

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**AARON CLARK,**

Plaintiff,

v.

**THE WALT DISNEY COMPANY; JAKKS  
PACIFIC, INC.; PLAY ALONG TOYS;  
KB TOYS; AMAZON.COM; and TOYS ‘R  
US,**

Defendants.

Case No. 2:08CV982

**MOTION TO TAKE JUDICIAL NOTICE  
FILED IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS**

Defendants JAKKS Pacific, Inc., Play Along Toys, and Toys “R” Us, respectfully submit this Motion to Take Judicial Notice filed in support of Defendant’s Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). The basis for this motion is set forth in the accompanying Memorandum of Law.

Dated: January 2, 2008

Respectfully submitted,

By: /s/ Michael C. Lueder

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/s/ Grant E. Kinsel

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

Defendants respectfully request the Court to take judicial notice of the materials set forth below on the grounds described below:

Kinsel Decl. Ex. 1, U.S. Patent No. 5,548,272, on the grounds that this document was attached as Exhibit “H” to the Complaint. *Bovee v. Coopers & Lybrand C.P.A.*, 272 F.3d 356, 360 (6th Cir. 2001) (Court may take judicial notice of materials integral to complaint); *F.R.E. 201*.

Kinsel Decl. Exs. 2 and 3, on the grounds that these documents were attached as Exhibits “A” and “B” to the Complaint. *Bovee v. Coopers & Lybrand C.P.A.*, 272 F.3d 356, 360 (6th Cir. 2001) (Court may take judicial notice of materials intergral to complaint); *F.R.E. 201*.

Kinsel Decl. Ex. 4 on the grounds that these materials are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *F.R.E. 201*.

Kinsel Decl. Ex. 5 on the grounds that portions of these materials were attached as Exhibit “H” to the Complaint. “It is well established that a Rule 12(b)(6) motion attacks the sufficiency of the pleadings, and a court ordinarily may not consider documents outside the four corners of the complaint. *Weiner v. Klais & Co.*, 108 F.3d 86, 88 (6th Cir.1997). However, documents a defendant attaches to a motion to dismiss are considered part of the pleadings if they are (1) referred to in the plaintiff’s complaint and (2) are central to his claims. *Id.* ‘Otherwise, a plaintiff with a legally deficient claim could survive a motion to dismiss simply by failing to attach a dispositive document upon which it relied.’” *Doe v. SexSearch.com*, 502 F.Supp.2d 719, 728 (N.D. Ohio 2007); *see also, Bovee v. Coopers & Lybrand C.P.A.*, 272 F.3d 356, 360 (6th Cir. 2001).

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**CERTIFICATE OF SERVICE**

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served today with a copy of this document via the Court's CM/ECF system per Local Rule 5.2. Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: January 2, 2009

/s/ Grant E. Kinsel

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