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13  
14 UNITED STATES DISTRICT COURT  
15 SOUTHERN DISTRICT OF CALIFORNIA  
16 SAN DIEGO DIVISION  
17

18 SHINSEDAI COMPANY, LIMITED  
Plaintiff,

19 vs.

20 NINTENDO COMPANY, LIMITED, and  
21 NINTENDO OF AMERICA INC.

22 Defendants.  
23  
24  
25  
26  
27  
28

CASE NO. '11 CV2799 WQHMD

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Shinsedai Company, Limited (“SSD”) for its complaint against defendants  
2 Nintendo Company, Limited (“Nintendo Ltd.”), Nintendo of America Inc. (“NOA”), collectively  
3 “Nintendo”, allege as follows:  
4

5 **NATURE OF THE ACTION**

6 1. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*,  
7 for infringement by Nintendo of patents owned by SSD.  
8

9 **THE PARTIES**

10 2. SSD is a Japanese company with its principal place of business in at 400  
11 Yamaderacho, Kusatsu-City, Shiga 525-8567, Japan.

12 3. SSD maintains a U.S. branch office at 11839 Sorrento Valley Road, Suite 39-G,  
13 San Diego CA, 92121.

14 4. On information and belief, Nintendo Ltd. is a corporation organized and existing  
15 under the laws of Japan, with its principal place of business at 11-1 Kamitoba Hokotate-Cho,  
16 Minami-ku, Kyoto, 601-8501, Japan.

17 5. On information and belief, NOA is a corporation organized and existing under the  
18 laws of the State of Washington, with its principal place of business at 4600 150th Ave. NE,  
19 Redmond, Washington 98052.

20 6. Upon information and belief, NOA is a wholly-owned subsidiary of Nintendo Ltd.  
21

22 **JURISDICTION AND VENUE**

23 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
24 §§ 1331 and 1338, in that this is a civil action for patent infringement arising under the Patent Laws  
25 of the United States, Title 35, United States.

26 8. Venue is proper in this district and division under 28 U.S.C. §§ 1391(b) and (c) and  
27 1400(b).  
28

9. This Court has personal jurisdiction over Nintendo in accordance with the Due Process Clause of the United States Constitution and California's long-arm statute by virtue of Nintendo's use, manufacture, marketing, promotion, offers for sale, sales and distribution of products, including products which are the subject of this Complaint, throughout the State of California, in this District and in this Division. Nintendo has also placed or helped to place, and are continuing to place, products into the stream of commerce within the United States, within California, in this District and in this Division, and it is reasonable to expect that such products will continue to enter and be used by consumers in California, including in this District and in this Division.

## THE PATENTS

10. SSD is the sole owner of U.S. Patent No 7,932,908 (“the '908 Patent”), entitled “Apparatus Systems, and the Methods for Stimulating Movement of a Ball in Response to a Signal Generated in an Input Device Moved by a Game Player,” which was duly and legally issued on April 26, 2011.

11. By written assignment from the inventors, SSD owns all right, title and interest in and to the '908 Patent, including all rights arising thereunder, such as the right to bring suit and recover damages for past infringement.

12. A true and correct copy of the '908 Patent is attached hereto as Exhibit A.

13. SSD is the sole owner of U.S. Patent No 8,049,758 (“the ‘758 Patent”), entitled “Sensing Ball Game Machine,” which was duly and legally issued on November 1, 2011.

14. By written assignment from the inventors, SSD owns all right, title and interest in and to the '758 Patent, including all rights arising thereunder, such as the right to bring suit and recover damages for past infringement.

15. A true and correct copy of the '758 Patent is attached hereto as Exhibit B.

16. SSD is the sole owner of U.S. Patent No. 7,839,382 (“the ‘382 Patent”), entitled “Sensing Ball Game Machine,” which was duly and legally issued on November 23, 2010.

17. By written assignment from the joint, SSD owns all right, title and interest in and to the '382 Patent, including all rights arising thereunder, such as the right to bring suit and recover

1 damages for past infringement.

2 18. A true and correct copy of the '382 Patent is attached hereto as Exhibit C.

