

1 Ronald J. Schutz (Admitted Pro Hac Vice)
 Richard M. Martinez (Admitted Pro Hac Vice)
 2 Scott R. Strand (Admitted Pro Hac Vice)
 3 Niall A. MacLeod (Admitted Pro Hac Vice)
 Nicholas S. Boebel (Admitted Pro Hac Vice)
 4 Michael D. Okerlund (Admitted Pro Hac Vice)
 ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
 5 2800 LaSalle Plaza
 6 800 LaSalle Avenue
 Minneapolis, MN 55402
 7 Telephone: (612) 349-8500
 Facsimile: (612) 339-4181
 8

9 Karl Olson (State Bar No. 104760)
 LEVY, RAM & OLSON L.L.P.
 10 639 Front Street, 4th Floor
 San Francisco, CA 94111
 11 Telephone: (415) 433-4949
 12 Facsimile: (415)-433-7311

13 **Attorneys for Plaintiff**
 14 **TV INTERACTIVE DATA CORPORATION**

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN FRANCISCO DIVISION**

18 TV INTERACTIVE DATA CORPORATION)
 a California corporation,)

19 Plaintiff,)

20 vs.)

21 FUJITSU LIMITED, FUJITSU COMPUTER)
 PRODUCTS OF AMERICA, INC., FUJITSU)
 22 COMPUTER SYSTEMS CORPORATION,)
 HEWLETT-PACKARD COMPANY,)
 23 INTERNATIONAL BUSINESS MACHINES)
 CORPORATION, DELL INC., TOSHIBA)
 CORPORATION, TOSHIBA AMERICA, INC.,)
 24 TOSHIBA AMERICA INFORMATION)
 SYSTEMS, INC., GATEWAY, INC.,)
 25 NEC CORPORATION, NEC USA, INC.,)
 26 NEC SOLUTIONS (AMERICA), INC., SONY)
 CORPORATION, SONY CORPORATION OF)
 AMERICA, and SONY ELECTRONICS INC.,)

27 Defendants.)
 28

CASE NO. C 04-03367 JSW
 (Related to Case No. C02-02385 JSW)

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This is an action for patent infringement involving the “AutoPlay” function contained
3 in every version of Microsoft Windows™ from Windows 95 to the most current release, Windows
4 XP. “AutoPlay” is that part of Windows™ that tells the computer to run a program automatically
5 once a storage medium like a CD-ROM or DVD is inserted. Before “AutoPlay,” computers
6 generally required users to perform a series of complex steps to run a program. The “AutoPlay”
7 technology has been a critical step in making PCs much more user-friendly, and in allowing PCs to
8 be the “digital hub” for a variety of different interactive media. Thus, today a majority of the setup
9 CDs used to install new computer software for the Windows™ platform use the “AutoPlay”
10 technology. For instance, Microsoft’s software products such as Office™ and Windows™ use
11 “AutoPlay” to simplify and automate software installation.

12 2. The “AutoPlay” technology is also widely used in Windows™-based PCs to support
13 many consumer multimedia applications. For example, the “AutoPlay” feature supports
14 automatically playing DVDs and automatically viewing digital photos on Windows™ PCs.

15 3. Plaintiff TV Interactive Data Corporation holds the valid patents on the “AutoPlay”
16 technology, and defendants Fujitsu Limited, Fujitsu Computer Products of America, Fujitsu
17 Computer Systems Corporation, Hewlett-Packard Company, International Business Machines
18 Corporation, Dell Inc., Toshiba Corporation, Toshiba America Inc., Toshiba America Information
19 Systems Inc., Gateway, Inc., NEC Corporation, NEC USA Inc., NEC Solutions (America) Inc., Sony
20 Corporation, Sony Corporation of America, and Sony Electronics Inc. have infringed those patents.

PARTIES

21
22 4. Plaintiff TV Interactive Data Corporation (“TVI”) is a California corporation, with its
23 sole business location at 22293 Old Logging Road, Los Gatos, in Santa Cruz County, California,
24 95033.

