

Kathleen C. Bricken, OSB#942660

E-Mail: kbricken@gsblaw.com

Adam R. Kelly, OSB #023431

E-Mail: akelly@gsblaw.com

Garvey Schubert Barer

Eleventh Floor

121 S.W. Morrison Street

Portland, Oregon 97204-3141

Telephone: (503) 228-3939

Facsimile: (503) 226-0259

FILED '11 3 21 16:00 USDC-ORP

James R. Barney (*pro hac vice pending*)

E-Mail: james.barney@finnegan.com

Michael A. Morin (*pro hac vice pending*)

E-Mail: michael.morin@finnegan.com

Michael V. O'Shaughnessy (*pro hac vice pending*)

E-Mail: michael.oshaughnessy@finnegan.com

Elizabeth D. Ferrill (*pro hac vice pending*)

E-Mail: Elizabeth.ferrill@finnegan.com

Finnegan, Henderson, Farabow,

Garrett & Dunner, LLP

901 New York Avenue, N.W.

Washington, D.C. 20001

Telephone: (202) 408-4000

Facsimile: (202) 408-4400

Attorneys for Plaintiffs

Creative Kingdoms, LLC and New Kingdoms, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CREATIVE KINGDOMS, LLC, a Rhode Island limited liability company; and **NEW KINGDOMS, LLC**, an Oregon limited liability company,

Plaintiffs,

v.

NINTENDO CO., LTD., a foreign corporation; and **NINTENDO OF AMERICA, INC.**, a Washington corporation,

Defendants.

Case No. CV '11 - 351 HU

**COMPLAINT
Patent Infringement**

JURY TRIAL DEMANDED

COMPLAINT (Patent Infringement)

Page 1 of 12

Plaintiffs Creative Kingdoms, LLC and New Kingdoms, LLC bring this action for patent infringement against Defendants Nintendo Co., Ltd. and Nintendo of America, Inc., asserting the following four patents: U.S. Patent No. 6,761,637; U.S. Patent No. 7,500,917; U.S. Patent No. 7,850,527; and U.S. Patent No. 7,896,742. Plaintiffs allege as follows:

THE PLAINTIFFS

1. Plaintiff CREATIVE KINGDOMS, LLC (“Creative Kingdoms”) is a limited liability company organized and existing under the laws of Rhode Island, having its principal place of business at 17005 Miami Forest Road, Nehalem, Oregon 97131.

2. Creative Kingdoms designs, develops, and markets an interactive live-action adventure game attraction and toy wands embodying technology covered by the asserted patents throughout the United States, including in the District of Oregon at its principal place of business located at 17005 Miami Forest Road, Nehalem, OR 97131.

3. Plaintiff NEW KINGDOMS, LLC (“New Kingdoms”) is a limited liability company organized and existing under the laws of Oregon, having its principal place of business at 17005 Miami Forest Road, Nehalem, Oregon 97131.

4. New Kingdoms is a wholly-owned subsidiary of Creative Kingdoms.

THE DEFENDANTS

5. Upon information and belief, defendant NINTENDO CO. LTD. (“Nintendo Japan”) is a corporation organized and existing under the laws of Japan, having a principal place of business at 11-1 Kamitoba hokotate-cho, Minami-ku, Kyoto 601-8501, Japan.

////

////

6. Upon information and belief, Nintendo Japan is the corporate parent of a multinational corporation that designs, develops, manufactures, and/or sells for importation wireless video game systems and controllers and components thereof, which are sold throughout the United States, including in the District of Oregon.

7. Upon information and belief, defendant NINTENDO OF AMERICA, INC. ("Nintendo of America") is a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 4820 150th Avenue N.E., Redmond, Washington 98052.

8. Upon information and belief, Nintendo of America is a wholly-owned subsidiary of Nintendo Japan.

9. Upon information and belief, Nintendo of America, through its distribution centers in Atlanta, Georgia, and North Bend, Washington, imports and sells infringing wireless gaming systems and controllers and components thereof throughout the United States, including in the District of Oregon.