3 19. SSD is the sole owner of U.S. Patent No. 7,635,301 ("the '301 Patent"), entitled  
4 "Game System" which was duly and legally issued on December 22, 2009.

5 20. By written assignment from the inventors, SSD owns all right, title and interest in  
6 and to the '301 Patent, including all rights arising thereunder, such as the right to bring suit and  
7 recover damages for past infringement.

8 21. A true and correct copy of the '301 Patent is attached hereto as Exhibit D.

## 10 BACKGROUND

### 12 (A) Case Overview

13 22. SSD patented and brought to market, through its XaviX(TM) brand, innovative  
14 sports games based on the concept of motion control. In XaviX(TM) sports games, first shown in  
15 2004, the player would simulate movements of the sport being played. SSD's tennis game for  
16 example, shipped with miniature tennis racquets that the player swung when a ball on the screen  
17 came within range. For its baseball game, SSD included a ball and bat, the bat was swung to  
18 intercept a pitched ball on the display screen, and the ball was "thrown" in a pitching motion to  
19 perform a pitching action.

20 Figure 1: XaviXTENNIS



21 Figure 2: XaviXBASEBALL



23. The patents asserted in this case relate to innovative features of these games and the technology that underlies them. While the patents speak for themselves, some of this technology is found in an acceleration sensor within the bat/racquet controller which senses the motion of the controller in free space. An example of a patented game feature is that in the tennis game, in a rally state, the player is automatically moved which prolongs the game.

24. Nintendo, a company with a long history of gaming, learned of SSD's technology, as described herein, and adopted key patented features and technology from SSD's XaviX(TM) sports games into its own products years after SSD had established the market for motion control gaming.

25. In particular, Nintendo's "Wii(TM)" product (hereinafter "Wii"), first released in 2006, employs motion control gaming with an acceleration sensing Wii remote that is moved in free space to simulate body movements of the sport being played.

26. Generally, the '908 and '758 patents are asserted against Nintendo Wii bundles and games where a ball is intercepted with a movement of the Wii remote which alters the moving direction of the ball, including Wii Sports (baseball, tennis), Wii Play (table tennis) and Wii Sports Resort (table tennis).

27. Generally, the '382 Patent is asserted against the Wii bundles and games employing motion control table tennis, including Wii Play and Wii Sports Resort.

28. Generally, the '301 Patent is asserted against the Wii bundles and games employing tennis of any kind (such as table tennis), where the player(s) are moved automatically, including Wii Sports (tennis) and Wii Sports Resort (table tennis).

29. While SSD respects Nintendo as a competitor and successful company, the success of the Wii and its sports games has been accomplished at the expense of SSD's pioneering work in the field, using SSD's patented technology. SSD seeks reasonable compensation from the substantial sales of Nintendo's Wii "bundles" and sports games that have used, as an underpinning, SSD's patented technology.

### (B) SSD's Innovations

30. SSD is an innovator in the console gaming industry and maintains intellectual property, including that identified herein, based on its research and development efforts.

31. SSD's research and development efforts included the development of user input devices that use motion control technology (hereinafter "motion control input devices"). SSD also developed games to be used with the motion control input devices (hereinafter "motion controlled games").

32. In the motion control input devices, the user provides control information to a game by moving the controller itself, rather than by operating buttons, switches or knobs on the controller.

33. In certain of these motion control input devices SSD developed an acceleration sensor such that the motion control input device can detect its own motion.

34. In January of 2004, SSD displayed motion control games for Baseball, Bowling, and Tennis at the Consumer Electronics Show (hereinafter "CES") in Las Vegas, Nevada.

35. At the CES, interest in SSD's motion control games was shown by visitors to SSD's booth, which included representatives of Nintendo, including but not limited to Jeff Kalles and Darren Smith of NOA.

36. SSD branded its motion control games with included motion control input devices under the "XaviX(TM)" brand (hereinafter "XaviX(TM) Games").

