

JAMES L. DRIESSEN, PRO SE, jd@driessenlaw.com, USB #09473
MARGUERITE A. DRIESSEN, PRO SE, mad@driessenlaw.com
305 N 1130 E, LINDON, UT 84042
PHONE (801)796-6924
FAX (801)785-2744

UNITED STATES DISTRICT COURT

District of Utah, Central Division

James L. Driessen and Marguerite A Driessen)	
)	
)	
Plaintiffs)	PLAINTIFFS' THIRD AMENDED
)	COMPLAINT
)	
v.)	
Sony Music Entertainment et.al.)	
Defendants)	CASE NUMBER: 2:09-cv-00140
)	Judge: Clark Waddoups
)	

NOW COMES James L. Driessen, Margurite A. Driessen, Plaintiffs in the above numbered cause and for cause of action against Sony Music Entertainment, Target Corporations, Best Buy Co. Inc., and FYE to submit PLAINTIFF’S THIRD AMENDED COMPLAINT (“Complaint”). A markup version showing the changes made from the Second Amended Complaint is attached as **Exhibit E.**¹ Herein, Plaintiffs would show as follows:

I. Parties

1. Plaintiff, James L. Driessen and Marguerite A. Driessen, husband and wife, (hereinafter "Plaintiffs") are individuals with their residence at 305 N 1130 E, Lindon, UT 84042.

2. Defendant, Sony Music Entertainment (hereinafter "Sony" or "Producer" of the Platinum Music Pass) is a Delaware Corporation with its principal place of business at 550 Madison Ave., New York, NY 10022-3211. Sony can be served with process by serving its registered agent for service of process at Corporation Service Co., 2711 Centerville Road Suite 400, Wilmington, DE 198086.
3. Defendant, Target Corporation (hereafter "Target" individually or "Retailer" included with the group of Best Buy and FYE) is a Minnesota Corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403. Target can be served with process by serving its registered agent for service of process at CT Corporation System, 136 East South Temple Ste 2100, Salt Lake City, UT 84111.
4. Defendant, Best Buy Co., Inc. (hereafter "Best Buy" or "Retailer" included with the group of Target and FYE) is a Minnesota Corporation its principal place of business at 7601 Penn Ave S, Richfield, MN 55423. Best Buy can be served with process by serving its registered agent for service of process at CT Corporation System, 136 East South Temple Ste 2100, Salt Lake City, UT 84111.
5. Defendant FYE, upon information and belief that it is operating as a fully owned and independent subsidiary of Trans World Entertainment (hereafter "FYE" or "Retailer" included with the group of Target and Best Buy) is a New York State Corporation with its principal

¹ This Plaintiffs' Third Amended Complaint is extremely detailed because of specific orders made by the court. The alleged infringement is simple and evident on its face through reading of the claims on the accused systems and methods. Due to the evolution of the pleading standards asserted in this case and the length of the resultant Complaint, a mark-up version showing the changes made from Plaintiff's Second Amended Complaint is attached as **Exhibit E** for the Court's and parties' convenience. The pleading standards for this patent infringement case have changed since the filing of the original complaint. *Memorandum Decision and Order, Dkt. Doc. 153, 1/17/2012; Mot. Hearing, Dkt. 115 04/20/2011* (Plaintiffs were instructed to follow the pleading standards as outlined in *Fujitsu v. Belkin, et. al., Case 5:10-cv-03972, N. Dist. Cal. Dkt. 101, 3/29/11 (Exhibit H)*).

place of business at 38 Corporate Cir., Albany, NY 12203. FYE can be served with process by serving its registered agent for service of process at CT Corporation System, 136 East South Temple Ste 2100, Salt Lake City, UT 84111.

II. Jurisdiction and Venue

6. This complaint involves claims for patent infringement arising under the patent laws of the United States, Title 35, United States Code and this court has jurisdiction over those claims under [28 U.S.C.A. § 1338 \(2005\)](#) which directs that District Courts shall have original jurisdiction of any civil action arising under any act of Congress relating to patents.
7. This court has personal jurisdiction over Sony because Sony has practiced the patented methods, manufactured, controlled manufacturing, advertised and sold accused infringing products within the boundaries of the Federal District Court of Utah, Central Division of the state of Utah.
8. This court has personal jurisdiction over Target because Target has practiced the patented methods and advertised and sold accused infringing products within the boundaries of the Federal District Court of Utah, Central Division of the state of Utah.
9. This court has personal jurisdiction over Best Buy because Best Buy has practiced the patented methods and advertised and sold accused infringing products within the boundaries of the Federal District Court of Utah, Central Division of the state of Utah.
10. This court has personal jurisdiction over FYE because FYE has practiced the patented methods and advertised and sold accused infringing products within the boundaries of the Federal District Court of Utah, Central Division of the state of Utah.
11. Venue is proper in this district pursuant to [28 U.S.C.A. §§ 1391](#) and [1400\(b\)](#).

III. Factual Background

12. Plaintiff and Inventor, James L. Driessen, (hereinafter, “Driessen” or “Inventor”) conceived and began development of his idea for the retail presentation of digital rights ownership electronic transactions at least as early as June of the year 1999. At that time, the nation and world were preparing for a “Y2K” problem that was predicted to wreak havoc with electronic money transfer systems and potentially disrupt banking and other online transactions.
13. Retail presentation of digital rights ownership was seen by the Inventor as a solution to handle the monetary transactions needed for online purchases which potentially might have become unstable during the 1999-2000 electronic calendar rollover. When the “Y2K” disaster did not occur, however, the Inventor continued in his diligent efforts to reduce the invention to practice while considering additional use applications within the scope of invention.
14. After considerable effort, Plaintiff James L. Driessen was able to reduce to practice retail presentation of digital rights ownership for electronic transactions, later to be called “SCART” (Secure Consumer Advantaged Retail Tagging) or just Retail Point of Sale (RPOS) apparatus.
15. After successfully building and testing the invention Plaintiff James Driessen (with the monetary support from his wife, Plaintiff Marguerite Driessen) prepared and filed U.S. Patent Application Serial No. 09/630,272, on August 1, 2000 in the U.S. Patent and Trademark Office to protect the new Retail point of sale (RPOS) apparatus for internet merchandising.

16. After a thorough examination by a patent examiner in the U.S. Patent and Trademark Office, a subsequent interview with the examiner, amendment of the claims, and a mandatory second examination, the application was issued as a Patent by the U.S. Patent and Trademark Office on February 21, 2006 as U.S. Letters Patent No. 7003500 (hereinafter the "'500" patent or just "patent"). A copy of the Issued Patent is attached hereto and incorporated by reference in its entirety as **Exhibit A**.
17. On October 31, 2005, Plaintiff James Driessen filed patent application 11/262,855, a continuation application from the parent application 09/630,272, which after thorough examination by the U.S. Patent and Trademark Office, issued as patent number 7,636,695 ('695 patent) on December 22, 2009. A copy of the Issued Patent is attached hereto and incorporated by reference in its entirety as **Exhibit B**.
18. On January 11, 2006, Plaintiff James Driessen filed patent application 11/329,526, a continuation in part application from the parent application 09/630,272, and stemming from 11/262,855, which after thorough examination by the U.S. Patent and Trademark Office, issued as patent number 7,742,993 ('993 patent) on June 22, 2010. A copy of the Issued Patent is attached and incorporated by reference in its entirety hereto as **Exhibit C**.
19. After the '500 (parent) patent application was filed, but prior to patent issuance, on or about August 9, 2000, Plaintiff James Driessen created and sent out via U.S. postal services an identical "mail merge" letter to various parties including BMG Entertainment, Sony Music Entertainment ("SME"), Columbia, EMI, and many others under either the BMG or SME umbrella, notifying them of the patent application and the key inventive steps and properties of its usefulness. By means of this letter, Plaintiffs informed Sony of the patent

application and by communicating the nature of the claims, informed Sony of potential activities which Plaintiffs believed to be infringement.

20. After the above filing of the applications, but prior to their issuance, on or about February 21, 2006, Plaintiffs sent another letter to Defendant Sony notifying them that Plaintiff James Driessen had received a notice of issue for the '500 Patent and inviting Defendants to license under the "Vibme"² brand owned by Plaintiffs. By means of this letter, Plaintiffs again informed Sony of the patent and of the activity which Plaintiffs believed to be infringement..
21. After the issuance of the '500 patent and Sony Music Entertainment having joined with BMG Entertainment to form a new Company under the "Sony Group," on or about October 16, 2006, Plaintiff James Driessen wrote to various executives at Sony Group and sought online registration under the Sony Procurement Integrated and Rationalized Internet Trading System ("SPIRITS") user ID: 437832 and password: 669242. Through communication on the "SPIRITS" system, James Driessen invited Defendants to partner and/or license under the "Vibme" brand owned by Plaintiffs. Through this communication, Plaintiffs again informed Sony of the patent and of the activity which Plaintiffs believed to be infringement.
22. Communications with Defendants are not limited to those alleged in paragraphs 18-21 above. Those are included as representative of the various means by which Defendants were informed about the patent
23. By at least March of 2008, Plaintiffs saw press releases and other information announcing that Sony was going to release a new product called the "Platinum Music Pass" which, like the Plaintiff's invention, claimed to be a product for retail presentation of specific digital

² 2010 business summary page attached as **Exhibit F**.

rights ownership for electronic sell-through (Digital Rights Management free) music downloads, which upon information and belief was an offer to sell a product through which Sony would be practicing the patented methods and using or selling the patented systems.

24. In addition, On February 18, 2009, lest there be any chance of misunderstanding on the part of Sony, Target, Best Buy, or FYE, James Driessen sent a letter via certified mail to the following addresses informing all defendants of the activities considered an infringement along with a proposal to abate, which included, *inter alia*, the following:

“ RE: 3500 Patent and Pending Litigation . . . Allow me in a most direct way to again inform you that the BMG “Sony Platinum Music Pass” has copied my invention and so very perfectly epitomized several claims of the 700500 patent (copy attached, hereafter ‘3500’ patent’) that I must insist you stop . . . I am prepared to take this to trial . . . It is difficult for me to believe that an organization like yours simply made the decision to just steal my invention. However, if that choice to copy my invention was purposeful, I will remain resolute . . . I look forward to hearing from you soon to allow us to discuss how I may best help you to get this matter resolved . . . ”

Sent Return Receipt Requested to:

Sony Music Entertainment
Attention: Legal
550 Madison Ave.
New York, NY 10022-3211

Target Corporation
Attention: Legal
1000 Nicollet Mall
Minneapolis, MN 55403

Best Buy Co., Inc.
Attention: Legal
7601 Penn Ave. S
Richfield, MN 55423

FYE
Attention: Legal
38 Corporate Cir.
Albany, NY 12203

25. After receiving correspondence from Sony, Best Buy, Target, and FYE confirming that they had reviewed Plaintiff's letter, Plaintiff found that Defendants had not pulled the Platinum Music Pass and continued to practice the invented methods and to make and use the infringing systems in the United States. None of the Defendants sought licensing.

26. The “Sony Platinum Music Pass” as described below in Section VI and elsewhere in this Complaint embodies the instrument of direction and control for the making, using, selling, or

offering to sell the asserted claimed systems and methods by each Defendant. All Defendants continued to make, use, sell, or offer to sell the Sony Platinum Music Pass in the United States despite the above mentioned notifications of the patents.

IV. Patent Ownership

27. As the first named inventor on all the patents, Plaintiff James Driessen, has presumptive ownership in the '500, '695, and '993 patents.
28. Plaintiff James Driessen is the only named inventor on the '500 and '695 patents. Joshua Aker, is a second named inventor on the '993 patent. See **Exhibits A, B, and C**.
29. On January 11, 2006 inventors James Driessen and Joshua Aker executed documents to assign 100% of their entire interests in the patent application 11/329,526, which application resulted in the '993 Patent, to the entity known as Vibme, LLC (hereafter, "Vibme) owned and operated by Plaintiff Marguerite Driessen (majority owner) and Plaintiff James Driessen (minority owner). These documents are recorded with the United States Patent and Trademark Office, Patent Assignments Services Division, reel and frame number 017464/0936.
30. On October 21, 2009, Vibme Owner, and authorized signatory, Plaintiff Marguerite Driessen, executed a document to assign 100% of Vibme's entire interests in the patent application 11/329,526, which application resulted in the '993 Patent, to Plaintiff James Driessen. This document is recorded with the United States Patent and Trademark Office, Patent Assignments Services Division, reel and frame number 023405/0822.
31. Incorporating by reference the allegations contained in paragraphs 1-29 above, Plaintiff James L. Driessen, further alleges that he was the owner of record of 100% of the entire '500 patent, the entire '695 patent, and the entire '993 patent – making all three patents, at issue in

this complaint, of common ownership of record as of at least October 21, 2009. This is further evinced in that, at or about that time, terminal disclaimers were filed by Plaintiff James Driessen as to the '695 and '993 patents, to the satisfaction of the United States Patent and Trademark Office, Terminal Disclaimers Division, as required by the Patent Office.

32. At least as of February 19, 2008, by filing as joint plaintiffs in an action in alleged patent infringement, case number 2:08cv00126, Driessen et. al v. Starbucks et.al., in the United States District Court, District of Utah, Plaintiffs have asserted Marguerite Driessen as an “equitable owner” of the '500 patent under Utah law, as Utah is an equitable distribution state.
33. At least as of November 8, 2010, by filing an amended complaint as joint plaintiffs in an action in alleged patent infringement, case number 2:09-cv-00140 (same action as herein) captioned Driessen et. al. v. Sony v. Sony et. al., Plaintiffs have asserted Marguerite Driessen as an “equitable owner” of the '500 Patent, the '695 Patent, and the '993 Patent, under Utah law, as Utah is an equitable distribution state.
34. As an “equitable distribution” state, Utah case precedent, in cases such as Utah Supreme Court in *Woodward v. Woodward*, 656 P.2d 431 (Utah 1982); *Leigh Furniture and Carpet Company*, 657 P.2d. 293 (Utah 1982); and *In re Marriage of Gonzales*, 1 P.3d 1074 (Utah 2001), has established, for example, that “while a successful adjudication of marriage in state court would presumably determine [the] federal court claims, it would also not be a *sine qua non* for such a determination.” *Id. At 1084*.
35. The validity of equitable ownership (and thereby standing) of Marguerite Driessen to sue as to the '500, '695, and '993 patents was challenged by Defendants on various occasions

related to the original and first amended complaints in this case, culminating in a motion to dismiss Marguerite Driessen as a Plaintiff, heard by the court on April 20, 2011.

Subsequently, while not conceding Defendants' motion, on April 22, 2011, James Driessen, nonetheless executed an "equitable assignment" document for each patent asserted, recorded at the USPTO Patent and Trademark Office, Patent Assignments Services Division, reel and frame 026171/0722; 026171/0720; and 026171/0726 for the '500, 695, and '993 patents respectively (documents attached herein as **Exhibit G**), assigning 51% ownership to Marguerite Driessen, thereby formalizing what Utah Law already establishes, and making moot Defendants' arguments regarding the standing of Plaintiff Marguerite Driessen.

