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12 Preservation Technologies LLC

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SOUTHERN DIVISION**

17 PRESERVATION TECHNOLOGIES
18 LLC,

19 Plaintiff,

20 vs.

21 WALMART STORES, INC; AND
22 VUDU, INC.,

23 Defendants.

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BY _____
2012 SEP 14 PM 4:00
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
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**PLAINTIFF'S ORIGINAL
COMPLAINT FOR PATENT
INFRINGEMENT**

JURY DEMANDED

1 Plaintiff Preservation Technologies LLC (“Preservation Technologies” or
2 “Plaintiff”) alleges as follows:

3
4 **THE PARTIES**

5 1. Plaintiff Preservation Technologies is a limited liability company
6 organized and existing under the laws of the State of Delaware, with its principal
7 place of business at 874 Walker Road, Suite C, Dover, Delaware 19904.

8
9 2. Upon information and belief, Wal-Mart Stores, Inc. (“Wal-Mart”) is a
10 corporation organized and existing under the laws of the State of Delaware, with a
11 place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716.
12 Wal-Mart can be served with process by serving its registered agent for service of
13 process in the State of California, CT Corporation System, 818 W. Seventh Street,
14 Los Angeles, California 90017.

15
16 3. Upon information and belief, VUDU, Inc. (“VUDU”) is a wholly
17 owned subsidiary of Wal-Mart and a corporation organized and existing under the
18 laws of the State of Delaware, with a place of business located at 702 SW 8th
19 Street, Bentonville, Arkansas 72716. VUDU can be served with process by
20 serving its registered agent for service of process in the State of California, Alain
21 Rossmann, 1247 Cowper Street, Palo Alto, California 94301.

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23 4. Collectively, Wal-Mart and VUDU are “Defendants.”
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JURISDICTION AND VENUE

5. This is an action for infringement of United States patents arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of the action under Title 28 U.S.C. §1331 and §1338(a).

6. Upon information and belief, personal jurisdiction by this Court over Defendants is proper based upon their having regularly conducted business, including the acts complained of herein, within the State of California and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in California and in this judicial district.

7. Venue properly lies in this district under the provisions of 28 U.S.C. § 1391 because Defendants have purposely and repeatedly availed itself of the privilege of doing business within the district, and because a substantial part of the events giving rise to the claims herein occurred in this district.

THE PATENTS-IN-SUIT

8. On September 22, 1998, United States Patent No. 5,813,014 (“the ’014 Patent”) was duly and legally issued for a “Method and Apparatus for Management of Multimedia Assets.” The invention disclosed by the ’014 patent is a generalized solution for management of multimedia assets comprising interfaces between various components of a multimedia system. These interfaces provide for communication between the components to accomplish searching for and retrieving multimedia assets. A true and correct copy of the ’014 Patent is attached hereto as Exhibit “A.”

1 9. On November 3, 1998, United States Patent No. 5,832,499 (“the ’499
2 Patent”) was duly and legally issued for a “Digital Library System.” The invention
3 disclosed by the ’499 patent relates to a digital library system that includes systems
4 and mechanisms for capturing, managing, and distributing multimedia data. A true
5 and correct copy of the ’499 Patent is attached hereto as Exhibit “B.”
6

7 10. On July 18, 2000, United States Patent No. 6,092,080 (“the ’080
8 Patent”) was duly and legally issued for a “Digital Library System.” The invention
9 disclosed by the ’080 patent relates to a digital library system that includes systems
10 and mechanisms for capturing, managing, and distributing multimedia data. A true
11 and correct copy of the ’080 Patent is attached hereto as Exhibit “C.”
12

13 11. On March 5, 2002, United States Patent No. 6,353,831 (“the ’831
14 Patent”) was duly and legally issued for a “Digital Library System.” The invention
15 disclosed by the ’831 patent relates to a digital library system that includes systems
16 and mechanisms for capturing, managing, and distributing multimedia data. A true
17 and correct copy of the ’831 Patent is attached hereto as Exhibit “D.”
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19 12. On April 3, 2001, United States Patent No. 6,212,527 (“the ’527
20 Patent”) was duly and legally issued for a “Method and Apparatus for Cataloguing
21 Multimedia Data.” The invention disclosed by the ’527 Patent relates to
22 cataloguing of data such as multimedia data. It comprises a catalog including one
23 or more catalog elements, each of which has one or more attributes. These
24 attributes may be used to build one or more indices that can be used to facilitate
25 catalog access. A true and correct copy of the ’527 Patent is attached hereto as
26 Exhibit “E.”
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BACKGROUND

13. The USC Shoah Foundation developed the patented technology. Its impetus was to gather, catalog and make available for access thousands of video testimonies. In January 2006, the Survivors of the Shoah Visual History Foundation became part of the Dana and David Dornsife College of Letters, Arts and Sciences at the University of Southern California in Los Angeles, where the testimonies in the Visual History Archive are preserved.

