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Attorneys for Plaintiff
EPL Holdings, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EPL HOLDINGS, LLC, a Delaware limited liability company,

Plaintiff,

vs.

APPLE, INC., a California corporation,

Defendant.

CV 12-04306
COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

ADR
E-filing

Filed
AUG 15 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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Plaintiff EPL Holdings, LLC ("EPL") complains and alleges as follows against Defendant Apple, Inc. ("Apple"):

1 dollars in U.S. sales annually. Apple took these actions with blatant knowledge and disregard for
2 the legal rights of Enounce.

3 16. Moreover, Apple began to advertise and tout the ability of its digital media players
4 to play back media files at variable speeds, the precise technology found in the Enounce patents.
5 For example, Apple describes its QuickTime product as a “sophisticated media player” and
6 further states, “Want to speed through a movie or slow things down? A handy slider lets you set
7 playback from 1/2x to 3x the normal speed.” (<http://www.apple.com/quicktime/what-is/>).

8 17. Similarly, Apple instructs iPhone users to “Set the playback speed” to play back
9 media files at variable speeds using the technology found in the Enounce patents:

10 Tap . Tap again to change the speed.

11 = Play at double speed.

12 = Play at half speed.

13 = Play at normal speed.

14 (iPhone User Guide For iOS 5.1 Software, at 77).

15 18. While Apple enjoyed billions of dollars of sales, Mr. Hejna and his company have
16 suffered and continue to suffer due to the inability to realize the full and fair value of the
17 patented inventions.

18 **COUNT I**

19 **INFRINGEMENT OF U.S. PATENT NO. 5,175,769**

20 19. Plaintiff EPL realleges and incorporates by reference paragraphs 1-18 above, as if
21 fully set forth herein.

22 20. EPL is the owner by assignment from Enounce, Inc., including the right to sue for
23 past damages, of United States Patent No. 5,175,769, titled “Method for Time-Scale
24 Modification of Signals.” The ’769 patent was duly and legally issued by the United States
25 Patent and Trademark Office on December 29, 1992. A true and correct copy of the ’769 patent
26 is included as Exhibit A.

27 21. On information and belief, Apple infringed the ’769 patent in the State of
28

1 California, in this District, and elsewhere in the United States, by, among other things, making,
2 using, selling, offering for sale, and/or importing into the United States products with variable
3 speed playback capability. Such products include, by way of example and without limitation,
4 Apple iPhone, iPod Touch, and iPad, the use of which were covered by one or more claims of
5 the '769 patent, including but not limited to claim 1. By making, using, importing, offering for
6 sale, and/or selling such products and services that are covered by one or more claims of the '769
7 patent, Apple injured EPL and is thus liable to EPL for infringement of the '769 patent pursuant
8 to 35 U.S.C. § 271.
9

10 22. On information and belief, Apple induced others to infringe the '769 patent in
11 violation of 35 U.S.C. § 271 by taking active steps to encourage and facilitate direct infringement
12 by others of at least claim 1 of the '769 patent with knowledge of that infringement, such as,
13 upon information and belief, by instructing users of the Apple iPhone, iPod Touch, and iPad to
14 play back digital media at faster- and/or slower-than-normal rates using the methods claimed in
15 the '769 patent. Apple's customers who played back digital media at faster- and/or slower-than-
16 normal rates directly infringed the claims of the '769 patent, including but not limited to claim 1.
17

18 23. EPL's predecessor in interest, Enounce, Inc., put Apple on notice of the '769 patent
19 during the meetings in 2002 between Mr. Hejna and members of Apple's engineering and design
20 teams for the Apple iPod and other products, such members including at least Mr. Fadell and Mr.
21 Lindahl.

22 24. Apple's infringement of the '769 patent was without regard to such prior
23 knowledge and communications with Enounce and Mr. Hejna. Thus, Apple's infringement was
24 willful.

25 25. As a result of Apple's acts of infringement, Plaintiff EPL has suffered substantial
26 damages in an amount to be proven at trial, but in no event less than a reasonable royalty for the
27 use made of the invention by Apple, together with interest and costs as fixed by the Court.
28

1 costs as fixed by the Court.

2 31. Plaintiff EPL and its predecessor in interest Enounce have complied with the
3 requirements of 35 U.S.C. § 287.

4 32. Plaintiff EPL has been irreparably harmed by Apple's act of infringement, and will
5 continue to be harmed unless an injunction is issued enjoining Apple and its agents, servants,
6 employees, representatives, affiliates, and all others acting or in active concert therewith from
7 infringing the '903 patent.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff EPL Holdings, LLC respectfully requests that this Court enter:

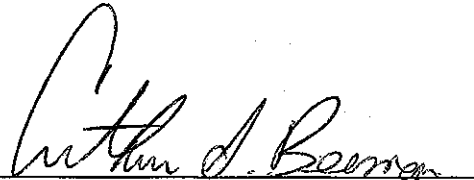
- 11 a. A judgment in favor of Plaintiff that Apple has infringed, either literally and/or
12 under the doctrine of equivalents, the '769 patent and the '903 patent;
- 13 b. A judgment that Apple induced infringement of the '769 patent;
- 14 c. A judgment that Apple willfully infringed the '769 patent;
- 15 d. A permanent injunction enjoining Apple and its officers, directors, agents, servants,
16 affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active
17 concert therewith from infringement, inducing the infringement of, and/or contributing to the
18 infringement of the '903 patent;
- 19 e. A judgment and order requiring Apple to pay Plaintiff its damages, costs, expenses,
20 and prejudgment and post-judgment interest for Apple's infringement of the '769 patent and the
21 '903 patent as provided under 35 U.S.C. § 284;
- 22 f. A judgment and order that this case is exceptional and requiring Defendant Apple
23 to pay Plaintiff reasonable experts' fees and attorneys' fees pursuant to 35 U.S.C. § 285; and
- 24 g. Any and all other relief as the Court may deem appropriate and just under the
25 circumstances.

26 **DEMAND FOR JURY TRIAL**

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Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: August 15, 2012

By: 

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