V. Patent Claim Elements Background

36. The '500 Patent is a "parent" patent with the '695 patent stemming from a continuation patent application (CPA) and the '993 patent stemming from a continuation in part (CIP) application. Together the patents make up the '500 Patent Family. The definitions used for patent claim terminology should remain consistent throughout the family of patents. The term "a" as used in a patent claim is to be taken to mean "one or more." The term "said," when referring to a specific claim element, invokes "antecedence"³ and therefore refers only to a particular instance of the element. When the term "said" is not used, there may be more than one instance of the function or system components as disclosed in the patent specification.

³ Plaintiffs allege that a term or phrase used in a claim which has no antecedent basis in the specification disclosure does not mean, necessarily, that the term or phrase is indefinite. There is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision.

37. To aid in the understanding of the claim elements and thereby Plaintiff's allegations of infringement, Plaintiffs begin by alleging generally that the '500 Patent Family, including the '695 continuation and the '993 continuation in part, sought, and were awarded, patent protection by the US Patent and Trademark Office for the novel business methods and systems for retail presentation of specific online digital rights ownership.
38. Retail presentation of digital rights ownership is a "pioneer"⁴ type invention. It is a counterintuitive, yet simple and useful approach, for completing sales of online merchandise whereby the money transaction for payment for specifically itemized network merchandise is accomplished at retail (in-the-person of the customer or in-the-person of a customer's representative) at a retail location.
39. Since the 1999 conception, there have been great strides and technological advancements in the information systems surrounding online digital rights ownership. Particularly, Plaintiffs, Defendants, and others have made progress in the area of digital rights management ("DRM") as well as digital rights storage. Digital rights storage differs from DRM by allowing an online place to manage, track, report, and/or display digital ownership of a particular enduser's online collection.
40. Plaintiffs allege, however, that systems and methods for retail presentation of specific digital rights ownership are "pioneering"⁵ inventions, which have inspired further development in new forms of online digital rights storage.

⁴ There is no "pioneer" doctrine per se. Pioneer in this context simply means that there is limited prior art. The so called "Pioneer invention" does not receive any different or favorable treatment from the courts, *Texas Instruments, Inc. v. Int'l Trade Comm'n* 846 F.2d 1369, 1370 (Fed. Cir. 1988).

⁵ *Id.*

41. Unlike prepaid or “stored value”⁶ cards, where dollar amounts are loaded onto in-store devices that can be used for subsequent purchases online or at retail (often to be used as “online bucks” or “online points”), retail presentation of digital rights ownership, as taught in the ‘500 Patent Family, is for specific items only.
42. The different asserted claims in the ‘500 Family are directed to different types of actors.⁷ Some claim voucher and/or voucherless systems and methods in retail presentation of specific online digital rights ownership. Some claim card activation/authorization through activities performed by the producer of the voucher (Producer Focused Claims). Some claims are satisfied through activities of the seller (Seller Focused Claims). Although the Seller Focused and Retailer Focused claims are written primarily to be performed by a single actor, an accused infringer may attempt to induce or co-opt another to cause those method steps to be performed by more than one actor. Plaintiffs reserve the right to clarify and/or adjust their infringement contention in sections VIII, IX, and X of this complaint if discovery produces further information of violative actions that demonstrate vicarious liability of a particular named Defendant.
43. There are also several mixed actor method claims (Mixed Actor Focused Claims) in which the claim elements are directed to activities performed by multiple parties, where the control of the technology or applications claimed is performed through collaboration, participation, combined actions, agency relationships, contractual obligations, exercising the

⁶ 74 Fed. Reg. 67155, November 13, 2008 (A stored-value card refers to monetary value on a card in an anonymous account and differs from prepaid cards where money is on deposit with the issuer similar to a debit card.)

⁷ BMC Resources, Inc. v. Paymentech, L.P. 498 F3d 1373 (Fed. Cir. 2007) BMC at 1381, citing Mark A. Lemley et al., Divided Infringement Claims, 33 AIPLA Q.J. 255, 272-75 (2005) (“The concerns over a party avoiding infringement by arms-length cooperation can usually be offset by proper claim drafting. A patentee can usually structure a claim to capture infringement by a single party.”)

ability to place the system as a whole into service, or through other activities that create the ability or duty to control the activities of another.⁸

44. Retail presentation and purchase seemed counterintuitive prior to the invention because the benefits of having a customer leave the convenience of shopping at home (while online or through other networked delivery home shopping networks) to go to a retail store to pay for the same item they could have purchased online, over the phone, or through on-demand networks, were not immediately apparent in 1999. The Inventor realized the additional dimensions of the invention, including increased payment options, in-person age verification for on-line purchases, real on-line anonymity, and immediate delivery of online digital merchandise. During the time that the “Y2K” problem was predicted to occur, most consumer markets had not yet begun the full transition to on-line digital media.
45. The scope of the claims for retail presentation of digital rights ownership in the ‘500 Family are narrow in that they generally require: an in-person visit by the customer to a retail establishment; specific itemized network merchandise presented for sale to a customer at retail; and, the items purchased must be networked merchandise in that they are offered or fulfilled via network cataloged modes of transactional completion. As later defined herein, the claims were drafted to cover different systems or acts that could be possessed or performed by different players in different retail distribution scenarios. Systems or acts that a Seller would possess or perform in a retail sale of itemized network merchandise are covered by Seller focused claims. Systems or acts that a Producer of a voucher would

⁸ This court has also noted the possibility for a finding of divided infringement. “It must also be noted that despite the rather strict language requiring one party to perform or use ‘each and every step or element,’ the courts have not completely prohibited claims under a direct infringement theory where there is more than one actor.” emphasis added. 2:09-cv-00140 Dkt. Doc. 153, Mem. Dec. and Ord. (01/17/12).

possess or perform in a retail sale of itemized networked merchandise are covered by Producer focused claims. Instrumental acts that could be contractually entered into (or acquiesced to) by multiple actors to accomplish the retail presentation methods were drafted as mixed actor methods of vending vouchers.

46. As with any patented invention or patentable subject matter, the scope of the claims in the ‘500 Family patents may be narrow as to claim coverage, but Plaintiffs allege that the applications of the invention may be expanded upon, essentially making the invention a pioneering invention. New uses for an already patented invention do not constitute separately patentable subject matter, nor do they escape patent infringement for the practicing of the patented invention without authorization – even if used for a new purpose or application.

VI Accused Systems and Methods Background

47. Based upon information and belief that all Defendants have an inventory of infringing Sony Platinum Music Passes and that they have practiced the asserted methods, sold the Music Pass system, and will continue to sell the accused infringing Music Passes to distributors and customers across the United States, to include their own distributors, all Defendants are knowingly infringing. In addition, distributors and customers of all Defendants have sold, resold, offered for sale, and/or used the infringing systems and methods.

48. Plaintiffs allege that electronic sell-through itemized merchandise offered on the Platinum Music Pass constitutes itemized merchandise. Even when digital rights are not managed, it does not take away from the proprietary and itemized nature of the digital rights. Plaintiffs allege that the music sold via the accused Platinum Music Pass was not intended to

be offered as “bonus access,” “upgrade,” or “advertisement” to music in the public domain, despite its “DRM” free posture.

49. After examining the prototype shown online by the Sony website and other online press releases about the Platinum Music Pass, Plaintiffs determined that the Platinum Music Pass was a copy of its invention because it embodied the practicing of the method claims asserted as well as the system claim asserted. Among other things, it requires an in-person visit by the customer to a retail establishment to purchase the Platinum Music Pass; that specifically itemized online merchandise is presented for sale on the Platinum Music Pass to the customer at a retail establishment; and that the music download items displayed on the Platinum Music Pass are networked merchandise (in that it they are offered or fulfilled via a network catalog or online mode of transactional completion).
50. Likewise, since all the patent claims in the ‘500 Patent Family have either “voucher” or “voucher-less” claims for retail presentation of specific digital rights ownership, a system or use of a voucher such as the Platinum Music Pass necessarily reads on most or all the claims because the “voucher” claims merely have an extra limitation requiring a voucher, whereas the voucher-less claims seek protection of retail presentation of online digital rights ownership generally and do not necessarily require a voucher.
51. Like the Sony Platinum Music Pass, through information and belief, Plaintiffs allege that other products are being developed, made, manufactured, and offered for sale by Defendants and/or under Defendants’ direct management or control, under names other than the Platinum Music Pass (or with no final name yet), that are also retail presentation of specific online digital rights ownership, whether voucher or voucher-less methods are used.

52. Defendants were provided or given access to a copy of the allowed claims of the '500 Patent Family.

53. The claims of the '500 Patent Family can be found in the patent documents attached herein as **Exhibits A-C**.

54. The current versions of the Defendants' products and practices continue to infringe the claims of the '500 patent, the '695 patent and the '993 patent.

55. Upon information and belief, all Defendants are using, making, manufacturing, selling, and/or offering the invention to distributors and customers across the United States.

Particularly, there are at least 7 FYE stores, 5 Best Buy Stores, and 11 Target Stores in the State of Utah, including cities of Salt Lake City, Centerville, Layton, Orem, Riverdale, Saint George, Fort Union, Sandy (North), Sandy (South), West Jordan, and West Jordan (SW).

VII. Accused Instrumentalities, Systems, and Methods

56. Allegations 1-55 above, along with related attachments, are hereby incorporated by reference.

57. The methods and systems utilized by Sony, Best Buy, Target, and FYE in using, making, selling or offering to sell the Sony Platinum Music Pass and any of the same or substantially similar named or unnamed instrumentalities, products, services, or methods used, developed, made, manufactured, sold, or offered for sale by Sony, Best Buy, Target, and FYE are the basis of both Direct literal infringement and indirect literal infringement as to the claims outlined in the Infringement sections VIII, IX and X of this Complaint.

58. The methods and systems utilized by Sony, Best Buy, Target, and FYE in using, making, selling or offering to sell the Sony Platinum Music Pass, and any of the same or substantially similar named or unnamed products, services, or methods developed, made, manufactured,

sold, or offered for sale, are the basis for direct and/or indirect infringement by way of the doctrine of equivalents where even if a product or method practiced does not fall within the literal scope of a patent claim, it is nevertheless an equivalent to the claimed invention as to the claims outlined in the Direct Infringement or Indirect Infringement, and by the Doctrine of Equivalents as set forth in sections VIII, IX and X of this complaint, below.

59. Plaintiffs cannot be sure of all the contractual relationships involved with the production and sale of the Sony Platinum Music Pass without discovery because most business contracts are either confidential or not made available to the general public. However, Plaintiffs can be sure that the system and/or method claim elements as asserted in this Complaint are present and/or accomplished by Defendants Sony, Best Buy, Target, and FYE as outlined in sections VIII, IX, and X of this Complaint. The systems and methods present and/or performed by the individual Defendants as included herein are the most plausible and evident from Plaintiff's examination of the accused infringing systems and methods. Plaintiffs reserve the right to provide further clarification as this litigation progresses.
60. Defendant's acts in making, using, selling, or offering to sell the invention constitute direct infringement of the '500, '695, and/or '993 patent and/or contribute or induce infringement of the '500, '695, and/or '993 patents pursuant to [35 U.S.C.A. § 271 \(2005\)](#) by marketing, selling, or making commercial use of the exact patented item or invention that performs substantially the identical function in the same way for the same purposes as outlined in the Direct Infringement or Indirect Infringement and/or by the Doctrine of Equivalents as set forth in sections VIII, IX and X of this complaint, below.

61. Best Buy, Target, and FYE are merchants who sell goods at retail and are referred to herein collectively as “Retailers.” Sony is a business which engages in music production, produces the Sony Platinum Music Pass, and is referred to herein as a “Producer.”

- (a) Upon information and belief regarding what is marketed and sold by the Retailers, Plaintiffs allege that the selling of the Sony Platinum Music Pass by Retailers is a direct infringement of the asserted patents;
- (b) that all Defendants knew of the ‘500 patent and ‘500 Patent Family no later than the date of the original filing of this lawsuit;
- (c) that Defendant Sony as a Producer made or sold a component or component of the services performed by or through the Platinum Music Pass or substantially the same or similar product or service;
- (d) that such component or component of the service has no substantial non-infringing uses;
- (e) that Defendant Sony had knowledge of the non-staple nature of the component or component of service;
- (f) that all Defendants engaged in such conduct within the United States; and
- (g) that such conduct contributed to another’s direct infringement by the making, manufacturing, selling, or offering to sell an infringing product or service as outlined in the Direct Infringement and Indirect Infringement or by the Doctrine of Equivalents as set forth in sections VIII, IX, and X of this complaint, below.

62. The Sony Platinum Music Pass is also an inventory control management and retail fulfillment system that directs or controls payment and authorization message(s) upon

purchase by the buyer. Upon information and belief, Plaintiffs allege that when the barcode is scanned and payment is accepted at the retail location, the inventory control management and retail fulfillment system sends or otherwise initiates a payment message. When the customer later enters the code(s) on the card to retrieve the proprietary work of authorship (in this case, the music album), some form of ownership rights (listening rights) are transferred by the system, as is evinced by the customer's ability to download and listen to the product. Without payment, the device that ultimately downloads the product (some form of computer logic device like a PC or Mac computer with a networked or connected mp3 player) would not be able to access or play the music without a downloaded file. Other method steps may be performed by Defendants' between the purchase and download of the itemized online merchandise, but the transfer of ownership is the ultimate result of the checkout (whether via retail employee or at a self-service kiosk), registering the event of the payment in either a temporary or more permanent memory, and authorizing and releasing the song title for download to the end-user. Some system elements may be functionally described.

VIII. Direct Literal Infringement

63. Allegations 1-62, along with related attachments, are herein incorporated by reference.
64. Plaintiffs allege that Claims 1 and 6 of the '993 Patent and Claim 10 of the '500 Patent are Seller Focused method claims and are directly infringed by Defendants Best Buy, Target and FYE as Retailers.
65. Claims 3 and 24 of the '993 Patent are Producer Focused method claims and are directly infringed by Defendant Sony as the Producer of the Sony Platinum Music Pass.

66. Claim 1 of the '500 Patent is a System Claim. Sony directly infringes by using and making the patented system. Best Buy, Target and FYE directly infringe by selling the patented system.
67. Claim 5 of the '993 Patent, and Claims 1 and 6 of the '695 Patent are mixed actor method claims. Sony directly infringes by the direction and control of the Retailers through the instrumentality created by the Sony Platinum Music Pass.
68. The Sony Platinum Music Pass is both a product and an instrumentality.
69. The text of the claims can be found attached as **Exhibit A-C**. A copy of an infringing specimen can be found attached as **Exhibit D**. The claim elements are reviewed herein exactly as written, meaning the elements are taken between semicolons within the language of each claim.
70. Plaintiffs allege direct literal infringement of the '993 Patent, the '695 patent, and the '500 patent.