14. Preservation Technologies has all substantial rights and interest to the Patents-in-Suit, including all rights to recover for all past and future infringements thereof.

DEFENDANTS' ACTS

15. Defendant manufactures, provides, sells, offers for sale, uses, and/or distributes infringing systems, articles, and methods, as well as provides computerized instructions that direct, control and/or put into use components that practice the claimed inventions. The infringing systems, articles, and methods include, but are not limited to, systems, articles, and methods relating to the cataloguing, organizing, searching, rating, and provisioning of digital multimedia data, including but not limited to Defendants' internet service for streaming movies, television shows, and other videos—available at <http://www.vudu.com> and the root URL <http://www.walmart.com/browse/movies-tv/video-on-demand-by-vudu>—and related home and mobile device-specific applications (the “Accused Systems”). In addition to the foregoing, Defendants also provide related services, specifications, and instructions for the installation and operation of such systems and articles to its end-users and customers. Defendants acquired knowledge of the

1 Patents through direct notice communicated to Defendants' general counsel on
2 August 28, 2012.

3
4 **COUNT 1**

5 ***(Direct and indirect infringement of United States Patent No. 5,813,014)***

6 16. Plaintiff repeats and re-alleges the allegations in paragraphs 1-15 as if
7 set forth in their entirety herein.

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9 17. Preservation Technologies is the owner of all substantial rights and
10 interest to the '014 Patent with the exclusive right to enforce such Patent against
11 infringers, and collect damages for all relevant times, including the right to
12 prosecute this action.

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14 18. Upon information and belief, Defendant, without permission of
15 Preservation Technologies, has been and is presently infringing the '014 Patent, as
16 infringement is defined by 35 U.S.C. § 271(a), including through using, selling,
17 offering for sale, and/or importing systems, articles, and methods infringing one or
18 more claims of the '014 Patent. Defendant is thus liable for direct infringement of
19 the '014 Patent pursuant to 35 U.S.C. § 271(a).

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21 19. Defendant had actual knowledge of the '014 Patent at least as of
22 August 28, 2012.

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24 20. Since obtaining knowledge of the '014 Patent on August 28, 2012,
25 Defendant has indirectly infringed and continues to indirectly infringe the '014
26 Patent by actively inducing infringement by others of one or more of the claims of
27 the '014 Patent in violation of 35 U.S.C. § 271(b) and contributorily infringing one

1 or more of the claims of the '014 Patent based on others' direct infringement in
2 violation of 35 U.S.C. § 271(c).

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4 21. Upon information and belief, Defendant's end-users, customers,
5 and/or third party content delivery network providers, such as Akamai
6 Technologies, Level 3 Communications, and/or Limelight Networks, alone or in
7 conjunction with Defendant directly infringe the '014 Patent by using the Accused
8 Systems or performing one or more steps of a method claimed in the '014 Patent
9 in violation of 35 U.S.C. § 271(a).

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11 22. Defendant's active inducement of infringement and contributory
12 infringement has occurred with actual knowledge of the '014 Patent.

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14 23. Defendant's active inducement of infringement has occurred with the
15 specific intent of encouraging others to infringe, or with willful blindness to the
16 fact that its action would induce infringement of, the '014 Patent, as demonstrated
17 by, inter alia, providing specifications and instructions for the installation and
18 operation of its Accused Systems, including uses that infringe one or more claims
19 of the '014 Patent, and/or causing, urging, encouraging and/or aiding others
20 through contracts, agreements, and/or computerized instructions to perform one or
21 more steps of a method claimed in the '014 Patent.

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23 24. On information and belief, Defendant's contributory infringement has
24 occurred with knowledge that its Accused Systems are a material part of the
25 invention, and are especially made or adapted for a use that infringes one or more
26 claims of the '014 Patent and are not a staple article or commodity of commerce
27 suitable for substantial non-infringing uses.

1 25. As a result of Defendant's infringement of the '014 Patent,
2 Preservation Technologies has suffered monetary damages that are adequate to
3 compensate it for the infringement under 35 U.S.C. § 284, but in no event less than
4 a reasonable royalty.

5
6 26. Upon information and belief, Defendant's infringing conduct will
7 continue unless enjoined by this Court, resulting in continuing harm to Plaintiff.

8
9 **COUNT 2**

10 ***(Direct and indirect infringement of United States Patent No. 5,832,499)***

11 27. Plaintiff repeats and re-alleges the allegations in paragraphs 1-15 as if
12 set forth in their entirety herein.

