

**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

**PLAINTIFF AARON CLARK’S SUPPLEMENTAL RESPONSE TO
JAKKS PACIFIC, INC.’S FIRST SET OF INTERROGATORIES**

[Nos. 1 - 23]

Now comes Plaintiff Aaron Clark (hereinafter “Plaintiff”), pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rules 26.1 and 26.2 of the Local Rules of the United States District Court for the Southern District of Ohio (hereinafter the “Local Rules”) and respectfully submits the following objections and supplemental responses to Defendant JAKKS Pacific Inc.’s (hereinafter “Defendant”) First Set of Interrogatories (hereinafter the “Interrogatories”) Nos. 8 and 9. Plaintiff’s supplemental responses are in addition to the objections and responses previously set forth and are not intended to waive any previously raised objections.

GENERAL OBJECTIONS

To avoid undue and unnecessary repetition, Plaintiff makes the following general and continuing objections to the Interrogatories. All general and continuing objections apply to each response to the Interrogatories. Although these objections may be specifically referred to elsewhere in a Response, failure to mention a general and continuing objection should not be construed as a waiver of that objection. Moreover, the assertion of the same, similar, or additional objections in response to specific Interrogatories does not waive, limit, or modify any of these General Objections.

1. Plaintiff objects to Defendant’s Interrogatories to the extent they impose burdens beyond the obligations of discovery as proscribed by the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Southern District of Ohio and are not reasonably calculated to lead to the discovery of admissible evidence.

2. Plaintiff objects to the Interrogatories to the extent that they are redundant and request the same information.

3. Plaintiff objects to Defendant's Interrogatories insofar as they seek information and/or documents not in Plaintiff's possession and/or control, or information and/or documents solely in Defendant's possession.

4. Plaintiff objects to Defendant's Interrogatories insofar as they seek, or can be construed to seek, the disclosure of information subject to the attorney-client privilege, work product doctrine or any other applicable privilege, or information protected from discovery because it reflects the impressions, conclusions, opinions, or legal research or theories of Plaintiff's attorneys. Any inadvertent disclosure of privileged information shall not constitute a waiver of any otherwise valid claim of privilege, and any failure to assert a privilege as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication so protected.

5. Plaintiff objects to the Interrogatories to the extent that they are vague, ambiguous, overly broad, unduly burdensome, argumentative, or premature.

6. Plaintiff objects to the Interrogatories to the extent that they seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

7. Plaintiff objects to the Interrogatories to the extent that they do not set forth a reasonable time period to which the Interrogatories relate on the ground that such Interrogatories are overly broad and unduly burdensome and seek information that is either relevant or reasonably calculated to lead to the discovery of admissible evidence.

8. Plaintiff objects to Defendant's Interrogatories to the extent they seek information not readily available to Plaintiff, but which may become available as discovery in this action progresses.

9. Plaintiff objects to Interrogatories to the extent that they seek information not in Plaintiff's possession, custody, or control. Plaintiff objects further to the Interrogatories to the

extent that they seek information already known to Defendants or as easily obtained by Defendants as by Plaintiff or that may be obtained more readily from third parties.

10. Plaintiff expressly reserves all objections as to competency, relevancy, materiality, and admissibility of the answers contained herein and any objections to future discovery requests.

11. Plaintiff objects to the Interrogatories to the extent that they ask Plaintiff to identify “all” references, extrinsic evidence, persons, analyses and documents or “any” produces, devices or apparatus, opinions, inventions, persons and documents relating to a specific topic on the grounds that such Interrogatories are vague, ambiguous, overbroad, unduly burdensome, and oppressive, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that Plaintiff agrees to disclose information in response to specific Interrogatories using these terms that are not otherwise objectionable, Plaintiff will disclose such information that refers or relates in a reasonably direct manner to the specified topic.

12. Plaintiff objects to the definition of “You” and “Your” to the extent that they are intended to encompass any entities or persons other than Plaintiff. Plaintiff’s supplemental responses and objections herein are provided on behalf of Plaintiff only, and are not on behalf of any person or entity other than Plaintiff.

13. Plaintiff objects to the definition of “Inotrend” to the extent that it is intended to encompass any entities or person other than Plaintiff. Plaintiff’s supplemental responses and objections herein are provided on behalf of Plaintiff only, and are not on behalf of any person or entity other than Plaintiff.