COUNT A - '993 Patent Claims and Direct Infringement

71. The Sony Platinum Music pass, and other similar products, methods, and/or services practiced, made, used, manufactured, sold, or offered for sale, by Defendants, directly infringe upon independent claims 1, 3, 5, 6, and 24 of the '993 Patent.
72. Defendants Best Buy, Target, and FYE (the "Retailers") are sellers of the Sony Platinum Music Pass.
73. Sony (the "Producer") is the entity responsible for making of the Sony Platinum Music Pass whereby all the activities in the creation and use of the Music Pass are accomplished or controlled by Sony who also puts its name on the end result, e.g "Sony Platinum Music Pass."

74. The named Retailers were announced by Sony to be Sony authorized resellers of the Sony Platinum Music pass at least as early as March of 2008.
75. The Retailers have sold the Sony Platinum Music Pass to the general public in their nation wide retail chains which include several stores in Utah.
76. The Platinum Music Pass in **Exhibit D** is attached to show that it has been created with specific information printed upon it, www.musicpass.com, which is a computerized network transaction location of a downloadable music product. That music product is line itemized. The downloadable music is a downloadable media material object, and musicpass.com is on a music selling-side computer. The barcode printed on **Exhibit D** is a barcode or other identifier information which is scanned or stored as memory at the checkout in the retail store.
77. Upon information and belief, when the Platinum Music Pass and the barcode and/or other information printed on the Platinum Music Pass is scanned (and/or read) from the card, there is a transmission of at least some form of permanent or temporary computer memory. It would be implausible to suggest otherwise. The mode of retrieval for any visible, scannable, or readable record on the Platinum Music Pass is via the retrieving port that a barcode provides, which, in this case, is a machine “visible” spectrum barcode.
78. When the barcode of the Platinum Music Pass is scanned at a retail checkout stand, based on the barcode being transmitting to memory, and calculating or otherwise being prompted by the barcode to the determination of a final price, the price is specific to the downloadable music. This barcode scanning takes place through an in-person transaction at a retail point of

sale location. The payment is then designated for the downloadable music product shown in **Exhibit D.**

'993 Patent Claim 1 – Seller Focused Claim

79. Claim 1 of the '993 Patent is a Seller focused method claim, wherein the elements of the asserted claim are focused on the activities that a seller of a retail representation of specific online digital rights must perform in order to accomplish a sale.
80. Defendant Best Buy is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 1 of the '993 Patent and therefore directly infringes.
81. Defendant Target is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 1 of the '993 Patent and therefore directly infringes.
82. Defendant FYE is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 1 of the '993 Patent and therefore directly infringes.
83. Upon current information and belief that Sony does not sell the Sony Platinum Music, Plaintiffs reserve the right to include Sony as a direct infringer of Claim 1 of the '993 Patent if further discovery shows that Sony in fact is a seller of the Sony Platinum Music Pass.
84. The Seller Focused method elements of Claim 1 of the '993 asserted patent, method of virtual Internet based merchandise or media exchange for payment, are as follows:
 - (a) creating specific information that is a computerized network transaction location of a product, said product comprising line itemized networked merchandise or line itemized downloadable media material objects on a selling computer on a network wherein a barcode or other identifier information of said product is scanned or stored as memory;

- (b) transmitting said memory to a point of sale terminal;
- (c) calculating or otherwise determining a price based on said transmitting that is specific to said product wherein payment of said price is through an in-person transaction at said retail point of sale location and said payment is designated for said product through said in-person transaction; and
- (d) sending a message of said payment over said network causing transfer of ownership rights in said product to a buyer computer on said network through authorization on said selling computer on said network as a result of said payment.

85. The Retailers' accomplish the first element, 84 (a) "creating" above, by selling the Sony Platinum Music Pass, example attached as **Exhibit D**, because such sale requires the scanning, reading, or otherwise entering of a barcode and the scanning of that barcode results in the creation of such information, initially within the scanning device, and then on the retail point of sale terminal as follows:

- i. The Sony Platinum Music Pass contains such magnetic strips and barcodes, and the Retailers scan, read, or otherwise enter those magnetic strips or barcodes via an electronic reading device connected to a computer (or computer terminal) connected to a network at a retail point of sale. Any reading or scanning at a retail point of sale is within the Retailer's establishment and is therefore under the control of the establishment.
- ii. When the Retailer scans or otherwise inputs the Music Pass information, the Retailer thereby *creates* specific information about the transaction on the

both the Retail establishment controlled computer and on the network. The Retailers' computers may allow the creation of information on the network to take place either concurrently or sequentially with the acts of scanning or transmitting. The information relates to (and therefore is connected to) a specific downloadable item and the www.musicpass.com location (URL) which is a network location.

- iii. The music album represented on the Sony Platinum Music Pass is a retail representation of itemized networked merchandise or line itemized downloadable media material objects on a selling computer on a network. Therefore, the Retailers satisfy this method element by creating specific information that is a computerized network transaction location of a product, said product comprising line itemized networked merchandise or line itemized downloadable media material objects on a selling computer on a network wherein a barcode or other identifier information of said product is scanned or stored as memory.

86. The Retailers perform element 84(b), "transmitting" above, by selling the Sony Platinum Music Pass because once the Retailers scan the card and create the information, the scanning results in a transmission of data from the scanning or reading device into some form of volatile or permanent electronic memory. This initial transmission comes from the Retailer controlled scanning device. Even though subsequent transmissions will occur, the initial transmission from the scanning or reading device is accomplished by the Retailer because it occurs at the retail point of sale and under the Retailers' control. Because the Retailers'

establishment is a physical brick and mortar location in which to interact with customers, the Retailers control the Music Pass processing at the checkout stand. The check out is at a retail point of sale. The retail point of sale terminal is also connected to a network. The Retailer, therefore, transmits memory to a point of sale terminal.

87. The Retailers perform element 84(c), “calculating” above, because the Retailers control any electronic cash register or other retail point of sale terminal at which the price of the Sony Platinum Music Pass is calculated or otherwise determined after the bar code or magnetic strip reader transmits the information contained thereon to memory. This calculation or determination occurs at the checkout. Scanning or manual input is performed by the Retailers’ cashier or other representative (or at the Retailers’ automated self-service Kiosk). The Retailer could not communicate to the customer the proper price or amount to pay for the Platinum Music Pass without this calculation or determination. The Retailer, therefore, calculates or otherwise determines a price based on said transmitting that is specific to said product wherein payment of said price is through an in-person transaction at said retail point of sale location and said payment is designated for said product through said in-person transaction.

88. The Retailers perform element 84(d), “sending” above, because when all the memory or information obtained from the Sony Platinum Music Pass has been transmitted to the Retailers’ point of sale terminal, that terminal sends some message or code indicating that payment has been received from the customer as follows:

- i. When the Retailers receives payment from the customer by cash, credit, debit card, or other means of payment, the sale is then consummated and

ownership rights to the itemized purchased Music Pass are authorized and transferred. Once the sale takes place, the itemized purchase of a Music Pass ultimately transfers rights for specifically itemized downloadable media object(s) which have been designated for sale under the control of the Retailer, to the buyer.

- ii. The Retailers' terminal sends a message of the purchase, or else the information of that purchase could not have become registered on any music selling-side computers. That message causes the transfer of ownership or the buyer could not retrieve or download the specifically itemized media material object.
- iii. "[C]ausing transfer of ownership," as in the relationship between an event (the cause) and the second event (the effect) can be any proximate cause or cause in fact. The outcome of transferred ownership is significant and not inconsequential. A causal relationship between conduct and result can include concurrent causes or sufficient combined causes. Retailers at minimum control an insufficient *but non-redundant* part of the condition that is cause for the outcome (ownership transfer) to occur. The Retailers' actions (scanning in the bar code of the Music Pass; the point of sale terminal's ringing up the Music Pass price on the receipt; the passing and purchase of the Music Pass from the Retailer to the customer; and the sending of the payment message) cause the transfer of the ownership. If this transfer of ownership were not true, not only would a customer not be able to access the proprietary work of authorship

represented on the card, but if he did, the customer could be arrested for theft of an item that they did not own.

- iv. The transferred ownership is therefore directly from a Retailer controlled network computer, through a network of computers, ultimately to a buyer computer, which could be a desktop, laptop, notebook, netbook, pad, tablet, handheld computing device, or any network enabled appliance.
- v. The message from the terminal contains enough information for the customer's download of the purchased item to be allowed. The download could not be accomplished without sending that message or else that same download would have to be available to anyone and everyone else on the internet. The customer download is not required by the claim element, but is evidence of the transfer of ownership element occurring within or as a result of the Retailer's control.
- vi. The message, even if encoded (as nothing more than an alert communication), directly or indirectly communicates at least a purchase of the Music Pass. A purchase, in turn, involves at least a price and a payment or else the download would just be free for the taking without paying. Since an end-user device may ultimately enable an end-user to play or listen to the music, the device used to listen is "a" buyer computer, which can mean one or more computers.
- vii. Therefore, in completing a Music Pass sale, the Retailers send a message of payment over a network causing transfer of ownership rights in said product

to a buyer computer on said network through authorization on said selling computer on said network as a result of said payment.

'993 Patent Claim 3 – Producer Focused

89. Claim 3 of the '993 patent is a Producer Focused claim wherein the elements of the asserted claim are focused on the activities that a producer of a retail representation of online digital rights would participate in order to accomplish such a sale.
90. Defendant Sony either produces, or causes to be produced, the Sony Platinum Music Pass and is therefore a Producer. Sony performs each element of Claim 3 of the '993 Patent and therefore directly infringes.
91. Upon current information and belief that Best Buy, Target, and FYE are not Producers of the Sony Platinum Music Pass, Plaintiffs reserve the right to include Best Buy, Target, and FYE as a direct infringer of Claim 3 of the '993 Patent if discovery shows that Best Buy, Target, and FYE, in fact, are Producers of the Sony Platinum Music Pass.
92. The Sony Platinum Music Pass web system www.musicpass.com is a distribution network. While musicpass.com is just one URL, the music files and release authorization components do not reside on only one computer. The internet includes many computers. Otherwise, the Platinum Music Pass could not offer a specific "itemized" music content product for its customers to retrieve outside of using only one in-store computer or media material object recording device (like a disk, tape, or vinyl record). Since, the media is ultimately redeemed on the internet, Sony, by definition, performs the method within a plurality of distribution nodes. Further, it is well known in the art of network computing that the blurring of the operating system and the network has become commonplace. As evinced

from the disclosures of the patent application, today the boundaries between “computer” and “computer network” (when referring to the software and systems that run on them) are becoming much less distinguishable.⁹ This means that software and systems on nearly all network connected computers operate as a plurality. **Exhibit D** shows a Sony Music Pass card retail item listing a price that is specific to a downloadable music album. Sony, through its card, directs and controls payment. In order for the card to function, Sony requires payment of the specified price through an in-person transaction at a retail point of sale location. The payment is designated for the purchase of the downloadable music album through an in-person transaction. The product shown in **Exhibit D** was obtained by Plaintiff James Driessen at a retail store.

93. The Sony Platinum Music Pass is an inventory control management and retail fulfillment embodiment through which Sony directs or controls the sending of payment messages upon purchase by the buyer. When the card is sold and payment is accepted at the retail location, the inventory control management and retail fulfillment methods are used to send a payment message because when the customer ultimately enters the codes on the card to retrieve the proprietary work of authorship (the music album), some form of ownership rights (listening rights) are transferred, as is evinced by the customer’s ability to download and listen to the product. The download is to the customer (“end-user”) because it is the end-user’s music playing device, which is some form of computer logic device like a PC or Mac computer, with a networked or connected software mp3 player.

⁹ The electronic signals sent on, by, or through computers or even through computer components with other communications media, such as wired or wireless radios and routers where “cyber” communications exist, are physical locations, though their exact locations are difficult to identify and may change due to demand, usage, etc.

94. The Producer Focused method elements of Claim 3 of the '993 asserted patent, transaction authorization method for virtual network based merchandise or media over a public or private network, are as follows:

- (a) placing specific information on a plurality of distribution nodes on a distribution network that comprises a specific product offered through said distribution network, said product comprising line itemized networked merchandise or line itemized downloadable media material objects on said distribution network;
- (b) specifying a price wherein said price is specific to said product wherein payment of said price is through an in-person transaction at a retail point of sale location wherein said payment is designated for said product through said in-person transaction; and
- (c) sending a message of said payment over said network causing transfer of ownership rights in said product to an end-user device on said network through authorization on said network as a result of said associating of said payment.

95. The Producer of the Sony Platinum Music Pass performs element 94(a), “placing” above, because the musicpass.com website, printed on the Music Pass, contains specific information on computerized internet web page(s) served by computer distribution nodes, often called a content distribution network (“CDN”), that Sony directs, controls or contracts. Sony Music Entertainment is known in the industry as a studio that produces music to be sold to customers. When a specific song or music album is made available by the Producer for download through in-store purchase and then internet retrieval, Sony is placing specific information on a plurality of distribution nodes on a distribution network that comprises a

specific product offered through said distribution network, and said product is a specific music album collection of songs by a specific artist or list of artists that comprises line itemized networked merchandise or line itemized downloadable media material objects on said distribution network.

96. Sony performs element 94(b), “specifying” above, as the Producer of the Sony Platinum Music Pass because the price is written on the Music Pass, **Exhibit D**. Even if a Retailer ultimately is allowed to modify or change the actual price paid by the customer, Sony has specified the price by inscribing it upon the Music Pass. Since the specified price is for itemized networked merchandise, the price is for a music product. The product is sold through an in-person transaction at the retail point of sale location, and the ultimate payment by the customer is designated for the product by Sony as follows:

- i. Sony’s specifying of the price occurs as a result of Sony placing the price on the Sony Platinum Music Pass.
- ii. The customer purchasing the product does not designate the price, the Producer who specified the price is the designator.
- iii. Since Sony produces the Sony Platinum Music pass which specifies both the designated product (specific downloadable songs) and the designated price, Sony specifies what is to be offered at retail locations and the price of the sale which is to occur through an in-person transaction.
- iv. Therefore, Sony as the Producer is specifying a price wherein said price is specific to said product wherein payment of said price is through an in-person

transaction at a retail point of sale location wherein said payment is designated for said product through said in-person transaction.

