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8 *Attorneys for Plaintiff*
9 **GOTUIT MEDIA CORPORATION**

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 GOTUIT MEDIA CORPORATION,

14 Plaintiff,

15 v.

16 MICROSOFT CORPORATION,

17 Defendant.

Case No. CV 08-3179 CRB

**ORIGINAL COMPLAINT AND
DEMAND FOR JURY TRIAL**

1 Plaintiff Gotuit Media Corp. (“Gotuit” or “Plaintiff”) hereby files its complaint
2 against Defendant Microsoft Corporation (“Microsoft” or “Defendant”) for patent
3 infringement. For its complaint, Plaintiff alleges, on personal knowledge as to its own acts
4 and on information and belief as to all other matters, as follows:

5 **PARTIES**

6 1. Gotuit is a corporation organized under the laws of the State of Delaware
7 and having its principal place of business in Woburn, Massachusetts. Gotuit is and at all
8 pertinent times was the assignee and owner of the patents at issue in this case.

9 2. Defendant Microsoft is incorporated under the laws of the State of
10 Washington and has its principal place of business in Redmond, Washington.

11 **JURISDICTION AND VENUE**

12 3. This complaint asserts a cause of action for patent infringement under the
13 Patent Act, 35 U.S.C. § 271. This Court has subject matter jurisdiction over this matter
14 by virtue of 28 U.S.C. § 1338(a). Venue is proper in this Court by virtue of 28 U.S.C. §
15 1391(b) and (c) and 28 U.S.C. § 1400(b), in that Microsoft may be found in this district,
16 Microsoft has committed acts of infringement in this district and a substantial part of the
17 events or omissions giving rise to the claim occurred and a substantial part of property
18 that is the subject of the action is situated in this district.

19 4. This Court has personal jurisdiction over Microsoft because it provides
20 infringing products and services in the Northern District of California.

21 **INTRADISTRICT ASSIGNMENT**

22 5. Pursuant to Civil LR 3-2(c), this case should be subject to district-wide
23 assignment because it is an Intellectual Property Action.

1 **BACKGROUND**

2 **The Gotuit Technology And Patents**

3 6. Gotuit has developed innovative technology and products for the
4 enhancement, personalization and monetization of video and other media. Gotuit’s
5 technology employs, among other things, metadata for describing scenes within a video
6 file and tagging of these metadata-enhanced scenes to enable enhanced video viewing,
7 search and navigation, all without altering the underling video file. Gotuit’s products,
8 including its VideoPlayer, VideoMixer, VideoMarker, and VideoDiscovery, incorporate
9 this technology in order to provide superior navigation, video search, targeted
10 advertising, personalized viewing, and virtual remixing.

12 7. Gotuit’s technology has been disclosed in patents including: U.S Patent No.
13 5,892,536 (“’536 Patent”), entitled Systems and Methods for Computer Enhanced Broadcast
14 Monitoring, issued on April 6, 1999; U.S. Patent No. 5,986,692 (“’692 Patent”) entitled
15 Systems and Methods for Computer Enhanced Broadcast Monitoring, issued on November
16 16, 1999; U.S. Patent No. 7,055,166 (“’166 Patent”), entitled Apparatus and Methods for
17 Broadcast Monitoring, issued May 30, 2006. True and correct copies of the ’536 Patent,
18 ’692 Patent, and ’166 Patent (collectively the “Patents in Suit” or “Patents”) are attached as
19 Exhibits A-C respectively. Plaintiff is the legal and rightful owner of each of the Patents
20 identified above. These Patents disclose unique and novel systems, methods and apparatus
21 for monitoring video and other programming, integrating programming signals with selected
22 additional programming signals, and further enhancing the integrated signals to provide
23 programming that is tailored to individual demands, including systems, methods and
24 apparatus for video enhancing with metadata tags in order to enable video search and
25 navigation and provide a personalized viewing experience with targeted advertising.
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Microsoft's Infringing Goods And Services

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2 8. Microsoft recently introduced its “Silverlight” product, which it describes as a
3 “cross-browser, cross-platform implementation . . . for building and delivering the next
4 generation of media experiences and rich interactive applications (RIA) for the Web.
5 Silverlight unifies the capabilities of the server, the Web, and the desktop,” resulting in a
6 platform that allows the creation of “cutting-edge applications” including streaming video
7 and audio. The Silverlight “media ecosystem” (referred-to herein collectively as
8 “Silverlight”) includes Microsoft Expression Studio, for authoring and publishing media
9 experiences, Microsoft Windows Server, for distribution, and Microsoft Silverlight, for client
10 presentation and display. Microsoft will also, in connection with Silverlight, offer the
11 Microsoft Silverlight by Windows Live service, a hosting and streaming solution for
12 delivering the “rich interactive applications” created with Silverlight. Silverlight, like
13 Gotuit’s patented technology and products, provides for video enhancing with metadata tags
14 in order to enable video search and navigation and provide a personalized viewing
15 experience with targeted advertising.
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18 9. In the coming summer of 2008, Microsoft’s MSN will present 2,200 hours of
19 live Summer Olympic coverage, and over 3,000 hours of on-demand Olympic video
20 coverage, on NBCOlympics.com on MSN. This Olympic coverage will be “powered using
21 Microsoft’s Silverlight technology.” Microsoft and MSN, in a “strategic alliance” with
22 NBC, will deliver a “next generation online experience for Olympic fans across the United
23 States.” MSN.com will deliver more than 20 simultaneous live video streams at peak times,
24 while the on-demand video content will include “full-event replays, highlights, features,
25 interviews and encore packages.” Using, Silverlight , metadata markers will be added to
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1 Olympic video, which will be re-broadcast with an index, so that the viewing experience can
2 be customized in order to match individual viewing preferences.

