

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

MONKEYMEDIA, INC.,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 1:20-CV-00010-ADA
	)	
vs.	)	<b>JURY TRIAL DEMANDED</b>
	)	
AMAZON.COM, INC.,	)	
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

MONKEYmedia, Inc. brings this suit against Amazon.com, Inc. for patent infringement.

**I. PARTIES**

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

2. Defendant Amazon.com, Inc. (“Amazon”) is a Delaware corporation that maintains its headquarters at 410 Terry Avenue North in Seattle, Washington. Amazon.com, Inc. may be served through its agent for service of process, Corporation Service Company, 251 Little Falls Drive in Wilmington, Delaware.

**II. JURISDICTION AND VENUE**

3. Plaintiff MONKEYmedia asserts causes of action under 35 U.S.C. § 271 for infringement of United States Patents owned by MONKEYmedia. This Court has original and exclusive subject matter jurisdiction over these claims under 28 U.S.C. §§ 1331 and 1338(a). Defendant Amazon is subject to personal jurisdiction, because Amazon regularly and continuously does business in this District and has infringed or induced infringement in this District. Amazon

also employs over a thousand individuals in this District. Amazon also has a technology hub and distribution/fulfillment center in this District.

4. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 1400(b). Defendant Amazon has a regular and established place of business in this judicial district and, upon information and belief, has infringed the Patents-in-Suit in this judicial district. Specifically, Defendant Amazon employs over a thousand individuals and maintains a large technology hub in this District. Amazon also has a large distribution/fulfillment center in this District that distributes infringing products, such as the Amazon Fire TV and Amazon Fire product lines.

### **III. FACTUAL BACKGROUND**

#### **A. MONKEYmedia**

5. Eric Gould Bear, the founder of MONKEYmedia, (<https://monkey.media>) is a prolific inventor and is named as the first inventor in over 100 patents and patent applications. These include the patents (now expired) in the “Seamless Expansion” patent family. The inventions in the Seamless Expansion patent family were conceived by Bear and his co-inventor at least as early as 1994 while experimenting with concepts for then-future video distribution formats such as DVD and interactive TV. MONKEYmedia is the owner by assignment of all right, title and interest in and to the Seamless Expansion patent family, including the Patents-in-Suit.

6. Generally speaking, the applicable claims in the Patents-in-Suit are directed towards devices, computer readable storage media, and methods used in connection with these devices, to perform “Seamless Expansion,” wherein the device plays a “main” audio/visual stream and determines whether an optional content expansion is desired when a cue or prompt is activated. The optional content is commonly “bonus content,” such as behind-the-scenes footage; “Advertainments,” such as long-form advertisements, network previews, or product details; and

“Calls to Action” where the viewer can request materials, vote, or purchase products. If playing the optional content expansion is desired, the main content stream “pauses” and the content expansion is played. After the viewer finishes with the optional expansion, the main content stream resumes at or near the point at which the main content stream paused.

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

7. On February 21, 2013, the United States Patent and Trademark Office duly and legally issued a reexamination certificate for claims in U.S. Patent No. 6,393,158 (’158) to MONKEYmedia in the Seamless Expansion patent family. The re-examined claims in the ’158 Patent, which expired in April 2019, have a priority date of April 23, 1999. A true and correct copy of the ’158 Patent, including the reexamination certificate and new claims 35-41, is attached to Plaintiff’s Original Complaint as Exhibit A. *See* Dkt. No. 1

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

9. On January 26, 2016, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 9,247,226 (’226) to MONKEYmedia in the Seamless Expansion patent family. A true and correct copy of the ’226 Patent is attached to Plaintiff’s original Complaint for Patent Infringement as Exhibit C. The ’226 Patent became the subject of an IPR Proceeding that was initiated by Unified Patents (IPR2018-00059). The Board instituted review only as to independent Claims 1 and 7 of the ’226 Patent but denied institution as to the dependent claims. To quickly resolve the IPR (which was filed in the midst of litigation against Samsung),

the parties to the IPR agreed that an adverse judgment would be rendered as to Claims 1 and 7 of the '226 Patent and that the claims upon which the IPR Proceeding was not instituted would be withdrawn. As a result, Claims 1 and 7 of the '226 Patent are not asserted or at issue in this lawsuit. The claims that are at issue in the '226 Patent, which expired in April 2019, have a priority date of April 23, 1999.

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

#### **IV. INFRINGEMENT BY AMAZON**

11. Amazon has directly or indirectly infringed one or more of the claims in the Patents-in-Suit in connection with at least the following products or activities.