97. The Producer of the Sony Platinum Music Pass performs element 94(c), “sending” above, even if other sending has occurred previously, because Sony controls the delivery of the line itemized network merchandise. The content distribution network (“CDN”) delivering the digital product is controlled either directly or indirectly by Sony through any number of computers on the network and sends a message as follows:

- i. “A” message means one or more messages, not a particular message.
- ii. When Sony receives an initial message from a retail point of sale, Sony either sends (or resends) a message to the CDN (which can be an actual web server) that releases the purchased file(s) to the customer, or Sony sends an authorization key (which is a message) that allows another computer to release the purchased file(s) to the customer.
- iii. The customer’s computer, such as a desktop, laptop, notebook, netbook, pad, tablet, handheld computing device, or any network enabled appliance, when connected to the internet, is an end-user device capable of receiving an authorization to download.
- iv. Authorization (no matter how many initial or intermediate authorizations or messages may have occurred) ultimately occurs as a result of the sale which associates a particular payment with a particular purchase.
- v. **Exhibit D**, which contains Sony’s name (and the musicpass.com website Contains Sony’s name) demonstrates that musicpass.com is the transaction

location, and this element has been performed by Sony. Therefore, Sony, as a Producer of the Music Pass, is sending at least one message of said payment over said network causing transfer of ownership rights in said product to an end-user device on said network through authorization on said network as a result of said associating of said payment.

'993 Patent Claim 6 – Seller Focused

98. Claim 6 of the '993 Patent is a Seller Focused method claim, wherein the elements of the asserted claim are focused on the activities that a seller of a retail representation of specific online digital rights must perform in order to accomplish a sale.
99. Defendant Best Buy is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 6 of the '993 Patent, and therefore directly infringes.
100. Defendant Target is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 6 of the '993 Patent, and therefore directly infringes.
101. Defendant FYE is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 6 of the '993 Patent, and therefore directly infringes.
102. Upon current information and belief that Sony does not sell the Sony Platinum Music, Plaintiffs reserve the right to include Sony as a direct infringer of Claim 6 of the '993 Patent if discovery shows that Sony, in fact, is a seller of the Sony Platinum Music Pass.
103. The Sony Platinum Music Pass, as shown in **Exhibit D**, is a retail item which, in at least one instance (likely thousands of times), has been displayed in retail stores of the named Retailers. Named Retailers provide customer access to their retail stores as directed or

controlled by Sony according to the inventory control management and retail fulfillment methods as embodied by the Platinum Music Pass.

104. The Sony Platinum Music Pass as shown in **Exhibit D** specifies a particular downloadable music album. A specific downloadable music album contains a specification of particular songs that is line itemized networked merchandise or line itemized downloadable media material objects on a selling computer on a network.

105. The Seller Focused method elements of Claim 6 of the '993 asserted patent, method of virtual Internet based merchandise or media exchange for payment, are as follows:

- (a) providing customer access to a customer at a retail point of sale location;
- (b) specifying a product, said product comprising line itemized networked merchandise or line itemized downloadable media material objects on a selling computer on a network;
- (c) accepting payment for said product through an in-person transaction at said retail point of sale location wherein said payment is at least zero;
- (d) sending a payment message as a response to said in-person transaction either directly or through other computers on said network to said selling computer on said network;
- (e) causing an authorization message to be created on said selling computer in or as a result of said payment message; and
- (f) transferring ownership of said product to said customer wherein said product can be engaged by a customer device on said network.

106. The Retailers perform element 105(a), “providing” above, by selling the Sony Platinum Music Pass, example herein attached as **Exhibit D**. A retail point of sale is not a virtual sale location; it is a physical location. Since physical retail points of sale locations where Music Passes are sold are controlled by the named Retailers, Best Buy, Target, or FYE, those Retailers control the private property and thereby control the portions of the access that occur directly or indirectly through controlled property ownership or through potential franchise, or other ownership agreements. Therefore, the Retailers are providing customer access to a customer at a retail point of sale location.
107. The Retailers perform element 105(b), “specifying” above, by asserting at the point of sale which product they are selling. Up to the point of sale, the specific product may have been specified on the Music Pass or by a variety of other means. However, more than one specification can and does occur when items are “rung” in by the cashier at Retailer’s retail point of sale. When an item is rung in, the Retailers make a specification of item and price into their own systems, onto the receipt given or offered to the customer, and also, onto a computer network if the item is in any way, activated, authorized, or redeemed through a network. Therefore, the Retailers specify a product. The specific line itemized downloadable media material objects are therefore specified by the Retailer at the point of sale.
108. The Retailers perform element 105(c), “accepting” above, by taking payment from customers at check-out. The Customers of the Retailers, Best Buy, Target, and FYE, appear physically in-person to purchase the Sony Platinum Music Pass. The Store is therefore a retail point of sale brick and mortar location. The Retailers accept payment from the

customers. Therefore the Retailers accept payment for said product through an in-person transaction at said retail point of sale location. Since the price of the example attached as **Exhibit D** of “\$12.99” is a positive amount, the payment is at least zero.

109. The Retailers perform element 105(d), “sending” above, by sending the requisite payment message from the Retailer’s point of sale terminal as follows:

- i. Since the Music Pass product represents a downloadable product, and download authorizations are provided without sending invoices or payment through the postal mails, the messages and authorizations are sent through electronic appliances connected to a network.
- ii. The Retailers’ Point of sale terminals are electronic appliances found in all of the Retailers’ stores, under the Retailers’ exclusive control. These Retailer point of sale terminals exist on the selling side of the transaction and other electronic appliances controlled by customers exist on the buyer-side in the Platinum Music Pass transaction in order for an *exchange for payment* to take place. When payment is received at the Retailer’s point of sale terminals, the terminal sends some message of payment because unless the message was sent¹⁰ there could be no subsequent record of purchase or authorization and download of the product by the customer.
- iii. Without the requirement of payment, cards on the shelves could be used for download without purchase, which does not occur with the Music Pass methods.

¹⁰ A simple single binary signal or a complicated message such as an entire record of the transaction may be sent.

- iv. Other messages (including advertisements for other products or services) may occur, but the Sony Platinum Music Pass is not an advertisement pointer for digital content available in the public domain. The download of the music sold on the Music Pass is accessed only through using the codes contained on the card. The Retailers send a message on the selling side even if the particular message sent is encoded or contains additional information.
- v. Any authorization to download is ultimately tied to payment or the music sold on the Sony Platinum Music Passes would have to be free in the public domain, which it is not. Therefore the Retailers are sending a payment message as a response to said in-person transaction either directly or through other computers on said network to said selling computer on said network.

110. The Retailers perform element 105(e), “causing” above, because when they accept payment for the Music Pass card at the retail location, the Retailers send the requisite payment message. This payment message causes the creation of an authorization message or else the download from the seller’s inventory control management and retail fulfillment to retrieve the proprietary work of authorship (the music album) could not occur. Some form of authorization occurs for there to be any control over the download. Therefore, the Retailers are causing the authorization message to be created. Even if they are not the authors of the authorization, the Retailers cause¹¹ the creation of the requisite authorization message as a result of the payment message sent by the Retailers.

¹¹ A “cause” is a relationship between an event (the cause) and another event (the effect). Cause is any proximate cause or cause in fact. The relationship between the conduct and result can include concurrent causes or sufficient combined causes. Retailers may not create authorization by accepting payment and sending a message to the selling-side network, but can control an insufficient but non-redundant part of a condition causing an outcome.

111. The Retailers perform element 105(f), “transferring” above, by completing the physical transfer of ownership of the Platinum Music Pass card to the customer. Multiple transfers of ownership may occur in the distribution of the card from the Producer, through the Retailers, to the ultimate downloading on the buyer-side. However, on the selling side, a transfer of ownership of the Platinum Music Pass itself occurs at the point of sale, where the customer takes ownership of the physical Music Pass card and whatever rights to the itemized merchandise that particular card represents. It is at this point that the card is no longer owned by the selling side, but is now owned by the customer. This claim element does not require the customer to actually engage the product; it only requires the Retailers to perform the steps so that the product *can* be engaged. Evidence of actual engagement of the product by the customers is evidence that the product can be engaged, but actual engagement is not required by the claim elements. Therefore, at the point of sale, the Retailers are transferring ownership of said product to said customer wherein said product can be engaged by a customer device on said network.

‘993 Patent Claim 24 – Seller Focused

112. Claim 24 of the ‘993 Patent is a Seller focused method claim, wherein the elements of the asserted claim are focused on the activities that a seller of a retail representation of specific online digital rights must perform in order to accomplish a sale.

113. Defendant Best Buy is a Retailer and seller of the Sony Platinum Music Pass and performs each element of Claim 24 of the ‘993 Patent and therefore directly infringes.

114. Defendant Target is a Retailer and seller of the Sony Platinum Music Pass and performs each element of Claim 24 of the ‘993 Patent and therefore directly infringes.

115. Defendant FYE is a Retailer and seller of the Sony Platinum Music Pass and performs each element of Claim 24 of the '993 Patent and therefore directly infringes.
116. Upon current information and belief that Sony does not sell the Sony Platinum Music, Plaintiffs reserve the right to include Sony as a direct infringer of Claim 24 of the '993 Patent if discovery shows that Sony, in fact, is a seller of the Sony Platinum Music Pass.
117. The seller focused method elements of Claim 24 of the '993 asserted patent, method of virtual Internet based merchandise or media exchange for payment, are as follows:
- (a) specifying a product, said product comprising line itemized networked merchandise or line itemized downloadable media material objects on a selling computer on a network wherein payment for said product is through an in-person transaction at a retail point of sale location wherein said payment is at least zero;
 - (b) receiving a payment message on said selling computer on said network as a response to said in-person transaction either directly or through other computers on said network;
 - (c) causing an authorization message to be created on said selling computer in or as a result of said payment message; and
 - (d) transferring ownership of said product to said customer.
118. The Retailers perform element 117(a), "specifying" above, by selling the Sony Platinum Music Pass, example attached herein as **Exhibit D**. A retail point of sale is not a virtual sale location; it is a physical location and therefore requires an in-person transaction at a retail point of sale location. Up to the point of sale, the product may have been specified by several entities. However, the Retailers also make a specification of item and price when an

item is “rung” in by the cashier at Retailer’s retail point of sale. The specific line itemized downloadable media material objects are therefore specified by the Retailer at the point of sale and the \$12.99 price as shown in the example in **Exhibit D** is a positive amount and therefore at least zero.

119. The Retailers perform element 117(b), “receiving” above, when they take payment from customers at check-out. The Customers of the Retailers, Best Buy, Target, and FYE, appear in person to purchase the Sony Platinum Music Pass. The Retailers accept payment from the customers and input the payment received either manually or through scanning into the retail point of sale terminal. Therefore, the Retailers receive a payment message on a selling side computer which is connected to a network. This message is a direct result of the in-person payment transaction. Whether or not the retail point of sale computer ultimately sends the payment message, it first receives the message from the scanning or manual input device under the control of the Retailer. Therefore the Retailers are receiving a payment message on said selling computer on said network as a response to said in-person transaction either directly or through other computers on said network.

120. The Retailers perform element 117(c), “causing”¹² above, by consummating the sale of the Platinum Music Pass through the use of Retailers’ point of sale terminals which are electronic appliances found in all of the Retailers’ stores. These electronic appliances are connected to a network. These point-of-sale terminals exist on a selling side of the transaction (and other electronic appliances controlled by customers exist on the downloading side) in the Platinum Music Pass transaction. When the Retailers sell the Music

¹² *Ibid*, p. 37, ftn 11

Pass card and accept payment for it at a retail location, the Retailers receive a payment message as described above. That payment message causes an authorization message or else the download from the Seller's inventory control management and retail fulfillment to retrieve the proprietary work of authorship (the music album) could not occur securely.

Some form of authorization occurs for there to be any control over the download. Therefore, if the Retailers are not providing music in the public domain (which they are not) the Retailers are causing the authorization even if they are not the authors of the authorization.

The causation is as a result of the payment message sent by the Retailer.

121. The Retailers perform element 117(d), "transferring" above, by completing the physical transfer of ownership of the Platinum Music Pass card to the customer. Multiple transfers of ownership may occur in the distribution of the card from the Producer, through the Retailers, to (and beyond) the authorized downloading on the buyer-side. However, on the selling side, a transfer of ownership of the Platinum Music Pass itself occurs at the point of sale, where the customer takes ownership of the physical Music Pass card and whatever rights to the itemized merchandise that particular card represents. It is at this point that the card is no longer owned by the selling side, but is now owned by the customer, and thereby ownership of the Music Pass card is transferred. This claim element does not require the customer to actually engage the product; it only requires the Retailers to perform the method steps so that ownership of the product is transferred. The actual engagement of the product by the customers is evidence that ownership of the product has been transferred, but it is not the transfer of ownership. Therefore, at the point of sale, the Retailers are transferring ownership of said product to said customer

COUNT B - '695 Patent Claims – Direct Infringement

122. Allegations 1-121 along with attachments are hereby incorporated by reference.
123. The Sony Platinum Music pass, with its products, methods, and/or services practiced, made, manufactured, sold, or offered for sale by Defendants directly infringe upon independent claims 1 and 6 of the '695 Patent.
124. Sony put its name on the Platinum Music Pass, thereby asserting that Sony directs or controls all the products, methods, and/or services practiced, made, used, manufactured, sold, or offered for sale through the Music Pass as its instrumentality of direction or control.
125. Because www.musicpass.com is by definition a URL to a computer, Sony, through its accused specimen, attached as **Exhibit D**, displays specific information that is a transaction location of a downloadable music product which is itemized networked merchandise or is a line itemized download-to-own media material object. Since the www.musicpass.com computer functions to perform a part of the inventory control management and retail fulfillment methods embodied by the Platinum Music Pass and the computer is not owned by the end-user or by the retail establishment, the www.musicpass.com computer is necessarily on the “selling side” of the inventory control management and retail fulfillment and thereby is a selling computer on a network. Therefore, the Sony Platinum Music Pass method creates item information operating with a purpose to sell.
126. Through its accused specimen, shown as **Exhibit D**, Sony shows specific information for a product on musicpass.com, which was sold to Plaintiff James Driessen at a retail location where it was displayed for the purpose of sale to any interested customer. **Exhibit D** shows that Sony designated the price of \$12.99 for the specific album, which is specific to a

product. Therefore, Sony specifies a price as described. The inventory control management and retail fulfillment embodied by the Sony Platinum Music pass methods occur at retail.

Without providing access to potential customers, the card is useless. The accused specimen shown as **Exhibit D** was in fact acquired by Plaintiff James Driessen at a retail location.

127. Sony's vicarious liability arises because Sony controls or directs the actions of others to perform one or more steps of the method. Sony has direct agency relationships with some entities within the Sony Group (Sony Parent Company) and with the Retailers through technology or applications performed through collaboration, participation, combined actions, agency relationships, contractual obligations, or other activities which create the ability or duty to control the activities of another, in performing the steps required by the Sony Platinum Music Pass as the instrumentality of Sony's direction or control.

