

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SEGAN LLC	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 11-00670-GMS
	§	
ZYNGA, INC.	§	
	§	
Defendant.	§	Jury Trial Demanded

**PLAINTIFF’S AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, Segan LLC, files this Complaint against Defendant, Zynga, Inc., and, in support thereof, further states and alleges as follows:

**THE PARTIES**

1. Plaintiff, Segan LLC, is a New York limited liability company, having a place of business located at 33-00 Northern Boulevard, Long Island City, New York, 11101.
2. Upon information and belief, Defendant Zynga, Inc. is a Delaware corporation, having a place of business located at 444 De Haro Street, Suite 132, San Francisco, California 94107.

**JURISDICTION AND VENUE**

3. This is a civil action for infringement under the laws of the United States, Title 35 United States Code §§ 1, *et seq.*
4. This Court has original subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1338(a) (patent-exclusive jurisdiction).

5. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant is a corporation organized and existing under the laws of the State of Delaware and because Defendant has conducted and does conduct business within the District of Delaware.

6. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b), as Defendant is subject to personal jurisdiction in this district.

### **FACTUAL BACKGROUND**

#### **A. Inventors**

7. Joint-inventor Marc Segan is the Founder and President of Plaintiff, Segan LLC, a product invention and development company. Mr. Segan is a prolific inventor and entrepreneur, having designed and developed numerous electronic and other products over the past thirty-three years that have been licensed to or which have been used by major corporations. In addition to founding Segan LLC, Mr. Segan founded or co-founded Swartztrauber/Segan Inc., M. H. Segan & Company Inc., Quadlogic Controls Corp., Long Hall Technologies, L.L.C., and The Animated Animations Company LLC, each of which has developed and produced numerous innovative products that have been widely distributed and highly profitable.

8. Joint-inventor Gene Lewin has served in management positions for various technology companies for nearly 20 years. For 13 years, beginning in 1993, Mr. Lewin served as the Director of Information Technology for Plaintiff or Plaintiff's predecessor, where Mr. Lewin maintained the information technology infrastructure and provided numerous customized applications, including custom prototyping tools to aid in consumer electronic product design. During his tenure at Segan LLC, Mr. Lewin worked closely with Mr. Segan to develop the concept behind a system for viewing content over a network, which is the subject of the present

patent-in-suit, and developed all of the back-end communications components for the initial prototype of that system.

**B. U.S. Patent No. 7,054,928**

9. On May 30, 2006, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 7,054,928 (“the ‘928 patent”), entitled “System for Viewing Content Over a Network and Method Therefor.” Mr. Segan and Mr. Lewin are named as joint inventors. A true and correct copy of the ‘928 patent is attached hereto as Exhibit A.

10. Plaintiff, Segan LLC, is the owner by assignment of the ‘928 patent.

11. The claims of the ‘928 patent relate to, *inter alia*, a user device, target website, and service provider, as well as obtaining and using a character icon and character enhancements.

**C. June 30, 2011, Letter to Zynga**

12. On June 30, 2011, Plaintiff sent to Defendant’s CEO, Mr. Mark Pincus, via United Parcel Service overnight delivery, a full copy of the ‘928 patent and a letter informing him of the ‘928 patent. On June 30, 2011, Plaintiff also sent, via United Parcel Service overnight delivery, full copies of ‘928 patent and the letter to Defendant’s General Counsel, Mr. Reggie Davis, Defendant’s Chief Operating Officer, Mr. John Schappert, and Defendant’s Chief Business Officer, Mr. Owen Van Natta. The letter stated that, “Segan LLC is the developer and owner of certain technology relating to network architecture and communication protocols which allow users to locate and acquire persistent character or icon enhancements at various websites on the Internet.” The letter spoke of the technology’s application to distributors of persistent games (like Zynga) over social media platforms or websites. Thus, since at least that June 30

letter's delivery to Zynga, Defendant had knowledge of the '928 patent, and knew at least that, among other things, Zynga's persistent games constituted computer applications that infringed and continue to infringe the '928 patent. To date, Defendant has not responded to the June 30, 2011, letter.

**D. Zynga's Persistent Social Games**

13. In its amended Initial Public Offering (IPO) statement dated September 21, 2011, Defendant claims to be the world's leading social game developer, and that on any given day 60,000,000 people play its computer application games on social websites. Defendant states that its games, which include but are not limited to, Café World, CityVille, Empires & Allies, FarmVille, FishVille, FrontierVille, Mafia Wars, PetVille, Treasure Isle, YoVille, and Zynga Poker, are accessible to game players worldwide on social network websites and on mobile platforms. Defendant states that Facebook is the primary distribution, marketing, promotion and payment platform for its games, and that Defendant generates substantially all of its revenue and players through the Facebook platform. Defendant states that it has developed its on-line games to be played on Facebook because of Facebook's strong brand recognition and large user base. Defendant says that its games' social design enhances player/user experience, and that its game players need to access the Internet, Facebook (although it can be almost any target website that Zynga chooses to engage to host or support its games), and Defendant's own website to play Defendant's games.

