

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80665-CIV-HURLEY

NISSIM CORP.,

Plaintiff,

v.

CLEARPLAY, INC.,  
ISP SERVICES LLC D/B/A MAX.COM,  
MATTHEW JARMAN,  
LEE JARMAN,  
WILLIAM AHO, AND  
FRED NINOW,

Defendants.

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AMENDED COMPLAINT

Plaintiff Nissim Corp., by and through its undersigned counsel, hereby sues Defendants ClearPlay, Inc., ISP Services LLC, Matthew Jarman, Lee Jarman, William Aho, and Fred Ninow, and for its Amended Complaint, alleges as follows:

THE PARTIES

1. Plaintiff Nissim Corp. ("Nissim") is a corporation organized and existing under the laws of the state of Florida with its principal place of business in Boca Raton, Florida.

2. Defendant ClearPlay, Inc. ("ClearPlay") is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Salt Lake City, Utah.

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3. Defendant ISP Services LLC is a limited liability company organized under the laws of the State of Utah and with its principal place of business in Salt Lake City, Utah. ISP Services LLC does business under the name Max.com.

4. Defendant Matthew Jarman is an individual residing in Salt Lake City, Utah.

5. Defendant Lee Jarman is an individual residing in Salt Lake City, Utah.

6. Defendant William Aho is an individual residing in Salt Lake City, Utah.

7. Defendant Fred Ninow is an individual residing in Salt Lake City, Utah.

#### JURISDICTION AND VENUE

8. This Court has federal question jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a) because Nissim seeks relief under the Patent Act, including remedies for patent infringement of seven United States Patents owned by Nissim.

9. Defendants are subject to personal jurisdiction in this state under Florida Statutes § 48.193 because they have transacted business in this state, contracted to supply services or products in this state, and/or caused tortious injury in this state.

10. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) because a substantial part of the events giving rise to these claims occurred in this judicial district, because Nissim has suffered injury in this district, because all Defendants reside in this district under the patent venue statute and because all Defendants have committed acts of patent infringement in this district.

### FACTUAL BACKGROUND

11. Plaintiff Nissim is the owner of an extraordinarily valuable portfolio of related United States Patents (collectively the “Nissim Patents”). The Nissim Patents cover, among other things, multiple features that are required by certain industry-adopted specifications (DVD Specifications for Read Only Disc, Part 3 Video Specifications, Version 1.1, December 1997 – hereinafter the “DVD-Specifications”) and that are incorporated in all consumer electronic products (“DVD-Devices”) capable of playing digital video discs (“DVDs”).

12. Virtually every company that sells DVD-Devices in the United States has taken a DVD-Device License from Nissim under the Nissim Patents and pays Nissim running royalties for sales of DVD-Devices. In fact, all of the very same companies that own the DVD-Specifications and which sell DVD-Devices (Hitachi, Ltd., Matsushita Electric Industrial Co., Mitsubishi Electric Corporation, Philips Electronics N.V., Pioneer Corporation, Sony Corporation, Thomson Multimedia S.A., Toshiba Corporation, and Victor Company of Japan, Limited) have taken a DVD-Device License from Nissim under the Nissim Patents and pay Nissim running royalties for sales of those DVD-Devices.

13. In addition to the foregoing companies, Nissim’s complete list of licensees, currently totaling approximately ninety (90) companies, also includes, by way of example: Dell Products, L.P., Funai Electric Company, Gateway, Inc., Hewlett-Packard Company, International Business Machines Corporation, Samsung Electronics Co. Ltd., and Sharp Corporation.

14. In order for a device to play DVD-Videos, including every device that bears the DVD logo, the device must be manufactured in accordance with the DVD Specifications. The

DVD Specifications incorporate and require the implementation of at least two sets of essential capabilities that are covered by the Nissim Patents. Thus, every device implementing the DVD Specifications infringes the Nissim Patents.