37. After January of 2004, SSD began releasing for sale in Japan and the U.S. various XaviX(TM) Games. These included the following sports games:

Product Name (also indicating sport)	Market Launch Date	Where Launched
XaviXPORT (console)	Summer 2004	USA
XaviXBaseball	Summer 2004	USA
XaviXTENNIS	Summer 2004	USA
XaviXBOWLING	Summer 2004	USA
XaviXGOLF	Summer 2005	USA
XaviXBassFISHING	Summer 2005	USA
XaviXPOWERBOXING	Fall 2005	USA and Japan



38. In and preceding this timeframe, SSD's patent applications relating to its innovations were being published, including the following publications:

Item	Number	Publication Date
'908 Japanese Filing	11-283233	April 17, 2001
'908 PCT Filing	PCT/JP00/06870	April 12, 2001
'301 Japanese Filing	JP 2002-122646	February 7, 2007
'301 PCT Publication	WO/03/09088	November 6, 2003
'382 Japanese Filing	11-283233	April 17, 2001
'382 US Application Published	US 2007/0091084	April 26, 2007

39. The PCT documents above designate on their face that the United States is selected for a national stage filing, meaning that SSD indicated an intent to file a US patent application.

40. SSD began a heavy marketing campaign for its XaviX(TM) products between 2004 through 2006, where the XaviX(TM) products were advertised, promoted and marketed, as well as described by various news organizations and by articles in computer and lifestyle magazines.

41. In this timeframe, articles about or describing the XaviX(TM) sports games appeared in the Boston Globe, Detroit Free press and other publications, and XaviX(TM) presented the "Virtual Sports Challenge" in the "Innovations" pavilion at Walt Disney's Resort Epcot(R) center featuring its sports games.

42. In addition, SSD and Nintendo (with other companies) sponsored the "techknowoverload tour" in 2005 ("the Tour" herein), where products from the sponsors were shown at spring break destinations in the United States as well as on various college campuses.

43. As part of the Tour, XaviX(TM) products (including XaviX(TM) Baseball, Tennis, Golf and Boxing) were shown by representatives of SSD/ XaviX(TM) alongside Nintendo products (including the Nintendo DS) being shown by representatives of Nintendo.

44. The Tour directly exposed Nintendo to XaviX(TM) sports games, as representatives from both companies traveled along the Tour together, showing their products side-by-side at Tour destinations which included the University of California, San Diego and 14 other large college

1 campuses across the United States.

2 45. From 2004 to the present, SSD has maintained a branch office in San Diego to, in  
3 part, market, sell and support the XaviX(TM) sports games, including the patented tennis and  
4 baseball games.

5 46. At one time, SSD San Diego's office had about a dozen employees whose job  
6 functions related to XaviX(TM) sales, marketing, demonstrations, customer service, operations,  
7 order processing and business development.

8 47. SSD's San Diego office maintains documents and records of SSD's XaviX(TM)  
9 related efforts in the United States.

10 48. Since 2008, SSD's exclusive US distributor for XaviX(TM) games has been Lifestyle  
11 Interactive Technologies, Inc. (hereinafter "LIT"), located in San Diego, CA.

12 49. LIT maintains all US XaviX(TM) inventory at a warehouse in San Diego, located at  
13 7130 Miramar Road.

14 50. Since 2008, LIT has been responsible for U.S. marketing and sales of XaviX(TM)  
15 games, and maintains all records and documents related to these efforts at its offices in San Diego.

16 51. XaviX(TM) sports games received critical acclaim from 2004-2006.

17 52. By virtue of the XaviX(TM) marketing efforts, positive market reaction, and direct  
18 exposure of XaviX(TM) games to Nintendo and its employees/ representatives, Nintendo learned of  
19 the XaviX(TM) sports games.

20  
21 **(C) Nintendo's Wii**

22 53. On information and belief, Nintendo introduced its "Wii" product on November 19,  
23 2006.

24 54. At this time, Nintendo and SSD were competitors, with Nintendo being a  
25 substantially larger company with superior financing and marketing capabilities.

26 55. On information and belief, between the release of XaviX(TM) Games in 2004 to the  
27 time of the Wii introduction, SSD was the only major console game manufacturer providing motion  
28 controlled games using motion control input devices.