3 **COUNT I**
4 **(Patent Infringement)**

5 10. Plaintiff incorporates by reference the allegations of paragraphs 1 through 9
6 above.

7 11. Plaintiff is the owner of the Patents in Suit.

8 12. Microsoft has infringed and is still infringing the Patents in Suit by, without
9 authority, consent, right or license, and in direct infringement of the Patents in Suit, making,
10 using, offering for sale and/or selling products using the methods, systems and apparatus
11 claimed in the Patents in Suit in this country. This conduct constitutes infringement under 35
12 U.S.C. § 271(a).

13
14 13. In addition, Microsoft has infringed and is still infringing the Patents in Suit in
15 this country, through, *inter alia*, its active inducement of others to make, use, and/or sell the
16 systems, products and methods claimed in one or more claims of the Patents in Suit. This
17 conduct constitutes infringement under 35 U.S.C. § 271(b).

18
19 14. In addition, Microsoft has infringed and is still infringing the Patents in Suit in
20 this country through, *inter alia*, providing and selling goods and services designed for use in
21 practicing one or more claims of the Patents, where the goods and services constitute a
22 material part of the invention and are not staple articles of commerce, and which have no use
23 other than infringing one or more claims of the Patents. Microsoft has committed these acts
24 with knowledge that the goods and services it provides are specially made for use in a
25 manner that directly infringes the Patents. This conduct constitutes infringement under 35
26 U.S.C. § 271(c).

1 15. Microsoft's infringing conduct is unlawful and willful. Microsoft's willful
2 conduct makes this an exceptional case as provided in 35 U.S.C. § 285.

3 16. As a result of Microsoft's infringement, Plaintiff has been damaged, and will
4 continue to be damaged, until Microsoft is enjoined from further acts of infringement.

5 17. Microsoft will continue to infringe the Patents unless enjoined by this Court.
6 Plaintiff faces real, substantial and irreparable damage and injury of a continuing nature from
7 Microsoft's infringement for which Plaintiff has no adequate remedy at law.

8 WHEREFORE, Plaintiff prays:

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10 (a) That this Court find Microsoft has committed acts of patent infringement
11 under the Patent Act, 35 U.S.C. § 271;

12 (b) That this Court enter judgment that:

13 (i) The Patents are valid and enforceable and;

14 (ii) Microsoft has willfully infringed the Patents;

15 (c) That this Court issue a preliminary and final injunction enjoining
16 Microsoft, its officers, agents, servants, employees and attorneys, and any other person in
17 active concert or participation with them, from continuing the acts herein complained of,
18 and more particularly, that Microsoft and such other persons be permanently enjoined
19 and restrained from further infringing the Patents;
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21 (d) That this Court require Microsoft to file with this Court, within thirty (30)
22 days after entry of final judgment, a written statement under oath setting forth in detail
23 the manner in which Microsoft has complied with the injunction;

24 (e) That this Court award Plaintiff the damages to which it is entitled due to
25 Microsoft's patent infringement, with both pre-judgment and post-judgment interest;
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1 (f) That Microsoft's infringement of the Patents be adjudged willful and that
2 the damages to Plaintiff be increased by three times the amount found or assessed
3 pursuant to 35 U.S.C. § 284;

4 (g) That this be adjudged an exceptional case and that Plaintiff be awarded its
5 attorney's fees in this action pursuant to 35 U.S.C. § 285;

6 (h) That this Court award Plaintiff its costs and disbursements in this civil
7 action, including reasonable attorney's fees; and

8 (i) That this Court grant Plaintiff such other and further relief, in law or in
9 equity, both general and special, to which it may be entitled.
10

11 Dated: July 2, 2008

12 Respectfully submitted,

13
14 /s/ Bruce Wecker

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DEMAND FOR JURY TRIAL

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Plaintiff, by its undersigned attorneys, demands a trial by jury on all issues so triable.

Dated: July 2, 2008

Respectfully submitted,

/s/ Bruce Wecker
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