

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: *[Signature]*
DEPUTY

BANDSPEED, INC.

Plaintiff

v.

SONY ELECTRONICS INC.; SONY
COMPUTER ENTERTAINMENT AMERICA
INC.; NINTENDO OF AMERICA, INC.;
APPLE, INC.; LEGO SYSTEMS, INC.;
PARROT, INC.; AND SCOSCHE
INDUSTRIES, INC.

Defendants

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CIVIL ACTION NO. A09CA593 LY

JURY TRIAL DEMANDED

**SECOND AMENDED COMPLAINT AND APPLICATION
FOR PERMANENT INJUNCTION**

Plaintiff Bandspeed, Inc. (“Bandspeed”) brings this action against Defendants Sony
Electronics Inc.; Sony Computer Entertainment America Inc.; Nintendo of America, Inc.; Apple,
Inc.; Lego Systems, Inc.; Parrot, Inc.; and Scosche Industries, Inc. and alleges:

NATURE OF THE CASE

1. This is an action arising under the patent laws of the United States (Title 35,
United States Code, § 271 *et seq.*) based upon defendants’ infringement of patents owned by
Bandspeed and relating generally to the field of wireless communication. Bandspeed seeks
damages for defendants’ infringement and a permanent injunction restraining defendants from
further infringement.

PARTIES

2. Bandspeed is a privately-held company incorporated under the laws of Delaware, with its corporate headquarters located in Austin, Texas.

3. Upon information and belief, Sony Electronics Inc. is a Delaware corporation and is a wholly owned subsidiary or division of Sony Corporation and maintains its principal place of business at 16530 Via Esprillo, San Diego, CA 92127. Upon information and belief, Sony Electronics Inc. is doing business as Sony Electronics Inc. and as Sony Corporation of America.

4. Upon information and belief, Sony Computer Entertainment America Inc. is a Delaware corporation and is a wholly owned subsidiary or division of Sony Corporation and maintains its principal place of business at 919 & 989 East Hillsdale Boulevard, Foster City CA, 94404.

5. Upon information and belief, Nintendo of America, Inc. is a Washington corporation with its principal place of business located at 4820 150th Avenue N.E., Redmond, Washington 98052.

6. Upon information and belief, Apple, Inc. is a California corporation with its principal place of business located at 1 Infinite Loop, Cupertino, CA 95014.

7. Upon information and belief, Lego Systems, Inc. is a Delaware corporation with its principal place of business at 555 Taylor Road, Enfield, CT 06083.

8. Upon information and belief, Parrot, Inc. is a New York corporation with its principal place of business at 28446 Franklin Road, Southfield, MI 48034.

9. Upon information and belief, Scosche Industries, Inc. is a California corporation with its principal place of business at 1550 Pacific Avenue, Oxnard, CA 93033.

JURISDICTION

10. This action arises under the patent laws of the United States, Title 35 United States Code. Subject matter jurisdiction is proper under 28 U.S.C. § 1331 and § 1338.

11. This court has personal jurisdiction over Sony Electronics Inc. and Sony Computer Entertainment America Inc. (hereafter referred to jointly as "Sony"). Upon information and belief, Sony conducts business in this state and is selling and offering to sell, and has within a reasonable period prior to the filing of this action, sold and offered to sell its products, including the infringing products, such as its Sony DRBT101iK Bluetooth headphones with adapter and its Sony Playstation 3 video game system, to customers in this state and in this district, either directly or indirectly. Upon information and belief, Sony has placed its products, including the infringing products, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this state and in this district. Upon information and belief, Sony has intentionally established distribution channels to offer its products for sale and to sell its products, including the infringing products, in this state and in this district.

12. This Court has personal jurisdiction over Nintendo of America, Inc. (hereafter referred to as "Nintendo"). Upon information and belief, Nintendo conducts business in this state and is selling and offering to sell, and has within a reasonable period prior to the filing of this action, sold and offered to sell its products, including the infringing products, such as its Nintendo Wii video game system, to customers in this state and in this district, either directly or indirectly. Upon information and belief, Nintendo has placed its products, including the infringing products, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this state and in this district. Upon

information and belief, Nintendo has intentionally established distribution channels to offer its products for sale and to sell its products, including the infringing products, in this state and in this district.