56. While the Wii contained innovative features not relevant to this action, Nintendo also adopted wholesale into its Wii games and controller the motion controlled gaming concepts pioneered by SSD's XaviX(TM) Games including the technology patented by SSD.

57. For example, "Wii Sports," released with the Wii (and bundled with the Wii for U.S. sales), contained motion controlled games for Baseball, Tennis, Bowling, Boxing and Golf.

58. These games were released years after the asserted patents were filed and years after the release of XaviXBASEBALL, XaviXTENNIS, XaviXBOWLING, XaviXBOXING, and XaviXGOLF.

59. "Wii Play," (on information and belief released in December 2006) contained motion controlled games for fishing and tennis (in this case table tennis).

60. These games were released years after the asserted patents were filed and after the release of XaviXBassFISHING and XaviXTENNIS.

61. "Wii Sports Resort," (on information and belief released in July 2008), contained motion control games drawn to tennis (in this case table tennis), golf and bowling.

62. These games were released years after XaviXGOLF, XaviXTENNIS, and XaviXBOWLING.

63. The Wii remote (and later Wii Motion Plus add-on accessory and Wii Remote Plus) incorporates one or more acceleration sensors to (at least in part) sense its movement (referred to collectively herein as "Wii Remote").

64. Wii Sports Baseball and XaviXBASEBALL have many similarities which, at least in some respects, include features of one or more SSD patents.

#### **Baseball Comparison**

- In both games a player swings the controller as if it is a bat in order to hit an incoming pitch, and swings the controller as if it were a baseball (without releasing it) in order to throw a pitch;
- Both controllers contain acceleration sensors, a feature of the '908 Patent and '758 Patent;

- Both controllers wirelessly communicate acceleration information to the game console;
- The baseball game computes the moving direction of the hit ball based on the swing detected by the acceleration controller, at least in part, a feature of the '908 Patent and '758 Patent.
- The '908 Patent and '758 Patent covers both systems.
- The functional non-cosmetic aspects of the games are the same.

65. Wii Sports Tennis and XaviXTENNIS have many similarities which, at least in some respects, include features of one or more SSD patents.

#### **Tennis Comparison**

- In both games a player swings the controller as if it is a tennis racquet in order to hit an incoming tennis ball;
- Both controllers contain acceleration sensors, a feature of the '908 Patent and '758 Patent;
- Both controllers wirelessly communicate acceleration information to the game console;
- Both games, in a rally state, automatically move the player to approximately the position the ball will land in order to prolong the game, a feature of the '301 patent.
- In both games the return speed vector (or moving direction of the ball) is determined at least in part by the swing detected by the acceleration controller, a feature of the '908, '758 and '301 Patents.
- The '908 Patent, '758 Patent and '301 Patents cover both systems.
- The functional non-cosmetic aspects of the games are the same.

66. Wii Sports Bowling and Wii Sports Resort Bowling are similar to XaviXBOWLING in at least the following respects:

**Bowling Comparison**

- In both games a player swings the controller as if it is a bowling ball;
- At this time, neither system is alleged to be covered by an asserted patent; yet key functional non-cosmetic elements of the systems are the same.

67. Wii Sports Boxing is similar to XaviXBoxing in at least the following respects:

**Boxing Comparison**

- In both games a player swings the controller as if it is a boxing glove;
- At this time, neither system is alleged to be covered by an asserted patent; yet key functional non-cosmetic elements of the systems are the same.

68. Wii Sports Golf and Wii Sports Resort Golf are similar to XaviXGolf in at least the following respects:

**Golf Comparison**

- In both games a player swings the controller as if it is a golf club;
- At this time, neither system is alleged to be covered by an asserted patent; yet key functional non-cosmetic elements of the systems are the same.

69. Wii Play Fishing is similar to XaviXBassFISHING in at least the following respects:

**Fishing Comparison**

- In both games a player holds and moves the controller as if it is a fishing rod in order to catch fish
- Both controllers contain acceleration sensors;
- Both controllers wirelessly communicate acceleration information to the game console;

- At this time, neither system is alleged to be covered by an asserted patent; yet key functional non-cosmetic elements of the systems are the same.