'695 Patent Claim 1 – Mixed Actor Method Claim

128. The mixed actor method elements of Claim 1 of the '695 asserted patent, method of virtual Internet based merchandise or media exchange for payment, are infringed by Sony directly and through Sony's instrumentalities of direction or control, and are as follows:

- (a) creating specific information that is a transaction location of a product, said product comprising line itemized networked merchandise or line itemized download-to-own media material objects on a selling computer on a network;
- (b) creating specific information that is a transaction location of said product on a selling computer operating for a purpose to sell said product;
- (c) specifying a price wherein said price is specific to said product;
- (d) providing customer access to a retail point of sale location;

- (e) accepting payment of said price through an in-person transaction at said retail point of sale location wherein said payment is designated for said product through said in-person transaction;
- (f) associating said payment to a purchase of said product for said price;
- (g) establishing an electronic communication between at least one user owned device on a network, wherein said user owned device is operated by a user desiring to buy at least one said product, and said selling computer on said network;
- (h) sending a payment message as a response to said in person transaction either directly or through other computers on said network to said selling computer on said network;
- (i) causing an authorization message to be created on said selling computer in or as a result of said payment message; and
- (j) causing transfer of ownership rights in said product to said user desiring to buy said product by granting access or rights to said user on said user-owned device either directly or through other computers on said network, as a result of said authorization message on said selling computer.

129. Sony directly performs the method step in 128(a), “creating” above, through its uploading of specific digital media files associated with the songs included on a Sony Platinum Music Pass. The www.musicpass.com is a uniform resource locator which is a transaction location of the Sony Platinum Music Pass product. The product shown on the Music Pass example in **Exhibit D** is a “Daughtry “ album containing specific music songs which are downloadable

songs and therefore line itemized networked merchandise or line itemized download-to-own media material objects on a selling computer on a network.

130. Sony performs the method step in 128(b), “creating” above, either directly or through its instrumentality of direction or control by creating the specific information on the Music Pass which is the URL musicpass.com which is an internet transaction location on a selling computer on a network. There are typically multiple other computers on the selling side that make up the local area networks (LANs) and wide area networks (WANs). These LANs and WANs can also connect to or otherwise utilize other open or secure network socket layers on the internet or Virtual Private Networks (VPNs) which also utilize the same physical network structures as the internet. Sony may author or directly communicate the above-described information onto the selling computer. However, since Sony created the Sony Platinum Music Pass with the purpose to sell its music, Sony is at the very least responsible for creating specific information that is a transaction location of said product on a selling computer operating for a purpose to sell said product;

131. Sony is both directly performing and responsible for performing the method step in 127(c), “specifying” above, by specifying the \$12.99 price on the Sony Platinum Music Pass and also causing the specification of the price to be determined at the point of sale terminal. Since Sony designated the price for the particular product represented on the Sony Platinum Music Pass card purchased, the price is specific to said product. Sony therefore specifies a price wherein said price is specific to said product.

132. Sony performs Claim 1 method step in 128(d), “providing” above, by having its Music Pass instrumentality distributed to Retailers and also marketed by Sony to consumers for

purchase at the Sony announced authorized Stores listed on the musicpass.com website. The Sony Platinum Music Pass itself is this instrumentality of direction or control so a direct agency relationship is not needed when the Music Pass instrumentality requires control of the technology or applications claimed, performed through collaboration, participation, combined actions, agency relationships, contractual obligations, exercising the ability to place the system as a whole into service, or other activities that create the ability or duty to control the activities of another. This relationship Sony created through its Music Pass card is one in which any Sony music sold by the Retailer using the Music Pass methods must fulfill the inventory control and management for providing the customer access functions or else the system could not perform its express purpose. Therefore Sony directs and controls the providing of customer access to a retail point of sale location. The Music Pass would be useless without Sony directing or controlling the access through their Music Pass instrumentality.

133. Sony controls or directs the performance of method step in 128(e), “accepting” above, by accepting the payment message from the retail point of sale as sufficient payment in its own inventory management and control scheme embodied by the Sony Platinum Music Pass methods. The Retailer may accept the direct payment of said price through an in-person transaction at said retail point of sale location, but does so only because the Music Pass is useless without payment. Because this payment is also designated for the product through the in-person transaction at the Retailer’s store, the acceptance of payment constitutes Sony’s acceptance of the payment on the selling side computer before it will allow a download. Therefore Sony uses its Music Pass instrumentality to control or direct accepting payment of

said price through an in-person transaction at said retail point of sale location wherein said payment is designated for said product through said in-person transaction

134. Once the payment is accepted by Sony's selling side computer, Sony directly performs step element 128(f), "associating" above, by associating the payment to the purchase of the specific product shown on the Music Pass in **Exhibit D**, allowing the ultimate consumer to download that product, and *only* that product, shown on the particular Music Pass purchased. Sony, therefore, directly performs associating said payment to a purchase of said product for said price.

135. Sony performs the element of 128(g), "establishing" above, through the www.musicpass.com website either directly or through its Content Distribution Network (CDN) under Sony's direct ownership or under Sony's direction, control, and/or agency by establishing the electronic communications necessary for the customer to download as follows:

- i. A point of sale terminal is one computer on the selling side and there are often many other computers associated with the selling side computer network.
- ii. The customer operates the buying-side or downloading-side of the computerized network transaction.
- iii. The customer ultimately may be responsible for initiating the connection between the selling side and the buying side, but Sony directs the consumers to the www.musicpass.com website, and then accepts the connection. In the art of electronic communications one party may request the communication, but the

connection is only *established* if the receiving party accepts the requested connection.

- iv. Therefore, Sony establishes an electronic communication between at least one user owned device on a network, wherein said user owned device is operated by a user desiring to buy at least one said product, and said selling computer on said network.

136. Sony performs the element 128(h), “sending” above, by sending/resending or coding/recoding messages sent from the point of sale terminal as required by Sony through the Music Pass as Sony’s instrumentality of direction or control. As described in allegations #49 and 93 above, a payment message necessarily is sent as a result of the in-person transaction. In fact, many such payment messages may be relayed beyond the first payment message from the point of sale terminal. Even if Sony does not independently generate and transmit a separate message in response to the transaction, Sony’s Platinum Music Pass product necessarily requires the sending of said message. Thus, Sony also directly performs the sending a payment message as a response to said in person transaction either directly or through other computers on said network to said selling computer on said network.

137. Sony performs method step 128(i), “causing”¹³ above, because Sony’s sending of payment messages on the selling side computers causes the described authorization message to be created.. The initiation of the download by the consumer does not perform this step, but rather is evidence that the step has been performed. Otherwise, Sony’s products, as represented on the Music Pass cards, would be available to anyone with an internet

¹³ *Ibid*, p. 37, ftn 11

connection. Since the product represented on Sony's Music Pass is only available if the specific Music Pass has been purchased, the download necessarily is authorized. Thus, through the Platinum Music Pass, its instrumentality of direction or control, Sony causes an authorization message to be created on said selling computer in or as a result of said payment message.

138. Sony directly performs method step 128(j), "causing"¹⁴ above, by allowing the consumer to download the purchased songs on the Sony Platinum Music Pass through the www.musicpass.com computers. The transfer of ownership of the Music Pass card occurs at the retail point of sale, but the of the consumer's obtaining access rights ownership occurs only when Sony grants those access rights. Therefore, Sony directly performs causing transfer of ownership rights in said product to said user desiring to buy said product by granting access or rights to said user on said user-owned device either directly or through other computers on said network, as a result of said authorization message on said selling computer.

'695 Patent Claim 6 – Mixed Actor Method Claim

139. Sony performs the mixed actor method elements of Claim 6 of the '695 asserted patent, method of vending a voucher, through the Sony Platinum Music Pass instrumentality of direction and control. Those elements are as follows:

¹⁴ In understanding "cause," the relationship between an event (the cause) and another event (the effect) can be any proximate cause or cause in fact. The outcome of transferred ownership is significant and not inconsequential. A causal relationship between conduct and result can include concurrent causes or sufficient combined causes. In the context of "[C]ausing transfer of ownership," the Producer of the Music Pass, at a minimum, has controlled an insufficient but non-redundant part of the condition which was cause for the outcome (ownership transfer) to occur. The Producer's actions (placing a music product on a voucher based retail representation; creating a bar code scanning strip on the Music Pass; opening an authorization link (or cookie) on the customer's computer or browsing window to a CDN (granting access and allowing for file transfer) cause the transfer of the ownership.

- (a) providing customer access to a customer at a retail point of sale location;
- (b) creating a voucher containing specific information on, in, or actuated from said voucher where said information is a transaction location of a product, said product comprising line itemized networked merchandise or line itemized download-to-own media material objects on a selling computer on a network;
- (c) specifying a price wherein said price is specific to said product;
- (d) accepting payment of said price for said voucher through an in-person transaction at said retail point of sale location wherein said payment is at least zero;
- (e) vending said voucher at said retail point of sale to said customer, wherein vending the voucher to the customer transfers ownership of said product comprising line itemized networked merchandise or line itemized download- to-own media material objects to said customer wherein said transferred ownership is only redeemable on a network;
- (f) associating said payment to a purchase of said product for said price;
- (g) establishing an electronic communication between at least one user owned device on a network, wherein said user owned device is operated by a user desiring to buy at least one said product, and said selling computer on said network;
- (h) sending a payment message as a response to said in person transaction either directly or through other computers on said network to said selling computer on said network;
- (i) causing an authorization message to be created on said selling computer in or as a result of said payment message; and

(j) redeeming said transferred ownership through an end-user device.

140. Sony performs element 139(a), “providing” above, by and through its instrumentality of control or direction called the Sony Platinum Music Pass, shown in **Exhibit D**. The Music Pass is a retail item that is displayed in Retailer’s stores. Since the Music Pass is useless without selling it at a retail store, the Music Pass requires access by customers. The Card design itself with its hang tag provides customer access to the Music Pass Card at a retail point of sale. Even though it is the Retailers who provide customer access to their retail stores, because of design features and functions included in the Sony Platinum Music Pass, Sony necessarily directs or controls how that access is accomplished. Sony therefore provides customer access to a customer at a retail point of sale location through the control of the technology or applications claimed which are performed through collaboration, participation, combined actions, agency relationships, contractual obligations, exercising the ability to place the system as a whole into service, or other activities which create the ability or duty to control the activities of another entailed in the Music Pass.

141. Sony directly performs element 139 (b), “creating” above, by making the Platinum Music Pass which is a plastic card voucher containing specific information on, in, or actuated from the plastic card, and at least part of the information, as shown in **Exhibit D**, communicates www.musicpass.com as the transaction location, and specifies the product comprising line itemized networked merchandise or line itemized download-to-own media material objects on a selling computer on a network in the form of a downloadable music album. Sony therefore directly creates a voucher containing specific information on, in, or actuated from said voucher where said information is a transaction location of a product, said product

comprising line itemized networked merchandise or line itemized download-to-own media material objects on a selling computer on a network.

142. Sony directly performs element 139(c), “specifying” above, by specifying the price for the particular product represented on the Music Pass card. It is the Sony Platinum Music Pass, and the price specified on **Exhibit D** is \$12.99. It is the price for the specific downloadable music album represented on that card. Sony therefore specifies a price wherein said price is specific to said product.

143. Sony performs element 139(d), “accepting” above, through Sony’s direction and control of the Retailers using the technology or applications claimed that are performed through collaboration, participation, combined actions, agency relationships, contractual obligations, exercising the ability to place the system as a whole into service, or other activities that create the ability or duty to control the activities of another. The instrumentality is called the Sony Platinum Music Pass. The Music Pass is useless unless sold at retail and the payment for the Music Pass is at least zero. The accepting of the payment portion of this claim element does not require Sony to be “at” the retail point of sale; it simply requires that the payment is ultimately “through” an in-person transaction at said retail point of sale and that Sony accept that payment. Since the downloadable music product ultimately is allowed or authorized for distribution to the customer, Sony necessarily has accepted the payment as sufficient price for the download. Therefore, the Retailers accept payment by virtue of Sony’s direction and control of said voucher through an in-person transaction, and Sony accepts that same payment which occurred through an in-person transaction at said retail point of sale location wherein said payment is at least zero.

144. Sony performs element 139(e), “vending” above, through Sony’s direction and control of Retailers using the technology or applications claimed that are performed through collaboration, participation, combined actions, agency relationships, contractual obligations, exercising the ability to place the system as a whole into service, or other activities that create the ability or duty to control the activities of another as follows:

- i. The instrumentality is called the Sony Platinum Music Pass. The Music Pass is useless unless sold at retail and requires a vendor to vend the voucher.
- ii. The inventory control management and retail fulfillment methods embodied by the Sony Platinum Music pass shown as **Exhibit D** are offered for sale at a retail location that require in-person payment. Therefore, the Retailer provided contractually for the in-person payment as described in this element.
- iii. The Music pass is vended when the \$12.99 price is paid.
- iv. The Platinum Music Pass, as shown in **Exhibit D**, directs the URL of www.musicpass.com as the transaction location. The Platinum Music Pass can only be redeemed on a network, in this case, the internet, because the album, tape, disc, or other media material object specified on the card is not available for redemption as a physical recording at the transaction location site.
- v. Thus the person retrieving or redeeming their purchased content over the network is not the entity performing the ability for making the Music Pass “redeemable.” The fact or proof of actual redemption merely is evidence that the Pass is in fact “redeemable” only on a network . Sony performs the element

of making its Pass redeemable through designing the Music Pass to be redeemed in this manner.

- vi. Therefore Sony controls and directs vending said voucher at said retail point of sale to said customer, wherein vending the voucher to the customer transfers ownership of said product comprising line itemized networked merchandise or line itemized download- to-own media material objects to said customer wherein said transferred ownership is only redeemable on a network.

145. Sony directly performs element 139(f), “associating” above, by allowing download of the item specified on the card, and only the item specified on the card, subsequent to receipt of the specified payment amount. The Sony Platinum Music Pass as shown in **Exhibit D** specifies a particular downloadable music album at a designated price. Sony displays specified rights to the particular music album on its Music Pass card. Those rights ultimately are delivered to the consumer in possession of the card, which is evidence that Sony associates the purchase to the specified downloadable product. Sony makes the Sony Platinum Music Pass. Therefore, the Sony performs associating said payment to a purchase of said product for said price.

146. Sony directly performs element 139(g), “establishing” above, by allowing the consumer to connect to a seller-side computer to download the specified product. As evidence, Plaintiff James Driessen, on the buyer-side, utilized the Sony Platinum Music Pass to download the specified music album displayed on the card as shown on **Exhibit D** to one of his devices. A “download,” by definition, is an electronic communication. Therefore, a user owned device on a network communicates with a selling side computer on a network in order

for the Platinum Music Pass method to deliver the product and thereby product fulfillment.

While James Driessen requested the electronic communication, only Sony could establish the communication by accepting the request. Therefore Sony performs establishing an electronic communication between at least one user owned device on a network, wherein said user owned device is operated by a user desiring to buy at least one said product, and said selling computer on said network.