JURISDICTION AND VENUE

10. This civil action for patent infringement arises under the Patent Laws of the United States, 35 U.S.C. §§ 100 *et seq.*, and in particular under 35 U.S.C. § 271(a), (b), and/or (c). Therefore, subject matter jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

11. Upon information and belief, Defendants Nintendo Japan and Nintendo of America have maintained continuous and systematic contacts with, and have purposefully availed themselves of the benefits and protections of, the laws of the State of Oregon by, among other things, purposefully conducting and continuing to conduct business in this state and placing the accused products in the stream of commerce knowing this state was a likely

////

destination for those products. Therefore, this court has personal jurisdiction over both Defendants.

12. Upon information and belief, venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) because Defendants have, among other things, committed acts of infringement in this district and engaged in commerce in this district.

FACTS PERTINENT TO ALL CLAIMS FOR RELIEF

13. United States Patent No. 7,500,917 (“the ‘917 patent”), titled “Magical Wand and Interactive Play Experience,” issued on March 10, 2009 to inventors Jonathan A. Barney and Denise Weston. Creative Kingdoms, LLC owns by assignment the entire right, title, and interest in and to the ‘917 patent. A true and correct copy of the ‘917 patent is attached to this Complaint as Exhibit 1.

14. The ‘917 patent is presumed valid under 28 U.S.C. § 282 and remains enforceable.

15. United States Patent No. 6,761,637 (“the ‘637 patent”), titled “Method of Game Play using RFID Tracking Device,” issued on July 13, 2004 to inventors Denise Weston and Jonathan A. Barney. Creative Kingdoms, LLC owns by assignment the entire right, title, and interest in and to the ‘637 patent. A true and correct copy of the ‘637 patent is attached to this Complaint as Exhibit 2.

16. The ‘637 patent is presumed valid under 28 U.S.C. § 282 and remains enforceable.

17. United States Patent No. 7,850,527 (“the ‘527 patent”), titled “Magic-Themed Adventure Game” issued on December 14, 2010, to inventors Jonathan Barney and Denise Weston. Creative Kingdoms, LLC owns by

////

assignment the entire right, title, and interest in and to the '527 patent. A true and correct copy of the '527 patent is attached to this Complaint as Exhibit C.

18. The '527 patent is presumed valid under 28 U.S.C. § 282 and remains enforceable.

19. United States Patent No. 7,896,742 ("the '742 patent"), titled "Apparatus and Methods for Providing Interactive Entertainment," issued on March 1, 2011, to inventors Denise Weston, Rick Briggs, and Jonathan Barney. Creative Kingdoms, LLC owns by assignment the entire right, title, and interest in and to the '742 patent. A true and correct copy of the '742 patent is attached to this Complaint as Exhibit 4.

20. The '742 patent is presumed valid under 28 U.S.C. § 282 and remains enforceable.

21. Upon information and belief, Defendants have been and are now making, using, selling, and/or offering for sale within the United States, and/or importing into the United States, games, game systems, and related components, including but not limited to the Nintendo Wii video game machine and games played thereon, the Wii Remote, the Wii MotionPlus, the Wii Remote Plus, the Wii Nunchuks, and the 3DS portable gaming system and games played thereon.

22. Upon information and belief, Defendants have been and are now directing and/or controlling the design and development of Wii-compatible and 3DS-compatible games and components made by other companies, through licensing agreements, and encouraging these companies to design and make games and components for use on the Wii system and the 3DS portable gaming system.

23. Upon information and belief, Defendants have been and are now advertising, encouraging, and inducing consumers, through Defendants'

website, among other things, to use the aforementioned games, game systems, and related components. Upon information and belief, Defendants have had actual knowledge of one or more of the '637, '917, '527, and '742 patents.

FIRST CLAIM FOR RELIEF

(Infringement of the '917 Patent)

24. Plaintiffs repeat and again allege each and every allegation contained in paragraphs 1-23 of the Complaint, as if fully set forth herein.