13. This Court has personal jurisdiction over Apple, Inc. (hereafter "Apple"). Upon information and belief, Apple conducts business in this state and is selling and offering to sell, and has within a reasonable period prior to the filing of this action, sold and offered to sell its products, including the infringing products, such as its Apple iPhone 3G, to customers in this state and in this district, either directly or indirectly. Upon information and belief, Apple has placed its products, including the infringing products, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this state and in this district. Upon information and belief, Apple has intentionally established distribution channels to offer its products for sale and to sell its products, including the infringing products, in this state and in this district.

14. This court has personal jurisdiction over Lego Systems, Inc. (hereafter referred to as "Lego"). Upon information and belief, Lego conducts business in this state and is selling and offering to sell, and has within a reasonable period prior to the filing of this action, sold and offered to sell its products, including the infringing products, such as its Mindstorm NXT, to customers in this state and in this district, either directly or indirectly. Upon information and belief, Lego has placed its products, including the infringing products, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this state and in this district. Upon information and belief, Lego has intentionally established distribution channels to offer its products for sale and to sell its products, including the infringing products, in this state and in this district.

15. This court has personal jurisdiction over Parrot, Inc. (hereafter referred to as “Parrot”). Upon information and belief, Parrot conducts business in this state and is selling and offering to sell, and has within a reasonable period prior to the filing of this action, sold and offered to sell its products, including the infringing products, such as its SK4000 hands free kit for motorcycles and scooters, to customers in this state and in this district, either directly or indirectly. Upon information and belief, Parrot has placed its products, including the infringing products, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this state and in this district. Upon information and belief, Parrot has intentionally established distribution channels to offer its products for sale and to sell its products, including the infringing products, in this state and in this district.

16. This court has personal jurisdiction over Scosche Industries, Inc. (hereafter referred to as “Scosche”). Upon information and belief, Scosche conducts business in this state and is selling and offering to sell, and has within a reasonable period prior to the filing of this action, sold and offered to sell its products, including the infringing products, such as its 1PBTT (iPod transmitter), to customers in this state and in this district, either directly or indirectly. Upon information and belief, Scosche has placed its products, including the infringing products, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this state and in this district. Upon information and belief, Scosche has intentionally established distribution channels to offer its products for sale and to sell its products, including the infringing products, in this state and in this district.

VENUE

17. Venue for Sony is proper in this Court under 28 U.S.C. § 1400(b) because Sony resides in this District within the meaning of 28 U.S.C. § 1391(c). In addition, venue is proper in

this Court under 28 U.S.C. §§ 1391(b)-(c) because (i) Sony resides in this District, and/or (ii) a substantial part of the events or omissions giving rise to the claims occurred in this District.

18. Venue for Nintendo is proper in this Court under 28 U.S.C. § 1400(b) because Nintendo resides in this District within the meaning of 28 U.S.C. § 1391(c). In addition, venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(c) because (i) Nintendo resides in this District, and/or (ii) a substantial part of the events or omissions giving rise to the claims occurred in this District.

19. Venue for Apple is proper in this Court under 28 U.S.C. § 1400(b) because Apple resides in this District within the meaning of 28 U.S.C. § 1391(c). In addition, venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(c) because (i) Apple resides in this District, and/or (ii) a substantial part of the events or omissions giving rise to the claims occurred in this District.

20. Venue for Lego is proper in this Court under 28 U.S.C. § 1400(b) because Lego resides in this District within the meaning of 28 U.S.C. § 1391(c). In addition, venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(c) because (i) Lego resides in this District, and/or (ii) a substantial part of the events or omissions giving rise to the claims occurred in this District.

21. Venue for Parrot is proper in this Court under 28 U.S.C. § 1400(b) because Parrot resides in this District within the meaning of 28 U.S.C. § 1391(c). In addition, venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(c) because (i) Parrot resides in this District, and/or (ii) a substantial part of the events or omissions giving rise to the claims occurred in this District.

22. Venue for Scosche is proper in this Court under 28 U.S.C. § 1400(b) because Scosche resides in this District within the meaning of 28 U.S.C. § 1391(c). In addition, venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(c) because (i) Scosche resides in this District,

and/or (ii) a substantial part of the events or omissions giving rise to the claims occurred in this District.

