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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISC

23 EMBLAZE LTD.,
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25 Plaintiff,
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27 - against -
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29 MICROSOFT CORPORATION,
30
31 Defendant.

Case No. **C 12 5422**

**COMPLAINT FOR PATENT
INFRINGEMENT**
(Trial by Jury Demanded)

32 Plaintiff Emblaze Ltd. ("Emblaze" or "Plaintiff"), by way of its Complaint against
33 Microsoft Corporation ("Microsoft" or "Defendant"), hereby alleges with knowledge with
34 respect to its own acts and upon information and belief with respect to all others:

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1 **NATURE OF THE ACTION**

2 1. This is an action brought against Defendant Microsoft for infringement of
3 United States Patent No. 6,389,473 (the "'473 Patent"), which is directed to technology used
4 for real-time broadcasting over a network, such as the Internet.

5 **PARTIES**

6 2. Emblaze is an Israeli corporation doing business world-wide in the
7 development and marketing of innovative high-tech technologies and products. Emblaze's
8 main offices are located at 9 Hamenofim Street, Herzliya Pituach 46725, Israel.

9 3. Emblaze is a publicly held company with shares registered and traded on the
10 London Stock Exchange since 1996.

11 4. Microsoft is a corporation organized and existing under the laws of the State of
12 Washington, doing business world-wide, with its principal place of business at One Microsoft
13 Way, Redmond, Washington 98052.

14 **JURISDICTION AND VENUE**

15 5. This is a civil action for patent infringement arising under 35 U.S.C. §§ 100, et
16 seq., and in particular § 271.

17 6. This Court has exclusive subject matter jurisdiction over this action under
18 28 U.S.C. § 1338(a).

19 7. This Court has personal jurisdiction over Microsoft because Microsoft regularly
20 conducts and solicits business in California and derives substantial revenue from goods used or
21 services rendered in California and within this judicial district.

22 8. Venue is proper under 28 U.S.C. §§ 1391(b) and 1400(b) because Microsoft
23 resides in this judicial district pursuant to 28 U.S.C. § 1391(c) and because it has committed
24 acts of infringement in this judicial district.

25 **INTRADISTRICT ASSIGNMENT**

26 9. Because this case is an Intellectual Property Action, it is not subject to
27 assignment to a particular location or division of the Court under Local Rule 3-2(c).

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FACTUAL BACKGROUND

Emblaze and its Patents

10. Emblaze is the owner of the '473 Patent. A true and correct copy of the '473 Patent is attached hereto as Exhibit A.

11. The '473 Patent claims methods for real-time broadcasting over a network, such as the Internet.

12. Emblaze developed the technology described and claimed in the '473 Patent and has used this technology in its products.

13. Emblaze first unveiled the technology described in the '473 Patent in a live video streaming broadcast of the 1998 White House's annual Easter Egg Roll. Emblaze's live streaming technology allows broadcasting of live audio and video to multiple devices, saves on data traffic, does not require devoted streaming servers, and allows reliable streaming even through firewalls.

14. The '473 Patent is valid and enforceable.

15. Emblaze is the assignee and owner of the right, title, and interest in and to the '473 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

Defendant's Infringement of the '473 Patent

16. Microsoft is infringing the '473 Patent under at least 35 U.S.C. §§ 271(a) and (b).

17. Without license or authorization, Microsoft is and has been directly infringing the '473 Patent in the United States, including in this district, by making, using, selling, and/or offering for sale in the United States, including within this judicial district, products that embody the inventions claimed in the '473 Patent and that allow end user devices, for example, Xbox 360 and devices running on Microsoft's Windows 7 and Windows Phone 7.0 Operating Systems, to view live smooth streaming multimedia content. Among such infringing products (collectively, "Infringing Systems") are one or more of the following:

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- a. Computers equipped with Microsoft's Internet Information Server (IIS) 7.0 (and later) and IIS Media Services 3.0 (and later)¹ (collectively, "IIS Computers");
- b. Microsoft's Windows Azure servers equipped with IIS 7.0 (and later) and Windows Azure Media Services² (collectively, "Windows Azure Servers");
- c. Devices equipped with web browsers enabled with Silverlight 2.0 (and later) that can play live smooth streaming multimedia content from IIS Computers and/or Windows Azure Servers; and
- d. Devices that use Microsoft Media Platform: Player Framework (MMPF)³ applications to play live smooth streaming multimedia content from IIS Computers and/or Windows Azure Servers.

18. Without license or authorization, Microsoft is and has been directly infringing the '473 Patent in the United States, including in this district by performing services that use one or more of the Infringing Systems (collectively, the "Infringing Services").

19. The risk that Microsoft's actions constituted infringement of a valid patent was either known or so obvious that it should have been known to Microsoft, for at least the following reasons:

- a. On August 5, 2008, Emblaze offered Microsoft a license for the use of the '473 Patent, *inter alia*, and Microsoft has had knowledge of the '473 Patent at least since that date;
- b. Nevertheless, in 2009, Microsoft announced its live smooth streaming application;

¹ IIS Computers may also work in combination with servers equipped with IIS Application Request Routing 1.0 (and later) or IIS Smooth Streaming Client 1.5 (and later) to facilitate streaming of live content in multiple formats such as, for exemplary purposes only, smooth streaming format for Microsoft Silverlight clients and Apple HTTP Live Streaming ("HLS") format for Apple devices.

