

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

PATENT HARBOR, LLC

Plaintiff,

v.

THE CRITERION COLLECTION, INC.

Defendant.

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CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

This is an action for patent infringement in which Patent Harbor, LLC (“Patent Harbor”), makes the following allegations against The Criterion Collection, Inc. (hereafter “Criterion” or “Defendant”).

PARTIES

1. Patent Harbor is a corporation organized under the laws of the State of Texas. Patent Harbor maintains its principal place of business at 4455 Camp Bowie Blvd., Suite 114, PMB 72, Ft. Worth, TX 76107.

2. Upon information and belief, Criterion is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 215 Park Avenue South, Fifth Floor, New York, NY 10003. Upon information and belief, The Criterion Collection, Inc. authors, manufactures and/or distributes DVD and Blu-Ray discs to consumers in the United States and, more particularly, in the Eastern District of Texas. Criterion may be served with process by serving its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

JURISDICTION AND VENUE

3. This is an action for violation of the patent laws of the United States, Title 35, United States Code, more particularly, 35 U.S.C. §§ 271 *et seq.*

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Criterion. Defendant has conducted and does conduct business within the State of Texas. Defendant, directly or through intermediaries (including distributors, retailers, and others), authors, distributes, offers for sale, sells, ships, and/or advertises (including the provision of an interactive web page) its products in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Defendant has purposefully and voluntarily placed one or more of its infringing products, as described below, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Texas. Upon information and belief, these infringing products have been and continue to be purchased by consumers in the Eastern District of Texas. Defendant has committed the tort of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

6. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 5,684,514

7. Patent Harbor refers to and incorporates all preceding paragraphs as though fully set forth herein.

8. United States Patent No. 5,684,514 (“the ‘514 Patent”), entitled “Apparatus and Method for Assembling Content Addressable Video” was duly and legally issued by the United States Patent and Trademark Office on November 4, 1997, after full and fair examination. Patent Harbor is the assignee of all rights, title, and interest in and to the ‘514 Patent and possesses all

rights of recovery under the '514 Patent, including the right to recover damages for past infringements. A true and correct copy of the '514 Patent is attached as Exhibit A.

9. Upon information and belief, and upon representations to Patent Harbor by United Artists Corporation and Metro-Goldwyn-Mayer, Inc., named defendants in the currently pending lawsuit before this Court styled *Patent Harbor, LLC v. DreamWorks Animation SKG, Inc. et al.*, civil action no. 6:11-cv-00229, Criterion manufactures, uses, sells, offers to sell, authors, and/or distributes DVD and Blu-Ray discs containing movies, television shows or other forms of video entertainment produced by at least United Artists Corporation and Metro-Goldwyn-Mayer, Inc. In particular, United Artists has represented that its "DVDs and Blu-Ray discs are and, since May 9, 2005 have been distributed by...The Criterion Collection, Inc." Metro-Goldwyn-Mayer has represented that its "DVDs and Blu-Ray discs are and, since May 9, 2005, have been distributed by...The Criterion Collection, Inc." Upon information and belief, Criterion's authoring or manufacture of the DVD and Blu-Ray discs, including, but not limited to, exemplary movie *The Curious Case of Benjamin Button*, with their content-addressing features (e.g. illustrated chapter/scene selection) along with the authoring equipment, and/or sale of the authored discs, on behalf of others and/or itself, infringe one or more claims of the '514 Patent. Upon information and belief, Criterion either performs the authoring, manufacturing, and/or distribution or directs and controls the authoring, manufacturing, and/or distribution through contract.

10. Criterion has actual notice of the '514 Patent at least as early as the filing of this Original Complaint.

11. Upon information and belief, Criterion is infringing one or more claims, including at least claim 6 of the '514 Patent under 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: (i) making, using, selling, offering to sell, authoring, and/or

distributing within the United States the DVD and Blu-ray discs which infringe one or more claims of the '514 Patent; (ii) importing into the United States the DVD and Blu-ray discs which infringe one or more claims of the '514 Patent; and/or (iii) indirectly infringing one or more claims of the '514 Patent by means of jointly infringing, inducing infringement and/or contributing to infringement through directly contracting with and/or directing contractors to perform infringing acts of their behalf.

12. Patent Harbor has been damaged as a result of Criterion's infringing conduct. Thus, Criterion is liable to Patent Harbor in an amount that adequately compensates Patent Harbor for its infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 § U.S.C. 284.

13. Criterion will continue to infringe the claims of the '514 Patent unless a post judgment royalty is awarded.

14. Patent Harbor is in compliance with the requirements of 35 U.S.C. § 287, to the extent applicable.

15. As a result of Criterion's acts of infringement, Patent Harbor has suffered and will continue to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

Patent Harbor prays for the following relief:

A. A judgment that Criterion has infringed the '514 Patent as alleged herein, directly and/or indirectly by way of contributory infringement and/or inducing infringement of the '514 Patent, as alleged herein;

B. A judgment and order requiring Criterion to pay Patent Harbor compensatory damages in an amount no less than a reasonable royalty under 35 U.S.C. § 284.

C. A judgment and order requiring Criterion to pay Patent Harbor pre-judgment and post-judgment interest on the damages awarded;

D. A judgment and order that Criterion pay Patent Harbor an on-going post-judgment royalty for future acts of infringement, at a rate to be determined by the jury or the Court; and

E. Any and all other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Patent Harbor, LLC hereby demands that all issues be determined by a jury.

October 13, 2011

Respectfully submitted,

/s/ Keith A. Rutherford

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