14. Plaintiff objects to the definition of “Prior Art” on the grounds that it is vague, ambiguous, and overbroad. To the extent that Plaintiff agrees to disclose information in response

to specific Discovery Request using the term that are not otherwise objectionable, Plaintiff will disclose such information that refers or relates in a reasonably direct manner to the specified topic.

15. Plaintiff objects to the definition of “Related Patent Matters” on the grounds that it is vague, ambiguous, and overbroad. To the extent that Plaintiff agrees to disclose information in response to specific Discovery Request using the term that are not otherwise objectionable, Plaintiff will disclose such information that refers or relates in a reasonably direct manner to the specified topic.

16. Plaintiff objects to the definition of “Covered Product” on the grounds that it is vague, ambiguous, and overbroad. To the extent that Plaintiff agrees to disclose information in response to specific Discovery Request using the term that are not otherwise objectionable, Plaintiff will disclose such information that refers or relates in a reasonably direct manner to the specified topic.

17. Plaintiff objects to the definition of “Inventor” on the grounds that it is vague, ambiguous, and overbroad and to the extent that it is intended to encompass any entities or person other than Plaintiff. Plaintiff’s supplemental responses and objections herein are provided on behalf of Plaintiff only, and are not on behalf of any person or entity other than Plaintiff. To the extent that Plaintiff agrees to disclose information in response to specific Discovery Request using the term that are not otherwise objectionable, Plaintiff will disclose such information that refers or relates in a reasonably direct manner to the specified topic.

18. Plaintiff objects to the definition of “document” on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, and seeks to impose an excessive discovery burden on Plaintiff, and seeks information not reasonably calculated to lead to the discovery of

admissible evidence. Plaintiff further objects to the definition to the extent it encompasses information subject to the attorney-client privilege and work-product privilege.

19. Plaintiff objects to the Interrogatories to the extent that they call for legal conclusions.

20. Plaintiff objects to the Interrogatories to the extent that they assume fact(s) not within Plaintiff's knowledge or otherwise premature in light of the ongoing nature of discovery in this matter.

21. Plaintiff reserves the right to challenge the competence, relevance, materiality, or admissibility of, or to object on any grounds to the use of, the information disclosed by Plaintiff by in this or any subsequent proceeding or trial.

22. Plaintiff's supplemental responses, as set forth herein, are based upon information presently known to Plaintiff and his attorneys. Plaintiff's supplemental responses are set forth herein without prejudice to Plaintiff's right to assert additional objections or supplemental responses should Plaintiff discover additional information or grounds for objections.

SPECIFIC SUPPLEMENTAL RESPONSES AND OBJECTIONS

Subject to and without waiver of the foregoing General Objections, Plaintiff hereby specifically responds and objects to the Interrogatories as follows:

INTERROGATORIES

1. State each claim in the Patent-in-Suit that is allegedly infringed by each Defendant, including for each claim, the applicable statutory subsections of 35 U.S.C. § 271 asserted (the "Asserted Claims").

Answer: *See, General Objections including, but not limited to, General Objections 3-5, 7-9 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent,*

Plaintiff states Claim One and Claim Five. The applicable statutory subsections of 35 U.S.C. § 271 would be subsections A, B and C and possibly others upon further discovery and legal review.

2. State separately for each Asserted Claim identified in Your response to Interrogatory No. 1, above, each accused apparatus, product, device, process, method, act or other instrumentality (“Accused Instrumentality”) of each Defendant of which You are aware. In responding to this interrogatory, Your identification shall be as specific as possible, with each Accused Instrumentality identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process.

Answer: *See, General Objections including, but not limited to, General Objections 2-5, 7-9, 12 and 19.* Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the ‘272 Patent, Plaintiff states with regard to Claim One, Defendants have a poster including poster art; a housing comprised of a second material which is attached to the poster art; a speaker that is concealed between said housing and poster; an electric circuit including sound production component that is operatively connected to said speaker and concealed between housing and poster; a trigger that is attached to the electric circuit and concealed within the housing which can be activated through the housing to produce sound; and the surface of the housing is prepared with matching art substantially the same as the surrounding art on the poster as to blend in artistically with the poster. In other words, pink housing matches pink on the poster and is designed to look attractive and artistically blend with the poster in order to look attractive as a product.