² Windows Azure Servers may also work in combination with servers equipped with IIS Application Request Routing 2.0 (and later) or IIS Smooth Streaming Client 1.5 (and later) to facilitate streaming of live content in multiple formats such as, for exemplary purposes only, smooth streaming format for Microsoft Silverlight clients and Apple HTTP Live Streaming ("HLS") format for Apple devices.

³ Such devices include, for exemplary purposes only, devices running the Windows 8 Operating System and Windows Phone 7.0 (and later) Operating System, and the Xbox 360.

- 1 c. In a February 4, 2010, letter, Emblaze again informed Microsoft of the
2 '473 Patent, asserted that Microsoft infringed the '473 patent with its
3 live smooth streaming application, and again offered to license the '473
4 Patent;
- 5 d. Discussions with Microsoft regarding a possible license agreement have
6 failed, and to date, Microsoft has declined to take a license under the
7 '473 Patent;
- 8 e. Microsoft further introduced other Infringing Systems and Infringing
9 Services (*e.g.*, Windows Azure Servers in 2012) after Microsoft had
10 knowledge of the '473 Patent; and
- 11 f. Microsoft has continued making, using, selling, and/or offering for sale
12 in the United States the Infringing Systems and Infringing Services
13 despite an objectively high likelihood that its actions constituted
14 infringement of a valid patent in light of, among other things, Emblaze's
15 letter of February 4, 2010, and subsequent discussions regarding the
16 '473 Patent.

17 20. Microsoft is liable for indirect infringement under 35 U.S.C. § 271(b) because it
18 has knowingly induced the direct infringement of one or more of the claims of the '473 Patent
19 by third parties, including, for example, content delivery network providers, content providers,
20 and/or end users ("Third Party Infringers").

21 21. Third Party Infringers directly infringe the '473 Patent in the United States by
22 making, using, selling, and/or offering for sale in the United States, the Infringing Systems and
23 performing the Infringing Services.

24 22. Microsoft has taken active steps to induce Third Party Infringers to engage in
25 direct infringement of the '473 Patent. For example, Microsoft provides to Third Party
26 Infringers instructions and support, including without limitation technical overviews,
27 deployment guides, websites, monitored online fora, and blogs regarding the Infringing
28 Systems and Infringing Services and their implementation.

1 23. Microsoft possessed specific intent to induce infringement of the method and
2 system claims of the '473 Patent by Third Party Infringers:

3 a. Microsoft had knowledge of the '473 Patent since at least August 5,
4 2008, as identified in paragraph 19(a);

5 b. In 2009, Microsoft announced its live smooth streaming application;

6 c. In a February 4, 2010, letter, Emblaze again informed Microsoft of the
7 '473 Patent, asserted that Microsoft infringed the '473 Patent with its
8 live smooth streaming application, and again offered to license the '473
9 Patent;

10 d. Discussions with Microsoft regarding a possible license agreement have
11 failed, and to date, Microsoft has declined to take a license under the
12 '473 Patent;

13 e. Microsoft knew or should have known that making, using, selling,
14 and/or offering for sale in the United States the Infringing Systems and
15 Infringing Services, would infringe the '473 Patent based on, among
16 other things, Emblaze's February 4, 2010, letter and subsequent
17 conversations between the parties;

18 f. In the alternative, Microsoft has taken the active steps described above
19 with at least willful blindness that Third Party Infringers infringe the
20 inventions claimed in the '473 Patent; and

21 g. Microsoft has knowingly taken active steps to induce Third Party
22 Infringers to engage in direct infringement of the '473 Patent and has
23 done so with an affirmative intent to cause such direct infringement
24 and/or with purposeful, culpable expression and conduct to encourage
25 such direct infringement. Microsoft's specific intent to induce
26 infringement is evidenced by, among other things, Microsoft's
27 providing of instructions to Third Party Infringers knowing that its acts
28 would induce Third Party Infringers to directly infringe the '473 Patent.

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- 1 (ii) A judgment that permanently enjoins Microsoft from further activity or
2 conduct that infringes the claims of the '473 Patent;
- 3 (iii) A judgment awarding Emblaze damages under 35 U.S.C. § 284, but not
4 less than a reasonable royalty, resulting from Microsoft's infringement;
- 5 (iv) A judgment that Microsoft's acts of infringement have been in willful,
6 knowing, and deliberate disregard of Emblaze's patent rights, and
7 awarding Emblaze enhanced damages pursuant to 35 U.S.C. § 284;
- 8 (v) A judgment awarding Emblaze its costs, disbursements, and attorneys'
9 fees incurred in prosecuting this action pursuant to 35 U.S.C. §§ 284
10 and 285;
- 11 (vi) A judgment awarding Emblaze supplemental damages for any
12 continuing infringement up until entry of the final judgment, with an
13 accounting as needed;
- 14 (vii) A judgment awarding Emblaze pre-judgment and post-judgment interest
15 on any damages awarded; and

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(viii) Such other and further relief as the Court deems just and equitable.

DATED: October 18, 2012

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