25 5. Fujitsu Limited (“Fujitsu”) is a Japanese corporation, headquartered in Tokyo, Japan,
26 but doing business throughout this judicial district and around the world. Fujitsu Computer Products
27 of America, Inc. (“Fujitsu”) is a California corporation, headquartered in San Jose, California, but
28

1 doing business throughout this judicial district and around the world. Fujitsu Computer Systems
2 Corporation (“Fujitsu”) is a California corporation, headquartered in Sunnyvale, California, but
3 doing business throughout this judicial district and around the world.

4 6. Hewlett-Packard Company (“HP”) is a Delaware corporation, headquartered in Palo
5 Alto, California, but doing business throughout this judicial district and around the world.

6 7. International Business Machines Corporation (“IBM”) is a New York corporation,
7 headquartered in Armonk, New York, but doing business throughout this judicial district and around
8 the world.

9 8. Dell Inc. (“Dell”) is a Delaware corporation, headquartered in Round Rock, Texas,
10 but doing business throughout this judicial district and around the world.

11 9. Toshiba Corporation (“Toshiba”) is a Japanese corporation, headquartered in Tokyo,
12 Japan, but doing business throughout this judicial district and around the world. Toshiba America,
13 Inc., (“Toshiba”) is a Delaware corporation, headquartered in New York, New York, but doing
14 business throughout this judicial district and around the world. Toshiba America Information
15 Systems Inc., (“Toshiba”) is a California corporation, headquartered in Irvine, California, but doing
16 business throughout this judicial district and around the world.

17 10. Gateway, Inc. (“Gateway”) is a Delaware corporation, headquartered in Poway,
18 California, but doing business throughout this judicial district and around the world.

19 11. NEC Corporation (“NEC”) is a Japanese corporation headquartered in Tokyo, Japan,
20 but doing business throughout this judicial district and around the world. NEC USA, Inc., (“NEC”)
21 is a Delaware corporation, headquartered in Melville, New York, but doing business throughout this
22 judicial district and around the world. NEC Solutions (America), Inc., (“NEC”) is a Delaware
23 corporation, headquartered in Rancho Cordova, California, but doing business throughout this
24 judicial district and around the world.

25 12. Sony Corporation (“Sony”) is a Japanese corporation headquartered in Tokyo, Japan,
26 but doing business throughout this judicial district and around the world. Sony Corporation of
27 America (“Sony”) is a New York corporation, headquartered in New York, New York, but doing
28

1 business throughout this judicial district and around the world. Sony Electronics Inc. (“Sony”) is a
2 Delaware corporation, headquartered in San Diego, California, but doing business throughout this
3 judicial district and around the world.

4 **JURISDICTION**

5 13. This action arises under the federal patent statute, 35 U.S.C. § 271, and §§ 281-285,
6 and this court therefore has jurisdiction under 28 U.S.C. § 1331 and § 1338(a).

7 **VENUE**

8 14. Venue is proper in this district under 28 U.S.C. § 1391(b) and § 1400(b).

9 **INTRADISTRICT ASSIGNMENT**

10 15. This is a patent infringement action, and, under Local Rule 3–2(c) and General Order
11 44 of this Court, venue is therefore proper in any Courthouse in this district; however, pursuant to
12 Local Rule 3-12, Plaintiff filed contemporaneously with its Original Complaint a Notice of Related
13 Case. That case, styled TV Interactive Data Corporation v. Microsoft Corporation, Case No. C02–
14 02385 (JSW)(EDL), is venued in the United States District Court for the Northern District of
15 California, San Francisco Division, before The Honorable Jeffrey S. White, United States District
16 Judge, and The Honorable Elizabeth D. Laporte, United States Magistrate Judge. In an Order dated
17 September 7, 2004, this Court found this present action and C02-02385 to be related.