Without waiving the foregoing General Objections with regard to Claim Five, Defendants have used a method of make a talking poster comprising of the steps of (1) providing a poster with poster art; (2) providing human actuatable sound components adapted to be contained on said poster; (3) providing a housing which is secured to a portion of the poster; and (4) have applied matching art to the housing substantially the same as the surrounding art on the poster as to blend in artistically with the poster. In other words, pink housing matches pink on the poster and is designed to look attractive and artistically blend with the poster in order to look attractive as a product.

Supplemental Answer: Without waiving the foregoing objections, the two infringing posters known to Plaintiff at this time are The Hannah Montana Singing Concert Series Poster and the Cheetah Girls Singing Concert Series Poster. The model number for each is unknown at this time. Plaintiff will supplement responses as discovery continues in this matter.

3. A chart identifying specifically where each limitation of each Asserted Claim is found within each Accused Instrumentality, including for each limitation that You contend is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function.

Answer: *See, General Objections including, but not limited to, General Objections 2-5, 7-9, 12 and 19.* Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, please see response to Interrogatory No. 2.

Supplemental Answer: Without waiving the foregoing objections, please see attached Diagram.

4. For each Asserted Claim that You allege to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect

infringer that contribute to or are inducing that direct infringement. Insofar as You contend that direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.

Answer: *See, General Objections including, but not limited to, General Objections 2-5, 7-9, 12 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff states he has been directly infringed in the manner set forth in the Answer to Interrogatory No. 2. Defendants have manufactured, sold, licensed, distributed, imported, etc., Plaintiff's patent protected Talking Poster. Further discovery will reveal the extent to which each Defendant is involved and the role of each Defendant in directly infringing.*

Supplemental Answer: *Without waiving the foregoing objections, please see attached Chart.*

5. State whether each limitation of each Asserted Claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality, for each limitation identified as present under the doctrine of equivalents, state Your complete factual bases for such assertion.

Answer: *See, General Objections including, but not limited to, General Objections 2-5, 7-9, 12 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff believes that the infringement is literal as indicated in Interrogatory No. 2 and at minimal, it satisfies the doctrine of equivalents.*

Supplemental Answer: *Without waiving the foregoing objections, Plaintiff states: (1) In addition to literally infringing as provided in detail in the Interrogatories Nos. 2, 3 and 4, the infringing posters also perform substantially the same function as the '272 Patent. The function of the Patented Talking Posters is to allow for electronic audio feedback related to the printed*

image which the poster displays. Example; The Patent Protected N'sync Talking Poster marketed in the past by my company (Plaintiff) displays the image of the pop music group N'sync, and played a portion of their hit song which can be heard audibly when pushing the button of the attached electronic unit. The function of the Defendants infringing Talking Posters is to allow for electronic audio feedback related to the printed image which the poster displays. Example; the infringing Hannah Montana Talking Poster marketed by the Defendants displays the image of pop star Hannah Montana, and plays a portion of her hit song which can be heard audibly when pushing the button of the attached electronic unit. The Defendants infringing product performs the same function as the patent protected product and violates the criteria of the doctrine of equivalents.

(2) The infringing posters also perform in substantially the same way. The manner in which the patent protected talking poster achieves the functional end product is to print a poster with an image and attach an electronic unit to the poster. The sound relating to the image can be heard by pushing desired area on the electronic unit. The sound stops on its own when the sound byte is over. The electronic module which houses the electronics and is attached to the poster is colored in a manner so as to blend attractively with the image as a marketable finished product so as not to be an eyesore. Patent protected designs of the housing unit marketed by my company (Plaintiff) have included different sizes, shapes and colors including monochrome colors of a pantone color found elsewhere on the poster, or contrast with colors on the poster so as to attractively blend.