15. The two sets of essential capabilities comprise “Seamless Play” (using navigation data to play along various paths within a video), and “User Operation Control” (disabling certain player functions during the playback of a video). Seamless Play is utilized in DVD-Videos that offer multiple language credit versions (*e.g.*, “Con Air”), multiple director’s cut versions (*e.g.*, “The Abyss”, “Kalifornia”, “Poison Ivy”, “Damage”, and “Crash”), and multi-angle versions (*e.g.*, “Metallica S&M”). User Operation Control utilizes coding in association with specified segments to inhibit the fast-forward and other playback functions of a DVD player during playback of those video segments. Specified segments comprise advertisements or other information found in most DVD-Videos that precedes the motion picture.

16. With respect to Seamless Play, to enable a DVD-Device to play different versions of a video, DVDs can include certain video segment information. For example, the DVD of the motion picture “Crash,” released by New Line Home Video, includes segment information that enables a DVD-Device to play an “NC-17 Rated” version or an “R Rated” version of the motion picture using substantially the same video segments. When playing the R Rated version, the segment information enables the DVD-Device to skip video segments of, for example, sexually graphic content that belongs to the NC-17 Rated version.

17. The DVD-Specifications provide for the use of video segment information carried by a DVD to enable a DVD-Device to play, from within the same DVD, more than one version

of a video. This capability of the DVD-Specifications incorporated into all DVD-Devices is covered by the Nissim Patents.

18. The Nissim Patents also teach the distribution of video segment information separate from the DVD, such as, for example, after the DVD has already been released by the movie studio. Thus, Nissim recognized a separate business opportunity in providing segment information external to a DVD that would enable a specially adapted DVD-Device to play a version of a DVD that was not enabled by the segment information carried by the DVD. For example, in the case of the "Crash" DVD, such a DVD-Device would use segment information provided separate from the DVD to play a "customized" version of the DVD that excluded scenes of violence or other objectionable content that would have been included in both the NC-17 and R Rated versions.

19. Nissim recognized the need for a separate business model for distributing segment information for videos that did not provide for desirable versions of the video. After filing the first of the Nissim Patents, during February of 1992, Nissim spent a substantial amount of time, effort, and money to develop that business, first referred to as "Content-Customization," and later as "CustomPlay."

20. By 1995, Nissim had completed development of a software application that was able to utilize segment information of a video provided by a source other than the video itself. In 1997, Nissim registered a web site, [www.customplay.com](http://www.customplay.com), for the purpose of promoting the CustomPlay software application. By June 1999, the CustomPlay website provided a detailed

explanation of the application, the service it provided, identified the U.S. patents protecting CustomPlay, and provided contact information.

21. From the outset, Nissim has recognized the great value of the CustomPlay software and of the business opportunity of separately distributing segment information to users. To make certain that Nissim, alone, could exploit the proprietary business model and intellectual property that Nissim created, Nissim explicitly excluded from the DVD-Device Licenses granted to all of its licensees any use of segment information distributed separate from a DVD to be used by a user to play a version of the DVD. At the time of execution of a DVD-Device License, each of Nissim's licensees understood that the CustomPlay software and the segment information technologies were protected by the Nissim Patents and that any use of those technologies would constitute an unauthorized infringement of the Nissim Patents.

22. On January 25, 2000, Matthew Jarman sent an email with the following subject line: "Very Interested in Custom Play," and the following message addressed to Nissim's chief executive officer: "I am very interested in learning more about Custom Play, Nissim, and your various patents. I worked as an editor for a motion picture company, and I think there is a tremendous market potential for customizable DVD playback. Please contact me ASAP ...."

23. On January 26, 2000, in response to Matthew Jarman's inquiry, Nissim sent Matthew Jarman an email with a zip file comprising a demonstration version of the CustomPlay software and a Bilateral Confidentiality Agreement. The opening screen of the CustomPlay software included the following reference to the Nissim Patents: "U.S. patents 5,434,678, 5,589,945, 5,634,849 and pending U.S. patent applications." Matthew Jarman and Lee Jarman

executed, as individuals, the Bilateral Confidentiality Agreement, and returned it to Nissim after repeated requests.