##### **A. AMAZON X-RAY FEATURE**

12. During the term of the patents-in-suit, Amazon operated a video-on-demand service (the "Amazon Video" service) that offered a library of streaming television shows and films, via an Amazon Video application, which was referred to as the "Amazon Video App" and then later referred to as the "Amazon Prime Video App" or via an internet web browser accessed at Amazon's website [www.amazon.com](http://www.amazon.com). The Amazon Video App and the Amazon Prime Video App will be collectively referred to herein as the "Amazon Video App." During the term of the Patents-in-Suit, Amazon offered an infringing feature(s) initially called X-Ray for Movies and TV Shows ("X-Ray") on numerous film and television show titles in the Amazon Video library, via the Amazon Video App and/or a web browser at Amazon's website. X-Ray allowed the user to access

optional expansion content generated by IMDb (an Amazon company) and other third parties, such as actor bios, videos, behind the scene info, trivia and other content while the viewer was watching the main Amazon Video Content, such as a movie or television show, and then resume watching the main content where the viewer left off.

### **B. AMAZON FIRE DEVICES**

13. During the term of the Patents-in-Suit, Amazon's X-Ray feature was available with Amazon Video Content on Amazon "Fire" products, including the Fire TV Stick, Fire TV Stick 4K and Fire TV Cube media streaming devices and the Fire 7, Fire HD 8, and the Fire HD 10 tablets. During the term of the Patents-in-Suit, Amazon also teamed with various companies that are not licensed by MONKEYmedia to sell, offer to sell and distribute in this District and elsewhere in the United States, "Fire Edition" Smart TVs that incorporated the Amazon Fire Operating System. Fire Edition Smart TVs included those sold under the Westinghouse, Toshiba, Element, and Insignia brands. Upon information and belief, these Devices perform in the substantially the same manner as the Amazon Fire TV and Fire Tablet products concerning infringement of the Patents-in-Suit. Amazon's "Fire" TV and Fire Tablet products, and third-party "Fire Edition" Smart TVs are collectively referred to herein as "Amazon Fire Devices."

14. In addition to being able to play Amazon Video Content with Amazon's X-Ray Feature in an infringing manner via the Amazon Video service, i.e., the Amazon Video App, Amazon Fire Devices were capable during the term of the Patents-in-Suit of playing other streaming Apps, such as Pandora, Hulu and NetFlix that were pre-installed in the Amazon Fire Devices or were available for downloading to these Devices. These Apps, when installed on the Amazon's Fire Devices, allowed a user to perform Seamless Expansion - streaming main content

and electing to view expansion content while watching the main content in a manner that infringed one or more of claims of the Patents-in-Suit.

### **C. AMAZON VIDEO APP AND AMAZON-ENABLED DEVICES**

15. Furthermore, during the term of the Patents-in-Suit, Amazon distributed its Amazon Video App through the Google App Store and other sites, including offering Amazon Video Content for playback with infringing X-Ray features via Amazon's website [www.amazon.com](http://www.amazon.com). The Amazon Video service enabled users to download the Amazon Video App to or access and playback Amazon Video Content via a web browser on a wide variety of non-Fire Devices manufactured, sold and/or offered for sale by third parties that are not licensed by MONKEYmedia, and stream Amazon Video Content with X-Ray ("Amazon-Enabled Devices"). Amazon-Enabled Devices include Smart TVs, Computers, Mobile Phones, Tablets, Media Streaming Devices, such as the Roku and Google Chromecast devices, IOS and Android Devices, Blu-Ray Players, Set Top Boxes, and Games Consoles, including the Nintendo Wii U gaming console (collectively "Amazon-Enabled Devices").

16. Upon information and belief, during the term of the Patents-in-Suit, Amazon Fire Devices, including "Fire Edition" Smart TVs, and Amazon-Enabled Devices (including Amazon Video Content accessed and played via a web browser) all performed in essentially the same manner when playing Amazon Video Content with the X-ray Feature in a way that directly and indirectly infringed one or more claims in the Patents-in-Suit. Additionally, upon information and belief, these Devices allowed users to control selection and playing of the content through voice commands and/or through other means that did not necessitate the user pushing a button to control these functions.

17. Amazon had actual notice of the Patents-in-Suit long before the filing of this action. By way of example, MONKEYmedia, through its counsel, notified Amazon about Amazon's infringement of patents in the Seamless Expansion patent family at least as early as June 2, 2017, and followed up several times after this date about Amazon's infringement. Despite having actual knowledge of the Patents-in-Suit and MONKEYmedia's allegations of infringement, Amazon continued to offer for sale, sell, distribute or authorize distribution of Amazon Video with X-Ray, Amazon Fire Devices, and the Amazon Video App or the web browser implementation of Amazon Video App (which enabled Amazon-Enabled Devices to access and playback Amazon Prime Video Content including X-Ray features) in violation of the Patents-In-Suit, and to encourage users in this District and elsewhere in the United States to infringe the Patents-In-Suit.

## **V. CAUSES OF ACTION**

### **A. Count I - Infringement of the '158 Patent**

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

19. MONKEYmedia has not licensed or otherwise authorized Amazon to make, use, offer for sale, sell, or import any products or use any methods that embody the inventions of the '158 Patent.