Note: When the word blend is referred to as a visual, as in art, patterns, colors, looks, styles etc. it is considered as an intransitive verb. Definition of Blend from Webster's Dictionary as Intransitive Verb (adjective as used and intended above and in patent); *intransitive verb* 1 a: to mingle intimately or unobtrusively b: to combine into an integrated whole 2: to produce a

harmonious effect. Definition of Blend from American Heritage Dictionary of the English Language < 4th Edition Copyright 2000 by Houghton Mifflin Company Dictionary; *v.intr.* - To create a harmonious effect or result: *picked a tie that blended with the jacket.* Definition of Blend from Random House Unabridged Dictionary Verb (used without object) -To fit or relate harmoniously; accord; go –*the brown sofa did not blend with the purple wall.*

The manner in which the Defendants infringing Talking poster achieves the functional end product is to print a poster with an image and attach an electronic unit to the poster. The sound relating to the image can be heard by pushing desired area on the electronic unit. The sound stops on its own when the sound byte is over. The electronic module which houses the electronics and is attached to the Defendants infringing poster is colored in a manner so as to blend attractively with the image as a marketable finished product so as not to be an eyesore. Defendants infringing designs of the housing unit have included monochrome colors of an exact pantone color found elsewhere on the poster, or colors in contrast with colors on the poster so as to attractively blend. Clearly Defendants infringing Talking Poster accomplishes the desired end product in the *Exact* same way as mine (Plaintiff), much less in substantially the same way as is all that is required by the doctrine of equivalents, and thus violates the criteria of the doctrine of equivalents.

(3) The infringing posters also yield substantially the same result. My (Plaintiff) Patent Protected Talking Poster can be displayed, the button of the attached sound unit can be pushed and when this is done, audio relating to the printed image displayed on the poster can be heard. Audio stops on its own when the sound byte is over. It can be enjoyable, entertaining, or annoying depending on the attitude of the audience interacting with the product. The housing of the attached electronics “goes” with the poster, designed to give an attractive, marketable overall appearance to the product, and does not stick out as an eyesore which would make the product

look clumsy and unprofessional. It should be ridiculously obvious to all that no company would intentionally design a housing unit which did not blend, match or “go” with the artwork with which it was designed to interact.

In the same way, yielding the same result, Defendants Infringing Talking Poster can be displayed, the button of the attached sound unit can be pushed and when this is done, audio relating to the printed image displayed on the poster can be heard. Audio stops on its own when the sound byte is over. It can be enjoyable, entertaining, or annoying depending on the attitude of the audience interacting with the product. The housing of the attached electronics “goes” with the poster, designed to give an attractive, marketable overall appearance to the product, and does not stick out as an eyesore which would make the product look clumsy and unprofessional. Again, it should be ridiculously obvious to all that no company would intentionally design a housing unit which did not blend, match or “go” with the artwork with which it was designed to interact. Of course Defendants designed their product and attached electronic housing unit in the same manner. Are we to believe that the artwork designers, product engineers, sales people, and corporate officers of Defendants said amongst themselves “lets intentionally assure that the attached electronic housing unit on this Talking Poster be designed not to match or blend with the surrounding art in any way, we want this product to look terrible!” Of course, not. That is why defendants’ pantone color of the attached electronic housing unit matches the pantone color found elsewhere in the poster and blends with the surrounding poster art. Thus, yielding the same result as our (Plaintiff) patented product. Clearly, Defendants infringing Talking Poster yields substantially the same result as my (Plaintiff) Patent Protected Talking Poster.

6. State the priority date to which each Asserted Claim is allegedly entitled.

Answer: See, General Objections including, but not limited to, General Objection 5. “Priority date” is not defined above. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the ‘272 Patent, the priority date is Spring of 1992.

7. Identify separately, and for each Asserted Claim, each of Your apparatus(es), product(s), device(s), process(es), method(s), act(s) or other instrumentality(ies) that practice any claimed invention in the Patent-in-Suit.

Answer: See, General Objections including, but not limited to, General Objections 2-5, 7-9, 12 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the ‘272 Patent, see response to Interrogatory No. 2.

Supplemental Answer: Without waiving the foregoing objections, Plaintiff states:

Looney Tunes “Bugs Bunny” Talking Poster
Looney Tunes “Taz” Talking Poster
Looney Tunes “Tweety & Sylvester” Talking Poster
Looney Tunes “Marvin Martian” Talking Poster
Batman Forever “Montage” Talking Poster
Batman Forever “Riddler” Talking Poster
Space Jam #1 Talking Poster
Space Jam #2 Talking Poster
Bump In The Night Talking Poster
Sailor Moon Talking Poster
Power Rangers Talking Poster
Austin Powers “Austin Powers” Talking Poster
Austin Powers “Dr. Evil” Talking Poster
Southpark “Cartman” Talking Poster
Southpark “Kenny” Talking Poster
Southpark “Stan” Talking Poster
Southpark “Kyle” Talking Poster
“Nsync” Talking Poster #1
“Nsync” Talking Poster #2
“Backstreet Boys” Talking Poster
“Ricky Martin” Talking Poster
Ohio State University Talking Poster
Jurassic Park – Talking Poster (Patent Technology Licensed, manufactured and Distributed by OSP Co.)
Godzilla- Talking Poster (Patent Technology Licensed, Manufactured and Distributed by Resaurus Corp)

8. Separately, and for each Asserted Claim, state Your construction of each and every limitation contained therein, including for each term which You contend is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) corresponding to that term's function.