70. Wii Play Table Tennis, Wii Sports Resort Table Tennis and XaviXTENNIS have many similarities which, at least in some respects, include features of one or more SSD patents.

#### **Table Tennis/Tennis Comparison**

- In all games a player swings the controller as if it is a racquet/paddle in order to hit an incoming ball;
- All controllers contain acceleration sensors, a feature of all the asserted patents;
- All controllers wirelessly communicate acceleration information to the game console;
- All games, in a rally state, automatically move the player to approximately the position the ball will land in order to prolong the game, a feature of the '301 patent.
- In all games the return speed vector (or moving direction of the ball) is determined at least in part by the swing detected by the input acceleration controller, a feature of the '908, '758 and '301 Patents.
- In all games an in or out signal is determined at a ball limit position, a feature of the '382 Patent.
- All the systems are covered by the '908 Patent and '758 Patent.
- The '301 Patent covers Wii Sports Resort Table Tennis, Wii Sports Tennis and the SSD System.
- The '382 Patent covers Wii Play Table Tennis and Wii Sports Resort Table Tennis.
- The functional non-cosmetic aspects of the games are the same.

1           71.     On May 7, 2010, Nintendo Ltd. released a "Financial Results Briefing for Fiscal  
2 Year Ended March 2010," (hereinafter "FRB") containing sales data through March 2010.

3           72.     The FRB indicated that by March 2010, Nintendo sold 17.59 million units of Wii  
4 Sports outside of Japan (which includes the United States).

5           73.     The FRB indicated that by March 2010, Nintendo sold 4.28 million units of Wii Play  
6 outside of Japan (which includes the United States).

7           74.     The FRB indicated that by March 2010, Nintendo sold 14.23 million units of Wii  
8 Sports Resort outside of Japan (which includes the United States).

9           75.     Sales of Wii Sports, Wii Play and Wii Sports Resort continue to the present day  
10 within the United States.

11          76.     On information and belief based on publicly available networking tools, Nintendo,  
12 its related companies, associates and/or subcontractors have, at all relevant times, owned and  
13 controlled the following internet IP addresses and/or internet domain names: 211.8.190.194;  
14 mist.nintendo.co.jp.

15          77.     Prior to January 17, 2005 (and thereafter), information concerning XaviX(TM)  
16 sports games was made publicly available on the SSD web site.

17          78.     Between January 17, 2005 and May 6, 2005, users from IP address 211.8.190.194  
18 accessed SSD's web site for a total of 3,424 page hits.

19          79.     In October 2005, the second-most frequent visitor to SSD's web site, with 1874 page  
20 views, were users from the domain mist.nintendo.co.jp.

21          80.     At one time SSD was represented by the Japanese law firm of "Yamada Patent  
22 Office" with respect to its Japanese patent related intellectual property, including IP issues related to  
23 the Japanese filing that led to the '908 Patent, '302 Patent and '758 Patent (JP 11-283333).

24          81.     At the time SSD approached Yamada Patent Office SSD was aware that Yamada  
25 Patent Office also represented Nintendo, yet Yamada Patent Office cleared conflicts concerning  
26 Nintendo and agreed to work with SSD.

27          82.     Shortly prior to the launch of the Wii, Yamada Patent Office withdrew from  
28 representing SSD in patent matters, under circumstances which indicated a conflict (or potential

1 conflict) of interest with Nintendo.

2 83. Nintendo Ltd., a publicly traded company in Japan, makes publicly available its  
3 annual notices of the general meeting of shareholders, which includes business issues, progress and  
4 results, financial, auditing and other information relating to Nintendo's business performance and  
5 liabilities. The original and English translations are available for the 67th through 71st general  
6 meetings (2007 through 2011, each reporting on the year prior).

7 84. The 67th through 71st notices include business and auditing information, and list  
8 (among others) a named auditor (hereinafter "Auditor1"), an "attorney-at-law" who attended board  
9 of director and board of auditor meetings, and "provided expert opinions mainly as an attorney-at-  
10 law and patent attorney".