18 **FACTUAL BACKGROUND**

19 16. Plaintiff TVI is a software and technology licensing company that specializes in
20 educational software development. The “AutoPlay” technology that is the subject of this lawsuit
21 was invented by Peter Redford and Donald Stern while they were developing an interactive
22 educational device for children in the early 1990's.

23 17. Redford and Stern recognized that one of the barriers to using computers, particularly
24 for beginners, and to making interactive media applications more user-friendly, was the inherent
25 complexity of getting programs to start.

26 18. To solve that problem, Redford and Stern developed an autostart feature, which
27 included a set of computer instructions that would tell a computer, once a storage media like a CD-
28

1 ROM was inserted, to look for a file with a predetermined name on the disk. If that file was found,
2 then the computer would automatically start a desired application.

3 19. On January 28, 1997, the USPTO duly and properly issued United States Letters
4 Patent 5,597,307, entitled "Method for Starting Up a Process Automatically on Insertion of a Storage
5 Media into a Host Device," to Redford and Stern, with plaintiff TVI listed as the assignee. On
6 August 18, 1998, the USPTO duly and properly issued United States Letters Patent 5,795,156,
7 entitled "Host Device Equipped with Means for Starting a Process in Response to Detecting
8 Insertion of a Storage Media," to Redford and Stern, with plaintiff TVI listed as the assignee. On
9 June 19, 2001, the USPTO duly and properly issued United States Letters Patent 6,249,863, entitled
10 "Host Device Equipped with Means for Starting a Process in Response to Detecting Insertion of a
11 Storage Media," to Redford and Stern with plaintiff TVI listed as the assignee. On July 9, 2002, the
12 USPTO duly and properly issued United States Letters Patent 6,418,532, entitled "Host Device
13 Equipped with Means for Starting a Process in Response to Detecting Insertion of a Storage Media,"
14 to Redford and Stern, with plaintiff TVI listed as the assignee. All patents are based on divisional
15 applications, with the filing date of the parent application being July 1, 1994.

16 20. Each of the companies named in this Complaint make, use, sell, offer to sell, supply,
17 and/or cause to be supplied personal computers to end users pre-installed with the Microsoft
18 Windows™ operating system software products. When the Defendants sell personal computers with
19 the Microsoft Windows™ operating system software products pre-installed, the personal computers
20 contain "AutoPlay" functionality the same as that disclosed and claimed in the '307, '156, '863 and
21 '532 patents. Microsoft's Computer Dictionary describes (in pertinent part) "AutoPlay" as:

22 A feature in Windows 9.x that allows it to automatically operate a CD-
23 ROM. When a CD is inserted into a CD-ROM drive, Windows 9.x
24 looks for a file called AUTORUN.INF on the CD. If the file is found,
25 Windows 9.x will open it and carry out its instructions, which are
26 usually to set up an application from the CD-ROM on the computer's
27 hard disk or to start the application once it has been installed.
28

1
2 21. The training materials for Windows XP, Microsoft's most recent Windows™ product,
3 describe the "AutoPlay" feature as follows:

4 Regardless of the sources of the installation files, almost all software
5 programs are installed by running an executable file that is usually
6 called Setup.exe. Many software manufacturers use files called
7 autorun files, which are located in the root directory of the place from
8 which the program is being installed—usually a CD-ROM. When you
9 insert the CD-ROM into its drive, your computer checks the drive, and
10 if it finds an autorun file, it starts it. The autorun file in turn starts an
11 executable file that either leads you through the setup process or
12 simply starts the program contained on the CD-ROM. Autorun files
13 take the guesswork out of the setup process, because they don't require
14 you to browse to a specific location, find a specific file, run a specific
15 program, or make any sort of decision about which installation action
16 to take.

12 **THE ORIGINAL EQUIPMENT MANUFACTURERS**

13 22. The accused OEM defendants in this matter, Fujitsu, HP, IBM, Dell, Toshiba,
14 Gateway, NEC and Sony (collectively "Defendants") are original equipment manufacturers
15 ("OEMs") or related companies that make, use, sell, offer to sell, supply, and/or cause to be supplied
16 personal computers pre-installed with a version of the Windows™ operating system software. In
17 addition, the Defendants sell or cause the sale of peripherals, software, and other equipment such as
18 digital cameras and printers due to the ease of installing software and the ease of accessing data files
19 made possible by the invention disclosed and claimed in the patents-in-suit.