Answer: *See, General Objections including, but not limited to, General Objections 3-5, 7-9, 12 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, see response to Interrogatory Nos. 2 and 7.*

Supplemental Answer: *Without waiving the foregoing objections and incorporating Supplemental Response No. 3, which was a diagram of two of the Infringing Products known to Plaintiff at this time which specifically identified where each limitation of each Asserted Claim is found within each Accused Instrumentality, and identifying the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function, please see attached Claim Construction Chart.*

9. For each construction stated in response to Interrogatory No. 8, above, identify all references from the specification or prosecution history that support Your proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and Prior Art, and testimony of percipient and expert witnesses. Identify all extrinsic evidence by production number or by producing a copy if not previously produced. With respect to any supporting witness, percipient or expert, provide a description of the substance of that witness' proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction.

Answer: *See, General Objections including, but not limited to, General Objections 2-5, 7-9, 11, 12, 14 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion.*

However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, see responses to Interrogatory Nos. 2 and 7. In addition and in support of Plaintiff's claims, there are several references in the patent history referring to the general term and idea of enabling a talking poster as a new concept and invention. The intent was to cover and protect the concept of a talking poster as broadly as possible and to cover possible future embodiments that may be enabled due to as yet unseen advances in printing and packaging technology to house the electronics. Furthermore, reference can be found stating that matching art itself would not be considered an inventive step because the function of the device would not be modified from prior inventions. So, ultimately, the patent was received upon convincing the patent office of the uniqueness of the overall "spirit of the invention," with which they agreed.

Supplemental Answer: Without waiving the foregoing objections and incorporating Supplemental Response No. 3 and 8, please see attached Claim Construction Chart.

10. Identify all persons with knowledge of the conception, design or reduction to practice of any inventions described in the Patent-in-Suit, including any Covered Product.

Answer: See, General Objections including, but not limited to, General Objections 3-5, 7-9, 11, 14, 16 and 19. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff states Jim Langman (helped develop artwork for prototypes) and Bob Setzer (assisted in finding funding for Talking Poster).

11. Identify and describe all analyses performed to assess with any of Defendants' products infringe the Patent-in-Suit, including the identity of who performed such analyses, and when.

Answer: See, General Objections including, but not limited to, General Objections 2-5, 7-9, 11, 14, 16 and 19. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff performed an analysis in the middle of 2008. Plaintiff

identified that Defendants' poster has artwork, a sound module containing electronics which is designed to blend into and match with the artwork, able to be activated, and attached to the poster art. Additional analysis has been performed by other parties to which all non-privileged expert witness testimony responsive to this Interrogatory will be produced 60 days before the deadline for completing all discovery per the Court's Preliminary Pretrial Order.

12. Describe any circumstances in which you contend that Defendants' sale of any allegedly infringing products caused You to lose any sale, including without limitation, dates, customer names, quantity of lost sales and any facts, evidence or documents which support Your contention that You were unable to make such sales due to Defendants' sale of allegedly infringing products.

Answer: See, General Objections including, but not limited to, General Objections 3-5, 7-9, 11, 14, 16 and 19. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff states that given the fact that Defendants have many licenses with many companies, this prevents Plaintiff from ever obtaining licensing from these companies. Given that the companies with which Defendants have obtained licensing deals are of the largest, lucrative and most sought after, Plaintiff's largest opportunities for top properties have been taken away, thereby limiting our potential. Additionally, when large retailers are already working with a partner on a novelty item such as the talking posters, they do not typically purchase multiple SKU's of similar items from different companies. So, generally, since Defendants are selling to or distributing or selling a talking poster to large retail outlets, Plaintiff's largest most lucrative retail opportunities are severely hampered if not destroyed. Specifically, when a company has approached Plaintiff with the desire to license Plaintiff's patent rights and pursue obtaining Hannah Montana rights for manufacture and distribution to large retailers, the fact that Hannah Montana talking posters were already on the market and the

stores they wished to sell to were already carrying them, this killed the deal and eliminated our income potential from the deal.

