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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MIXXER, Inc., a Delaware corporation,)	CASE NO.: CV07-0021-TSZ
)	
Plaintiff,)	
)	AMENDED COMPLAINT FOR
v.)	PATENT INFRINGEMENT
)	
MVISIBLE TECHNOLOGIES, INC., a)	
Delaware corporation,)	
)	
Defendant.)	JURY DEMAND
_____)		

Plaintiff MIXXER, INC. (“MIXXER”) for its Amended Complaint against Defendant MVISIBLE TECHNOLOGIES, INC. (“MVISIBLE”) alleges as follows:

THE PARTIES

1. Plaintiff MIXXER is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 2001 Western Avenue, Suite 410, Seattle, Washington, 98121.

2. Defendant MVISIBLE is a corporation organized and existing under the laws of the State of Delaware with its principal place of business 804 S.E. 13th Court, Deerfield Beach, Florida, 33441.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over defendant MVISIBLE because, as alleged below, MVISIBLE’s conduct constitutes a direct act of patent infringement occurring, on information and belief, in Seattle, Washington, MIXXER’s principal place of business, and in this judicial district. MVISIBLE also has numerous contacts with the State of Washington. MVISIBLE operates a commercial website, located at www.myxertones.com, that is freely accessible to Washington state residents. On information and belief, MVISIBLE transacts business and enters into contracts with Washington residents in connection with services offered on defendant’s website, and Washington residents have subscribed to MVISIBLE’s services through its www.myxertones.com website. Additionally, on its website, MVISIBLE offers music created and/or published by Washington resident artists, indicates that the artists are from Washington, and provides links to the artists’ own websites. MVISIBLE’s www.myxertones.com website also contains search tools, including “tags”, that allow subscribers to locate music created or published by Washington resident artists.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because defendant’s contacts with this district are sufficient for a finding that it “resides” in this judicial district and defendant has committed acts of infringement in this judicial district.

FIRST CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 7,113,981 B2

6. On September 26, 2006, United States Patent No. 7,113,981 (“the ‘981 Patent”), entitled “Cellular Telephone Download Locker,” was duly and legally issued to MIXXER, as Assignee. A true and correct copy of the ‘981 Patent is attached hereto as Exhibit 1.

1 7. MIXXER is informed and believes and, on the basis of such information and
2 belief, alleges that MVISIBLE has infringed and continues to infringe the '981 Patent by
3 making, using, selling, and/or offering for sale systems and methods of providing data files to
4 mobile phone users covered by the '981 Patent. MVISIBLE is liable for patent infringement
5 pursuant to 35 U.S.C. § 271.

6 8. MVISIBLE'S infringement of the '981 Patent has caused and continues to cause
7 damage to MIXXER in an amount to be determined at trial. MVISIBLE's infringement as
8 herein alleged will continue to cause immediate and irreparable harm to MIXXER for which
9 there is no adequate remedy at law, unless this Court enjoins and restrains such activities.

10 9. MIXXER is informed and believes and, on the basis of such information and
11 belief, alleges that MVISIBLE's infringement of the '981 Patent is willful and deliberate,
12 entitling MIXXER to enhanced damages pursuant to 35 U.S.C. § 284 and to an award of
13 attorneys' fees and costs incurred in prosecuting this action pursuant to 35 U.S.C. § 285.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, MIXXER prays for relief as follows:

16 1. That judgment be entered in favor of MIXXER that the '981 Patent is infringed
17 by MVISIBLE;

18 2. That MIXXER be granted an accounting of all damages sustained as a result of
19 MVISIBLE's infringement of the '981 Patent;

20 3. That MIXXER be awarded actual damages together with prejudgment interest
21 according to proof, and enhanced damages pursuant to 35 U.S.C. § 284;

22 4. For a preliminary and permanent injunction enjoining MVISIBLE's acts of
23 infringement and those of its officers, agents, servants, employees, subsidiaries, and any
24 persons acting in concert with MVISIBLE, including related individuals and entities,
25 customers, representatives, OEMs, dealers, and distributors;

26 5. That MIXXER be awarded attorneys' fees and costs pursuant to 35 U.S.C. § 285
27 or as otherwise provided by law; and
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