20 23. On information and belief, TVI asserts that Microsoft Corporation is the real party in
21 interest because the Defendants are indemnified through indemnification or other hold harmless
22 agreements. Despite the fact that it is the real party in interest, Microsoft, in Case No. C02-02385
23 (JSW)(EDL), filed on May 16, 2002, has denied its own liability, indicating instead that the original
24 equipment manufacturers ("OEMs") that pre-install the accused Windows™ products into their
25 computers are liable for any infringement of TVI's '307, '156, '863 and '532 patents. Pursuant to
26 Microsoft's urging in Case No. C02-02385, TVI brings the instant action.

COUNT I — PATENT INFRINGEMENT (‘307 PATENT)

24. Plaintiff TVI restates and realleges each of the allegations set forth in paragraphs 1 through 23 of this Complaint and incorporates them herein.

25. Defendants Fujitsu, HP, IBM, Dell, Toshiba, Gateway, NEC and Sony have infringed the claims of the ‘307 patent, as defined in 35 U.S.C. § 271, in this judicial district and throughout the United States by making, using, selling, offering to sell, supplying, and/or causing to be supplied, personal computers pre-installed with a version of the Windows™ operating system software, such software including, without limitation, Windows 95, Windows 98, Windows 98 Second Edition, Windows Millennium Edition, Windows NT 4.0 (Server and Workstation), Windows 2000 (Advanced Server, Server, and Professional), Windows XP (Home and Professional), and several other more recent versions including, also without limitation, all editions, versions, subversions, and builds.

26. Defendants will continue to infringe the ‘307 patent unless enjoined by this Court.

27. Defendants’ infringement of the ‘307 patent has injured plaintiff TVI and caused it significant financial damage.

COUNT II — PATENT INFRINGEMENT (‘156 PATENT)

28. Plaintiff TVI restates and realleges each of the allegations set forth in paragraphs 1 through 27 of this Complaint and incorporates them herein.

29. Defendants Fujitsu, HP, IBM, Dell, Toshiba, Gateway, NEC and Sony have infringed the claims of the ‘156 patent, as defined in 35 U.S.C. § 271, in this judicial district and throughout the United States by making, using, selling, offering to sell, supplying, and/or causing to be supplied, personal computers pre-installed with a version of the Windows™ operating system software, such software including, without limitation, Windows 95, Windows 98, Windows 98 Second Edition, Windows Millennium Edition, Windows NT 4.0 (Server and Workstation), Windows 2000 (Advanced Server, Server, and Professional), Windows XP (Home and Professional), and several other more recent versions including, also without limitation, all editions, versions, subversions, and builds.

1 30. Defendants will continue to infringe the '156 patent unless enjoined by this Court.

2 31. Defendants' infringement of the '156 patent has injured plaintiff TVI and caused it
3 significant financial damage.

4 **COUNT III — PATENT INFRINGEMENT ('863 PATENT)**

5 32. Plaintiff TVI restates and realleges each of the allegations set forth in paragraphs 1
6 through 31 of this Complaint and incorporates them herein.

7 33. Defendants Fujitsu, HP, IBM, Dell, Toshiba, Gateway, NEC and Sony have infringed
8 the claims of the '863 patent, as defined in 35 U.S.C. § 271, in this judicial district and throughout
9 the United States by making, using, selling, offering to sell, supplying, and/or causing to be supplied,
10 personal computers pre-installed with a version of the Windows™ operating system software, such
11 software including, without limitation, Windows 95, Windows 98, Windows 98 Second Edition,
12 Windows Millennium Edition, Windows NT 4.0 (Server and Workstation), Windows 2000
13 (Advanced Server, Server, and Professional), Windows XP (Home and Professional), and several
14 other more recent versions including, also without limitation, all editions, versions, subversions, and
15 builds.

