

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

YANGAROO INC.,

Plaintiff,

Case No. _____

v.

JURY TRIAL DEMANDED

**DESTINY MEDIA TECHNOLOGIES INC.,
DESTINY SOFTWARE PRODUCTIONS
INC., and MPE DISTRIBUTION, INC.**

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Yangaroo Inc., by its attorneys, for its complaint against Defendants Destiny Media Technologies Inc., Destiny Software Productions Inc., and MPE Distribution, Inc. (collectively, “Destiny”) alleges as follows. The allegations and other factual contentions herein have evidentiary support or are likely to have evidentiary support after an opportunity for further discovery.

PARTIES

1. Plaintiff Yangaroo Inc. (“Yangaroo”) is an Ontario, Canada corporation with its principal place of business located at 95 Mural Street, Suite 600, Richmond Hill, Ontario, Canada, L4B 3G2, and is the owner of the patent at issue.
2. Upon information and belief, Defendant Destiny Media Technologies Inc. (“Destiny Media”) is incorporated under the laws of the State of Colorado, operates out of

Vancouver, British Columbia, Canada, and has its principal place of business at #800-570 Granville Street, Vancouver, British Columbia, Canada V6C 3P1.

3. Upon information and belief, Destiny Media is a holding company which owns 100% of the outstanding shares of Defendants Destiny Software Productions Inc. (“Destiny Software”) and MPE Distribution, Inc. (“MPE Distribution”). Upon further information and belief, Destiny Media carries out its business operations through Destiny Software and MPE Distribution.

4. Upon information and belief, Destiny Software is a British Columbia, Canada corporation incorporated in 1992, is a wholly owned subsidiary of Destiny Media, and has its principle place of business at #800-570 Granville Street, Vancouver, British Columbia, Canada V6C 3P1. Upon further information and belief, Destiny Software develops software tools and provides services which enable content owners to distribute their digital media globally using the internet.

5. Upon information and belief, MPE Distribution is a Nevada company incorporated in 2007, is a wholly owned subsidiary of Destiny Media, and has its principle place of business at #800-570 Granville Street, Vancouver, British Columbia, Canada V6C 3P1. Upon further information and belief, MPE Distribution develops software tools and provides services which enable content owners to distribute their digital media globally using the internet.

JURISDICTION AND VENUE

6. This is an action for patent infringement under the patent laws of the United States, Title 35, United States Code.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a).

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b) in that a substantial part of the events giving rise to Yangaroo's claims occurred in this district, Destiny may be found and/or reside in this district by virtue of its activities in this district, and Destiny has committed acts of patent infringement in this district which on information and belief includes, *inter alia*, selling and/or offering to sell its MPE® products and/or services, including Play MPE™, to WKSZ 95.9 Kiss FM, located at 1263 Main Street, Suite 225, Green Bay, WI 54302, and WORQ 90.1 FM, located at 1075 Brookwood Drive, Green Bay, WI 54304.

BACKGROUND

9. On May 5, 2009, the United States Patent & Trademark Office duly and legally issued United States Patent No. 7,529,712 ("the '712 patent"), entitled "Content Distribution System and Method." The '712 patent was issued to inventors John Heaven, Wojtek Hoch and Cliff Hunt. The three inventors have assigned all rights, title and interest in and to the '712 patent to Yangaroo. A true and correct copy of the '712 patent is attached hereto as Exhibit 1.

10. The '712 patent is a U.S. utility patent with a filing date of May 8, 2003, and claims priority to Canadian Application Nos. 2,393,685, filed July 16, 2002, and 2,407,774, filed October 11, 2002.

COUNT I -- INFRINGEMENT OF THE '712 PATENT

11. Yangaroo realleges and incorporates paragraphs 1-10 above as if fully set forth herein.

12. Destiny is directly infringing, inducing infringement of and/or contributorily infringing one or more claims of the '712 patent. The infringing acts include at least making, using, offering to sell, and/or selling, within the United States or importing into the United

States, its products and/or services, including at least its MPE® products and services, such as Play MPE™. Destiny is liable for infringement of the ‘712 patent pursuant to 35 U.S.C. § 271.

13. Destiny’s acts of infringement have caused and are causing damage to Yangaroo. Yangaroo is entitled to recover from Destiny the damages sustained by Yangaroo as a result of Destiny’s infringement in an amount to be proven at trial.

14. Destiny’s infringement of Yangaroo’s rights under the ‘712 patent is also causing, and will continue to cause, irreparable harm to Yangaroo’s business, for which there is no adequate remedy at law, unless Destiny is enjoined by this Court.

15. Upon information and belief, Destiny’s infringement of the ‘712 patent is willful and deliberate, entitling Yangaroo to increased damages under 35 U.S.C. § 284 and attorney fees incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Yangaroo respectfully requests that this Court enter judgment:

- A. Adjudging that Destiny has infringed the ‘712 patent;
- B. Adjudging such infringement to be willful;
- C. Granting preliminary and permanent injunctions enjoining Destiny and its officers, agents, servants, employees, affiliates and all others in active concert or participation with the foregoing from making, using, selling, offering to sell and importing into the United States any product or service that infringes, or induces or contributes to the infringement of, the ‘712 patent;
- D. Awarding monetary damages, including pre- and post-judgment interest, adequate to compensate Yangaroo for Destiny’s infringement;

E. Awarding enhanced damages and attorneys' fees to Yangaroo pursuant to 35 U.S.C. §§ 284 and 285; and

F. Ordering any such other and further relief as the Court deems just and appropriate.

DEMAND FOR A JURY TRIAL

Yangaroo respectfully demands a jury trial on all claims so triable.

Dated: May 5, 2009

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