11 85. In these 67th through 71st notices, no mention or disclosure is made of SSD or the  
12 adoption or appropriation of SSD's technology, despite the fact that this adoption or appropriation  
13 would have been, on information and belief, relevant to the issues reported and should have been  
14 disclosed if known.

15 86. On information and belief Nintendo kept from its Board Members, shareholders,  
16 auditors (including its patent law auditors such as Auditor1) and attorneys (such as Auditor1) the  
17 fact that it appropriated SSD's technology as discussed herein.

18 87. Wii Sports, Wii Play and Wii Sports Resort are material parts of the infringing  
19 devic(es) which have no other use than to be operated in conjunction with a Wii Console and at  
20 least one Wii Remote; and which are not staple articles of commerce having suitable noninfringing  
21 uses.

22 88. There have been millions of direct infringements by Nintendo and end users of the  
23 '908, '758, '382 and '301 Patents; caused by the making, using, selling, offering for sale and  
24 importation of the accused devices.

25 89. The methods of the '301 Patent and '758 Patent are performed when users of Wii  
26 Sports, Wii Play and Wii Sports Resort play the respective games, which has occurred and is  
27 occurring millions of times in the United States and in this District.

28



1           90.     On information and belief "Nintendo World Store" is a wholly-owned subsidiary of  
2 NOA, located at 10 Rockefeller Plaza, New York, NY 10020, and which is under NOA's operation  
3 and control.

4           91.     Nintendo World Store is a retail store which imports, sells and offers for sale the  
5 accused products, and which allows and encourages employees and customers/ visitors to use the  
6 accused products in operational Wii systems.

7  
8                                   **NOTICE OF SSD's PATENTS**

9           92.     On information and belief, Nintendo and its representatives undertook to study and  
10 appropriate the innovative features and technology from the XaviX(TM) sports games identified  
11 above, including the acceleration based motion control input device and key patented features of the  
12 games themselves, either in whole or in part.

13           93.     On information and belief, Nintendo undertook an appropriation of SSD's  
14 XaviX(TM) product line when creating its Wii console, Wii Remote and games.

15           94.     On information and belief Nintendo investigated the scope of SSD's patent and  
16 pending patent rights and has actual knowledge of SSD's U.S. Patents through the publications  
17 identified herein as well as the patents themselves.

18           95.     In these circumstances it is the obligation of any company releasing a line of  
19 products that appropriate the same motion control technology and gaming concepts as a competitor  
20 to examine and to continue to examine the intellectual property and patent rights of the competitor.

21           96.     Nintendo either had and has actual knowledge of SSD's patent rights, or was  
22 willfully ignorant of and blind to SSD's intellectual property, including the '908, '758, '302 and '301  
23 patents, taking deliberate steps to avoid knowing of SSD's asserted patents where such steps  
24 included failure to disclose the appropriation of SSD's technology to its Board Members,  
25 shareholders, auditors (including Auditor1) and attorneys (including Auditor1), and failure to  
26 monitor SSD's IP.

27           97.     The fact that Nintendo appropriated an amount of technology in excess of the scope  
28 of the patents asserted herein, adopting features from most of the XaviX(TM) sports product line,

1 illustrates the extent to which Nintendo willfully disregarded any IP rights held by SSD.

2 98. Prior to the filing of this complaint, Nintendo either actually or legally under the  
3 Supreme Court doctrine of "willful blindness" (*Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S.Ct.  
4 2060 (2011)) had knowledge of the '908, '758, '382 and '301 Patents.

5 99. Prior to the filing of this complaint, Nintendo willfully intended to directly infringe,  
6 induce the infringement of, and contribute to the infringement of the '908, '758, '382 and '301  
7 Patents.

8 100. Nintendo, prior to the filing of this Complaint knew that Wii Sports, Wii Play and  
9 Wii Sports Resort were especially made or adapted for infringement of the '908, '758, '382 and '301  
10 Patents.