**COUNT I**  
**Direct Infringement of the '928 Patent**

14. Plaintiff incorporates the allegations set forth in the paragraphs above as though fully set forth herein.

15. Upon information and belief, Defendant's business is fundamentally predicated on it making, using, selling, offering for sale, and/or importing into the United States a variety of computer applications covered by the '928 patent, including but not limited to, Café World, CityVille, Empires & Allies, FarmVille, FishVille, FrontierVille, Mafia Wars, PetVille, Treasure Isle, YoVille, and Zynga Poker. Upon information and belief, Defendant has specifically designed, developed, and acquired those and other on-line games for game players to use on target websites (such as, for example, Facebook), and Defendant has directed its resources to making those games appealing to game players on such websites. Defendant's efforts have resulted in millions of game players playing its games every day, and it has earned millions of dollars in revenue from the use of those games.

16. Upon information and belief, Defendant has directly infringed, and continues to directly infringe, the '928 patent, by, *inter alia*, making, using, selling, offering for sale, and/or importing its games covered by the '928 patent, and distributing, marketing, and/or advertising its games covered by the '928 patent in the District of Delaware and elsewhere in the United States. For example, Defendant has used its own games on social media websites. Defendant has been on notice of said infringement since, at least, the time that it received the June 30, 2011, letter from Plaintiff.

17. As a direct and proximate result of Defendant's acts of infringing the '928 patent, Plaintiff has suffered injury and monetary damages for which Plaintiff is entitled to relief, in no event less than a reasonable royalty to compensate for Defendant's infringement.

18. Upon information and belief, Defendant has knowingly, willfully, and deliberately infringed the '928 patent in conscious disregard of Plaintiff's rights, making this

case exceptional within the meaning of 35 U.S.C. § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

19. Upon information and belief, Defendant will continue to directly infringe the '928 patent, causing immediate and irreparable harm unless this Court enjoins and restrains Defendant's activities.

20. Upon information and belief, the direct infringement of the '928 patent by Defendant has, and will, deprive Plaintiff of royalties and other related revenue which Plaintiff would have made or would enjoy in the future; has injured Plaintiff in other respects; and will cause Plaintiff added injury and damage unless Defendant is enjoined from infringing the '928 patent on all products Defendant will make, use, offer for sale, sell, import, distribute, market, or advertise until the expiration of the '928 patent.

**COUNT II**  
**Indirect Infringement of the '928 Patent**

21. Plaintiff incorporates the allegations set forth in the paragraphs above as though fully set forth herein.

22. Upon information and belief, Defendant has indirectly infringed, and continues to indirectly infringe, the '928 patent, by, *inter alia*, inducing others to make, use, sell, offer for sale, and/or import into the United States games covered by the '928 patent, and distributing, marketing, and/or advertising those games in the District of Delaware and elsewhere in the United States. Furthermore, Defendant has indirectly infringed, and continues to indirectly infringe, the '928 patent, by, *inter alia*, offering to sell and/or selling components of the invention claimed in the '928 patent.

23. Upon information and belief, Defendant had knowledge of the '928 patent at least as early as June 30, 2011, when Plaintiff sent a copy of the '928 patent to Defendant's CEO, Mr. Pincus. Despite having such knowledge, Defendant has continued to make its games available to millions of game users on social media websites such as Facebook, MySpace, Yahoo, and Google+. In its amended IPO, Defendant admits that on any given day 60,000,000 people (*i.e.*, users) play Defendant's games on social websites.

24. Upon information and belief, Defendant is also aware that its games are covered by (and therefore infringe) the '928 patent. Defendant admits in its amended IPO statement that its games require game players (users) to access the Internet, Facebook (or any target website Zynga engages), and Defendant's own website (service provider) to play Defendant's games. Defendant's amended IPO includes screen shots of its games having character icons and character enhancements. In fact, many of Defendant's games are persistent games involving character icons and character enhancements, as outlined in the '928 patent.

25. For example, the '928 patent notes that it allows a user to access enhancement content for a user's character icon; Defendant similarly claims in its amended IPO that one of the keys to its continued success is the game's ability to facilitate a user customizing (*e.g.*, enhancing) his or her character's appearance in its games.

26. The June 30, 2011 letter from Plaintiff to Defendant states that Plaintiff is the developer and owner of certain technology relating to network architecture and communication protocols which allow users to locate and acquire persistent character or icon enhancements at various websites on the Internet. The letter also indicates the '928 patent's applicability to Zynga's present business model. Thus, at least as of the time of the letter, and quite possibly before, the Defendant knew that the '928 covered Defendant's games, *i.e.*, where a user accesses

the Internet and goes to a target website to play games distributed by Defendant, a service provider.