Moreover, given the size and market presence of Defendants as a team, one of the largest toy manufacturing companies, largest licensing companies, and largest toy and novelty retailers in the world, the power, leverage and industry position held by each, when combined as a team, easily and clearly creates an overwhelming perception to the public, other retailers, and other licensees that they are the owners and purveyors of such product and any inherent intellectual property rights that go with it.

13. State Your monthly and annual gross and net sales, by dollars and unit volume for each Covered Product.

Answer: See, General Objections including, but not limited to, General Objections 3-5, 7-9 and 12. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff states his sales were not tracked by monthly or annual basis, but rather by project (or property). Some projects were very lucrative grossing and netting hundreds of thousands of dollars. Some projects resulted in a loss of money.

Supplemental Answer: Without waiving the foregoing objections, Plaintiff states that the estimated gross for each Covered Product are:

Looney Tunes "Bugs Bunny" Talking Poster \$100,000
Looney Tunes "Taz" Talking Poster \$100,000
Looney Tunes "Tweety & Sylvester" Talking Poster \$100,000
Looney Tunes "Marvin Martian" Talking Poster \$100,000
Batman Forever "Montage" Talking Poster \$250,000
Batman Forever "Riddler" Talking Poster \$250,000
Space Jam #1 Talking Poster \$250,000
Space Jam #2 Talking Poster \$250,000
Bump In The Night Talking Poster \$0
Sailor Moon Talking Poster \$20,000
Power Rangers Talking Poster \$250,000
Austin Powers "Austin Powers" Talking Poster \$250,000
Austin Powers "Dr. Evil" Talking Poster \$250,000
Southpark "Cartman" Talking Poster \$150,000

Southpark “Kenny” Talking Poster \$100,000
Southpark “Stan” Talking Poster \$75,000
Southpark “Kyle” Talking Poster \$75,000
“Nsync” Talking Poster #1 \$250,000
“Nsync” Talking Poster #2 \$500,000
“Backstreet Boys” Talking Poster \$150,000
“Ricky Martin” Talking Poster \$75,000
Ohio State University Talking Poster \$0
Jurassic Park – Talking Poster (Patent Technology Licensed, manufactured and Distributed by OSP Co.) – information in possession of OSP
Godzilla- Talking Poster (Patent Technology Licensed, Manufactured and Distributed by Resaurus Corp) – information in possession of Resaurus

14. State Your monthly and annual cost of goods, per unit and overall, for each Covered Product, including without limitation any royalty payments.

Answer: See, General Objections including, but not limited to, General Objections 3-5, 7-9 and 12. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the ‘272 Patent, Plaintiff states that the per unit cost was from \$3.50 to \$5.50, depending on licensing fees and quantities manufactured. Licensing fees to licensors, such as Warner Brothers, ranged from \$.50 cents, to \$.75 cents a unit.

Supplemental Answer: Without waiving the foregoing objections, see attached Excel Spreadsheet.

15. Describe the complete chain of title for the Patent-in-Suit that leads to You, including any assignments or licenses for the Patent-in-Suit to or from You, or to or from Inotrend, or any other person or entity.

Answer: See, General Objections including, but not limited to, General Objections 3-5, 7-9, and 12. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the ‘272 Patent, Plaintiff states that the patent was assigned to Inotrend, then to Aaron Clark, then jointly to Aaron Clark and John Peirano.

16. Identify any person(s) You are aware of who is of ordinary skill in the art with reference to the inventions described in the Patent-in-Suit, and describe the qualifications that render him/her of ordinary skill in the art.

Answer: *See, General Objections including, but not limited to, General Objections 4-5, 7-9, and 12. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff identifies himself as the Inventor and Assignee of the '272 Patent.*

17. Give the date, identity of Your sales representative, identity of the purchaser, and describe the circumstances of Your first offer to sell and first sale of any Covered Product.

Answer: *See, General Objections including, but not limited to, General Objections 4-5, 7-9, and 12. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff states the purchaser was WalMart. Plaintiff sold the account in 1994 or 1995.*

18. Describe the circumstances of when You first made a poster with a sound housing attached to it, including without limitation, the dates and names of all persons involved with designing and developing the product and their respective roles.

