kindle™ system. Information regarding these patents is publicly available, including via the Patent Office's PAIR system. We believe that a license would benefit Amazon by providing it the ability to practice claims of DataQuill' s patents without violating rights under the patents, and any relevant rights which may vest under the pending application.

Ex. B (Letter to Amazon).

99. Amazon was aware of the '304 patent because Amazon acknowledged DataQuill's 2009 Letter in a reply sent on December 22, 2009. Ex. B at 4.

100. Amazon was aware of the '304 patent because DataQuill sent a letter to Amazon on August 2, 2010, stating:

> Please find enclosed a copy for your file of the following: . . . . A re-examination certificate, issued April 13, 2010, for U.S. 6,058,304 C1, e.g., claims 62, 80, 81, 95,

[4] *Kindle User Guide – HTML* [Kindle Paperwhite (7th Generation)], Amazon.com, https://customerdocumentation.s3-us-west-2.amazonaws.com/kug/kindle_all_new_paperwhite/v1/en-US/html/kug.html (last visited May 2, 2022).

> 98, 104, 107, 115, etc. . . . Amazon should have its patent counsel include the above patents and the pending U.S. application in its study relative to the Kindle™ product line. . . . We believe that a license would benefit Amazon by providing it the ability to practice claims of DataQuill's patents without violating rights under the patents . . .

101. Amazon was aware of the '304 patent because over 100 U.S. patents that issued after April 2010 have cited the '304 patent as prior art.

102. Amazon was aware of the '304 patent because DataQuill has asserted claims of the reexamined patent's claims in litigation against major manufacturers of smartphones and tablets including ZTE in the Eastern District of Texas jury trial that resulted in a $31.5 million verdict and Palm, HTC, Research in Motion, Apple, Huawei, and TCL.

103. At least by 2009, Amazon was aware (or willfully blind) that it was infringing the '304 patent because, among other things, DataQuill's 2009, 2010 and 2011 letters notified Amazon that such systems infringed the '304 patent.

104. 37 claims of the '304 patent as originally issued survived reexamination. These were dependent claims rewritten as independent claims.

105. Additionally, DataQuill's 2009 and 2010 letters to Amazon also informed Amazon that: "DataQuill has entered settlements and licensed rights to its patented technology to the wireless telecommunications industry since 2002. Licensees include Hewlett-Packard, Palm, Pantech, Motorola, Research in Motion, LG Electronics, Nokia, and Samsung Electronics". Ex. B at 7; *see id*. at 2. Amazon thereby was aware (or willfully blind) that third-party smartphone and tablet manufacturers (*e.g.*, HP, Palm, Motorola, and Samsung) infringed the '304 patent and had licensed the '304 patent.

106. While knowing (or being willfully blind) that Accused Kindle Products infringed the Patent-in-Suit, Amazon continued to induce retailers and end users to infringe the '304 patent: Amazon sold and/or provided Accused Kindle Products and other support materials and

services to third-party retailers and to end user consumers and Amazon advertised Accused Kindle Products, as detailed above.

107. On information and belief, Amazon induced third-party companies to infringe the Patent-in-Suit including without limitation Best Buy Co., Inc., Target Brands, Inc., GameStop Corp., and NewEgg Inc. Amazon induced consumers to infringe the Patent-in-Suit including, for example, consumers that have an infringing device and an Amazon Prime membership.

108. DataQuill reserves the right to discover and pursue all such additional induced sales by third-party manufacturers and Amazon's subsidiaries.

109. Despite Amazon's awareness of the Patent-in-Suit, Amazon has continued these acts of inducement with specific intent to cause and encourage direct infringement of the Patent-in-Suit or with willful blindness that such activities occurred and constitute direct infringement of the Patent-in-Suit. Amazon had a financial interest in third-party retailers, and its own subsidiaries, advertising and selling the Accused Kindle Products because Amazon derived revenue from purchases through, e.g., Kindle Shop, Shop Amazon, or Amazon Appstore.

110. Amazon is thus liable for infringement of the '304 Patent under 35 U.S.C. § 271(b).

111. As a result of its infringement of the '304 Patent, Amazon has damaged DataQuill. Amazon is liable to DataQuill in an amount to be determined at trial that adequately compensates DataQuill for the infringement, which by law can be no less than a reasonable royalty.

112. Because Amazon knew of the '304 Patent and its infringement thereof (as detailed above), Amazon's infringement of the '304 Patent is therefore willful and deliberate, entitling

DataQuill to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

DataQuill demands a trial by jury on all issues that may be so tried.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff DataQuill requests that this Court enter judgment in its favor and against Defendants Amazon.com, Inc., Amazon Digital Services LLC, and Amazon.com Services LLC as follows:

A. Adjudging, finding, and declaring that Amazon has infringed the Patent-in-Suit under 35 U.S.C. § 271;

B. Awarding the past damages arising out of Amazon's infringement of the Patent-in-Suit to DataQuill in an amount no less than a reasonable royalty, together with prejudgment and post-judgment interest, in an amount according to proof;

C. Adjudging, finding, and declaring that Amazon's infringement is willful and awarding enhanced damages and fees as a result of that willfulness under 35 U.S.C. § 284;

D. Adjudging, finding, and declaring that the Patent-in-Suit is valid and enforceable;

E. Awarding attorneys' fees, costs, or other damages pursuant to 35 U.S.C. §§ 284 or 285 or as otherwise permitted by law; and

F. Granting DataQuill such other further relief as is just and proper, or as the Court deems appropriate.

Dated: December 19, 2022

Respectfully submitted,

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