147. Sony performs element 139(h), “sending” above, both directly and through its instrumentality of direction and control at the Retailer’s retail point of sale as follows:

- i. The inventory control management and retail fulfillment bar code is scanned by the retail establishment and payment is received via manned or unmanned kiosk. When payment for the accused device shown in **Exhibit D** was tendered, the electronic cash register received an electronic message of payment. Therefore, at least one payment is sent at the point of sale.
- ii. Sony directs that electronic payment message as a response to the in-person transaction either directly or through other computers on the network because when Plaintiff James Driessen purchased the accused Music Pass shown as **Exhibit D**, the card was activated long before such message could have been sent through the mail and the store sent no runners to physically transfer the message (although a manually transferred message would still not affect the “reading on” the activation element of the claim).

- iii. The message was sent to the selling-side computer because the item was available for download and was not an item published on the internet in the public domain.
- iv. The number of activation/authorization steps or computers used between the payment and the sending of the payment message are not specified in the claim, therefore any number of selling-side computers or enduser devices may participate in the sending of this message.
- v. Therefore even if the only payment message is the one sent by the Retailers, whatever connection on the seller-side content distribution network authorizes the download, Sony designed the Music Pass to function in this manner, and because it cannot function in any other manner, Sony performs sending a payment message as a response to said in person transaction either directly or through other computers on said network to said selling computer on said network.

148. Sony directly performs element 139(i), “causing” above, by authorizing the enduser to download the specific merchandise itemized on the Sony Platinum Music Pass card. Authorization under Claim 6 of the ‘695 Patent (the instant claim), differs from authorization under Element 8 of Claim 2 of the ‘993 Patent, in that authorization under Claim 2 of the ‘993 Patent requires a two step process of activation followed by authorization. The instant Claim 6 allows for any number of steps in the creation of the authorization message on the selling computer. When payment for the Music pass has been accepted, Sony necessarily creates at least one authorization message on at least one selling side computer as a result of

that payment as is evidenced by the consumer's ability ultimately to download the itemized music. Therefore, Sony performs authorization as described in this element

149. Sony performs element 139(j), "redeeming" above, by accepting the code(s) on the Music Pass in exchange for granting the enduser authorization to download the specific merchandise itemized on that particular card. Sony performs this action directly itself or through subsidiaries or other business affiliates under its direct control, and by using the technology or applications claimed that are performed through collaboration, participation, combined actions, agency relationships, contractual obligations, exercising the ability to place the system as a whole into service, or other activities that create the ability or duty to control the activities of another. In this claim, the Music Pass needs to be more than just redeemable. This claim requires that the Music Pass actually be redeemed. While the word "redeem" may mean "exchange for represented value" as when a customer redeems a coupon at a store, or may mean "reclaim" as in redeeming one's reputation, redeem can also mean, and in this context does mean, "accept" or "honor" as when the United States Treasury redeems a savings bond or a restaurant redeems a meal voucher. Plaintiff James Driessen utilized the Sony Platinum Music Pass method at one of his home computers to request the redemption, but the specified music album displayed on the card as shown on **Exhibit D** was not downloaded until the codes inscribed on that card were honored or accepted, and thus redeemed, by Sony. Sony ultimately did honor the specified code(s) for the itemized merchandise previously purchased by James Driessen. To accomplish this, Sony redeemed its Music Pass and authorized the download of the electronic sell-through item shown in **Exhibit D** through an end-user device, thereby reading on the last element of Claim 6.

COUNT C - '500 Patent Claims – Direct Infringement

150. The allegations in 1-149 above, along with attachments in their entirety, are herein incorporated by reference.

151. The Sony Platinum Music Pass and other named or unnamed products and/or services, that are made, manufactured, sold, or offered for sale, by defendants, or those that are substantially the same or similar to the Sony Platinum Music Pass, directly infringe upon independent claims 1 and 10 of the '500 Patent.

'500 Patent Claim 1 – System Claim

152. '500 Patent Claim 1 presents a familiar claiming preamble format by referring to a “system.” System claims differ from device claims only in that the patented invention is not one single device, but rather a system comprising multiple distinct components and the nature of those components permits their function and use to be separated from their physical location and the system is considered an operable assembly taken as a whole.

153. Sony directly infringes all the elements of the '500 Patent Claim 1, System claim, by making and offering to sell the Sony Platinum Music Pass system.

154. Retailers, Best Buy, Target, and FYE infringe all the elements of the '500 Patent Claim 1, System claim, by using, selling, and offering to sell the Sony Platinum Music Pass system.

155. The place at which the system as a whole is put into service, or the place where control of the system is exercised and beneficial use of the system is obtained, occurs wherever any

computer networks are reached by the Sony Platinum Music Pass system,¹⁵ for example, at any retail point of sale at which Sony controls how the system will deliver specific downloadable items to a digital media playing device.

156. The elements of the payment system for itemized Internet merchandise or itemized downloadable media material objects as found in claim 1 of the '500 Patent are as follows:

- (a) a retail point of sale establishment;
- (b) a customer access point at said retail point of sale establishment;
- (c) URL information that is an Internet transaction location of said itemized Internet merchandise or itemized downloadable media material objects;
- (d) means for accepting payment through an in person transaction with a customer wherein said payment is designated for purchase of said itemized Internet merchandise or itemized downloadable media material objects;
- (e) means for storing and retrieving a record on or in a physical medium corresponding to said URL information that is an Internet transaction location of said itemized Internet merchandise or itemized downloadable media material objects;
- (f) means for transfer of said physical medium from said retail point of sale establishment to said customer; and

¹⁵ *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1313 (Fed. Cir. 2005) (Despite the fact that part of RIM's system is located in Canada. As the Court noted, ordinarily, "whether an infringing activity . . . occurs within the United States can be determined without difficulty. This case presents an added degree of complexity, however, in that: (1) the 'patented invention' is not one single device, but rather a system comprising multiple distinct components or a method with multiple distinct steps; and (2) the nature of those components or steps permits their function and use to be separated from their physical location.").

(g) means for Internet transaction authorization on, in, or actuated from said physical medium wherein ownership rights in said itemized Internet merchandise or itemized downloadable media material objects are preselected and transferred to said customer through said transfer of said physical medium.

157. System element 156(a), “retail point of sale establishment” above, is present in Sony’s payment system for itemized Internet merchandise because Sony’s Platinum Music Pass, as shown in **Exhibit D**, is a retail item that has been displayed (offered for sale) and sold in the retail stores of Best Buy, Target, and FYE (“Retailers”). The Music Pass itself is not a brick and mortar establishment, but the Music Pass system requires a brick and mortar establishment as a component of the system as follows:

- i. The Sony Platinum Music Pass is a retail item; it is not sold online.
- ii. The Sony Platinum Music Pass must be sold at a retail location. Therefore, Sony exercises control of the system by requiring the use of a retail establishment for the distribution of the Music Pass, and Sony exercises control of the retail establishment to the extent necessary to obtain the beneficial use of the system enjoyed by Sony.
- iii. Retail point of sale establishments indeed are provided for other products not related to the Platinum Music Pass and would exist with or without the Music Pass. However, the reverse is not true. The Music Pass system takes advantage of the Retailer’s point of sale establishment component for the system to operate. The Music Pass system would not exist without the point of sale establishment.

- iv. Retailers sell the Music Pass only as directed or controlled by Sony according to the inventory control management and retail fulfillment as embodied by the Platinum Music Pass.

158. System element 156(b), “access point” above, is present in Sony’s payment system for itemized Internet merchandise because Sony’s Platinum Music Pass system, as put into service by Sony and as shown in **Exhibit D** provides customer access through the retail establishments of Best Buy, Target, and FYE as directed or controlled by Sony, according to the inventory control management and retail fulfillment system as embodied by the Platinum Music Pass as follows:

- i. The place or point of access need not be computerized, but most places of customer access have one or more networked appliances like cash registers or self-check out Kiosks stationed at a point of access for a customer.
- ii. Even if none of these checkout stands or terminals exist in the store, Sony’s payment system for itemized Internet merchandise provides customer access points in retail establishments through doors and walkways to the merchandise.
- iii. Without access to the store where the Music Pass is sold, or to the point in the store where it is displayed, or other shelf access, the Sony Platinum Music Pass might not be accessible by customers. However, Sony provides at least one level of access through the Music Pass itself via its hang tag that allows the customer to access the Music Pass from the store shelf. This access is at the direction or control of the inventory control management and retail fulfillment

system because if the customer had no access to the card, the card could not be sold, and product fulfillment would be impossible.

iv. James Driessen obtained access to the Sony Platinum Music Pass at a retail point of sale, therefore Sony's payment system for itemized Internet merchandise provides customer access as part of the system. A customer may or may not take advantage of the access, but customer access at the retail point of sale is part of the Music Pass system because physical Music Pass voucher cards are not sold virtually online. The Music Pass requires retail sale.

v. Customer access to the Music Pass (or "card") is made according to the retail layout and in-store shelf space allotments which Sony does not control. However, the system aggregation is the result of the control management of the Music Pass itself. Therefore, Sony mandates customer access at said retail point of sale establishment in the Music Pass system as put into service by Sony whose name is on the Platinum Music Pass.

vi. The Music Pass is the instrumentality for putting the system into service.

159. System element 156(c), "URL" above, is present in Sony's payment system for itemized Internet merchandise embodied in the Platinum Music Pass, as put into service by Sony and as shown in **Exhibit D** because Sony provides a URL that is an internet location for the transaction as is evidenced by Sony's inclusion of the requisite URL information on the Music Pass itself and/or on the retail packaging. The Sony Platinum Music Pass is a plastic card about the size of a credit card that typically is attached to a cardboard hanging tag for retail display and to communicate other information to consumers. Sony directly satisfies the

third element of Claim 1 because Sony included URL information on both the Music Pass card and the card's hanging tag. This claim element does not require the URL information to be written on the card or the tag, but merely that an Internet transaction location exists. However, since Sony inscribed the URL information on the Music Pass card in the form of "PLATINUM musicpass[®]" "Redeem at www.musicpass.com," Sony has either established a URL that is an internet transaction location as part of the Music Pass system or is perpetrating a huge fraud on all Music Pass purchasers.

160. System element 156(d) "means for accepting payment" above is present in Sony's payment system for itemized Internet merchandise embodied in the Sony Platinum Music Pass because the means for accepting payment exists at the retail point of sale and is fulfilled by the structures, materials, and acts embodied by the Sony Platinum Music Pass. The Sony Platinum Music Pass is a designed system that only works in retail. The \$12.99 payment amount (Specimen **Exhibit D**) is evidence that the system requires, controls, and directs payment, and directs that payment is accepted through an in person transaction, rather than online. The payment takes place at the retail store. Without a retail establishment and its necessary components to accept payment, the Sony Platinum Music Pass could not accomplish its express purpose. While Best Buy, Target, and FYE provide retail establishments that contain structures, materials, or acts embodying the means for accepting payment, providing those retail establishments for product placement and display is crucial to the system embodied in the Platinum Music Pass.

- i. If construed as a 112 ¶6 "*structures*" claim, this element is fulfilled by the retail store cash register as part of the system.

- ii. If construed as a 112¶6 “*materials*” claim, the hanger tag placement with Stock Keeping Unit (“SKU”) requires that one of ordinary skill in the art recognizes that the SKUs are used by suppliers within their data management systems as the means for invoking the payment accepting system.
- iii. If construed as a 112¶6 “*acts*” claim, the required acts of the operational system of the Sony Platinum Music Pass achieve operability only when a purchase is made. If someone steals the card, or the card never reaches purchase point and the card cannot perform its express function. Therefore, because James Driessen was able to tender payment for and use the Sony Platinum Music Pass to achieve its intended function, Sony embodies, directs, or controls a means for accepting payment within the Sony Platinum Music pass system.
- iv. This element is best understood, however, when it is seen as fulfilled as a 112¶6 “*structures, materials, and acts*” element of the claim, where the accused device is a machine-readable unit that embodies the direction, control, and tracking for inventory stock keeping, assigned to a physical product, embodying a digital rights ownership item in inventory, that is a billable product with units of ownership or rights or warranties. Therefore, the Sony Platinum Music Pass is a code assigned to a supplier's billable entities to be “scanned” or otherwise read into the payment system. The accused device is an object of control and direction in one of Sony’s inventory control management and retail fulfillment system. The precise methods of communication used in accepting payment are

irrelevant to the infringement analysis so long as system components are used to accept payment.

- v. The payment associated with the Sony Platinum Music Pass is designated for the purchase of a specific downloadable music album, which is itemized Internet merchandise or itemized downloadable media material objects.

161. System element 156(e), “means for storing and retrieving” above, is present in the Sony Platinum Music Pass because the Platinum Music Pass is (or contains) a means for storing and retrieving a record. The Platinum Music Pass card and hanging tag are physical media and comprise a virtual filing cabinet where voluminous transactional information is both stored and retrieved.

- i. The Platinum Music Pass (card and hanging tag) are a single unit within the retail presentation of digital rights ownership system. However, the components of the Platinum Music Pass are numerous, containing the cardboard material the hanging tag is made from, the sealant applied to create the shine, the ink applied to the background, the ink that creates the pictures, writings, and system codes on both the hang tag and the card, the plastic material attached to the cardboard hanging tag, and most importantly, the systems embodied in the specific URL and SKU numbers. Within the URL and SKU information are the embodied or embedded systems in the inventory control management and retail fulfillment system.
- ii. The physical medium of the Platinum Music Pass includes the cardboard and/or plastic of which it is made and the inks, dyes, etc, through which all information

is written or attached. The means for storing and retrieving are the embodied retail transaction schema that those various word, code, URL, and SKU systems comprise.

- iii. As in all electronic messages, storing and retrieving done onto and from the card relate back to the corresponding URL information that is an Internet transaction location of said itemized Internet merchandise or itemized downloadable media material objects, which are the songs to be downloaded with the Platinum Music Pass.

162. System element 156(f), “means for transfer” above, is present in Sony’s payment system for itemized Internet merchandise embodied in the Sony Platinum Music Pass system because Sony included various means for transferring the physical medium to the customer. This element literally is infringed by the hang tag itself (although a specific hang tag is not required by the claim language) because the physical medium is transferred when the consumer takes possession of the card by means of grasping that hang tag. In addition, Sony directs and controls the means for transfer to the customer through the inventory control management and retail fulfillment systems that are both embodied and embedded within Sony’s platinum Music Pass system, as follows:

- i. The Music Pass is Sony’s instrumentality of direction and control.
- ii. If only the customer’s removal of the Music Pass from the shelf put the system as whole into service, the Pass could be shoplifted and used to download without payment or any other operations .

- iii. However, the Music Pass card only is functional when the Music Pass system allows it to be put into service. Stolen cards are useless.
- iv. Sony designed the Music Pass system and only Sony controls the totality of the system elements and does so to obtain benefit therefrom.