24. In a subsequent February 28, 2000 email, Matthew and Lee Jarman indicated: “we need to know which of your patent claims you have exclusively and contractually reserved for Custom Play.” The email also requested copies of “existing licensing agreements.” In response, Nissim provided a document that explained: “Since the requirements of the DVD Specifications and CustomPlay overlap a substantial number of issued patents, the licensing agreements ... primarily rely on the exclusionary language shown below to protect the core of CustomPlay.” The document provided the exclusionary paragraphs of the DVD-License agreements that exclude “navigation data [*i.e.*, segment information] distributed separate from the DVD to be used by the consumer to play a version of the DVD for which the DVD does not provide the necessary navigation data.”

25. On March 14, 2000, in an effort to induce Nissim to enter into a business relationship, Matthew Jarman prepared and provided to Nissim a 37-page PowerPoint presentation entitled “CustomPlay.” The unsolicited presentation made liberal use of the terminology and concepts of the Nissim Patents, the CustomPlay website created by Nissim, and other proprietary concepts introduced by Nissim, including, for example, “Content Preferences,” “Individual Preferences For Varying Degrees of Content Explicitness,” “Variable-Content Movie,” “Variable Content Standards,” “Introducing CustomPlay: The Standard for Variable Content Movies,” “the CustomPlay Standard,” and “the CustomPlay GamePlan.” The terms “Variable Content Video” appear in the title of four of the Nissim Patents issued prior to March

14, 2000. In the sections of the presentation entitled "CustomPlay Licensing," Jarman also prominently featured the CustomPlay logo.

26. Pursuant to the Bilateral Confidentiality Agreement, Nissim further provided Matthew Jarman a 44-page confidential CustomPlay Business Plan (the "CustomPlay Confidential Information") as well as a videotape containing television news reports evidencing the newsworthiness of CustomPlay.

27. On or about March 2001, unbeknownst to Nissim, and following extensive discussions with Nissim, ClearPlay Inc. ("ClearPlay") was formed by Matthew and Lee Jarman. ClearPlay then began producing and distributing copies of a personal computer software program (the "ClearPlay PC Software") and segment information which enabled a PC to customize the playback of DVDs according to a consumer's content preferences. ClearPlay referred to the segment information as "ClearPlay Filters."

28. On October 2001, through its attorneys, Nissim provided written notice to Matthew Jarman that the ClearPlay PC Software infringed certain of the Nissim Patents and demanded that the infringement cease and desist. The notice also again requested the return of the CustomPlay Confidential Information previously provided under the Bilateral Confidentiality Agreement. Matthew and Lee Jarman have, to date, failed to honor the terms of the Bilateral Confidentiality Agreement and have failed to return the CustomPlay Confidential Information.

29. On November 2001, William Aho, Chief Executive Officer of ClearPlay, requested from Nissim a license under the Nissim Patents. Despite protracted licensing discussions, the parties did not agree on terms and Nissim did not grant ClearPlay a license.



30. As part of the licensing discussions, in September 2002 Nissim provided ClearPlay with a 19-page "CustomPlay License Agreement," a second written notice of ClearPlay's infringement of the Nissim Patents, and a 7-page "Technical Analysis Regarding Infringement of Claims in Nissim's DVD Patent Portfolio." ClearPlay has never provided a response to the Technical Analysis. Additionally, a license agreement was not executed between Nissim and ClearPlay.

31. Unbeknownst to Nissim during the license discussions, and in the absence of an executed license agreement, during 2003 and early 2004 ClearPlay in conjunction with Thomson Multimedia SA ("Thomson"), owner of the RCA trademark, incorporated functions of the ClearPlay PC Software into a new DVD player, including ClearPlay Filters (video segment information) produced by ClearPlay, that ClearPlay and its principals (Matthew Jarman, Lee Jarman and William Aho) knew constitute an unlicensed infringement of the Nissim Patents.

32. Despite embarking a business relationship with Thomson to produce and market a new DVD player incorporating ClearPlay Filters, ClearPlay and its principals intentionally withheld and concealed from Thomson that ClearPlay had received notice from Nissim regarding the Nissim Patents.