20. Amazon directly and indirectly infringed claims 37, 40 and/or 41 of the '158 Patent during the term of the '158 Patent, in violation of 35 U.S.C. § 271.

21. Amazon directly and indirectly infringed the '158 Patent, by, among other things, distributing, offering for sale, selling, licensing, and/or importing within this District and elsewhere in the United States, without license or authority, the Amazon Video service (distributed to users via the Amazon Video App) with X-Ray, Amazon Fire Devices, and Amazon-Enabled

Devices, because the Amazon Fire Devices and Amazon-Enabled Devices installed with the Amazon Video App or enabled to access and playback Amazon Video Content via a web browser perform the methods falling within the scope of claims 37, 40 and/or 41 of the '158 Patent when playing Amazon Video Content with X-Ray.

22. Amazon also directly or indirectly infringed the '158 Patent, by, among other things, distributing, offering for sale, selling, licensing and/or importing within this District and elsewhere in the United States, without license or authority, Amazon Fire Devices that perform the methods falling within the scope of claims 37, 40 and/or 41 of the '158 Patent when performing Seamless Expansion Content through other Apps that are pre-installed or can be downloaded to these Devices, such as Hulu, Netflix and Pandora.

23. By way of a representative example, the Amazon Fire Stick is an Amazon Fire Device with the Amazon Video App installed that was offered for sale and sold by Amazon in this District and elsewhere in the United States during the term of the '158 Patent. "Grand Tour" with X-Ray Content was a series made available by Amazon for downloading/streaming through Amazon Fire Devices, including Amazon "Fire Edition" Smart TVs, and Amazon-Enabled Devices. The Amazon Fire Stick was configured to perform each of the steps claimed for playing stored content, such as the Grand Tour with X-Ray Content when desired by a user, and thus infringed at least Claim 37 of the '158 Patent, as follows:

- a. The Amazon Fire Stick with the Amazon Video App installed was configured to provide a plurality of segments of the Grand Tour content having a temporal flow from the first terminus to the second terminus of the segments, wherein at least one segment is associated with a plurality of links to a corresponding plurality of other of said segments.



b. The Amazon Fire Stick with the Amazon Video App installed was configured to play the at least one segment of the Grand Tour content with the temporal flow and determine prior to reaching the second terminus of the segment whether a content expansion using X-Ray was desired and linked to an expansion segment and played the expansion segment if the content expansion was desired, where there was an additional link from the expansion segment to the continuing segment of the Grand Tour content such that the continuing segment was played after the expansion segment has been played. If the content expansion was not desired, the Amazon Fire Stick linked to a continuing segment of the Grand Tour content and played the continuing segment.

c. In playing the segments of the Grand Tour content, the Amazon Fire Stick with the Amazon Video App installed was also configured to highlight an expansion cue corresponding to one of the expansion links and determine prior to reaching said second terminus of the segment of the Grand Tour content whether a content expansion was desired by, at least in part, determining whether the expansion segment cue is selected, wherein the expansion segment cue is one of a plurality of expansion cues in an expansion cue container.

24. Upon information and belief, other Amazon Fire Devices with the Amazon Video App installed are also configured to perform the above-described claimed method in the same manner when playing Amazon Video with X-Ray Content, such as the Grand Tour or when performing Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora. Similarly, the Amazon Video service (when downloaded as the Amazon Video App or accessed via a web browser at Amazon's website) to enable Amazon-

Enabled Devices configures such devices to perform the above-described claimed method in the same manner when playing Amazon Video Content with X-Ray Content, such as the Grand Tour.

25. Amazon has, upon information and belief, directly infringed the '158 Patent during the term of the '158 Patent, in violation of 35 U.S.C. § 271(a) by, among other things, using, distributing, offering for sale, selling, licensing and/or importing within this District and elsewhere in the United States, without license or authority, the Amazon Fire Devices with the Amazon Video App installed and the Amazon Video service, including via Amazon Video App or as accessed via Amazon's website ([www.amazon.com](http://www.amazon.com)), with X-Ray features. For example, upon information and belief, Amazon at least designs, develops, and tests its Amazon Video App and the web browser implementation of the Amazon Video service to ensure that the X-Ray features function on the Amazon Fire Devices and Amazon-Enabled Devices according to their pre-designed specifications.

26. Amazon has, upon information and belief, infringed the '158 Patent during the term of the '158 Patent, in violation of 35 U.S.C. § 271(b) by actively inducing direct infringement of the '158 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '158 Patent and knowledge that it was inducing the direct infringement of the '158 Patent, by, among other things, taking affirmative steps that encouraged, aided and abetted direct infringement by others including without limitation, customers and end users of Amazon Fire Devices in Texas and elsewhere the United States who played Amazon Video with X-Ray Content, such as the Grand Tour, or performed Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora.