163. System element 155(g), “means for Internet transaction authorization” above, is present in the Sony’s payment system for itemized Internet merchandise embodied in the Sony Platinum Music Pass System because Sony requires the payment for downloadable music transaction to be authorized before it is consummated. The last element of the system claim, means for Internet transaction authorization on, in, or actuated from, said physical medium wherein ownership rights in said itemized Internet merchandise or itemized downloadable media material objects are preselected and transferred to said customer through said transfer of said physical medium, is present in the Platinum Music Pass inventory control management and retail fulfillment system because said system specifies the URL of www.musicpass.com as the internet transaction location, and more specifically, supplies a code in the form of a “scratch off” on the back of the card that is the authorization code, not for bonus access or webpage advertisement, but for the authorized download of the specific online digital rights ownership.

‘500 Patent Claim 10 – Primarily Seller Focused Method Claim

164. Claim 10 of the ‘500 Patent is primarily a Seller focused method claim, wherein the elements of the asserted claim are focused on the activities that a seller of a retail representation of specific online digital rights must perform in order to accomplish a sale.

165. Although actions satisfying Claim 10 elements could be performed by multiple actors under certain circumstances, the elements of claim 10 do not require multiple actors.
166. Defendant Best Buy is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 10 of the '500 Patent and therefore directly infringes.
167. Defendant Target is a Retailer and Seller of the Sony Platinum Music Pass and performs each element of Claim 10 of the '500 Patent and therefore infringes.
168. Defendant FYE is a Retailer and seller of the Sony Platinum Music Pass and performs each element of Claim 10 of the '500 Patent and therefore infringes.
169. Upon current information and belief that Sony does not sell the Sony Platinum Music, Plaintiffs reserve the right to include Sony as a direct infringer of Claim 10 of the '500 Patent if discovery shows that Sony, in fact, is a seller of the Sony Platinum Music Pass.
170. The Seller focused method elements of Claim 10 of the '500 asserted patent, method of merchandise transfer on a computer network comprising at least one buyer computer on a network for operation by a user desiring to buy at least one product and at least one selling computer on said network operating for a purpose to sell said product, are as follows:
- (a) creating specific information that is a transaction location of said product, said product comprising networked merchandise or downloadable media material objects represented on said selling computer;
 - (b) specifying a price wherein said price is specific to said product on said selling computer;

- (c) receiving payment of said price through an in person transaction with said user at a retail point of sale location wherein said payment amount is associated to said product;
- (d) sending a payment message as a response to said in person transaction either directly or through other computers on said network to said selling computer on said network;
- (e) causing an authorization message to be created on said selling computer in or as a result of said payment message that comprises at least said specification of said product and authentication based on cryptographic key(s), said selling computer being programmed to receive said authorization message for verification of said authentication;
- (f) causing selling computer, as a result of said selling computer being programmed, to ensure that said authorization message was created using said cryptographic key(s); and
- (g) causing transfer of ownership rights in said product to said user desiring to buy said product by granting access or rights to said user on said buyer computer either directly or through other computers on said network, as a result of said authorization message on said selling computer.

171. The Retailers¹⁶ perform element 170(a), “creating” above, because the Retailers scan the Music Pass card thereby creating specific information that is, among other things, an internet

¹⁶ This element could be a mixed actor claim if further violative activities on the part of Defendants is discovered, but as used through the infringing instrumentality, the activity claimed in 170(a) is none-the-less performed by each of the named Retailers (Best Buy, Target, and FYE).

transaction location for that particular purchase. Even though Sony controls the www.musicpass.com URL, which is a network transaction location (and is one form of “creating” of the specific information), the retail point of sale is under the control of the Retailer. When the Retailer scans the Music Pass card, the Retailer also creates specific internet transaction information for a particular digital product. A specific digital download song or album product necessarily comprises a networked merchandise or downloadable media material object. The Music Pass card represents the accessibility of the merchandise on a selling computer at www.musicpass.com. When Sony redeems the music purchase, the download icon for the song or album also is represented on a selling computer. Because the customer ultimately downloads the music purchase via the network location, The Retailer has specified a particular network transaction as recited in this element as is required by the Sony Platinum Music Pass instrumentality.

172. The Retailers perform element 170(b), “specifying” above, by entering in the price specific to the particular Music Pass card. Plaintiff James Driessen purchased the attached specimen (**Exhibit D**) at a retail establishment. By scanning in that specimen, the Retailer specified a price of “\$12.99” for all purposes necessary to the consummation of the transaction and on the customer receipt, and that price is specific to the downloadable product depicted on the specimen.

173. The Retailers perform element 170 (c), “receiving” above, by accepting payment for the Sony Platinum Music Pass from a customer through an in-person transaction at a retail point of sale location. The price specified on **Exhibit D** is \$12.99, which James Driessen remitted at a retail location to obtain the itemized Internet merchandise depicted on that specific Sony

Platinum Music Pass. While the retail entity may use electronic means of commencing or communicating the payment, the payment of the price listed on the card occurs through an in-person transaction with a customer at a retail point of sale customer access point, either through a manned check-out or an unmanned kiosk

174. The Retailers perform element 170 (d), “sending” above, by transmitting necessary payment information at the point of sale so that the ultimate download by the consumer will be authorized. The Sony Platinum Music Pass does not work unless it is sold. Once the buyer purchases the card at the retail check-out (manned or unmanned) the ability to later input the download authorization is activated because the Retailer transmits some manner of electronic communication signaling to the designated components along the transaction network that payment has been remitted and that the preprinted authorization code on the card is to be, and/or has been, activated. Without such a payment message, the music download either would not be authorized (or would simply have to be free access to music online and in the public domain).

- i. The Platinum Music Pass redemption system is behind a secure socket layer (“https”) and therefore by definition, the download does not take place in the public domain (it requires authorization).
- ii. The Retailers directly infringe the “sending a payment message as a response to the in-person transaction” element of Claim 10, either directly or through other computers on an electronic payments system on a network, in order to allow the customer to effectuate his/her purchase.

175. The Retailers perform claim element 170 (e), “causing” above, by selling the Sony Platinum Music Pass and transmitting information regarding the facts of that sale to the requisite seller-side computer either directly or through any number of communication nodes on the networked system. The Music Pass has a “scratch off” that reveals an authorization code on the back of the card. But even if that authorization code itself is not “activated,” the sale and authorization must take place for the music represented by the card to be downloaded as a proprietary object as follows:

- i. Electronic messages necessarily are transmitted to access and utilize the inventory control management and retail fulfillment system embodied by the Sony Platinum Music Pass so that it achieves its intended purpose.¹⁷ James Driessen purchased the attached specimen (**Exhibit D**) at retail and completed the download without time for authorization to have been accomplished via non-electronic means.
- ii. Prepaid card activation systems, which plaintiffs allege are used by the Sony Platinum Music Pass, are well known in the art. These systems deter theft by not placing pre-activated cards (or cards with pre-activated codes) in consumer-accessible retail space. Instead, the cards are activated at the point of sale. This activation causes an authorization message to be created on the selling side of the system, allowing for subsequent secure socket layer

¹⁷ Prior to the parties in this matter having exchanged discovery, it is upon information and belief that the Sony Platinum Systems can only work with computer authorization messages being sent and received. It is impracticable that a store employee would somehow physically transfer the sale message (although a manually transferred message would still not affect the “reading on” the authorization element of the claim). It is beyond reasonable expectation that the retail point of sale message could be accomplished without a computer authorization message

communications using cryptographic key(s) common to all secure socket layer protocols. Selling side computer systems are also programmed to receive authorization messages and to use cryptographic key(s). Plaintiff James Driessen noted the “padlock” symbol displayed by the browser at the internet transaction location, indicating that the site was secured, and accessing the information on it required authorization.

176. The Retailers perform element 170 (f), “causing” above, because the inventory control management and retail fulfillment system embodied by the musicpass.com system utilizes secure socket layer communications, and any secure socket layer communications use cryptographic keys directly or through other computers. When James Driessen tested the accused specimen, the musicpass.com website directed the redemption process to occur via an “https” where the customer browser indicated that cryptographic keys were being exchanged by displaying an icon with a picture of a padlock.

177. The Retailers perform claim element 170 (g) ”causing” above, at least by the act of selling the Sony Platinum Music Pass card because this sale is necessary to transfer ownership rights from the selling-side to the ultimate end-user. Only the authorized purchaser (or purchaser’s agent) in possession of the authorization code, has the right to download the particular music product itemized on the Music Pass card¹⁸. By supplying the customer with an authorization code, the Retailers grant access or rights to a customer to use

being exchanged from the retail side to the provider side which, in this case, is the inventory control management and retail fulfillment system embodied by the Sony Platinum Music Pass.

¹⁸ Digital rights management (“DRM”) systems employed on the music file that results from the download is irrelevant to whether the Sony Platinum Music Pass reads on element 7 of Claim 10 because the music itemized on the card cannot be accessed by anyone other than the purchaser or his agent or assignee without the music being available free in the public domain.

a computer (buyer computer), either directly or through other computers on a network, to access ownership of the specific music itemized on the Sony Platinum Music Pass and thereby download songs with rights to the digital media as a result of an authorization message being sent.

IX. Direct Infringement by Doctrine of Equivalents – ‘500 Patent Family

178. Allegations 1-177 are incorporated herein by reference.

179. Alternatively, the elements found in the independent Claims of the ‘500 Patent Family (‘500, ‘695, and ‘993 Patents) are infringed under the doctrine of equivalents. Analysis of the specific claim elements for infringement by doctrine of equivalents is the same as in direct literal infringement in section VIII, with the addition of the following:

(a) Retail presentation of digital rights ownership is a “pioneer” invention in that it is very significant, opens new fields of research or endeavor or permits new industries to be founded. At the time of this law suit, in the US market, there were very few real examples of retail presentation of specific online digital rights ownership. Examples of some products known to Plaintiffs at the time of origination of this law suit that employ some form retail presentation (patent licensing may already apply) are called the “Walmart MP3 Download Card,” “Apple-iTunes Digital Release Album,” “Symtio book card,” and, as alleged herein, the “Sony Platinum Music Pass.”

(b) Such retail presentation, however, can be accomplished in any number of ways. There are slight differences between each of the types of products listed in Section IXa above. The various claims of the ‘500 Patent Family each offer different approaches to covering the different aspects of the representative claims.

- i. Claim 1 of the '500 Patent is a system claim in that any system aggregated, designed, or put into service, that contains the elements of the claimed system, infringes upon the claim.
- ii. Claims 1 and 6 of the '993 Patent and Claim 10 of the '500 Patent are Seller focused method claims in that the elements of the asserted claim are focused on the activities that a seller of a retail representation of specific online digital rights performs in order to accomplish a sale.
- iii. Claims 3 and 24 of the '993 Patent are Producer focused method claims in that the elements of the asserted claim are focused on the activities that a producer of a retail representation of online digital rights would participate in order to accomplish such a sale.
- iv. Claim 5 of the '993 Patent, and Claims 1 and 6 of the '695 Patent, are mixed actor method claims in which a direct infringement theory survives where there is more than one actor if one party, in this case, Sony, controls or directs the actions of another to perform one or more steps of the method through an agency relationship or other contractual obligation to perform the steps. Where there is an instrumentality of direction or control, such as the Sony Platinum Music pass that requires that every element of the independent claims raised in section VIII of this complaint be performed either literally or by way of the doctrine of equivalents on a limitation-by-limitation basis, the Retailer and Producer collaborators cannot escape a finding of infringement.

(c) Prior to fact discovery, Plaintiffs currently proceed upon information and belief based upon the materials Defendants included in their advertisements, product offerings, and examination of Defendants' actual components as they apply to each system or functional component of the accused devices and the role played by each element in the context of the specific patent claim.

(d) Upon information and belief, Sony substantially fulfills the purposes for which the system and method claim elements are read upon using the same functions in the same way to achieve the same result as the element-by-element analysis in section VIII of this complaint above with, by, and through its product, the Sony Platinum Music Pass, because use of that product and the implementation of the actions and/or systems embodied within it, in fact, embodies or performs such retail presentation of specific online digital rights ownership for the sale of networked items in a retail environment, as follows:

- i. Plaintiffs observed that the Sony Platinum Music Pass, with respect to each claim element of the alleged claims in the '500 Patent Family, taken as a whole, accomplishes the following: presents a product for purchase to a customer through an in-person visit to a retail establishment; presents specifically itemized network merchandise for sale to the customer at retail; and provides that the items purchased are networked merchandise in that they are offered or fulfilled via network cataloged modes of transactional completion.

- ii. In the event that further information gained through discovery shows that one or more of the patent elements may not be infringed literally because components and/or elements may have been combined in alternative configurations, because the Sony Platinum Music Pass uses or deploys the same functions in the same ways to achieve the same results, Plaintiffs will have established proof of infringement by doctrine of equivalents.

X. Indirect Infringement – ‘500 Patent Family

180. Allegations 1-179 above along with attachments are herein incorporated by reference.

181. Indirect Infringement and Indirect Infringement by Doctrine of Equivalents are alleged herein for induced infringement and contributory infringement.

- (a) The Sony “Platinum Music Pass” (if packaged and sold at retail) embodies or encompasses the infringing instrumentality of the method elements of the asserted claims.
- (b) The Sony “Platinum Music Pass” system on its own contains all the system elements of the one asserted system claim.
- (c) Sony has taken active steps to induce an underlying direct infringement and have done so with specific intent. The underlying direct infringement may be analyzed according to the Direct infringement allegations section VIII above by either literal or by doctrine of equivalents.
- (d) Defendant Sony has induced Defendants Best Buy, FYE, and Target to sell their Sony Platinum Music Pass in their stores.

(e) In-store sales of the digital rights ownership in the Platinum Music Pass is an especially adapted use to take advantage of Plaintiff's retail component. See 35 U.S.C. § 271(c).

(f) Retail presentation of specific online digital rights ownership has no non-infringing uses.

182. Claims 1 and 10 – '500 Patent; Claims 1 and 6 of the '695 Patent; and 1, 3, 5, 6, and 24 of the '993 Patent. The Sony Platinum Music pass and other products and/or services (with names other than the Sony Platinum Music Pass) made, manufactured, sold, or offered for sale, by business associates of Sony that are substantially the same or similar to the Sony Platinum Music Pass, directly infringe upon independent claims of the '500 Patent Family pursuant to the analysis as set out in the direct infringement allegations in section VIII above when taken in light of the indirect infringement allegations herein as follows:

(a) Induced Infringement

- i. The allegations as found in 1-181 above are herein incorporated by reference.
- ii. Defendant Sony has demonstrated specific intent to induce through encouragement to use retail presentations.
- iii. Defendant Sony, in particular, has demonstrated its influence over the named Retailers, customers, and other unnamed retailers.
 1. It may be inferred that Sony intends that which is the natural and probable consequences of its acts, to incorporate and encourage the retail component of online digital rights ownership to retailers

knowing that such activities will infringe Plaintiffs' patents, and that when voluntarily and willfully doing such, the direct and natural result will be to the injury of Plaintiffs abilities to build its own businesses in the retail presentation of online digital rights ownership. Such injury was the specific intent of Sony.