25. Upon information and belief, Defendants have been and are now making, using, selling, offering for sale within the United States, and/or importing into the United States, and/or controlling or directing others to make, use, sell, offer for sale within the United States and/or importing into the United States, games, game systems, and related components that infringe the '917 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

26. Upon information and belief, Defendants have been and are now actively inducing the infringement of the '917 patent by others by, among other things, distributing or offering for sale games, game systems, and related components that infringe the '917 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(b).

27. Upon information and belief, Defendants have been and are now contributing to the infringement of the '917 patent by others by, among other things, distributing or offering for sale games, game systems, and related components that infringe the '917 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(c).

28. Upon information and belief, Defendants' infringement of the '917 patent has been willful.

/////

29. Defendants' past and continued acts of infringement have damaged Plaintiffs in an amount not yet determined and will continue to damage Plaintiffs in the future; and thus Plaintiffs are entitled to recover damages adequate to compensate for that infringement.

30. Defendants' acts of infringement have caused and will continue to cause irreparable injury to Plaintiffs unless and until enjoined by this Court.

SECOND CLAIM FOR RELIEF

(Infringement of the '637 Patent)

31. Plaintiffs repeat and again allege each and every allegation contained in paragraphs 1-23 of the Complaint, as if fully set forth herein.

32. Upon information and belief, Defendants have been and are now making, using, selling, offering for sale within the United States, and/or importing into the United States, and/or controlling or directing others to make, use, sell, offer for sale within the United States and/or importing into the United States, among other things, games, game systems, and related components that infringe the '637 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

33. Upon information and belief, Defendants have been and are now actively inducing the infringement of the '637 patent by others by, among other things, distributing or offering for sale games, game systems, and related components that infringe the '637 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(b).

34. Upon information and belief, Defendants have been and are now contributing to the infringement of the '637 patent by others by, among other things, distributing or offering for sale games, game systems, and related components that infringe the '637 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(c).

35. Upon information and belief, Defendants' infringement of the '637 patent has been willful.

36. Defendants' past and continued acts of infringement have damaged Plaintiffs in an amount not yet determined and will continue to damage Plaintiffs in the future; and thus Plaintiffs are entitled to recover damages adequate to compensate for that infringement.

37. Defendants' acts of infringement have caused and will continue to cause irreparable injury to Plaintiffs unless and until enjoined by this Court.

THIRD CLAIM FOR RELIEF

(Infringement of the '527 Patent)

38. Plaintiffs repeat and again allege each and every allegation contained in paragraphs 1-23 of the Complaint, as if fully set forth herein.

39. Upon information and belief, Defendants have been and are now making, using, selling, offering for sale within the United States, and/or importing into the United States, and/or controlling or directing others to make, use, sell, offer for sale within the United States and/or importing into the United States, among other things, games, game systems, and related components that infringe the '527 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

40. Upon information and belief, Defendants have been and are now actively inducing the infringement of the '527 patent by others by, among other things, distributing or offering for sale games, game systems, and related components that infringe the '527 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(b).

41. Upon information and belief, Defendants have been and are now contributing to the infringement of the '527 patent by others by, among other things, distributing or offering for sale games, game systems, and related

components that infringe the '527 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(c).

42. Upon information and belief, Defendants' infringement of the '527 patent has been willful.

43. Defendants' past and continued acts of infringement have damaged Plaintiffs in an amount not yet determined and will continue to damage Plaintiffs in the future; and thus Plaintiffs are entitled to recover damages adequate to compensate for that infringement.

44. Defendants' acts of infringement have caused and will continue to cause irreparable injury to Plaintiffs unless and until enjoined by this Court.

FOURTH CLAIM FOR RELIEF

(Infringement of the '742 Patent)

45. Plaintiffs repeat and again allege each and every allegation contained in paragraphs 1-23 of the Complaint, as if fully set forth herein.