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

the '158 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '158 Patent and knowledge that it was inducing the direct infringement of the '158 Patent, by, among other things, taking affirmative steps that encouraged, aided and abetted direct infringement by others including without limitation, customers and end users of the Amazon Video service, when downloaded as the Amazon Video App or accessed via Amazon's website (www.amazon.com) to enable Amazon-Enabled Devices, in Texas and elsewhere the United States who played Amazon Video Content with X-Ray Content.

28. Amazon knew that the induced acts constituted infringement or has been willfully blind to the infringement. On information and belief, Amazon infringed the '158 Patent in an egregious and willful manner with knowledge of the '158 Patent and its infringement, or was willfully blind to the risk of infringement.

29. Additionally and alternatively, on information and belief, Amazon distributed, offered for sale, sold, and/or imported into in this District and elsewhere in the United States features incorporated into the Amazon Fire Devices, Amazon "Fire Edition" Smart TVs, and into the Amazon Video service (when downloaded as the Amazon Video App or accessed via Amazon's website www.amazon.com) to enable Amazon-Enabled Devices, including, the ability to play Amazon Video Content with X-Ray in a manner that allow performance of one or more of the method claims in the '158 Patent, knowing that one or more of such features are especially made and adapted for use in infringing the claimed method(s), and not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, end users directly infringed one or more of the claims in the '158 Patent by carrying out the claimed method(s) on the Amazon Fire Devices in this District and elsewhere the United States when playing Amazon Video Content with X-Ray, such as the Grand Tour, or performing Seamless

Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora. End users also directly infringed one or more of the claims in the '158 Patent by carrying out the claimed method(s) on Amazon-Enabled Devices in this District and elsewhere the United States when playing Amazon Video Content with X-Ray, via the Amazon Video App or as accessed and played via Amazon's website via a web browser. This conduct by Amazon constitutes contributory infringement under 35 U.S.C. §271(c).

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

**B. Count–II - Infringement of the '379 Patent**

31. MONKEYmedia reincorporates by reference and realleges paragraphs 1 through 30 above as if fully set forth herein.

32. MONKEYmedia has not licensed or otherwise authorized Amazon to make, use, offer for sale, sell, license or import any products that embody the inventions of the '379 Patent.

33. Amazon has directly and indirectly infringed one or more of claims 21-22, 24-25 and/or 27 of the '379 Patent during the term of the '379 Patent, in violation of 35 U.S.C. § 271.

34. Amazon directly and indirectly infringed the '379 Patent literally and/or under the doctrine of equivalents during the term of the '379 Patent, by, among other things, using, distributing, offering for sale, selling, licensing and/or importing in this District and elsewhere in the United States, without license or authority, the Amazon Video App with X-Ray, the Amazon Fire Devices installed with the Amazon Video App, and the Amazon-Enabled Devices installed with the Amazon Video App or enabled to access and playback Amazon Video Content via a web

browser, each falling within the scope of one or more of claims 21-22, 24-25 and/or 27 of the '379 Patent.

35. By way of a representative example, the Amazon Fire Stick is an Amazon Fire Device that was offered for sale and sold by Amazon in this District and elsewhere in the United States during the term of the '158 Patent. "Grand Tour" with X-Ray Content was a series made available by Amazon for downloading/streaming through Amazon Fire Devices and Amazon-Enabled Devices.

36. The Amazon Fire Stick with the Amazon Video App installed infringed at least Claim 21 of the '379 Patent, because it comprised computer readable storage media storing instructions that when executed by the Fire Stick was capable of causing the Fire Stick to:

- a. begin receiving a main content continuous play media stream of the Grand Tour comprising a stream of audio, video and/or still image(s);
- b. generate a signal to play a first subset of the main content continuous play media stream of the Grand Tour, wherein a visual portion of said first subset substantially fills a first visual display space of a connected display such as a TV, during play of said first subset, and wherein a highlighted discernible entity is presented during play of the first subset as a visual expansion cue that invites a user to elect insertion of an expansion, and wherein the visual expansion cue is one of a plurality of expansion cues that are presented simultaneously in a visually distinguished subset of the first visual display space during playing of the first subset;
- c. determine during playing of the first subset whether there is user input electing an expansion, wherein electing an expansion does not necessitate pushing of a physical button;

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

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

- i. generate a signal to present a change in said expansion cue;
- ii. establish a resume point as a landing offset in the main content continuous play media stream of Grand Tour temporally located less than ten seconds from where the user input was detected in the main content continuous play media stream;
- iii. fetch the expansion, wherein the expansion comprises expansion content;
- iv. generate a signal to play the expansion, wherein a visual portion of the second subset of the main content continuous play media stream fills the first visual display space, and replaces the visual portion of the expansion content in the first visual display space less than ten seconds after the expansion content ceases being played.