16 34. Defendants will continue to infringe the '863 patent unless enjoined by this Court.

17 35. Defendants' infringement of the '863 patent has injured plaintiff TVI and caused it
18 significant financial damage.

19 **COUNT IV— PATENT INFRINGEMENT ('532 PATENT)**

20 36. Plaintiff TVI restates and realleges each of the allegations set forth in paragraphs 1
21 through 35 of this Complaint and incorporates them herein.

22 37. Defendants Fujitsu, HP, IBM, Dell, Toshiba, Gateway, NEC and Sony have infringed
23 the claims of the '532 patent, as defined in 35 U.S.C. § 271, in this judicial district and throughout
24 the United States by making, using, selling, offering to sell, supplying, and/or causing to be supplied,
25 personal computers pre-installed with a version of the Windows™ operating system software, such
26 software including, without limitation, Windows 95, Windows 98, Windows 98 Second Edition,
27 Windows Millennium Edition, Windows NT 4.0 (Server and Workstation), Windows 2000
28

1 (Advanced Server, Server, and Professional), Windows XP (Home and Professional), and several
2 other more recent versions including, also without limitation, all editions, versions, subversions, and
3 builds.

4 38. Defendants will continue to infringe the '532 patent unless enjoined by this Court.

5 39. Defendants' infringement of the '532 patent has injured plaintiff TVI and caused it
6 significant financial damage.

7 **WHEREFORE** plaintiff TVI prays for the following relief:

8 1. A declaration that Defendants have infringed the '307, '156, '863 and/or '532 patents.

9 2. An order enjoining Defendants from infringing, inducing others to infringe, and/or
10 contributing to the infringement of the '307, '156, '863 and/or '532 patents, or, in the alternative,
11 entry of a compulsory license.

12 3. An order that Defendants account for and pay to plaintiff TVI the damages to which it
13 is entitled as a consequence of the infringement.

14 4. An award of compensatory damages to plaintiff TVI for infringement, in an amount
15 no less than a reasonable royalty for the use made of the invention by the Defendants.

16 5. A finding that this case is exceptional pursuant to 35 U.S.C. § 285.

17 6. An award of prejudgment interest, costs and disbursements, attorney fees, and
18 exemplary damages up to three times the amount of compensatory damages awarded.

19 7. Such other and further relief as the Court may deem appropriate.

20 Dated: October 20, 2004

LEVY, RAM & OLSON L.L.P.

21
22 By /s/ Karl Olson

Karl Olson (State Bar No. 104760)

23
24 And

25 Ronald J. Schutz (Admitted Pro Hac Vice)
26 Richard M. Martinez (Admitted Pro Hac Vice)
27 Scott R. Strand (Admitted Pro Hac Vice)
28 Niall A. MacLeod (Admitted Pro Hac Vice)
Nicholas S. Boebel (Admitted Pro Hac Vice)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael D. Okerlund (Admitted Pro Hac Vice)
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
Telephone: (612) 349-8500
Facsimile: (612) 339-4181

Attorneys for Plaintiff
TV INTERACTIVE DATA CORPORATION

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(a), plaintiff TVI demands a jury trial on all issues so triable.

Dated: October 20, 2004

LEVY, RAM & OLSON L.L.P.

By /s/ Karl Olson
Karl Olson (State Bar No. 104760)

And

Ronald J. Schutz (Admitted Pro Hac Vice)
Richard M. Martinez (Admitted Pro Hac Vice)
Scott R. Strand (Admitted Pro Hac Vice)
Niall A. MacLeod (Admitted Pro Hac Vice)
Nicholas S. Boebel (Admitted Pro Hac Vice)
Michael D. Okerlund (Admitted Pro Hac Vice)
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
Telephone: (612) 349-8500
Facsimile: (612) 339-4181

Attorneys for Plaintiff
TV INTERACTIVE DATA CORPORATION