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14 28. Preservation Technologies is the owner of all substantial rights and
15 interest to the '499 Patent with the exclusive right to enforce such Patent against
16 infringers, and collect damages for all relevant times, including the right to
17 prosecute this action.

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19 29. Upon information and belief, Defendants, without permission of
20 Preservation Technologies, have been and are presently infringing the '499 Patent,
21 as infringement is defined by 35 U.S.C. § 271(a), including through using, selling,
22 offering for sale, and/or importing systems, articles, and methods infringing one or
23 more claims of the '499 Patent. Defendants are thus liable for direct infringement
24 of the '499 Patent pursuant to 35 U.S.C. § 271(a).

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26 30. As a result of Defendants' infringement of the '499 Patent,
27 Preservation Technologies has suffered monetary damages that are adequate to

1 compensate it for the infringement under 35 U.S.C. § 284, but in no event less than
2 a reasonable royalty.

3
4 31. Upon information and belief, Defendants' infringing conduct will
5 continue unless enjoined by this Court, resulting in continuing harm to Plaintiff.

6
7 **COUNT 3**

8 ***(Direct and indirect infringement of United States Patent No. 6,092,080)***

9 32. Plaintiff repeats and re-alleges the allegations in paragraphs 1-15 as if
10 set forth in their entirety herein.

11
12 33. Preservation Technologies is the owner of all substantial rights and
13 interest to the '080 Patent with the exclusive right to enforce such Patent against
14 infringers, and collect damages for all relevant times, including the right to
15 prosecute this action.

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17 34. Upon information and belief, Defendants, without permission of
18 Preservation Technologies, have been and are presently infringing the '080 Patent,
19 as infringement is defined by 35 U.S.C. § 271(a), including through using, selling,
20 offering for sale, and/or importing systems, articles, and methods infringing one or
21 more claims of the '080 Patent. Defendants are thus liable for direct infringement
22 of the '080 Patent pursuant to 35 U.S.C. § 271(a).

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24 35. Defendants had actual knowledge of the '080 Patent at least as of
25 August 28, 2012.

1 36. Since obtaining knowledge of the '080 Patent on August 28, 2012,
2 Defendants have indirectly infringed and continue to indirectly infringe the '080
3 Patent by actively inducing infringement by others of one or more of the claims of
4 the '080 Patent in violation of 35 U.S.C. § 271(b) and contributorily infringing one
5 or more of the claims of the '080 Patent based on others' direct infringement in
6 violation of 35 U.S.C. § 271(c).

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8 37. Upon information and belief, Defendants' end-users and/or customers
9 directly infringe the '080 Patent by using the Accused Systems in violation of 35
10 U.S.C. § 271(a).

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12 38. Defendants' active inducement of infringement and contributory
13 infringement have occurred with actual knowledge of the '080 Patent.

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15 39. Defendants' active inducement of infringement has occurred with the
16 specific intent of encouraging others to infringe, or with willful blindness to the
17 fact that Defendants' actions would induce infringement of, the '080 Patent, as
18 demonstrated by, inter alia, providing specifications and instructions for the
19 installation and operation of Defendants' Accused Systems, including uses that
20 infringe one or more claims of the '080 Patent.

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22 40. On information and belief, Defendants' contributory infringement has
23 occurred with knowledge that its Accused Systems are a material part of the
24 invention, and are especially made or adapted for a use that infringes one or more
25 claims of the '080 Patent and are not a staple article or commodity of commerce
26 suitable for substantial non-infringing uses.

1 41. As a result of Defendants' infringement of the '080 Patent,
2 Preservation Technologies has suffered monetary damages that are adequate to
3 compensate it for the infringement under 35 U.S.C. § 284, but in no event less than
4 a reasonable royalty.

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6 42. Upon information and belief, Defendants' infringing conduct will
7 continue unless enjoined by this Court, resulting in continuing harm to Plaintiff.

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9 **COUNT 4**

10 ***(Direct and indirect infringement of United States Patent No. 6,353,831)***

11 43. Plaintiff repeats and re-alleges the allegations in paragraphs 1-15 as if
12 set forth in their entirety herein.

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14 44. Preservation Technologies is the owner of all substantial rights and
15 interest to the '831 Patent with the exclusive right to enforce such Patent against
16 infringers, and collect damages for all relevant times, including the right to
17 prosecute this action.

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19 45. Upon information and belief, Defendants, without permission of
20 Preservation Technologies, have been and are presently infringing the '831 Patent,
21 as infringement is defined by 35 U.S.C. § 271(a), including through using, selling,
22 offering for sale, and/or importing systems, articles, and methods infringing one or
23 more claims of the '831 Patent. Defendants are thus liable for direct infringement
24 of the '831 Patent pursuant to 35 U.S.C. § 271(a).

