

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ACTIVISION TV, INC.,

Plaintiff,

v.

NATIONAL CINEMEDIA, INC. and  
NATIONAL CINEMEDIA, LLC,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**C.A. No. 1:12-cv-01009-SLR**

**DEMAND FOR JURY TRIAL**

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Activision TV, Inc. (“Activision”), by way of this Complaint against Defendants National CineMedia, Inc. and National CineMedia, LLC (collectively, “Defendants”), hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement of United States Patent Nos. 6,384,736, 6,215,411, and 7,369,058 (“the Activision Patents”) arising under the patent laws of the United States, 35 U.S.C § 271 *et seq.*

**THE PARTIES**

2. Plaintiff Activision is a corporation organized under the laws of Delaware with its principal place of business at 5400 Yahl Street, Suite D, Naples, Florida 34109.

3. Defendant National CineMedia, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 9110 East Nichols Avenue, Suite 200, Centennial, CO 80112-3451.

4. Defendant National CineMedia, LLC is a limited liability company organized under the laws of Delaware with its principal place of business at 9110 East Nichols Avenue, Suite 200, Centennial, CO 80112-3451.

5. Upon information and belief, Defendant National CineMedia, Inc. exercises control over its subsidiary National CineMedia, LLC.<sup>1</sup> For instance, National CineMedia, Inc. “was incorporated in Delaware as a holding company with the sole purpose of becoming a member and sole manager of National CineMedia, LLC (“NCM LLC”).”<sup>2</sup> Furthermore, National CineMedia, Inc. is presumed to control National CineMedia, LLC.<sup>3</sup> As the manager of National CineMedia, LLC, National CineMedia, Inc. has “authority on behalf of the Company to make all decisions with respect to the Company’s business without approval of the Members.”<sup>4</sup>

---

<sup>1</sup> See National CineMedia, Inc.’s Form 8-K, filed April 30, 2012, available at <http://www.sec.gov/Archives/edgar/data/1377630/000119312512192111/d344489d8k.htm> (referring to National CineMedia, LLC as its “subsidiary”).

<sup>2</sup> See National CineMedia, Inc.’s *Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934* for the quarterly period ended June 28, 2012 available at <http://investor.ncm.com/secfiling.cfm?filingID=1193125-12-332904&CIK=1377630>.

<sup>3</sup> “Under ASC 810, a managing member of a limited liability company (“LLC”) is presumed to control the LLC, unless the non-managing members have the right to dissolve the entity or remove the managing member without cause, or if the non-managing members have substantive participating rights. The non-managing members of NCM LLC do not have either dissolution rights or removal rights. NCM, Inc. has evaluated the provisions of the NCM LLC membership agreement and has concluded that the various rights of the non-managing members are not substantive participation rights under ASC 810, as they do not limit NCM, Inc.’s ability to make decisions in the ordinary course of business.” <http://investor.ncm.com/secfiling.cfm?filingID=1193125-12-332904&CIK=1377630> National CineMedia, Inc. and Subsidiary Notes to Condensed Consolidated Financial Statements, *Consolidation*

<sup>4</sup> See National CineMedia, LLC’s Third Amended and Rested Limited Liability Company Operating Agreement, available at <http://www.sec.gov/Archives/edgar/data/1377630/000119312507034062/dex101.htm>, Section 4.1, “Manager” and Section 4.2, “Management Authority.”

6. As a general matter, a parent company may be held liable for the patent infringement of its subsidiaries.<sup>5</sup>

### **JURISDICTION AND VENUE**

7. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendants at least because Defendants are organized under the laws of the State of Delaware and have thereby purposefully availed themselves of the benefits and protections of the laws of the State of Delaware.

10. Upon information and belief, Defendants have ongoing and systematic contacts with this judicial district and the United States.

