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8 Attorneys for Plaintiff
9 SEER SYSTEMS, INC.,
10 a California Corporation

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 SEER SYSTEMS, INC., a California
14 Corporation,

15 Plaintiff,

16 vs.

17 BEATNIK, INC., a California Corporation;
18 BEATNIK (DELAWARE), INC., a
19 Delaware Corporation; and MICROSOFT
20 CORPORATION, a Washington
21 Corporation,

22 Defendants.

CASE NO. C 03-04636 MEJ

**FIRST AMENDED COMPLAINT FOR
INFRINGEMENT OF U.S. PATENT NO.
5,886,274**

DEMAND FOR JURY TRIAL

23 Plaintiff SEER SYSTEMS, INC., a California corporation (hereinafter “SEER
24 SYSTEMS”) hereby complains of Defendants BEATNIK, INC., a California corporation
25 (hereinafter “BEATNIK CALIFORNIA”), BEATNIK (DELAWARE), INC., a Delaware
26 corporation (hereinafter “BEATNIK DELAWARE”) and MICROSOFT CORPORATION, a
27 Washington corporation (hereinafter “MICROSOFT”), and alleges as follows:

JURISDICTION AND VENUE

- 28
1. This action for patent infringement arises under the patent laws of the United States, Title 35, United States Code, more particularly 35 U.S.C. §§ 271 and 281.
 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

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1 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

2 **THE PARTIES**

3 4. Plaintiff SEER SYSTEMS is a corporation duly incorporated and existing under
4 the laws of the State of California, with its principal place of business in San Mateo County,
5 California.

6 5. Plaintiff SEER SYSTEMS is the assignee of United States Patent No. 5,886,274,
7 entitled “System and method for generating, distributing, and performing musical work files” (the
8 “ ‘274 patent”), filed on July 11, 1997, and duly and lawfully issued on March 23, 1999. A copy
9 of the patent is attached hereto as Exhibit A.

10 6. Plaintiff is informed and believes, and on that basis alleges, that Defendant
11 BEATNIK CALIFORNIA is a California Corporation with its principal place of business in San
12 Mateo County, California.

13 7. Plaintiff is informed and believes, and on that basis alleges, that Defendant
14 BEATNIK CALIFORNIA does business in this judicial district and has committed and is
15 continuing to commit acts of infringement in this judicial district.

16 8. Plaintiff is informed and believes, and on that basis alleges, that Defendant
17 BEATNIK DELAWARE is a Delaware Corporation with its principal place of business in San
18 Francisco County, California.

19 9. Plaintiff is informed and believes, and on that basis alleges, that Defendant
20 BEATNIK DELAWARE does business in this judicial district and has committed and is
21 continuing to commit acts of infringement in this judicial district.

22 10. Plaintiff is informed and believes, and on that basis alleges, that Defendant
23 MICROSOFT is a Washington Corporation with its principal place of business at One Microsoft
24 Way, Redmond, Washington.

25 11. Plaintiff is informed and believes, and on that basis alleges, that Defendant
26 MICROSOFT does business in this judicial district and has committed and is continuing to
27 commit acts of infringement in this judicial district.

28

CLAIM FOR RELIEF

12. Plaintiff hereby incorporates by reference paragraphs 1-11 as if restated herein.

13. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

14. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK CALIFORNIA has been and is infringing the ‘274 patent under § 271 (a). In addition, on information and belief, Plaintiff alleges that BEATNIK CALIFORNIA is making and using other systems and/or is in the process of developing other systems, which infringe the ‘274 patent under § 271(a), including but not limited to the so-called “Rich Music Format,” “eXtensible Music Format,” “Beatnik Editor,” “Beatnik Audio Engine” and “mobileBAE” (the “infringing systems”). Plaintiff is further informed and believes, and on that basis alleges, that BEATNIK CALIFORNIA’s infringement of the ‘274 patent under § 271(a) will continue unless enjoined by this Court.

15. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK CALIFORNIA has been and is knowingly and intentionally inducing others to infringe directly the ‘274 patent under § 271 (a), thereby inducing infringement of the ‘274 patent under § 271(b). Plaintiff is further informed and believes that BEATNIK CALIFORNIA has promoted and marketed use of the infringing systems. Plaintiff is further informed and believes, and on that basis alleges, that BEATNIK CALIFORNIA’s infringement of the ‘274 patent under § 271(b) will continue unless enjoined by this Court.

16. Plaintiff is informed and believes, and on that basis alleges, that through the infringing systems BEATNIK CALIFORNIA has been and is contributorily infringing the ‘274 patent under § 271(c) by providing software and services especially made or especially adapted for infringing use and not staple articles or commodities of commerce suitable for substantial noninfringing use. Plaintiff is further informed and believes, and on that basis alleges, that BEATNIK CALIFORNIA’s infringement of the ‘274 patent under § 271(c) will continue unless enjoined by this Court.

17. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK CALIFORNIA is willfully infringing the ‘274 patent in the manner described above in paragraphs

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1 14 through 16, and will continue to do so unless enjoined by this Court.

2 18. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK
3 CALIFORNIA derived and received, and will continue to derive and receive from the aforesaid
4 acts of infringement gains, profits, and advantages, tangible and intangible, the extent of which
5 are not presently known to Plaintiff. By reason of the aforesaid acts of infringement, Plaintiff has
6 been, and will continue to be, irreparably harmed.

7 19. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK
8 DELAWARE has been and is infringing the '274 patent under § 271 (a). In addition, on
9 information and belief, Plaintiff alleges that through the infringing systems BEATNIK
10 DELAWARE is making and using other systems and/or is in the process of developing other
11 systems, which infringe the '274 patent under § 271(a). Plaintiff is further informed and believes,
12 and on that basis alleges, that BEATNIK DELAWARE's infringement of the '274 patent under
13 § 271(a) will continue unless enjoined by this Court.

14 20. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK
15 DELAWARE has been and is knowingly and intentionally inducing others to infringe directly the
16 '274 patent under § 271 (a), thereby inducing infringement of the '274 patent under § 271(b).
17 Plaintiff is further informed and believes that BEATNIK DELAWARE has promoted and
18 marketed use of the infringing systems. Plaintiff is further informed and believes, and on that
19 basis alleges, that BEATNIK DELAWARE's infringement of the '274 patent under § 271(b) will
20 continue unless enjoined by this Court.

21 21. Plaintiff is informed and believes, and on that basis alleges, that through the
22 infringing systems BEATNIK DELAWARE has been and is contributorily infringing the '274
23 patent under § 271(c) by providing software and services especially made or especially adapted
24 for infringing use and not staple articles or commodities of commerce suitable for substantial
25 noninfringing use. Plaintiff is further informed and believes, and on that basis alleges, that
26 BEATNIK DELAWARE's infringement of the '274 patent under § 271(c) will continue unless
27 enjoined by this Court.

28

1 22. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK
2 DELAWARE is willfully infringing the '274 patent in the manner described above in paragraphs
3 19 through 21, and will continue to do so unless enjoined by this Court.

4 23. Plaintiff is informed and believes, and on that basis alleges, that BEATNIK
5 DELAWARE derived and received, and will continue to derive and receive from the aforesaid
6 acts of infringement gains, profits, and advantages, tangible and intangible, the extent of which is
7 not presently known to Plaintiff. By reason of the aforesaid acts of infringement, Plaintiff has
8 been, and will continue to be, irreparably harmed.

9 24. Plaintiff is informed and believes, and on that basis alleges, that MICROSOFT has
10 been and is infringing the '274 patent under § 271 (a). In addition, on information and belief,
11 Plaintiff alleges that MICROSOFT is making and using other systems and/or is in the process of
12 developing other systems, which infringe the '274 patent under § 271(a) including but not limited
13 to the so-called "DirectMusic" system (the "DirectMusic system"). Plaintiff is further informed
14 and believes, and on that basis alleges, that MICROSOFT's infringement of the '274 patent under
15 § 271(a) will continue unless enjoined by this Court.