FIRST CLAIM

(Patent Infringement of the '418 Patent)

23. The allegations of paragraphs 1-22 are incorporated herein by reference.

24. Bandspeed is the sole owner of United States Patent No. 7,027,418, entitled "APPROACH FOR SELECTING COMMUNICATIONS CHANNELS BASED ON PERFORMANCE" ("the '418 patent"). The '418 patent was duly and legally issued on April 11, 2006 to Hongbing Gan, Bijan Treister, and Efstratios Skafidas and was assigned to Bandspeed. A copy of the '418 patent is attached to this Complaint as Exhibit A.

25. Upon information and belief, Sony has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '418 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '418 patent.

26. Upon information and belief, Nintendo has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '418 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '418 patent.

27. Upon information and belief, Apple has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '418 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the

territorial boundaries of the United States, products that are covered by one or more claims of the '418 patent.

28. Upon information and belief, Lego has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '418 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '418 patent.

29. Upon information and belief, Parrot has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '418 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '418 patent.

30. Upon information and belief, Scosche has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '418 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '418 patent.

31. Upon information and belief, infringement of the '418 patent will continue unless enjoined by the Court. Bandspeed has suffered, and will continue to suffer, irreparable injury as a result of this infringement. Pursuant to 35 U.S.C. § 284, Bandspeed is entitled to damages for infringement. Pursuant to 35 U.S.C. § 283, Bandspeed is entitled to a permanent injunction against further infringement.

SECOND CLAIM

(Patent Infringement of the '614 Patent)

32. The allegations of paragraphs 1-22 are incorporated herein by reference.

33. Bandspeed is the sole owner of United States Patent No. 7,570,614, entitled "APPROACH FOR MANAGING COMMUNICATIONS CHANNELS BASED ON PERFORMANCE" ("the '614 patent"). The '614 patent was duly and legally issued on August 4, 2009 to Hongbing Gan, Bijan Treister, and Efstratios Skafidas and was assigned to Bandspeed. A copy of the '614 patent is attached to this Complaint as Exhibit B.

34. Upon information and belief, Sony has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '614 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '614 patent.

35. Upon information and belief, Nintendo has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '614 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '614 patent.

36. Upon information and belief, Apple has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '614 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '614 patent.

37. Upon information and belief, Lego has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '614 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '614 patent.

38. Upon information and belief, Parrot has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '614 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '614 patent.

39. Upon information and belief, Scosche has been and currently is infringing, contributing to the infringement of, and/or inducing the infringement of the '614 patent, by among other things, making, using, selling, importing, and/or offering for sale, within the territorial boundaries of the United States, products that are covered by one or more claims of the '614 patent.

40. Upon information and belief, infringement of the '614 patent will continue unless enjoined by the Court. Bandspeed has suffered, and will continue to suffer, irreparable injury as a result of this infringement. Pursuant to 35 U.S.C. § 284, Bandspeed is entitled to damages for infringement. Pursuant to 35 U.S.C. § 283, Bandspeed is entitled to a permanent injunction against further infringement.

PRAYER FOR RELIEF

Bandspeed respectfully requests the following relief:

- A. that Sony, Nintendo, Apple, Lego, Parrot, and Scosche be adjudged to have infringed or induced others to infringe the '418 and '614 patents;
- B. that the Court enter a permanent injunction pursuant to 35 U.S.C. § 283 against Sony, Nintendo, Apple, Lego, Parrot, Scosche and all others in active concert with one or more of them, prohibiting them from directly or indirectly infringing, or inducing others to infringe, the '418 and '614 patents;
- C. that the Court order an accounting for damages by virtue of Sony, Nintendo, Apple, Lego, Parrot, and Scosche's infringement of the '418 and '614 patents;
- D. that the Court award damages to Bandspeed against Sony, Nintendo, Apple, Lego, Parrot, and Scosche pursuant to 35 U.S.C. § 284;
- E. that the Court award Bandspeed pre-judgment and post-judgment interest and its costs, pursuant to 35 U.S.C. §284; and
- F. that Bandspeed be awarded such other and further relief as this Court deems just and proper.

DEMAND FOR A JURY TRIAL

41. Bandspeed hereby demands a trial by jury as to all issues triable by a jury.

Respectfully submitted,

WATTS GUERRA CRAFT, L.L.P.