33. On April 2004, ClearPlay and Thomson launched nationally through Wal-Mart the ClearPlay-enabled RCA DVD player, the RCA Model DRC232N (the "ClearPlay RCA Player"). With the introduction of the ClearPlay RCA Player, ClearPlay abandoned selling the ClearPlay PC Software.

34. The ClearPlay RCA Player and the associated ClearPlay Filters, distributed with the ClearPlay RCA Player and separately by ClearPlay, are a willful infringement of the Nissim Patents. As a result, on May 13, 2004, Nissim brought suit for patent infringement in the United States District Court for the Southern District of Florida against ClearPlay and its principals, CASE NO. 04-21140-CIV-HUCK.

35. Shortly after the launch of the ClearPlay RCA Player and the filing of the earlier complaint against ClearPlay and its principals, Nissim demanded in writing that Thomson cease and desist from the manufacture, sale, and marketing of the ClearPlay RCA Player. On July 12, 2004, Thomson responded in a letter to Nissim that: "Thomson has ceased and desisted from any and all future sale, manufacturing, or promotion of production number DRC232N as well as any other ClearPlay-enabled DVD players in the United States."

36. Despite Thomson's decision to discontinue production of the ClearPlay RCA Player, throughout the remainder of 2004 and during 2005, ClearPlay continued to sell leftover ClearPlay RCA DVD units and threatened to continue to willfully infringe the Nissim Patents by introducing other products onto the market.

37. For example, in July and August 2004, ISP Services LLC, a company which had executed a distribution agreement with ClearPlay, began promoting the sale of a ClearPlay-enabled DVD player on its website, [www.max.com](http://www.max.com). As a result, in August 2004, Nissim provided ISP Services LLC with written notice of the Nissim Patents, notice of the pending lawsuit against ClearPlay, and demanded that ISP Services cease and desist from any promotion

or sale of ClearPlay-enabled DVD players. Thereafter, ISP Services LLC responded to Nissim by indicating that ISP Services would not promote or sell ClearPlay-enabled DVD players.

38. Notwithstanding ISP Services LLC's representations to Nissim, Thomson's decision to cease production of the ClearPlay RCA Player, and the pendency of the patent infringement action in the Southern District of Florida, in or about July 2005, ClearPlay and ISP Services LLC launched nationally a new DVD player called the ClearPlay-enabled MaxPlay DVD Modem Player. A true and correct copy of the ClearPlay website offering this product for sale is attached hereto as Exhibit 1. A true and correct copy of the ISP Services website offering this product for sale is attached hereto as Exhibit 2.

39. The ClearPlay-enabled MaxPlay DVD Modem Player and the associated distribution of ClearPlay Filters, distributed with the ClearPlay-enabled MaxPlay DVD Modem Player and separately by ClearPlay and ISP Services LLC, are a willful infringement of the Nissim Patents.

40. Additionally, the manufacturer of the ClearPlay-enabled MaxPlay DVD Modem Player, ISP Services LLC, is not a Nissim licensee. Thus, unlike the ClearPlay RCA Player produced by Thomson, a company which has a limited license to practice the Nissim Patents in connection with DVD-Devices to implement the DVD-Specifications (but not where video segment information is distributed separate from the DVD-Video, as in the case with ClearPlay Filters), the ClearPlay-enabled MaxPlay DVD Modem Player is not licensed by Nissim for any field of use. Thus, by utilizing the "Seamless Play" and "User Operation Control" features of the

DVD-Specifications, as with every DVD-Device, the ClearPlay-enabled MaxPlay DVD Modem Player further infringes the Nissim Patents.

41. With full knowledge of the Nissim Patents, Matthew Jarman, Lee Jarman and William Aho supervised, directed, participated in and/or approved the infringing acts of ClearPlay.

42. With full knowledge of the Nissim Patents, Fred Ninow supervised, directed, participated in and/or approved the infringing acts of ISP Services LLC.