46. Upon information and belief, Defendants have been and are now making, using, selling, offering for sale within the United States, and/or importing into the United States, and/or controlling or directing others to make, use, sell, offer for sale within the United States and/or importing into the United States, among other things, games, game systems, and related components that infringe the '742 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

47. Upon information and belief, Defendants have been and are now actively inducing the infringement of the '742 patent by others by, among other things, distributing or offering for sale games, game systems, and related components that infringe the '742 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(b).

////

48. Upon information and belief, Defendants have been and are now contributing to the infringement of the '742 patent by others by, among other things, distributing or offering for sale games, game systems, and related components that infringe the '742 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(c).

49. Upon information and belief, Defendants' infringement of the '742 patent has been willful.

50. Defendants' past and continued acts of infringement have damaged Plaintiffs in an amount not yet determined and will continue to damage Plaintiffs in the future; and thus Plaintiffs are entitled to recover damages adequate to compensate for that infringement.

51. Defendants' acts of infringement have caused and will continue to cause irreparable injury to Plaintiffs unless and until enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Creative Kingdoms, LLC and New Kingdoms, LLC respectfully request that the Court enter judgment against Nintendo Co., Ltd. and Nintendo of America, Inc. as follows:

- A. Declaring that Nintendo Japan has infringed the '637 patent;
- B. Declaring that Nintendo Japan has infringed the '917 patent;
- C. Declaring that Nintendo Japan has infringed the '527 patent;
- D. Declaring that Nintendo Japan has infringed the '742 patent;
- E. Declaring that Nintendo of America has infringed the '637 patent;
- F. Declaring that Nintendo of America has infringed the '917 patent;
- G. Declaring that Nintendo of America has infringed the '527 patent;
- H. Declaring that Nintendo of America has infringed the '742 patent;
- I. Awarding Creative Kingdoms and New Kingdoms damages adequate to compensate for the aforesaid infringement in an amount no less

than a reasonable royalty, together with prejudgment and post-judgment interest thereon;

J. Awarding Creative Kingdoms and New Kingdoms any other damages permitted, including any for willful infringement, under 35 U.S.C. § 284;

K. Declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and awarding Creative Kingdoms and New Kingdoms its fees, costs, expenses, and disbursements in this action, including reasonable attorneys fees;

L. Permanently enjoining Nintendo Japan, its officers, agents, employees, privies, successors, and assigns, and those acting in concert or participation with them, from infringing the '637, '917, '527, and '742 patents;

M. Permanently enjoining Nintendo of America, its officers, agents, employees, privies, successors, and assigns, and those acting in concert or participation with them, from infringing the '637, '917, '527, and '742 patents; and

N. Granting Creative Kingdoms and New Kingdoms such other and further relief as this Court may deem just and equitable.

/////

/////

/////

/////

/////

/////

/////

/////

/////

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure,
Creative Kingdoms, LLC and New Kingdoms, LLC request a trial by jury for all
issues so triable.

DATED this 21st day of March, 2011.

Respectfully submitted,

GARVEY SCHUBERT BARER

By 

Kathleen C. Bricken, OSB# 942660

E-Mail: kbricken@gsblaw.com

Adam R. Kelly, OSB #023431

E-Mail: akelly@gsblaw.com

Garvey Schubert Barer

Eleventh Floor

121 S.W. Morrison Street

Portland, Oregon 97204

Telephone: (503) 228-3939

Facsimile: (503) 226-0259

James R. Barney (*pro hac vice pending*)

E-Mail: james.barney@finnegan.com

Michael A. Morin (*pro hac vice pending*)

E-Mail: michael.morin@finnegan.com

Michael V. O'Shaughnessy (*pro hac vice pending*)

E-Mail: michael.oshaughnessy@finnegan.com

Elizabeth D. Ferrill (*pro hac vice pending*)

E-Mail: Elizabeth.ferrill@finnegan.com

Finnegan, Henderson, Farabow,

Garrett & Dunner, LLP

901 New York Avenue, N.W.

Washington, D.C. 20001

Telephone: (202) 408-4000

Facsimile: (202) 408-4400

Attorneys for Plaintiffs

Creative Kingdoms, LLC and New Kingdoms, LLC