16 25. Plaintiff is informed and believes, and on that basis alleges, that MICROSOFT
17 has been and is knowingly and intentionally inducing others to infringe directly the '274 patent
18 under § 271 (a), thereby inducing infringement of the '274 patent under § 271(b). Plaintiff is
19 further informed and believes that MICROSOFT has promoted and marketed the use of the
20 DirectMusic system. Plaintiff is further informed and believes, and on that basis alleges, that
21 MICROSOFT's infringement of the '274 patent under § 271(b) will continue unless enjoined by
22 this Court.

23 26. Plaintiff is informed and believes, and on that basis alleges, that through the
24 DirectMusic system MICROSOFT has been and is contributorily infringing the '274 patent under
25 § 271(c) by providing software and services especially made or especially adapted for infringing
26 use and not staple articles or commodities of commerce suitable for substantial noninfringing use.
27 Plaintiff is further informed and believes, and on that basis alleges, that MICROSOFT's
28 infringement of the '274 patent under § 271(c) will continue unless enjoined by this Court.

1 H. That BEATNIK DELAWARE be adjudged to have infringed the ‘274 patent under
2 35 U.S.C. § 271(b) by inducing others to infringe directly the ‘274 patent under 35 U.S.C. §
3 271(a);

4 I. That BEATNIK DELAWARE be adjudged to have contributorily infringed the
5 ‘274 patent under 35 U.S.C. § 271(c);

6 J. That BEATNIK DELAWARE be adjudged to have willfully infringed the ‘274
7 patent under 35 U.S.C. § 271(a), (b), and (c);

8 K. That BEATNIK DELAWARE, its officers, agents, servants, employees and
9 attorneys, and those persons in active concert or participation with them, be preliminarily and
10 permanently restrained and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing
11 the ‘274 patent;

12 L. That this Court award damages to compensate SEER SYSTEMS, INC. for
13 BEATNIK DELAWARE’s infringement, as well as enhanced damages, pursuant to 35 U.S.C. §
14 284;

15 M. That MICROSOFT be adjudged to have infringed the ‘274 patent under 35 U.S.C.
16 § 271(a);

17 N. That MICROSOFT be adjudged to have infringed the ‘274 patent under 35 U.S.C.
18 § 271(b) by inducing others to infringe directly the ‘274 patent under 35 U.S.C. § 271(a);

19 O. That MICROSOFT be adjudged to have contributorily infringed the ‘274 patent
20 under 35 U.S.C. § 271(c);

21 P. That MICROSOFT be adjudged to have willfully infringed the ‘274 patent under
22 35 U.S.C. § 271(a), (b), and (c);

23 Q. That MICROSOFT, its officers, agents, servants, employees and attorneys, and
24 those persons in active concert or participation with them, be preliminarily and permanently
25 restrained and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the ‘274
26 patent;

27 R. That this Court award damages to compensate SEER SYSTEMS, INC. for
28 MICROSOFT’s infringement, as well as enhanced damages, pursuant to 35 U.S.C. § 284;

1 S. That this Court adjudge this case to be exceptional and award reasonable
2 attorney’s fees to SEER SYSTEMS, INC. pursuant to 35 U.S.C. § 285;

3 T. That this Court assess pre-judgment and post-judgment interest and costs against
4 Defendants, and award such interest and costs to SEER SYSTEMS, INC. pursuant to 35 U.S.C. §
5 284; and

6 U. That SEER SYSTEMS, INC. have such other and further relief as the Court may
7 deem proper.

8 Dated: November ____, 2003

PETERSON, WEYAND & MARTIN, LLP

9
10
11 By _____
12 Alexander M. Weyand
13 Attorney for Plaintiff
14 SEER SYSTEMS, INC.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff SEER SYSTEMS, INC. hereby demands a trial by jury as to all issues triable by
17 jury, specifically including, but not limited to, the issue of the infringement of United States
18 Patent No. 5,886,274.

19 Dated: November ____, 2003

PETERSON, WEYAND & MARTIN, LLP

20
21
22 By _____
23 Alexander M. Weyand
24 Attorney for Plaintiff
25 SEER SYSTEMS, INC.

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