COUNT I – PATENT INFRINGEMENT  
(AGAINST ALL DEFENDANTS)

43. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

44. Part of the portfolio of Nissim Patents, United States Patent 6,067,401 (“the ‘401 patent”), entitled “Playing A Version Of And From Within A Video By Means Of Downloaded Segment Information,” was duly and lawfully issued on May 23, 2000 by the United States Patent and Trademark Office. The ‘401 patent issued from an application filed with the United States Patent and Trademark Office on December 11, 1997, claims priority from a parent application which was originally filed on January 11, 1993 and which issued as United States Patent 5,434,678, and which is now, and has been at all times since its date of issue, valid and enforceable. A true and correct copy of the ‘401 patent is attached hereto as Exhibit 3.

45. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay

Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '401 patent.

46. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay's infringing activity.

47. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '401 patent.

48. Fred Ninow has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

49. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '401 patent.

50. Defendants will continue to infringe in the future unless enjoined by the Court.

51. Nissim has been damaged by Defendants' infringement of the '401 patent in an amount to be proven at trial.

**COUNT II – PATENT INFRINGEMENT**  
**(AGAINST ALL DEFENDANTS)**

52. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

53. Part of the portfolio of Nissim Patents, United States Patent 5,724,472 (“the ‘472 patent”), entitled “Content Map For Seamlessly Skipping A Retrieval Of A Segment Of A Video,” was duly and lawfully issued on March 3, 1998 by the United States Patent and Trademark Office. The ‘472 patent issued from an application filed with the United States Patent and Trademark Office on May 1, 1995, claims priority from a parent application which was originally filed on February 7, 1992 and which issued as United States Patent 6,208,805, and which is now, and has been at all times since its date of issue, valid and enforceable. A true and correct copy of the ‘472 patent is attached hereto as Exhibit 4.

54. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the ‘472 patent.

55. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay’s infringing activity.

56. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the ‘472 patent.

57. Fred Ninow has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

58. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '472 patent.

59. Defendants will continue to infringe in the future unless enjoined by the Court.

60. Nissim has been damaged by Defendants' infringement of the '472 patent in an amount to be proven at trial.

COUNT III – PATENT INFRINGEMENT  
(AGAINST ALL DEFENDANTS)

61. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

62. Part of the portfolio of Nissim Patents, United States Patent 5,434,678 ("the '678 patent"), entitled "Seamless Transmission Of Non-Sequential Video Segments," was duly and lawfully issued on July 18, 1995 by the United States Patent and Trademark Office. The '678 patent issued from an application filed with the United States Patent and Trademark Office on January 11, 1993, and is now, and has been at all times since its date of issue, valid and enforceable. A true and correct copy of the '678 patent is attached hereto as Exhibit 5.

63. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '678 patent.

64. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay's infringing activity.

65. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '678 patent.

66. Fred Ninow has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

67. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '678 patent.

68. Defendants will continue to infringe in the future unless enjoined by the Court.

69. Nissim has been damaged by Defendants' infringement of the '678 patent in an amount to be proven at trial.

COUNT IV – PATENT INFRINGEMENT  
(AGAINST ALL DEFENDANTS)

70. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

71. Part of the portfolio of Nissim Patents, United States Patent 5,589,945 ("the '945 patent"), entitled "Computer-Themed Playing System," was duly and lawfully issued on December 31, 1996 by the United States Patent and Trademark Office. The '945 patent issued



from an application filed with the United States Patent and Trademark Office on September 13, 1994, which claims priority from a parent application originally filed on January 11, 1993 and which issued as United States Patent 5,434,678, and which is now, and has been at all times since its date of issue, valid and enforceable. A true and correct copy of the '945 patent is attached hereto as Exhibit 6.

72. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '945 patent.

73. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay's infringing activity.

74. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '945 patent.

75. Fred Ninow has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

76. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '945 patent.