27. Defendant also specifically encourages use of its games in a manner covered by the '928 patent. Defendant admits in its amended IPO that it makes its games accessible to game players worldwide on Facebook, other social network websites, and on mobile platforms. Users of the games put the invention into service for Defendant. Through a user device, a game player accesses the Internet, goes to a target website to play Defendant's games, and that website interacts with the service provider's (Zynga's) server to facilitate playing of the game and enhancement of character icon appearances (and permits other user preference alterations). The games are persistent, which means game player's information is stored by Defendant in user profiles. In this respect, Defendant knew or should have known that the ability of its games' users to put the invention into service, control the operation of the system as a whole, and obtain benefit from that use infringed the '928 patent, such that making its games available to game players on Facebook and other social media websites and platforms would induce infringement of the '928 patent. Defendant, as the games' creator and distributor, knowingly induced infringement and possessed the specific intent to encourage its games' users' infringement. Furthermore, the games created and distributed by Defendant are not staple articles or commodities of commerce suitable for non-infringing use. Therefore, by offering to sell and/or selling games, and/or components thereof, covered by the '928 patent, Defendant has contributed to infringement of the '928 patent.

28. As a direct and proximate result of Defendant's acts of inducing and contributing to infringement of the '928 patent, Plaintiff has suffered injury and monetary damages for which



Plaintiff is entitled to relief, in no event less than a reasonable royalty to compensate for Defendant's infringement.

29. Upon information and belief, Defendant has knowingly, willfully, and deliberately induced and contributed to infringement of the '928 patent, in conscious disregard of Plaintiff's rights, making this case exceptional within the meaning of 35 U.S.C. § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

30. Upon information and belief, Defendant will continue to induce and contribute to infringement of the '928 patent, causing immediate and irreparable harm unless this Court enjoins and restrains Defendant's activities.

31. Upon information and belief, the induced infringement by Defendant has, and will, deprive Plaintiff of royalties and other related revenue which Plaintiff would have made or would enjoy in the future; has injured Plaintiff in other respects; and will cause Plaintiff added injury and damage unless Defendant is enjoined from inducing infringement of the '928 patent on all products Defendant will make, use, offer for sale, sell, import, distribute, market, or advertise until the expiration of the '928 patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Segan LLC, respectfully requests this Court to:

A. Enter judgment for Plaintiff that the '928 patent was duly and legally issued, is valid, enforceable, and has been infringed, directly or indirectly, by Defendant;

B. Enter judgment for Plaintiff that Defendant has willfully infringed, and is willfully infringing, one or more claims of the '928 patent;

C. Order Defendant to account in written form for and to pay to Plaintiff actual damages to compensate Plaintiff for Defendant's infringement of the '928 patent through and including the date of entry of the judgment on the jury's verdict, including but not limited to, damages of no less than a reasonable royalty, together with interest and costs under 35 U.S.C. §284, and further order that such damages be trebled due to Defendant's deliberate, willful, and knowing conduct;

D. Issue a preliminary injunction restraining the Defendant, its directors, officers, agents, employees, successors, subsidiaries, assigns, affiliates and all persons acting in privity or in concert or participation with any of them from the continued infringement, direct or contributory, or active inducement of infringement by others, of the '928 patent;

E. Issue a permanent injunction restraining the Defendant, its directors, officers, agents, employees, successors, subsidiaries, assigns, affiliates and all persons acting in privity or in concert or participation with any of them from the continued infringement, direct or contributory, or active inducement of infringement by others, of the '928 patent;

F. Direct Defendant to file with this Court, and to serve on Plaintiff, a written report under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

G. In lieu of a permanent injunction, order the Defendant to pay to Plaintiff monetary damages that will be suffered as a result of Defendant's continuing post-verdict infringement of the '928 patent by requiring the Defendant to take a compulsory license at a reasonable royalty rate to be determined by the Court on all products that Defendant makes, uses, offers for sale, sells, imports, distributes, markets, or advertises that infringe the '928 patent until the expiration of the '928 patent, which royalty payments shall commence three months after entry of the

judgment and shall be made quarterly thereafter, and shall be accompanied by an accounting of the sales of infringing products by the Defendant;

H. Order such other measures in the form of audit rights, interest on late payments, and appropriate security to protect Plaintiff's rights;

I. Order Defendant to pay Plaintiff its costs, expenses, and fees, including reasonable attorneys' fees pursuant to 35 U.S.C. § 285, and pre-judgment and post-judgment interest at the maximum rate allowed by law; and

J. Grant Plaintiff such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands that the issues in this case be tried by a jury.

Dated: October 13, 2011

Respectfully submitted,

/s/ David A. Dorey

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