25
26 46. Defendants had actual knowledge of the '831 Patent at least as of
27 August 28, 2012.

1 47. Since obtaining knowledge of the '831 Patent on August 28, 2012,
2 Defendants have indirectly infringed and continue to indirectly infringe the '831
3 Patent by actively inducing infringement by others of one or more of the claims of
4 the '831 Patent in violation of 35 U.S.C. § 271(b) and contributorily infringing one
5 or more of the claims of the '831 Patent based on others' direct infringement in
6 violation of 35 U.S.C. § 271(c).

7
8 48. Upon information and belief, Defendants' end-users and/or customers
9 directly infringe the '831 Patent by using the Accused Systems in violation of 35
10 U.S.C. § 271(a).

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12 49. Defendants' active inducement of infringement and contributory
13 infringement have occurred with actual knowledge of the '831 Patent.

14
15 50. Defendants' active inducement of infringement has occurred with the
16 specific intent of encouraging others to infringe, or with willful blindness to the
17 fact that Defendants' actions would induce infringement of, the '831 Patent, as
18 demonstrated by, inter alia, providing specifications and instructions for the
19 installation and operation of Defendants' Accused Systems, including uses that
20 infringe one or more claims of the '831 Patent.

21
22 51. On information and belief, Defendants' contributory infringement has
23 occurred with knowledge that its Accused Systems are a material part of the
24 invention, and are especially made or adapted for a use that infringes one or more
25 claims of the '831 Patent and are not a staple article or commodity of commerce
26 suitable for substantial non-infringing uses.

1 52. As a result of Defendants' infringement of the '831 Patent,
2 Preservation Technologies has suffered monetary damages that are adequate to
3 compensate it for the infringement under 35 U.S.C. § 284, but in no event less than
4 a reasonable royalty.

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6 53. Upon information and belief, Defendants' infringing conduct will
7 continue unless enjoined by this Court, resulting in continuing harm to Plaintiff.
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9 **COUNT 5**

10 *(Direct and indirect infringement of United States Patent No. 6,212,527)*

11 54. Plaintiff repeats and re-alleges the allegations in paragraphs 1-15 as if
12 set forth in their entirety herein.
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14 55. Preservation Technologies is the owner of all substantial rights and
15 interest to the '527 Patent with the exclusive right to enforce such Patent against
16 infringers, and collect damages for all relevant times, including the right to
17 prosecute this action.
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19 56. Upon information and belief, Defendants, without permission of
20 Preservation Technologies, have been and are presently infringing the '527 Patent,
21 as infringement is defined by 35 U.S.C. § 271(a), including through using, selling,
22 offering for sale, and/or importing systems, articles, and methods infringing one or
23 more claims of the '527 Patent. Defendants are thus liable for direct infringement
24 of the '527 Patent pursuant to 35 U.S.C. § 271(a).
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26 57. As a result of Defendants' infringement of the '527 Patent,
27 Preservation Technologies has suffered monetary damages that are adequate to
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1 compensate it for the infringement under 35 U.S.C. § 284, but in no event less than
2 a reasonable royalty.

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4 58. Upon information and belief, Defendants' infringing conduct will
5 continue unless enjoined by this Court, resulting in continuing harm to Plaintiff.

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8 **JURY DEMAND**

9 Plaintiff Preservation Technologies hereby requests a trial by jury pursuant
10 to Rule 38 of the Federal Rules of Civil Procedure.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff Preservation Technologies respectfully requests
14 that the Court:

15
16 A. Permanently enjoin Defendants, its agents, servants, and employees,
17 and all those in privity with Defendants or in active concert and participation with
18 Defendants, from engaging in acts of infringement of the Patents-in-Suit;

19
20 B. Award Plaintiff Preservation Technologies past and future damages
21 together with prejudgment and post-judgment interest to compensate for the
22 infringement by Defendants of the Patents-in-Suit in accordance with 35 U.S.C.
23 § 284;

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25 C. Declare this case exceptional pursuant to 35 U.S.C. § 285; and
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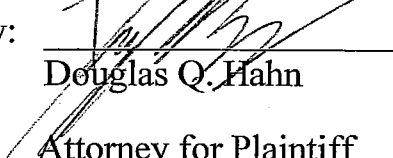
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D. Award Plaintiff Preservation Technologies its costs, disbursements, attorneys' fees, and such further and additional relief as is deemed appropriate by this Court.

Respectfully submitted,

Dated: September 14, 2012

STRADLING YOCCA CARLSON &
RAUTH

By: 

Douglas Q. Hahn
Attorney for Plaintiff
Preservation Technologies LLC