77. Defendants will continue to infringe in the future unless enjoined by the Court.

78. Nissim has been damaged by Defendants' infringement of the '945 patent in an amount to be proven at trial.

COUNT V – PATENT INFRINGEMENT  
(AGAINST ALL DEFENDANTS)

79. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

80. Part of the portfolio of Nissim Patents, United States Patent 5,913,013 (“the ‘013 patent”), entitled “Seamless Transmission of Non-Sequential Video Segments,” was duly and lawfully issued on June 15, 1999 by the United States Patent and Trademark Office. The ‘013 patent issued from an application filed with the United States Patent and Trademark Office on December 15, 1997, which claims priority from a parent application originally filed on January 11, 1993 and which issued as United States Patent 5,434,678, and which is now, and has been at all times since its date of issue, valid and enforceable. A true and correct copy of the ‘013 patent is attached hereto as Exhibit 7.

81. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the ‘013 patent.

82. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay's infringing activity.

83. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '013 patent.

84. Fred Ninow has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

85. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '013 patent.

86. Defendants will continue to infringe in the future unless enjoined by the Court.

87. Nissim has been damaged by Defendants' infringement of the '013 patent in an amount to be proven at trial.

COUNT VI – PATENT INFRINGEMENT  
(AGAINST ALL DEFENDANTS)

88. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

89. Part of the portfolio of Nissim Patents, United States Patent 6,151,444 ("the '444 patent"), entitled "Motion Picture Including a Duplication of Frames," was duly and lawfully issued on November 21, 2000 by the United States Patent and Trademark Office. The '444 patent issued from an application filed with the United States Patent and Trademark Office on June 30, 1998, which claims priority from a parent application originally filed on January 11, 1993 and which issued as United States Patent 5,434,678, and which is now, and has been at all

times since its date of issue, valid and enforceable. A true and correct copy of the '444 patent is attached hereto as Exhibit 8.

90. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '444 patent.

91. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay's infringing activity.

92. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '444 patent.

93. Fred Ninow has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

94. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '444 patent.

95. Defendants will continue to infringe in the future unless enjoined by the Court.

96. Nissim has been damaged by Defendants' infringement of the '444 patent in an amount to be proven at trial.

COUNT VII – PATENT INFRINGEMENT  
(AGAINST ALL DEFENDANTS)

97. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

98. Part of the portfolio of Nissim Patents, United States Patent 6,463,207 (“the ‘207 patent”), entitled “Playing a Variable-Content Video Having a User Interface,” was duly and lawfully issued on October 8, 2002 by the United States Patent and Trademark Office. The ‘207 patent issued from an application filed with the United States Patent and Trademark Office on December 12, 1997, which claims priority from a parent application originally filed on February 7, 1992 and which issued as United States Patent 6,208,805, and which is now, and has been at all times since its date of issue, valid and enforceable. A true and correct copy of the ‘207 patent is attached hereto as Exhibit 9.

99. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the ‘207 patent.

100. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay’s infringing activity.

101. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells

ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '207 patent.

102. Feed Nissim has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

103. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '207 patent.

104. Defendants will continue to infringe in the future unless enjoined by the Court.

105. Nissim has been damaged by Defendants' infringement of the '207 patent in an amount to be proven at trial.

COUNT VIII – PATENT INFRINGEMENT  
(AGAINST ALL DEFENDANTS)

106. Nissim repeats and realleges each and all of the allegations contained in paragraphs 1 through 42 above as though fully set forth herein.

107. Part of the portfolio of Nissim Patents, United States Patent 6,208,805 ("the '805 patent"), entitled "Inhibiting a Control Function from Interfering with a Playing of a Video," was duly and lawfully issued on March 27, 2001 by the United States Patent and Trademark Office. The '805 patent claims priority from a parent application originally filed on February 7, 1992 and which issued as United States Patent 6,208,805, and is now, and has been at all times since its date of issue, valid and enforceable. A true and correct copy of the '805 patent is attached hereto as Exhibit 10.

108. ClearPlay sells, uses, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and makes, uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '805 patent.

109. Matthew Jarman, Lee Jarman and William Aho have actively aided and abetted the infringement by ClearPlay by supervising, directing, participating in and/or approving ClearPlay's infringing activity.

110. ISP Services LLC makes, uses, sells, and offers to sell, within the United States, the ClearPlay-enabled MaxPlay DVD Modem Player; and uses, offers to sell and/or sells ClearPlay Filters, and related technologies that directly infringe, literally or under the doctrine of equivalents, and/or indirectly infringe, one or more claims of the '207 patent.

