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Richard W. Wieking Clerk, U.S. District Court Northern District of California

05369

COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT AND INVALIDITY

Plaintiffs, Creative Labs, Inc. and Creative Technology Ltd. ("Creative"), by their attorneys, allege for their Complaint against Defendant Audio MPEG, Inc. ("Audio MPEG") seeking a judgment declaring that the claims of United States Patent Nos. 5,214,678; 5,323,396;

Plaintiff Creative Technology Ltd. is a corporation organized under the laws of Singapore with a principal place of business at 31 International Business Park, Republic of Singapore. Plaintiff Creative Labs, Inc. is a corporation organized under the laws of the State of California and has a principal place of business at 1901 McCarthy Blvd., Milpitas, California

OF PATENT NON-INFRINGEMENT AND INVALIDITY AND DEMAND FOR JURY TRIAL

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Creative is informed and believes that defendant Audio MPEG is a corporation 2. organized and existing under the laws of the Commonwealth of Virginia, having an office at 2800 Shirlington Road, Suite 325, Arlington, Virginia 22206.

JURISDICTION AND VENUE

- 3. This is an action for a declaratory judgment of non-infringement and invalidity of the Patents-in-Suit (attached hereto as Exhibits A-C).
- This Court has subject matter jurisdiction over this complaint in accordance with 4. the provisions of 28 U.S.C. §§ 1331, 1338, 2201 and 2202.
- 5. On information and belief, Audio MPEG, by its contact with California and its business transactions in California, is subject to personal jurisdiction in this District.
 - 6. Venue is proper pursuant to 28 U.S.C. § 1391(a)-(d).

FACTUAL BACKGROUND

- 7. Creative incorporates by reference paragraphs 1-6 of this Complaint as though fully and completely set forth herein.
- Creative is informed and believes that Audio MPEG has the exclusive right to 8. grant non-exclusive sublicenses to the Patents-in-Suit.
- 9. Audio MPEG has accused Creative of infringing the Patents-in-Suit. Specifically, in a letter dated April 23, 2002 (attached hereto as Exhibit D), counsel for Audio MPEG alleged that the Patents-in-Suit are infringed by Creative MP3 players and any other Creative products capable of encoding and/or decoding Audio MPEG layer 1, 2, or 3 files. Audio MPEG's counsel specifically accused Creative's Nomad Jukebox 10 GB product of infringing the Patents-in-Suit. Audio MPEG's conduct, described herein, has created a reasonable apprehension on the part of Creative of an infringement suit if it continues to manufacture and/or sell the accused products. A case or controversy thus exists under 28 U.S.C. § 2201, establishing subject matter jurisdiction.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE PATENTS-IN-SUIT

Creative incorporates by reference paragraphs 1-9 of this Complaint as though 10.

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fully and completely set forth herein.

- 11. Creative does not infringe and has not infringed, either directly or indirectly, any valid or enforceable claim of the Patents-in-Suit.
- 12. Accordingly, Creative is entitled to a declaratory judgment that it does not and has not infringed the Patents-in-Suit.

COUNT II

DECLARATORY JUDGMENT OF INVALIDITY OF THE PATENTS-IN-SUIT

- 13. Creative incorporates by reference paragraphs 1-12 of this Complaint as though fully and completely set forth herein.
- 14. The claims of the Patents-in-Suit, are invalid for failure to meet the patentability requirements of one or more of 35 U.S.C. §§ 102, 103 and/or 112.
- 15. Accordingly, Creative is entitled to a declaration that the claims of the patents in suit are invalid.

WHEREFORE, Creative prays for the following relief:

- (A) That the Court enter a judgment declaring that the claims of the Patents-in-Suit are invalid;
- (B) That the Court enter a judgment declaring that Creative has not infringed, directly or indirectly, the Patents-in-Suit;
- (C) That the Court enter judgment enjoining Audio MPEG, its officers, agents, servants, employees, attorneys and those persons in active concert with any of them, from threatening to institute or instituting any action for infringement against Creative based on the Patents-in-Suit, or against any of Creative's customers for same;
- (D) That the Court find that this is an exceptional case and award Creative its attorney fees, costs and expenses incurred in this action; and
- (E) That the Court grant Creative such other and further relief as this Court may deem just and proper.

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By:

1 Dated: November 8, 2002
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Pursuant to Rule 38 of the Federal Rules of Federal Procedure, Creative hereby demands a trial by jury on all issues properly triable to a jury in this action.

McDERMOTT, WILL & EMERY

Attorneys for Creative Labs, Inc. and

Creative Technology Ltd.

COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT AND INVALIDITY AND DEMAND FOR JURY TRIAL