

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FENNER INVESTMENTS, LTD.

§

PLAINTIFF,

§

§

v.

§

CIVIL ACTION NO. 6:07-CV-08

§

(1) MICROSOFT CORPORATION ,

§

JURY TRIAL

§

(2) NINTENDO COMPANY, LTD.,

§

(3) NINTENDO OF AMERICA, INC.,

§

§

DEFENDANTS.

§

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fenner Investments, Ltd. (“Fenner”) for its Second Amended Complaint against Defendants Microsoft Corporation (“Microsoft”), Nintendo Company, Ltd. (“Nintendo”), and Nintendo of America, Inc. (“Nintendo America”) (collectively “the Nintendo defendants”) alleges as follows:

THE PARTIES

1. Fenner is a limited partnership duly organized and existing under the laws of the State of Texas, having a principal place of business in Richardson, Texas.

2. Microsoft Corporation is a corporation duly organized and existing under the laws of the State of Washington, having a principal place of business at One Microsoft Way, Redmond, WA 98052-6399. Microsoft has an agent for service of process as: c/o Corporation Services Company d/b/a CSC, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

3. Nintendo Company, Ltd. is a corporation having a principal place of business at 60 Fukuine Kamitakamatsucho, CPO Box No 23, Higashiyama-ku, Kyoto 605 Japan.

4. Nintendo of America, Inc. is a corporation duly organized and existing under the laws of the State of Washington, having a principal place of business at 4820 150th Avenue NE, Redmond, WA 98052. Nintendo America has an agent for service of process as: c/o CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201.

JURISDICTION

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* The Court has personal jurisdiction over the Defendants in that each of them has committed acts within Texas and this judicial district giving rise to this action and each of the Defendants has established minimum contacts with the forum such that the exercise of jurisdiction over each of the Defendants would not offend traditional notions of fair play and substantial justice.

VENUE

6. Each of the Defendants has committed acts within this judicial district giving rise to this action and does business in this district, including offering for sale, making sales and providing service and support to their respective customers in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) (c) and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 6,297,751

7. On October 2, 2001, United States Patent No. 6,297,751 (the '751 Patent) was duly and legally issued for an invention entitled "Low-Voltage Joystick Port Interface." Fenner was assigned the '751 Patent, and Fenner continues to hold all rights and interests in the '751 Patent.

8. Each of the Defendants has in the past and is now engaging, and will in the future continue to engage, in unauthorized conduct and activities that violate 35 U.S.C. § 271 constituting infringement of the '751 Patent. In particular, Microsoft infringes the '751 Patent by failing to obtain Fenner's authorization for the acts Microsoft commits, that are prohibited by 35 U.S.C. § 271, with respect to providing, at least, its XBox and XBox360 products that incorporate structures and practice methods that are covered by one or more claims of the '751 Patent. In particular, the Nintendo defendants infringe the '751 Patent by failing to obtain Fenner's authorization for the acts the Nintendo defendants commit, that are prohibited by 35 U.S.C. § 271, with respect to providing, at least, their GameCube and Wii products that incorporate structures and practice methods that are covered by one or more claims of the '751 Patent.

9. Each of the Defendants' acts of infringement has caused damage to Fenner, and Fenner is entitled to recover from each Defendant the damages sustained by Fenner as a result of their individual wrongful acts in an amount subject to proof at trial. Each of the Defendants' infringement of Fenner's exclusive rights under the '751 Patent will continue to damage Fenner's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

10. Upon information and belief, the Nintendo defendants' infringement of the '751 Patent is exceptional, entitling Fenner to attorneys' fees incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

16. Pursuant to Federal Rule of Civil Procedure 38, Fenner demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Fenner prays for judgment and seeks relief against each of the Defendants as follows:

- (a) For judgment that the '751 Patent has been and will continue to be infringed by each Defendant;
- (b) For an accounting of all damages sustained by Fenner as the result of the acts of infringement by each Defendant;
- (c) For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by each Defendant, their officers, agents, servants, employees, subsidiaries and attorneys, and those persons acting in concert with them, including related individuals and entities, customers, representatives, OEMS, dealers, distributors;
- (d) For actual damages together with prejudgment interest;
- (e) For an award of attorneys' fees as to the Nintendo defendants pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- (f) For all costs of suit; and
- (g) For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 27th day of October 2008,

/s/ Robert M. Chiaviello, Jr.

Robert M. Chiaviello, Jr.
Texas Bar No. 04190720

Lead Attorney

Brett C. Govett
Texas Bar No. 08235900

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

Telephone: (214) 855-8000

Facsimile: (214) 855-8200

Email: bobc@fulbright.com

Email: bgovett@fulbright.com

COUNSEL FOR PLAINTIFF
FENNER INVESTMENTS, LTD.

OF COUNSEL

Otis W. Carroll
Texas Bar No. 03895700
IRELAND, CARROLL & KELLEY, P.C.
6101 South Broadway
P.O. Box 7879
Tyler, Texas 75711-7879
Telephone: (903) 561-1600
Facsimile: (903) 581-1071
Email: otiscarroll@ickl.com

T. John Ward, Jr.
Texas Bar No. 00794818
LAW OFFICE OF T. JOHN WARD, JR., P.C.
109 W. Tyler
P.O. Box 1231
Longview, Texas 75606-1231
Telephone: (903) 757-6400
Facsimile: (903) 757-2323
Email: jw@jwfirm.com

Franklin Jones, Jr.
Texas Bar No. 00000055
201 West Houston Street
P.O. Box 1249
Marshall, Texas 75671-1249
Telephone: (903) 938-4395
Facsimile: (903) 938-33604395
Email: maizieh@millerfirm.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Robert M. Chiaviello, Jr. _____
Robert M. Chiaviello, Jr.