Answer: *See, General Objections including, but not limited to, General Objections 5, 7, 11 and 12. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff did a report in college which detailed that small companies were doing big business with big retailers such as Wal-Mart, Kmart and Target stores. One area it appeared a new company could compete was with a new invention. The toy category appeared to allow itself to new inventions by entrepreneurs. The three top toys at the time were singing or talking toys (Talking Barney, etc.). In the spring of 1992 Plaintiff noticed posters of Michael Jordan, Nirvana, etc. (on his younger brother's bedroom wall) and surmised this could be his big*

invention that he could take to the big retailers. Plaintiff purchased a talking story book and removed the sound device from the book. Plaintiff took poster from his brother's wall and glued the sound unit from the book on to the poster to create his very first prototype.

After a great deal of research, Plaintiff found that a talking poster of this manner had never been done, much less patented. Plaintiff set about protecting his idea for a talking poster and further developing the look. After a couple of years of hard work, Plaintiff had his patent, his finished product and his first orders to big retailers.

19. State the date on which a Covered Product was first marked with a patent number of the Patent-in-Suit.

Answer: *See, General Objections including, but not limited to, General Objection 16. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff states the Fourth Quarter 1996.*

20. Describe Your complete basis for monetary recovery as requested in the prayer in the Complaint, including without limitation, how You were damaged, what royalty rate You contend You are entitled to, the date on which You contend Your right to collect damages began, and any documents that support such a theory.

Answer: *See, General Objections including, but not limited to, General Objections 3, 5, 7-8 and 12. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the '272 Patent, Plaintiff states see responses to Interrogatories Nos. 2, 4, 7, 9, and 12. Additional basis for monetary recovery may be discovered through the process of discovery. Plaintiff is entitled to a royalty rate consistent with that which Plaintiff paid to licensors for properties and that Plaintiff has been paid in the past when companies such as OSP and Resaurus have licensed our patent rights. The documents supporting such theory would be the '272 Patent.*

Also if willful conduct is confirmed, through further discovery, by Defendants TWDC and Toys “R” Us, then Plaintiff is entitled to punitive damages.

21. Identify all of Your Covered Products.

Answer: *See, General Objections including, but not limited to, General Objections 2, 5, 7, 11-12 and 16. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the ‘272 Patent, Plaintiff states the Talking Poster.*

Supplemental Answer: *Without waiving the foregoing objections, see response to Interrogatory No. 7.*

22. State the complete factual basis for Your contention that Defendants have violated the Lanham Act, and in Your response, identify all witnesses who have knowledge of such facts, and all documents relating, in any way, to such facts.

Answer: *See, General Objections including, but not limited to, General Objections 2, 4-5, 7-9, 11-12 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion. However, since Plaintiff is the Inventor and has the best knowledge as to the claims within the ‘272 Patent, see responses to Interrogatories Nos. 2, 4, 7, 9, 12 and 20 and additional information discovered through further discovery.*

Supplemental Answer: *Without waiving the foregoing objections, Defendants have violated the Lanham act in that their failure to license and properly mark product with patent number and company information as legally required constitutes false designation. Misrepresentation of having approval to produce, market, distribute and sell our patented intellectual property or misrepresentation of the fact that such approval was not required constitutes false designation and deception as to origin, ownership, or sponsorship. This damaged us (Plaintiff) in our ability to procure investment, sign licensing deals for the technology, licensing deals for top properties*

(like Hannah Montana owned by Disney) and our ability to sell to lucrative retailers (like Toys R Us).

Further, it is believed that upon presentation of our Patented Talking Poster to Disney and to Toys R Us, the companies intentionally turned us down when we presented opportunity to license and distribute our product. Then later upon Jakks seeing our patented product in the market place, all parties intentionally, and with full knowledge of the protected status of the product, conspired and coordinated between them to enter into agreements to manufacture, license and sell/ distribute infringing product each in their respective roles. In other words, we were turned down, then our concept was in bad faith taken, and copied and marketed in a coordinated effort for profit, to defendants benefit and our detriment. When this occurred, we lost revenue opportunities and our patent lost perceived value in the eyes of the market since large, industry controlling companies were ignoring it.

