

COPY
ORIGINAL

2012 APR 19 P 1:18
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

PSG

1 DURIE TANGRI LLP
2 DARALYN J. DURIE (SBN 169825)
3 ddurie@durietangri.com
4 SONALI D. MAITRA (SBN 254896)
5 smaitra@durietangri.com
6 217 Leidesdorff Street
7 San Francisco, CA 94111
8 Telephone: 415-362-6666
9 Facsimile: 415-236-6300

6 Attorneys for Plaintiff
7 ZYNGA INC.

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

CV Case No. 12 1952

11 ZYNGA INC.,

12 Plaintiff,

13 v.

14 LEXOS MEDIA, INC.,

15 Defendant.

16 **COMPLAINT FOR DECLARATORY
17 JUDGMENT OF NONINFRINGEMENT AND
18 INVALIDITY OF U.S. PATENT NOS.
19 5,995,102, 6,065,057, 6,118,449, 7,111,254, AND
20 7,975,241**

16
17
18
19
20
21
22
23
24
25
26
27
28

1 As a technology leader and patent holder, Zynga Inc. (“Zynga”) vigorously supports the valid
2 enforcement of intellectual property rights. Zynga will take appropriate action to protect itself, however,
3 when others try to misuse such rights as Lexos Media, Inc. (“Lexos”) has attempted with its repeated
4 allegations of patent infringement against Zynga. Zynga thus initiates this action to seek relief from the
5 Court, including declarations that Lexos’s patents are not valid and not infringed by Zynga.

6 **NATURE OF THE ACTION**

7 1. This is an action arising under the patent laws of the United States for declaratory
8 judgment of non-infringement and invalidity of United States Patent Nos. 5,995,102, 6,065,057,
9 6,118,449, 7,111,254, and 7,975,241 (the ’102 patent, the ’057 patent, the ’449 patent, the ’254 patent,
10 and the ’241 patent, respectively and, collectively, the patents-in-suit).

11 **THE PARTIES**

12 2. Plaintiff Zynga is a Delaware corporation with its principal place of business at 699
13 Eighth Street, San Francisco, California.

14 3. On information and belief, Defendant Lexos is a Delaware corporation with its principal
15 places of business at 6214 Presidential Court, Suite C, Fort Myers, Florida.

16 **JURISDICTION AND VENUE**

17 4. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and
18 under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

19 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a),
20 2201(a), and 2202.

21 6. On information and belief, this Court has personal jurisdiction over Lexos because Lexos
22 is doing business in this Judicial District. Lexos nationally distributes a product called “AdBull.” On
23 information and belief, the patents-in-suit are based on AdBull-related technology. On information and
24 belief, Lexos Media announced the launch of AdBull in San Francisco, California, and directly solicited
25 customers in San Francisco, California to license its purportedly-patented technology. Specifically, on
26 information and belief, Craig Pizaris-Henderson, Lexos’s founder and CEO, and John Moran, Lexos’s
27 Chief Revenue Officer, participated in the launch in San Francisco of AdBull and met with publishers
28 who wanted to discuss licensing AdBull in this judicial district. In addition, as discussed in more detail

1 below, Lexos has made overtures to Zynga to license its technology along with the patents-in-suit, which
2 overtures Zynga has rejected.

3 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c).

4 8. An immediate, real, and justiciable controversy exists between Zynga and Lexos as to (1)
5 whether the '102, '057, '449, '254 and '241 patents are valid, and (2) whether Zynga infringes these
6 patents.

7 INTRA-DISTRICT ASSIGNMENT

8 9. Pursuant to Civil Local Rule 3-2(c), this is an Intellectual Property Action assigned on a
9 district-wide basis.

10 FACTUAL BACKGROUND

11 10. The '102 patent is entitled "Server System and Method for Modifying a Cursor Image."
12 The '057 patent is entitled "Method for Authenticating Modification of a Cursor Image." The '449
13 patent is entitled "Server System and Method for Modifying a Cursor Image." The '254 patent is entitled
14 "System for Replacing a Cursor Image in Connection with Displaying the Contents of a Web Page."
15 And the '241 patent is entitled "System for Replacing a Cursor Image in Connection with Displaying the
16 Contents of a Web Page."

17 11. Lexos has written to Zynga threatening litigation on the patents-in-suit: "Lexos is the
18 owner of several patents on core technology related to cursor-based content delivery and presentation,
19 including [the patents-in-suit]." Lexos further stated that Zynga's cursor technology "appears to infringe
20 one or more claims of [the patents-in-suit]." It asked Zynga to confirm that, if Zynga was not interested
21 in pursuing a license with Lexos, it would "respect Lexos's intellectual property rights and discontinue
22 all use of cursor-based content that is within the scope of any claim of [the patents-in-suit]." Lexos
23 further threatened that even if Zynga so confirmed, "Lexos may still pursue recovery for Zynga's prior
24 infringement of the [patents-in-suit]." Lexos specifically identified Zynga's game Farmville as
25 potentially infringing. Thereafter, Lexos invited Zynga to license its technology and the associated
26 patent rights. It also provided Zynga with infringement charts that claimed to show how Zynga's game
27 Farmville infringed its patents. Zynga declined this invitation.

28 12. On information and belief, Lexos owns the patents-in-suit.

1 G. A declaration that Zynga has not infringed and is not infringing any claims of the '254
2 patent;

3 H. A declaration that all claims of the '254 patent are invalid;

4 I. A declaration that Zynga has not infringed and is not infringing any claims of the '241
5 patent;

6 J. A declaration that all of the claims of the '241 patent are invalid;

7 K. An order declaring that Zynga is the prevailing party to this action and that this is an
8 exceptional case, awarding Zynga its costs, expenses, disbursements, and reasonable attorneys' fees
9 under 25 U.S.C. § 285 and all other applicable statutes, rules, and common law;

10 L. An order declaring that Lexos pay all costs associated with this action; and

11 M. An order granting Zynga such other and additional relief as the Court deems just and
12 proper.

13 Dated: April 19, 2012

DURIE TANGRI LLP



14 By: _____
15

16 DARALYN J. DURIE
17 SONALI D. MAITRA

18 Attorneys for Plaintiff
19 ZYNGA INC.
20
21
22
23
24
25
26
27
28