By:

Mikal C. Watts by E. W. Allred
Mikal C. Watts
State Bar. No. 20981820
Edward W. Allred
State Bar No. 50511764
Mark Fassold
State Bar No. 24012609
300 Convent Street, Suite 100
San Antonio, Texas 78205

Telephone: (210) 527-0500
Facsimile: (210) 527-0501

Chris V. Goodpastor
State Bar No. 00791991
One Congress Plaza, Suite 1000
111 Congress Avenue
Austin, Texas 78701
Telephone: (512) 479-0500
Facsimile: (512) 473-0328

DAFFER MCDANIEL LLP

Kurt M. Sauer
State Bar No. 17673700
Kevin L. Daffer
State Bar No. 05307300
Aaron J. Pickell
State Bar No. 24051193
Stacy L. Zoern
State Bar No. 24051565
700 Lavaca Street, Suite 720
Austin, Texas 78701
Telephone: (512) 476-1400
Facsimile: (512) 703-1250

ATTORNEYS FOR BANDSPEED, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that on October 9, 2009 the following counsel of record are being served with a copy of this document as set forth below:

David J. Healey
Garland T. Stephens
Wasif Qureshi
Fish and Richardson P.C.
1221 McKinney, Suite 2800
Houston, Texas 77010
Phone: (713) 652-5300
Fax: (713) 752-0109
Service by U.S. Mail and Email at:
healey@fr.com
stephens@fr.com
qureshi@fr.com

Alan D. Albright, Esq.
Fish and Richardson P.C.
One Congress Plaza, Suite 810
111 Congress Avenue
Austin, Texas 78701
Phone: (512) 226-8106
Fax: (512) 320-8935
Service by U.S. Mail and Email at:
albright@fr.com

Ruffin B. Cordell
Fish and Richardson P.C.
1425 K Street, N.W., Suite 1100
Washington, D.C. 20005
Phone: (202) 783-5070
Fax: (202) 783-2331
Service by U.S. Mail and Email at:
cordell@fr.com

ATTORNEYS FOR APPLE, INC.

Stephen E. McConnico, Esq.
Scott, Douglass & McConnico, L.L.P.
600 Congress Avenue, Suite 1500
Austin, Texas 78701-3234
Phone: (512) 495-6300
Fax: (512) 474-0731
Service by U.S. Mail and Email at:
smconnico@scottdoug.com

Matthew J. Brigham
Lori E. Ploeger
Benjamin Damstedt
Adam Pivovar
Timothy S. Teter
Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Phone: (650) 843-5000
Fax: (650) 857-0663
Service by U.S. Mail and Email at:
mbrigham@cooley.com
ploegerle@cooley.com
bdamstedt@cooley.com
apivovar@cooley.com
teterts@cooley.com

Thomas J. Friel
Cooley Godward Kronish LLP
101 California Street, 5th Floor
San Francisco, CA 94111
Phone: (415) 693-2162
Fax: (415) 693-2222
Service by U.S. Mail and Email at:
frieltj@cooley.com

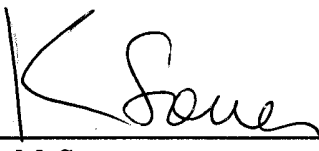
ATTORNEYS FOR NINTENDO OF AMERICA, INC.

Kevin P.B. Johnson
Quinn Emanuel Urquhart Oliver & Hedges, LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, California 94065
Phone: (650) 801-5000
Fax: (650) 801-5100
Service by U.S. Mail and Email at:
bandspeed@quinnemanuel.com

Sean S. Pak
Quinn Emanuel Urquhart Oliver & Hedges, LLP
50 California Street, 22nd Floor
San Francisco, California 94111
Phone: (415) 875-6600
Fax: (415) 875-6700
Service by U.S. Mail and Email at:
bandspeed@quinnemanuel.com

B. Russell Horton, Esq.
Kincaid & Horton, L.L.P.
114 W. 7th Street, Suite 1100
Austin, Texas 78701
Phone: (512) 499-0999
Fax: (512) 499-0816
Service by U.S. Mail and Email at:
rhorton@khs-law.com

**ATTORNEYS FOR SONY ELECTRONICS INC. and
SONY COMPUTER ENTERTAINMENT AMERICA INC.**


Kurt M. Sauer