37. Upon information and belief, the other Amazon Fire Devices with the Amazon Video App installed also comprised computer readable storage media storing instructions that when executed were capable of causing those Devices to perform the above-described steps when playing Amazon Video Content with X-Ray Content, such as the Grand Tour or to perform Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora. Similarly, the Amazon Video service (when downloaded as the Amazon

Video App or accessed via a web browser at Amazon's website to enable Amazon-Enabled Devices) also comprised computer readable storage media storing instructions that when executed were capable of causing those Devices to perform the above-described steps when playing Amazon Video with X-Ray Content, such as the Grand Tour.

38. Amazon has, upon information and belief, directly infringed the '379 Patent during the term of the '379 Patent, in violation of 35 U.S.C. § 271(a) by, among other things, using, distributing, offering for sale, selling, licensing and/or importing within this District and elsewhere in the United States, without license or authority, the Amazon Fire Devices with the Amazon Video App installed and the Amazon Video service, including the Amazon Video App or as accessed via Amazon's website ([www.amazon.com](http://www.amazon.com)), with X-Ray features. For example, upon information and belief, Amazon at least designs, develops, and tests its Amazon Video App and the web browser implementation of the Amazon Video service to ensure that the X-Ray features function on the Amazon Fire Devices and Amazon-Enabled Devices according to their pre-designed specifications.

39. Additionally and/or alternatively, Amazon has, upon information and belief, infringed the '379 Patent during the term of the '379 Patent, in violation of 35 U.S.C. § 271(b) by actively inducing direct infringement of the '379 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '379 Patent and knowledge that it was inducing the direct infringement of the '379 Patent, by, among other things, taking affirmative steps that encouraged, aided and abetted direct infringement by others including without limitation, customers and end users of Amazon Fire Devices in Texas and elsewhere the United States who played Amazon Video Content with X-Ray Content, such as the Grand Tour, or performed Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora.

40. Additionally and/or alternatively, Amazon has, upon information and belief, infringed the '379 Patent during the term of the '379 Patent, in violation of 35 U.S.C. § 271(b) by actively inducing direct infringement of the '379 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '379 Patent and knowledge that it was inducing the direct infringement of the '379 Patent, by, among other things, taking affirmative steps that encouraged, aided and abetted direct infringement by others including without limitation, customers and end users of the Amazon Video service (when downloaded as the Amazon Video App or accessed via a web browser at Amazon's website to enable Amazon-Enabled Devices) in Texas and elsewhere the United States who played Amazon Video Content with X-Ray Content such as the Grand Tour.

41. Amazon knew that the induced acts constituted infringement or has been willfully blind to the infringement. On information and belief, Amazon infringed the '379 Patent in an egregious and willful manner, with knowledge of the '379 Patent and its infringement or was willfully blind to the risk of infringement.

42. Additionally and alternatively, on information and belief, Amazon distributed, offered for sale, sold, and/or imported into this District and elsewhere in this District and elsewhere in the United States, features incorporated into the Amazon Fire Devices and into the Amazon Video service (when downloaded as the Amazon Video App or accessed via a web browser at Amazon's website to enable Amazon-Enabled Devices), such as the ability to play Amazon Video Content with X-Ray in a manner that allow performance of one or more of the claims in the '379 Patent, knowing that one or more of such features are especially made and adapted for use in infringing the claim(s), and not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, end users directly infringed one or more of the claims in the '379 Patent by playing Amazon Video Content with X-Ray on Fire Devices or



performing Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora and by playing Amazon Video Content with X-Ray on Amazon-Enabled Devices (via the Amazon Video App or as accessed and played via Amazon's website via a web browser) in Texas and elsewhere the United States. This conduct by Amazon constitutes contributory infringement under 35 U.S.C. §271(c).

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

**C. Count III - Infringement of the '226 Patent**

44. MONKEYmedia reincorporates by reference and realleges paragraphs 1 through 43 above as if fully set forth herein.

45. MONKEYmedia has not licensed or otherwise authorized Amazon to make, use, offer for sale, sell, license or import any products that embody the inventions of the '226 Patent.

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

47. Amazon directly and indirectly infringed the '226 Patent literally and/or under the doctrine of equivalents during the term of the '226 Patent, by, among other things, using, distributing, offering for sale, selling, licensing and/or importing within this District and elsewhere in the United States, without license or authority, Amazon Video service with X-Ray, Amazon Fire Devices, and the Amazon-Enabled Devices, because the Amazon Fire Devices and Amazon-Enabled Devices installed with the Amazon Video App or enabled to access and playback Amazon Video Content via a web browser perform one or more of the methods of claims 8-12 of the '226

Patent, and/or comprise computer readable storage media that are capable of causing the Devices to perform the steps in claims 2-6 of the '226 Patent.

48. By way of a representative example, the Amazon Fire Stick is an Amazon Fire Device with the Amazon Video App installed that was offered for sale and sold by Amazon in this District and elsewhere in the United States during the term of the '226 Patent. "Grand Tour" with X-Ray Content was a series made available by Amazon for downloading/streaming through the Amazon Fire Stick.