11 101. Additional and unequivocal notice of the existence of the '908, '758, '382 and '301  
12 Patents is provided by notice of this action to Nintendo.

13 102. Nintendo's continued sale of Wii Sports, Wii Sports Resort, and Wii Play (alone or  
14 bundled with a Wii console and/or Wii Remote) after notice of this action constitutes further willful  
15 intent to directly infringe, induce the infringement of, and contribute to the infringement of the '908,  
16 '758, '382 and '301 Patents.

17 103. Nintendo's continued sale of Wii Sports, Wii Sports Resort, and Wii Play (alone or  
18 bundled with a Wii console and/ or Wii Remote) after notice of this action is being done with  
19 knowledge that Wii Sports, Wii Play and Wii Sports Resort are especially made or adapted for  
20 infringement of the '908, '758, '382 and '301 Patents.

## 21 **COUNT I**

### 22 **(Infringement of the '908 Patent)**

23 104. SSD repeats, realleges and incorporates herein by reference the allegations stated in  
24 paragraphs 1–103 of this Complaint as if fully set forth herein.

25 105. Nintendo has been and continues to directly infringe (literally or under the doctrine  
26 of equivalents) the '908 Patent by making, using, offering for sale, selling and/or importing Wii  
27 bundles containing at least the following: (a) a Wii Console, (b) at least one Wii Remote and (c)  
28 one or more of (1) Wii Sports, (2) Wii Play, (3) Wii Sports Resort.

106. Nintendo has been and continues to induce the infringement and contribute to the infringement of the '908 Patent by making, using, selling, importing and offering for sale Wii Sports, Wii Play and Wii Sports Resort, either alone or bundled with other product(s), and by performing the acts in the prior paragraph.

107. Nintendo's direct infringement, contributory infringement and/or active inducement of others' infringement of the '908 Patent has taken place and is taking place with actual or legal knowledge of the '908 Patent and has been and is intentional, deliberate and willful.

108. As a result of Nintendo's direct infringement, contributory infringement and/or active inducement of infringement of the '908 Patent, SSD has been and will continue to be damaged unless and until Nintendo is enjoined by this Court.

## COUNT II

### **(Infringement of the '758 Patent)**

109. SSD repeats, realleges and incorporates herein by reference the allegations stated in paragraphs 1–108 of this Complaint as if fully set forth herein.

110. Nintendo has been and continues to directly infringe (literally or under the doctrine of equivalents) the '758 Patent by making, using, offering for sale, selling and/or importing any of: (1) Wii Sports, (2) Wii Play, (3) Wii Sports Resort, (4) Wii bundles containing at least the following: (a) a Wii Console, (b) at least one Wii Remote and (c) one or more of: (i) Wii Sports, (ii) Wii Play, (iii) Wii Sports Resort.

111. Nintendo has been and continues to induce the infringement and contribute to the infringement of the '758 Patent by making, using, selling, importing and offering for sale Wii Sports, Wii Play and Wii Sports Resort, either alone or bundled with other product(s), and by performing the acts in the prior paragraph.

112. Nintendo's direct infringement, contributory infringement and/or active inducement of others' infringement of the '758 Patent has taken place and is taking place with actual or legal knowledge of the '758 Patent and has been and is intentional, deliberate and willful.

113. As a result of Nintendo's direct infringement, contributory infringement and/or active inducement of infringement of the '758 Patent, SSD has been and will continue to be damaged

1 unless and until Nintendo is enjoined by this Court.

2 **COUNT III**

3 **(Infringement of the '382 Patent)**

4 114. SSD repeats, realleges and incorporates herein by reference the allegations stated in  
5 paragraphs 1–113 of this Complaint as if fully set forth herein.

6 115. Nintendo has been and continues to directly infringe (literally or under the doctrine  
7 of equivalents) the '382 Patent by making, using, offering for sale, selling and/or importing any of:  
8 (1) Wii Sports Resort, (2) Wii Play, (3) Wii bundles containing at least the following: (a) a Wii  
9 console, (b) at least one Wii Remote, and (c) one or more of: (i) Wii Play, (ii) Wii Sports Resort.