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

### **COUNT I** **INFRINGEMENT OF U.S. PATENT NOS. 6,384,736, 6,215,411, and 7,369,058**

12. Plaintiff repeats and realleges the allegations of paragraphs 1 through 11 as though fully set forth herein.

13. On May 7, 2002, United States Patent No. 6,384,736 (“the ’736 Patent”), entitled “REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’736 Patent is attached as Exhibit A to this Complaint.

---

<sup>5</sup> See *A. Stucki Co. v. Worthington Industries, Inc.*, 849 F.2d 593, 596 (Fed. Cir. 1988) (explaining circumstances in which parent could be liable for subsidiary’s direct infringement); see also *Ethypharm S.A. France v. Bentley Pharms., Inc.*, 388 F. Supp. 2d 426, 432 (D. Del. 2005) (“If a parent corporation directs the allegedly infringing activity of a subsidiary, the parent can be liable for its subsidiary’s infringement”).

14. On April 10, 2001, United States Patent No. 6,215,411 (“the ’411 Patent”), entitled “REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’411 Patent is attached as Exhibit B to this Complaint.

15. On May 6, 2008, United States Patent No. 7,369,058 (“the ’058 Patent”), entitled “REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’058 Patent is attached as Exhibit C to this Complaint.

16. Plaintiff Activision, as the assignee and owner of the right, title, and interest in and to the Activision Patents, has the right to assert causes of action arising under said patents and the right to any remedies for infringement thereof.

17. Upon information and belief, Defendants are and have been directly infringing the Activision Patents in the United States at least by making and using Digital Sign Kiosks, which include display systems. Defendants have infringed and continue to infringe one or more claims of the Activision Patents by making and using such products that infringe and/or perform methods that infringe one or more claims of the Activision Patents. Through their products, including but not limited to the Digital Sign Kiosks, Defendants have been and are infringing one or more claims of the Activision Patents directly, contributorily, and/or by inducement, in violation of 35 U.S.C. § 271.

18. Because of Defendants’ infringement of the Activision Patents, Plaintiff has suffered damages and will continue to suffer damages in the future.

19. Plaintiff has been damaged and has suffered irreparable injury due to the acts of infringement by Defendants and will continue to suffer such irreparable injury unless Defendants' infringing activities are enjoined.

20. Defendants have had notice of the Activision Patents at least since October 13, 2011, when Defendants were notified of its infringement in a letter sent by certified mail.

21. Upon information and belief, Defendants' continued infringement despite its knowledge of the Activision Patents and the accusations of infringement has been objectively reckless and willful.

### **JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully demands judgment for itself and against Defendants as follows:

- A. An adjudication that Defendants have infringed the Activision Patents;
- B. Permanently enjoining and restraining Defendants, their agents, affiliates, subsidiaries, servants, employees, officers, directors, attorneys, and those persons in active concert with or controlled by Defendants from further infringing the Activision Patents;
- C. An award of damages to be paid by Defendants adequate to compensate Plaintiff for their past infringement of the Activision Patents and any continuing or future infringement of the Activision Patents through the date such judgment is entered, together with pre-judgment and post-judgment interest, costs and expenses as justified under 35 U.S.C. § 284;

D. To the extent the Defendants' conduct subsequent to the date of its notice of the Activision Patents is found to be objectively reckless, enhanced damages pursuant to 35 U.S.C. § 284 for Defendants' willful infringement of the Activision Patents;

E. An accounting of all infringing acts including, but not limited to, those acts not presented at trial and an award for Plaintiff's damages for any such acts;

F. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

G. Such other and further relief at law or in equity as the Court deems just and proper.

Dated: August 30, 2012

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

Stamatios Stamoulis #4606

stamoulis@swdelaw.com

Richard C. Weinblatt #5080

weinblatt@swdelaw.com

Two Fox Point Centre

6 Denny Road, Suite 307

Wilmington, DE 19809

Telephone: (302) 999-1540

*Attorneys for Plaintiff*

*Activision TV, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 30, 2012, I electronically filed the above document with the Clerk of Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

/s/ Richard C. Weinblatt  
Richard C. Weinblatt #5080