49. The Amazon Fire Stick infringed at least Claim 2 of the '226 Patent because it comprised computer readable storage media storing instructions that when executed by the Fire Stick is configured to cause the Fire Stick with the Amazon Video App installed to:

- a. begin fetching a primary content comprising a primary content continuous play media stream of the Grand Tour,
- b. generate a signal to display a first portion of the primary content continuous media stream of the Grand Tour comprising a first stored audio and/or visual content of the primary content continuous play media stream, wherein the first stored content comprises video, wherein an interruption terminus of the first portion and a resume-point terminus of a continuing portion of the primary content continuous media stream of the Grand Tour that continues the primary content continuous play media stream from the interruption terminus of the first portion in the primary content continuous play media stream are established during display of the first portion at an expansion decision point if a content expansion is selected by a user;
- c. provide a highlighted expansion cue to the user during display of the first portion indicating an option for the user to elect to access the content expansion comprising an

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

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

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

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

g. provide an expansion link from the first portion to an expansion portion of the optional content continuous play media stream comprising a second stored audio and/or visual content, and generate a signal to display the second stored audio and/or visual content of the expansion portion if the content expansion is selected, wherein the displayed second stored audio and/or visual content is spatiotemporally continuous with the displayed first stored audio and/or visual content and with a displayed third stored audio and/or visual content of the continuing portion of the Grand Tour whereby the display of the second stored audio and/or visual content replaces the display of the first stored audio and/or visual content after at most a small amount of time and whereby the display of the third stored audio and/or visual content replaces the display of the second stored audio and/or visual content after at most a small amount of time, and wherein a transition is played from the displayed first stored audio and/or visual content to the displayed second stored audio and/or visual content;

- h. provide a continuity link from the expansion portion to the continuing portion and generate a signal to display a third stored audio and/or visual content of the continuing portion after finishing the display of the expansion if the content expansion is elected; and
- i. provide a continuity link from the first portion to the continuing portion and generate a signal to display the third stored audio and/or visual content of the continuing portion if the content expansion is not elected, wherein the displayed third stored audio and/or visual content is spatiotemporally continuous with the displayed first stored audio and/or visual content whereby the display of the third stored audio and/or visual content replaces the display of the first stored audio and/or visual content after at most a small amount of time.

50. Upon information and belief, other Amazon Fire Devices with the Amazon Video App installed also comprised computer readable storage media storing instructions that when executed were capable of causing those Devices to perform the above-described steps when playing Amazon Video Content with X-Ray Content, such as the Grand Tour or to perform Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora. Similarly, the Amazon Video service (when downloaded as the Amazon Video App or accessed via a web browser at Amazon's website to enable Amazon-Enabled Devices) also comprised computer readable storage media storing instructions that when executed were capable of causing those Devices to perform the above-described steps when playing Amazon Video with X-Ray Content, such as the Grand Tour.

51. Amazon has, upon information and belief, directly infringed the '226 Patent during the term of the '226 Patent, in violation of 35 U.S.C. § 271(a) by, among other things, using, distributing, offering for sale, selling, licensing and/or importing within this District and elsewhere

in the United States, without license or authority, the Amazon Fire Devices with the Amazon Video App installed and the Amazon Video service, including the Amazon Video App or as accessed via Amazon's website ([www.amazon.com](http://www.amazon.com)), with X-Ray features. For example, upon information and belief, Amazon at least designs, develops, and tests its Amazon Video App and the web browser implementation of the Amazon Video service to ensure that the X-Ray features function on the Amazon Fire Devices and Amazon-Enabled Devices according to their pre-designed specifications.

52. Additionally and/or alternatively, Amazon has, upon information and belief infringed the '226 Patent in violation of 35 U.S.C. § 271(b) during the term of the '226 Patent by actively inducing direct infringement of the '226 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '226 Patent and knowledge that it was inducing the direct infringement of the '226 Patent by, among other things, taking affirmative steps that encouraged, aided and abetted direct infringement by others (including without limitation, customers and end users of Amazon Fire Devices) in this District and elsewhere the United States who played Amazon Video with X-Ray Content, such as the Grand Tour or performed Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora.

53. Additionally and/or alternatively, Amazon has, upon information and belief, infringed the '226 Patent in violation of 35 U.S.C. § 271(b) during the term of the '226 Patent by actively inducing direct infringement of the '226 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '226 Patent and knowledge that it was inducing the direct infringement of the '226 Patent by, among other things, taking affirmative steps that encouraged, aided and abetted direct infringement by others (including without limitation, customers and end users of the Amazon Video service (when downloaded as the Amazon Video App or accessed via Amazon's website [www.amazon.com](http://www.amazon.com) to enable Amazon-Enabled Devices) in this District and

elsewhere the United States who played Amazon Video with X-Ray Content, such as the Grand Tour.