2. But for the centrally controlled Sony Platinum Music Pass system there would be no control over the end-user's download. The Sony Platinum Music Pass itself, as shown in **Exhibit D**, embodies, directs, or controls each and every element of the claims asserted. The Platinum Music Pass content distribution system, which embodies, controls, or directs each and every element of the asserted method claims, thereby fulfill each element of the method claims, and may also constitute direct infringement through a divided infringement theory. Therefore, Sony, by or through its direct control and influence is specifically inducing retailers to directly infringe the asserted patents. By including the retail component into its online digital rights ownership systems and services, both Sony and the Retailers are committing direct infringement.
3. Retailers were influenced by the Sony organization to include retail presentation as a component of the Platinum Music Pass, knowing that retail presentation of the digital rights ownership

components would fulfill all elements of the above asserted claims in the '500 Patent Family. Therefore, upon information and belief, the Sony organization, as the parent company of Sony Music Entertainment, possessed specific intent to encourage another's infringement by encouraging the selling of specific digital rights ownership through retail presentation.

4. Encouragement of the Retailers by Sony was evinced through at least their announcement of the "authorized" Retailers in Sony's 2008 press releases about the launch of the Music Pass products. The press releases also described how the authorized Retailers were going to sell the Music Passes. Plaintiffs reserve the right to present further evidence of encouragement of the Retailers by Sony when further discovery presents the documented chain of evidence as to how the Standards Setting Organizations in the music industry along with music distribution contracts or other agreements allowed for a Music Pass product, with Sony's name on it, to become available for presentation and vending in Retailer's stores
- iv. The specific acts of a defendant in the inducement need not be direct infringement so long as there is an underlying direct infringement occurring.

- v. Underlying direct infringement of the '500 Patent Family does not require a single product to be sold. If a product is being used, made, manufactured, or offered for sale by an individual or group controlled or influenced by Defendants, without authorization from the Plaintiffs, there is an underlying direct infringement.
- vi. Because James Driessen was able to purchase accused infringing devices at the Retailers locations, retail digital rights presentation has been sold as of the date of this complaint and therefore has been made, used, and offered for sale by retailers as of the date of this complaint, Sony Music Entertainment.
- vii. Plaintiffs sent letters, emails, and made phone calls to Sony informing them about the patent along with a proposal to abate infringement and Sony continued to market, sell, and distribute the Sony Platinum Music Pass. Therefore, Sony Music Entertainment, knew (or reasonably should have known) about the '500 Patent Family at that time. Sony Corporation and Sony Pictures Entertainment, knew of the patent(s) at issue herein at least as early as the filing of this lawsuit.
- viii. Based upon the foregoing, Plaintiffs allege that Sony Music Entertainment, through its influence and control, took active steps to encourage another's infringement by encouraging retailers to include the retail presentation components in the Platinum Music Pass sales thereby inducing others to make infringing products and to offer those products to

be sold, and by influencing customers to use the Music Pass in the only way it could be used.

- ix. Based upon the foregoing, Plaintiffs allege that Sony Music Entertainment, through its influence and control over retailers and customers, took active steps to encourage another's infringement by encouraging retailers to include a retail presentation component along with the digital rights ownership components, which together make an infringing product, thereby inducing others to use infringing products and to offer those products to be sold.
- x. Upon information and belief, "Sony BMG," as named at the time of the merger between Sony Corporation of America and Bertelsmann AG on or about March 4, 2004, is a subsidiary of Sony Music Entertainment and thereby is a subsidiary of Sony Corporation of America.
- xi. All Defendants who knowingly make, manufacture, use, sell, or offer to sell the infringing products or methods (where together they are directed or controlled by the inventory control management and retail fulfillment system the Sony Platinum Music Pass embodies) knowingly induce infringement with the intent to encourage the infringement by causing the acts of direct infringement, and all Defendants knew or should have known that their acts would cause such direct infringement.

(b) Contributory Infringement

- i. The allegations as found in 1-181 (above) are herein incorporated by reference.
- ii. The retail presentation component of Sony Platinum Music Pass is being made and offered by Sony directly and through their influence upon retailers and customers.
- iii. The other components of the Music Pass (without the retail presentation component) do have substantial non-infringing uses.
- iv. However, the retail presentation of specific online digital rights component (i.e. wherever Music Pass standard products are sold at retail) has no substantial non-infringing uses.
- v. Sony Music Entertainment, and thereby its parents and subsidiaries including Sony Corporation and Sony Pictures Entertainment, have knowledge of the non-staple nature of the retail presentation component of the Sony Platinum Music Pass.
- vi. Sony Music Entertainment made, sold, or otherwise provided the retail component in question to the retailers.
- vii. Sony has not offered to buy or license the retail component from Plaintiffs.
- viii. The above alleged activities have occurred within the United States of America.

X. Treatment of Dependant Claims Claims 2, 3, 4, 7, 12, 14, and 15 of the ‘500 Patent; Claims 2-4, 7-21, and 23-26 ‘of the ‘695 Patent; Claims 4, 7-23, and 25-41 of the ‘993 Patent.

183. The Sony Platinum Music Pass and other unnamed products and/or services are made, manufactured, sold, or offered for sale by Sony, Best Buy, Target, and FYE. The Sony Platinum Music Pass directly infringes upon dependent claims of the ‘500 Patent Family by direct literal infringement, direct infringement by doctrine of equivalents, and/or indirect infringement because each dependent claim includes every limitation of the independent claim to which it is dependent (the “infringement test as found in MPEP § 608.01(n)). Similar analyses as are found in Sections VIII and IX above are herein incorporated by reference with allegations satisfying the additional elements as found in the dependent claims, as follows:

(a) Claims 2, 3, 4, 7, 12, 14, and 15 of the ‘500 Patent

- i. The types of facilities at which Defendants sell the Sony Platinum Music Pass include at least one of a retail store, convenience store, vending machine, parking lot, hallway, lobby, or other physical place to conduct business.
- ii. The types of customer access points at which Defendants sell the Sony Platinum Music Pass include at least one of a checkout, kiosk, cashier's station, cash register, self check out, self-service, or other means of customer interaction with said retail point of sale establishment.
- iii. The storing and retrieving operations Sony designed into the Sony Platinum Music Pass, and the control or direction of inventory control management and retail fulfillment system that product embodies, include at least one of writing, inscribing, programming, or otherwise placing access

information on a card, computer diskette, or other physical means of recordation without requiring access to a public computer network (Internet) during the recording process whether or not access is actually made.

- iv. The price for the Platinum Music Pass is at least zero.
- v. The transaction location is www.musicpass.com which is a URL on the world wide web.
- vi. In addition to being a retail presentation of specific online digital rights ownership for sale at a retail location, the Sony Platinum Music Pass, is also a prepaid card onto which funds are loaded as evinced by the “FastCard®” service mark.

(b) Claims 2-4, 7-21, and 23-26 ‘695 Patent

- i. The types of facilities at which Defendants sell the Sony Platinum Music Pass include at least one of a retail store, convenience store, vending machine, parking lot, hallway, lobby, or other physical place to conduct business.
- ii. The types of customer access points the Defendants provide from which the Sony Platinum Music Pass is sold include at least one of a checkout, kiosk, cashier's station, cash register, self check out, self-service, or other means of customer interaction with said retail point of sale establishment.
- iii. The storing and retrieving operations that Sony designed into the Sony Platinum Music Pass, and the control or direction of inventory control management and retail fulfillment system that product embodies, include at least one of writing, inscribing, programming, or otherwise placing access

information on a card, computer diskette, or other physical means of recordation without requiring access to a public computer network (Internet) during the recording process whether or not access is actually made.

- iv. Communications or Internet infrastructure can include fiber, cable, wireless, telephone wires, satellite, or digital wireless.
- v. The price for the Sony Platinum Music Pass is at least zero.
- vi. The Sony Platinum Music Pass is a physical voucher and is of at least one of the types: card, ticket, disk, or receipt.
- vii. Once downloaded, the specific music download which was depicted on the Sony Platinum Music Pass can be recorded onto a card, ticket, disk, or receipt.
- viii. The scratch off code contains an access key.
- ix. The Sony Platinum Music Pass card is a whole physical unit and device, but it may be separated into its tangible and intangible components to include the ink, the letters, the barcodes, data, and the various overt and/or embedded systems that comprise the control management and retail fulfillment system it embodies.
- x. The transaction location is www.musicpass.com which is a URL on the world wide web.
- xi. In addition to being a retail presentation of specific online digital rights ownership for sale at a retail location, The Sony Platinum Music Pass, is also a

prepaid card onto which funds are loaded as evinced by the “FastCard®” service mark.

- xii. A retail transaction with a manned check-out is a face to face transaction
 - xiii. Digital rights ownership in the Platinum Music Pass may be construed at least as a license for listening rights.
 - xiv. Payment may include payment for the music and/or payment for the voucher.
 - xv. Redemption of the Sony Platinum Music Pass voucher can occur on a networked computer in or out of the store in which the voucher was purchased.
- (c) Claims 4, 7-23, and 25-41 of the ‘993 Patent. In addition to the features of the Platinum Music Pass described in 89a and 89b:
- i. The transaction location of www.musicpass.com is a URL on the world wide web.
 - ii. The retail point of sale includes an establishment under the control of a party other than the end-user that is capable of accepting payment for the Sony Platinum Music Pass card.
 - iii. DRM free downloads may be recorded to a memory device, which can be done on at least one of the following: disk, compact disk, cassette, VHS tape, or other recording media.

XI. Demand for Jury Trial and Enhanced Damages

184. Defendants’ acts are deliberate and willful and will continue unless enjoined by this court.

185. Any opinions or reports reviewed by Defendants in their decision to continue to infringe Plaintiffs' patents are self-serving and known by Defendants to be faulty or inaccurate or made using purposefully faulty or inaccurate assumptions.

186. As a result of Defendants' acts, Plaintiffs will be damaged in an amount in excess of the jurisdictional limit of this court. Due to the deliberate and willful nature of Defendant's acts, such damages should be increased to the maximum amount allowed by law including an award of attorney's fees.

187. Plaintiffs hereby demand trial by a jury.

XII. U.S. District Court – Illustrative Civil Form 18 Allegations (uscourts.gov)

188. Allegations 1-187 along with attachments are hereby incorporated by reference.

189. On February 21, 2006, United States Letters Patent No. 7,003,500 was issued to Plaintiff, James Driessen, on December 22, 2009, United States Patent no. 7,636,695 was issued to Plaintiff James Driessen, and on June 22, 2010, United States Patent No. 7,742,993 was issued to *Vibme LLC*, for an invention in retail presentation of specific online digital rights ownership. Subsequent documents have been executed so that at various times either or both Plaintiffs James Driessen and Marguerite Driessen have owned 100% of the enforcement rights to the named patents throughout the period of the Defendant's infringing acts, and both Plaintiffs still own the patents.

190. Defendants have infringed and still are infringing each asserted Letters Patent by making, selling, using, and offering to sell retail presentation of specific online digital rights ownership that embodies the patented invention, and Defendants will continue to do so unless enjoined by this court.

191. Where notice can be satisfied by either the filing of an original action for infringement or by the transmittal of a letter in which Defendants were informed of the identity of the patent(s) at issue, the activity that is believed to be an infringement, and a proposal to abate the infringement, whether by license or otherwise, Plaintiffs have complied with 35 U.S.C. 287(a) by providing proof that the infringer was notified of the infringement and continued to infringe thereafter for which damages may be recovered for any infringement occurring after such notice. Therefore, Plaintiffs demand:

- (a) a preliminary and final injunction against the continuing infringement;
- (b) an accounting for damages; and
- (c) interest and costs.

XIII. Prayer for Relief

192. WHEREFORE, Plaintiffs, James L. Driessen and Marguerite A. Driessen, respectfully request that this court enter judgment against Defendants as follows:

A. Finding that Defendants have infringed Plaintiff's U.S. Letters Patents 7,743,993

COUNT A as to all Defendants, specifically that: Claims 1 and 6 of the '993 Patent and are Seller Focused method claims and are directly infringed by Defendants Best Buy, Target and FYE; Claims 3 and 24 of the '993 Patent are Producer Focused method claims and are directly infringed by Defendant Sony; and Claim 5 of the '993 Patent is mixed actor method claim which Sony directly infringes with direction and control of the Retailers through the instrumentality created by the Sony Platinum Music Pass.

B. Finding that Defendants have infringed Plaintiff's U.S. Letters Patents 7,636,695

COUNT B as to all Defendants, specifically that: Claims 1 and 6 of the '695 Patent are mixed actor method claims. Sony directly infringes with direction and control of the Retailers through the instrumentality created by the Sony Platinum Music Pass.

C. Finding that Defendants have infringed Plaintiff's U.S. Letters Patents 7,003,500

COUNT C as to all Defendants, specifically that: Claim 1 of the '500 Patent is a System Claim that Sony directly infringes by using and making the patented system and that Best Buy, Target and FYE directly infringe by selling the patented system; and Claim 10 of the '500 Patent is a Seller Focused method claim which is directly infringed by Defendants Best Buy, Target and FYE as Retailers.

D. A finding that Defendant Sony has contributed to or induced infringement of U.S. Letters Patents 7,003,500, 7,636,695, and 7,743,993.

COUNT D, Contributory or induced infringement of the asserted patents by Defendant Sony.

E. That Plaintiffs be awarded compensatory damages against Defendants as a result of the acts complained of herein;

F. That Defendant's acts be determined to be willful and as a result, damages be increased to the maximum amount allowed by law to include triple damages according to [35 U.S.C.A. § 284](#).

G. That Plaintiffs be awarded their attorneys fees and costs;

H. That Plaintiffs be awarded prejudgment and post-judgment interest;

I. That an injunction issue enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert of participation with them during the pendency of this action and permanently thereafter as follows:

- i. From any and all acts in infringement of the '500, '695, and '993 patents;
- ii. To submit to Plaintiffs an accounting for profits received by Defendant as a result of the acts complained of herein; and

J. For such other and further relief which this Court finds just and proper.

Respectfully submitted this 17th day of February, 2012

By: /s/James L. Driessen By: /s/James L. Driessen
James L. Driessen, Plaintiff Pro Se for Marguerite A. Driessen, Plaintiff Pro Se

Index of Exhibits

Exhibit A US Letters Patent 7,003,500
Exhibit B US Letters Patent 7,636,695
Exhibit C US Letters Patent 7,742,993
Exhibit D Specimen – Sony Platinum Music Pass
Exhibit E Plaintiff's Second Amended Complaint with mark up showing changes made in
 Plaintiff's Third Amended Complaint
Exhibit F Vibme 2010 Business Summary
Exhibit G Patent Assignment Recorded Documents
Exhibit H Fujitsu v. Belkin, et. al., Case 5:10-cv-03972, N. Dist. Cal. Dkt. 101, 3/29/11