

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROBOCAST, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 11-cv-235-RGA
	)	
APPLE INC.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

1. This is an action for patent infringement by Robocast, Inc. (“Robocast”) against Apple Inc. (“Apple”) for infringement of United States Patent No. 7,155,451 (the “451 patent”), under 35 U.S.C. § 271. By and through its undersigned counsel, Robocast alleges as follows:

**THE PARTIES**

2. Plaintiff Robocast is a Delaware corporation with its place of business in New York, NY.

3. Defendant Apple is a California corporation with its principal place of business at 1 Infinite Loop, Cupertino, California, 95014.

**JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

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

6. On information and belief, defendant has transacted and does transact business within the State of Delaware, and has committed, contributed to, and/or induced acts of

patent infringement in Delaware and this District. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Delaware Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

### **BACKGROUND**

7. Robocast, and its founder, Damon Torres, pioneered the use of automated web browsing in the 1990's, when the World Wide Web was still in its infancy. Mr. Torres envisioned and implemented a new paradigm for the web browsing experience, and his inventions are the subject of the '451 patent here at issue.

8. The original application for what became the '451 patent was filed as provisional patent application No. 60/025,360 on September 3, 1996. The '451 patent issued on December 26, 2006, after the Board of Patent Appeals and Interferences unanimously reversed the examiner's rejections. Due to the delays within the Patent Office, the term of the '451 patent was extended by 1072 days.

9. At the time of the invention, Web users were limited in their ability to access content from the Web. The experience was characterized by the computer-centric, point-and-click model for selecting and retrieving web pages.

10. Mr. Torres foresaw the far broader potential of the Web as a medium for content delivery that functioned more like television, but with the significant benefits provided by user interactivity and control, and the vast resources accessible via the Internet.

11. From this perspective of the Internet, Robocast developed and deployed for numerous customers its unique automated browsing tools, which enabled users to access a plurality of Web-accessible resources with a single click of the mouse.

12. Robocast developed and implemented a number of software applications utilizing the technology described in the '451 patent, including Robocaster, RoboGuide, RoboMobile, RoboPublisher, RoboSearch, RoboStats, and RoboSurf.

13. By 2001, Robocast's lists of customers and partners included well known names such as Hachette Filipacchi, the world's largest special interest publisher whose sites included Premiere, Cycleworld and Car and Driver; ZDNet's News.com, a technology news site; and InfoSpace, which partnered with Robocast on the launch of RoboSearch using the search site Metacrawler and other resources.

14. The value and success of Robocast's automated web browsing tools was demonstrated by, for example, data collected from customer sites, which showed an increase in time spent on the sites, number of page views, and number of advertisements viewed, all of which translate to increased revenues from, e.g., advertising and subscriptions.

15. Robocast was also part of the Microsoft TV Developer Program, and was invited to participate in a Developer Conference held in Silicon Valley, California on Dec. 6-7, 2001, where it showcased its technology. At the conference, Microsoft unveiled a new version of its Microsoft TV Advanced client software used to develop interactive television content and applications.

16. Microsoft prominently featured Robocast in its press release announcing the Microsoft TV Developer Conference, praising Robocast as a "pioneering Web company."  
<http://www.microsoft.com/presspass/press/2001/dec01/12-18devconcalipr.msp>

17. In addition, Robocast demonstrated its technology at numerous trade shows, including the Spring Internet World show held in Los Angeles in April 1999. At this show and others, Robocast handed out materials describing its products and technology, and indicating that Robocast owned a patent application relating thereto.

18. At least one Apple employee, Mr. Fred Reynolds, visited Robocast's booth at the Spring Internet World show held in Los Angeles in 1999. Mr. Reynolds indicated that his job responsibilities for Apple included managing relationships, alliances and joint product development with other organizations, and managing internet and web site marketing, advertising and promotions.

19. In October 2007, Damon Torres met an Apple iTunes executive at a conference in San Diego, California, and informed him of the '451 patent.

20. Apple has since incorporated Robocast's patented automated browsing technology into a number of its products and services, including at least the following: AppleTV, Front Row, and iTunes.

**CLAIM – PATENT INFRINGEMENT BY APPLE**

21. Robocast incorporates by reference paragraphs 1 – 20 as if fully set forth herein.

22. On December 26, 2006, United States Patent No. 7,155,451 entitled “Automated Browsing System for Publishers and Users on Networks Serving Internet and Remote Devices” was duly and legally issued to Damon Torres after full and fair examination. Robocast is the owner of all right, title, and interest in and to the '451 patent. A copy of the '451 patent is attached as Exhibit A.

23. On information and belief, Apple has infringed and is infringing the '451 patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, directly and/or indirectly.

24. On information and belief, Apple has infringed and is infringing the '451 patent by performing, without authority, one or more of the following acts: making, using, offering to sell, selling within, and importing into, the United States products and services that practice the claimed inventions of the '451 patent, including but not limited to AppleTV, Front Row, and iTunes, and products incorporating the foregoing.

25. On information and belief, Apple has knowledge of the '451 patent based at least on information learned at the Spring Internet World show held in Los Angeles in 1999 and the October 2007 conference, as well as Robocast's filing of a complaint against Microsoft in this Court for infringement of the '451 patent on December 6, 2010. Moreover, Apple will be provided with a copy of this Complaint upon its filing.

26. On information and belief, Apple has contributed and is contributing to the infringement of the '451 patent because Apple knows that its infringing products and services, including but not limited to AppleTV, Front Row, and iTunes, and products incorporating the foregoing, are made for use in an infringement, and are not staple articles of commerce suitable for substantial non-infringing uses.

27. On information and belief, Apple has induced and is inducing the infringement of the '451 patent, with knowledge of the '451 patent and the intent that its acts, including without limitation using, offering to sell, selling within, and importing into the United States, AppleTV, Front Row, and iTunes, and products incorporating the foregoing, would induce infringement by end users of the foregoing.

28. Apple's acts of infringement have caused damage to Robocast, and Robocast is entitled to recover damages from Apple in an amount subject to proof at trial.

29. Apple's infringement of Robocast's rights under the '451 patent will continue to damage Robocast's business, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

30. Robocast believes that after reasonable opportunity for discovery, the evidence will likely show that, Apple has acted with disregard of Robocast's patent rights, without any reasonable basis for doing so, and has willfully infringed and does willfully infringe the '451 patent.

**DEMAND FOR JURY TRIAL**

31. Robocast hereby demands a jury for all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Robocast prays for the following relief:

1. A judgment that Apple has directly infringed the '451 patent, contributorily infringed the '451 patent, and/or induced the infringement of the '451 patent;
2. A preliminary and permanent injunction preventing Apple and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '451 patent;
3. A judgment that Apple's infringement of the '451 patent has been willful;
4. An award of attorneys' fees incurred in prosecuting this action, on the basis that this is an exceptional case;

5. A judgment and order requiring Apple to pay Robocast damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;

6. A judgment and order requiring Apple to pay Robocast the costs of this action (including all disbursements);

7. A judgment and order requiring Apple to pay Robocast pre-judgment and post-judgment interest on the damages awarded;

8. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that Robocast be awarded a compulsory ongoing licensing fee; and

9. Such other and further relief as the Court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Thomas C. Grimm*

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