10 116. Nintendo has been and continues to induce the infringement and contribute to the  
11 infringement of the '382 Patent by making, using, selling, importing and offering for sale Wii Play  
12 and Wii Sports Resort, either alone or bundled with other product(s), and by performing the acts in  
13 the prior paragraph.

14 117. Nintendo's direct infringement, contributory infringement and/or active inducement  
15 of others' infringement of the '382 Patent has taken place and is taking place with actual or legal  
16 knowledge of the '382 Patent and has been and is intentional, deliberate and willful.

17 118. As a result of Nintendo's direct infringement, contributory infringement and/or active  
18 inducement of infringement of the '382 Patent, SSD has been and will continue to be damaged  
19 unless and until Nintendo is enjoined by this Court.

20 **COUNT IV**

21 **(Infringement of the '301 Patent)**

22 119. SSD repeats, realleges and incorporates herein by reference the allegations stated in  
23 paragraphs 1–119 of this Complaint as if fully set forth herein.

24 120. Nintendo has been and continues to directly infringe (literally or under the doctrine  
25 of equivalents) the '301 Patent by making, using, offering for sale, selling and/or importing Wii  
26 bundles containing at least the following: (a) a Wii console, (b) a Wii Remote, (c) one or more of:  
27 (1) Wii Sports, (2) Wii Sports Resort.  
28

121. Nintendo has been and continues to induce the infringement and contribute to the infringement of the '301 Patent by making, using, selling, importing and offering for sale Wii Sports and Wii Sports Resort, either alone or bundled with other product(s), and by performing the acts in the prior paragraph.

122. Nintendo's direct infringement, contributory infringement and/or active inducement of others' infringement of the '301 Patent has taken place and is taking place with actual or legal knowledge of the '301 Patent and has been and is intentional, deliberate and willful.

123. As a result of Nintendo's direct infringement, contributory infringement and/or active inducement of infringement of the '301 Patent, SSD has been and will continue to be damaged unless and until Nintendo is enjoined by this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, SSD respectfully requests that this Court:

1. Enter a judgment in favor of SSD that Nintendo has directly infringed, contributorily infringed and actively induced others to infringe the '908 Patent, '758 Patent, '382 Patent and '301 Patent;

2. Grant a permanent injunction enjoining Nintendo, its officers, directors, agents, servants, affiliates, employees, successors, assigns, divisions, branches, subsidiaries, parents and all others acting in active concert therewith from infringing, inducing others to infringe and contributing to the infringement of the of the '908 Patent, '758 Patent, '301 Patent and '382 Patent;

3. Award SSD damages in an amount sufficient to compensate SSD for Nintendo's infringement, contributory infringement and active inducement of infringement of the '908 Patent, '758 Patent, '382 Patent and '301 Patent, but no less than a reasonable royalty;

4. Award prejudgment interest to SSD under 35 U.S.C. § 284;

5. Award increased damages, under 35 U.S.C. § 284, in an amount not less than three times the amount of actual damages awarded to SSD, by reason of Nintendo's willful infringement of the '908 Patent, '758 Patent, '301 Patent and '382 Patent;

7. Grant SSD any and all other relief that this Court may find just and reasonable.

SSD hereby demands a trial by jury on all issues appropriately triable by a jury.

SHINSEDAI CO., LTD.



CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of December, 2011, the foregoing ***Complaint for Patent Infringement*** was filed electronically using the Court's CM/ECF system, that no party has appeared in this action to receive a Notice of Electronic Filing under Local Rule CV5(a)(3)(A), and that a copy of the foregoing will be served on all parties, together with the summons, pursuant to Fed. R. Civ. P.

5770188v.1

s/ John E. Giust  
John E. Giust

EXHIBIT TABLE OF CONTENTS

<b>Exh</b>	<b>Description</b>	<b>Pages</b>
A	U.S. Patent No 7,932,908	22-48
B	U.S. Patent No 8,049,758	49-75
C	U.S. Patent No. 7,839,382	76-102
D	U.S. Patent No. 7,635,301	103-134