54. Amazon knew that the induced acts constituted infringement or has been willfully blind to the infringement. On information and belief, Amazon infringed the '226 Patent in an egregious and willful manner with knowledge of the '226 Patent and its infringement, or was willfully blind to the risk of infringement.

55. Additionally and alternatively, on information and belief, Amazon distributed, offered for sale, sold, and/or imported into this District and elsewhere in the United States, features incorporated into the Amazon Fire Devices and into the Amazon Video service (when downloaded as the Amazon Video App or accessed via Amazon's website [www.amazon.com](http://www.amazon.com) to enable Amazon-Enabled Devices), including the ability to play Amazon Video Content with X-Ray in a manner that allows performance of one or more of the claims in the '226 Patent, knowing that one or more of such features are especially made and adapted for use in infringing the claim(s), and not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, end users directly infringed one or more of the claims in the '226 Patent by playing Amazon Video Content with X-Ray on the Amazon Fire Devices or by performing Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora in this District and elsewhere the United States. On information and belief, end users also directly infringed one or more of the claims in the '226 Patent by playing Amazon Video Content with X-Ray on the Amazon-Enabled Devices (via the Amazon Video App or as accessed and played via Amazon's website via a web browser) in this District and elsewhere the United States. This conduct by Amazon constitutes contributory infringement under 35 U.S.C. §271(c).

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

**D. Count IV - Infringement of the '298 Patent**

57. MONKEYmedia reincorporates by reference and realleges paragraphs 1 through 56 above as if fully set forth herein.

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

59. Amazon directly and indirectly infringed one or more of claims 1-9, 13 and/or 14 of the '298 Patent during the term of the '298 Patent, in violation of 35 U.S.C. § 271.

60. Amazon has directly and indirectly infringed the '298 Patent literally and/or under the doctrine of equivalents, during the term of the '298 Patent by, among other things, using, distributing, offering for sale, selling, and/or importing within this District and elsewhere in the United States, without license or authority, Amazon Fire Devices installed with the Amazon Video App, and the Amazon Video App service to enable Amazon-Enabled Devices installed with the Amazon Video App or enabled to access and playback Amazon Video Content via a web browser, each falling within the scope of one or more of claims 1-9, 13 and/or 14 of the '298 Patent.

61. By way of a representative example, Amazon Fire Devices, such as the Amazon Fire Stick and the Toshiba 4K Ultra HD Smart LED TV with HDR— Fire TV Edition ("Toshiba") are infringing devices with the Amazon Video App installed that were offered for sale and sold in this District and elsewhere in the United States during the term of the '298 Patent. "Grand Tour" with X-Ray Content was a series made available by Amazon for downloading/streaming through Amazon Fire Devices and Amazon-Enabled Devices.

62. The Toshiba and Fire Stick were each a media player for capturing and playing continuous play media streams, comprising a display circuit, a selector interface coupled to a digital controller, memory caching storage, and an interface circuit comprising an external interface circuit.

63. The interface circuit of the Toshiba and Fire Stick were capable of wirelessly receiving, from a remote server, a main content continuous play media stream comprising a stream of audio, video, and/or still image(s) and a promotional expansion comprising promotional expansion content.

64. The digital controller of the Toshiba and Fire Stick were capable of causing the display circuit to generate a signal to play the main content continuous play media stream, wherein a visual portion of the main content continuous play media stream substantially fills a first visual display space during play, and wherein a highlighted discernible entity is presented during play as a visual expansion cue that invites a user to elect insertion of the promotional expansion;

65. The selector interface of the Toshiba and Fire Stick were capable of detecting user input electing the promotional expansion during playing of the main content continuous play media stream without the user pushing a physical button on a selector device.

66. If the selector interface of the Toshiba and Fire Stick detects the user input electing the promotional expansion during playing of the main content continuous play media stream, the selector interface is further capable of transmitting detection of the user input to the digital controller, wherein the digital controller is further capable of (a) causing the display circuit to generate a signal to present an apparent change in size of said expansion cue, (b) causing the media player to store in memory a resume point as a landing offset in the main content continuous play media stream, (c) causing the interface circuit to receive the promotional expansion, (d) causing



the display circuit to cease generating the signal to play the main content continuous play media stream at the resume point, (e) causing the display circuit to generate a signal to play the promotional expansion, wherein a visual portion of the promotional expansion content substantially fills the first visual display space in spatiotemporal continuity with the visual portion of the main content continuous play media stream after a transition from playing the main content continuous play media stream to playing the promotional expansion, (f) causing the memory caching storage to temporarily store a portion of the main content continuous play media stream during play of the promotional expansion, (g) causing the media player to retrieve the resume point from memory, (h) causing the media player to retrieve the temporarily stored portion of the main content continuous play media stream from the memory caching storage, (i) causing the display circuit to cease generating the signal to play the promotional expansion; and (j) causing the display circuit to generate a signal to play the temporarily stored portion of the main content continuous play media stream from the resume point, wherein a visual portion of the temporarily stored portion of the main content continuous play media stream fills the first visual display space in spatiotemporal continuity with the visual portion of the promotional expansion content by replacing the visual portion of the promotional expansion content in the first visual display space.