111. Fred Ninow has actively aided and abetted the infringement by ISP Services LLC by supervising, directing, participating in and/or approving ISP Services LLC's infringing activity.

112. Defendants' acts of infringement have been willful and with full knowledge and in conscious disregard of Nissim's rights under the '805 patent.

113. Defendants will continue to infringe in the future unless enjoined by the Court.

114. Nissim has been damaged by Defendants' infringement of the '805 patent in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nissim Corp. prays:

A. That the Court find ClearPlay and ISP Services LLC liable for direct infringement of the '401, '472, '678, '945, '013, '444, '207 and '805 patents, either literally or under the doctrine of equivalents, and/or for indirect infringement.

B. That the Court find Matthew Jarman, Lee Jarman, William Aho and Fred Ninow liable for inducing infringement of the '401, '472, '678, '945, '013, '444, '207 and '805 patents.

C. That Defendants, and all of ClearPlay's and ISP Services LLC's officers, directors, agents, servants, employees, successors, and assigns, and all persons acting in concert or in active participation with them, be preliminarily and permanently enjoined and restrained from making, using, importing, exporting, distributing, selling and/or offering to sell in or from the United States the ClearPlay-enabled MaxPlay DVD Modem Player and associated ClearPlay Filters, or any other goods or services that infringe the '401, '472, '678, '945, '013, '444, '207 and/or '805 patents; that Defendants be ordered to deliver up for destruction all ClearPlay-enabled MaxPlay DVD Modem Players and associated ClearPlay Filters, imported into, produced in, or exported from, the United States and any other goods that infringe the '401, '472, '678, '945, '013, '444, '207 and/or '805 patents; and that Defendants be directed to file with this Court and serve upon Plaintiff a written report under oath setting forth in detail the manner in which Defendants have complied with the injunction.

D. That the Court award Nissim compensatory damages due to Defendants' infringement of the '401, '472, '678, '945, '013, '444, '207 and/or '805 patents and that the



Court find this case exceptional within the meaning of 35 U.S.C. § 285 based on the willful nature of Defendants' infringement, and that the Court enter judgment three (3) times such compensatory amounts pursuant to 35 U.S.C. § 284.

E. That the Court award Nissim its reasonable attorneys' fees incurred in this action pursuant to 35 U.S.C. § 285.

F. That the Court award Nissim its taxable costs, disbursements, and pre-judgment and post-judgment interest.

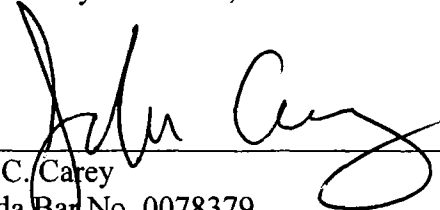
G. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Nissim Corp. demands trial by jury on all issues so triable.

Dated: August 11, 2005

Respectfully submitted,



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*Counsel for Plaintiff Nissim Corp.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served by

U.S. Mail this 11<sup>th</sup> day of August, 2005, on:

Clearplay, Inc.  
c/o Registered Agent, Lee Jarman  
2190 Claremont Drive  
Bountiful, UT 84010

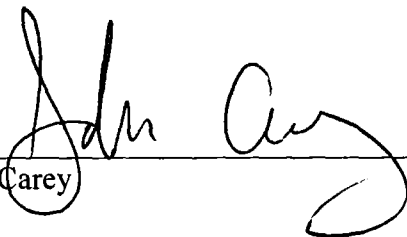
ISP Services, LLC d/b/a Max.com  
c/o President, Fred Ninow  
3760 Highland Drive  
Salt Lake City, UT 84106

Matthew Jarman  
3830 South 3100 East  
Salt Lake City, UT 84109

Lee Jarman  
2190 Claremont Drive  
Bountiful, UT 84010

William Aho  
2010 Kidd Circle  
Park City, UT 84098

Fred Ninow  
3760 Highland Drive  
Salt Lake City, UT 84106

  
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John C. Carey