67. Amazon has, upon information and belief, directly infringed the '298 Patent during the term of the '298 Patent, in violation of 35 U.S.C. § 271(a) by, among other things, using, distributing, offering for sale, selling, licensing and/or importing within this District and elsewhere in the United States, without license or authority, the Amazon Fire Devices with the Amazon Video App installed and the Amazon Video service, including the Amazon Video App or as accessed via Amazon's website ([www.amazon.com](http://www.amazon.com)), with X-Ray features. For example, upon information and belief, Amazon at least designs, develops, and tests its Amazon Video App and the web browser

implementation of the Amazon Video service to ensure that the X-Ray features function on the Amazon Fire Devices and Amazon-Enabled Devices according to their pre-designed specifications.

68. Additionally and/or alternatively, Amazon has, upon information and belief infringed the '298 Patent during the term of the '298 Patent in violation of 35 U.S.C. § 271(b) by actively inducing direct infringement of the '298 Patent, literally and/or under the doctrine of equivalents, with knowledge of the '298 Patent and knowledge that it was inducing the direct infringement of the '298 Patent by, among other things, taking affirmative steps that encouraged, aided and abetted direct infringement by others (including without limitation, end users of Amazon Fire Devices and Amazon-Enabled Devices utilizing the Amazon Video App or accessing the Amazon Video service via Amazon's website in this District and elsewhere the United States, and Amazon knew that its induced acts constituted infringement or was been willfully blind to the infringement.

69. Amazon knew that the induced acts constituted infringement or has been willfully blind to the infringement. On information and belief, Amazon infringed the '298 Patent in an egregious and willful manner with knowledge of the '298 Patent and its infringement or was willfully blind to the risk of infringement.

70. Additionally and alternatively, on information and belief, Amazon distributed, offered for sale, sold, and/or imported into this District and elsewhere in this District and elsewhere in the United States, features incorporated into the Amazon Fire Devices and into the Amazon Video service (when downloaded as the Amazon Video App or accessed via a web browser at Amazon's website to enable Amazon-Enabled Devices), such as the ability to play Amazon Video Content with X-Ray in a manner that allow performance of one or more of the claims in the '298

Patent, knowing that one or more of such features are especially made and adapted for use in infringing the claim(s), and not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, end users directly infringed one or more of the claims in the '298 Patent by playing Amazon Video Content with X-Ray on Fire Devices or performing Seamless Expansion through Apps pre-installed or downloaded to these Devices, such as Hulu, Netflix and Pandora and by playing Amazon Video Content with X-Ray on Amazon-Enabled Devices (via the Amazon Video App or as accessed and played via Amazon's website via a web browser) in Texas and elsewhere the United States. This conduct by Amazon constitutes contributory infringement under 35 U.S.C. §271(c).

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

## **VI. DEMAND FOR JURY TRIAL**

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

## **VII. PRAYER**

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

- (a) That this Court find Amazon infringed the '158, '379, '226 and '298 Patents (directly, contributorily, and by inducement) in violation of the Patent Act, 35 U.S.C. § 271;
- (b) That this Court enter judgment that:
  - (i) MONKEYmedia is the owner of the MONKEYmedia '158, '379, '226 and '298 Patents and all rights of recovery thereunder;

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

Dated: December 6, 2023

Respectfully submitted,

/s/ Jeffrey R. Bragalone

Jeffrey R. Bragalone (lead attorney)

Texas Bar No. 02855775

E-mail: jbragalone@bosfirm.com

Daniel F. Olejko

Texas Bar No. 24108897

E-mail: dolejko@bosfirm.com

Terry A. Saad

Texas Bar No. 24066015

E-mail: tsaad@bosfirm.com

Marcus Benavides

Texas Bar No. 24035574

E-mail: mbenavides@bosfirm.com

Brandon V. Zuniga

Texas Bar No. 24088720

E-mail: bzuniga@bosfirm.com

Mark M.R. Douglass

Texas Bar No. 24131184

E-mail: mdouglass@bosfirm.com

**BRAGALONE OLEJKO SAAD PC**

901 Main Street

Suite 3800

Dallas, Texas 75202

Telephone: (214) 785-6670

Facsimile: (214) 785-6680

Matthew C. Powers

State Bar ID No. 24046650

mpowers@gdhm.com

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

401 Congress Avenue, Suite 2700

Austin, Texas 78701

(512) 480-5600 Telephone

(512) 480-5853 Telecopier

**ATTORNEYS FOR PLAINTIFF  
MONKEYMEDIA, INC.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system.

/s/ Marcus Benavides  
Marcus Benavides