Witnesses to one or more of the violations above:

- (1) John Drew – J Drew and Associates;
- (2) Kelly Kirk;
- (3) Todd Wiggington- The Sign Guys;
- (4) Terry Brodtkin – Terry Brodtkin and Associates;
- (5) Bob Setzer- Capital Plus Partners;
- (6) June Archer- Disney Licensing;
- (7) John Sullivan – Toys R Us;
- (8) Trends International;
- (9) Funky Posters;
- (10) More to be discovered

Documents previously produced.

23. State the complete factual basis for Your contention that Defendants have violated the Ohio Deceptive Trade Practices Act, and in Your response, identify all witnesses who have knowledge of such facts, and all documents relating, in any way, to such facts.

Answer: See, General Objections including, but not limited to, General Objections 2, 4-5, 7-9, 11-12 and 19. Plaintiff is not an attorney and this question calls for a legal conclusion.

Supplemental Answer: Without waiving the foregoing objections, Defendants have represented that their infringing Talking Posters are a concept, creation and product which they own. The consumer has been lead to presume that any patent owner of such concept or proprietary rights has given consent and approval. Moreover, parties we have been attempting to engage in licensing agreements have been, or have potentially been confused as to false representations of Defendants unauthorized product in the marketplace.

Defendants have represented to the public that they have permission, affiliation or rights of some kind to produce the infringing patent protected product; and or have represented that is acceptable to produce a patent protected product without need for consent, approval, affiliation, etc. Additionally, defendants have represented their product has characteristics and benefits it does not actually have in that they display an electronic housing which shows areas for two speaker “holes” for sound to escape, representing there are two speakers inside. Upon opening the housing one will discover there is only one speaker inside the housing and the other speaker hole area in the housing is deceptively designed to give the appearance of holding another speaker, yet there is none. Defendants have intentionally designed the product to deceive the consumer.

Furthermore, Defendants have represented their product is of a particular style when it is not as in that they display an electronic housing which shows areas for two speaker “holes” for sound to escape, representing there are two speakers inside. Upon opening the housing one will discover there is only one speaker inside the housing and the other speaker hole area in the housing is deceptively designed to give the appearance of holding another speaker, yet there is none. Defendants have intentionally designed the product to deceive the consumer. Thus, Defendants have attempted to give the impression that their product delivers sound “in stereo” (with two speakers) quality when it does not.

Defendants' misrepresentation of having approval to produce, market, distribute and sell Plaintiff's patented intellectual property; or misrepresentation of the fact that such approval was not required, hurt our ability to procure investment, sign licensing deals for the technology, licensing deals for top properties (like Hannah Montana owned by Disney) and our ability to sell to lucrative retailers (like Toys R Us). Further, it is believed that upon presentation of the Patented Talking Poster to Disney and to Toys R Us, and the companies intentionally turned down opportunity to license and distribute such product. Then later upon Jakks seeing our patented product in the market place, all parties intentionally, and with full knowledge of the protected status of the product, conspired and coordinated between themselves to enter into agreements to manufacture, license and sell/ distribute infringing product each in their respective roles. In other words, we were turned down, then our concept was in bad faith taken, and copied and marketed in a coordinated effort for their profit to defendants benefit and our detriment. Our patent lost perceived value in the marketplace after these events as industry giants were walking all over it and ignoring it.

Witnesses to one or more of the violations above are indentified in Interrogatory No. 22.

Documents previously provided.

AS TO ALL OBJECTIONS,



Sharlene I. Chance (0070999)

Respectfully submitted,



Brian E. Dickerson (0069227)
Lead Trial Attorney

Sharlene I. Chance (0070999)
Kevin R. Conners (0042012)
THE DICKERSON LAW GROUP, P.A.
5003 Horizons Drive, Suite 101
Columbus, OH 43220
Telephone: (614) 339-5370
Facsimile: (614) 442-5942
bdickerson@dickerson-law.com
shance@dickerson-law.com
kconners@dickerson-law.com
Attorneys for Plaintiff Aaron Clark

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2009, I served via electronic mail and Regular U.S.

Mail, postage prepaid, the foregoing upon:

Michael C. Lueder
Trial Attorney
mlueder@foley.com
Foley & Lardner LLP
777 E. Wisconsin Avenue
Milwaukee, WE 53202

Grant Kinsel
Pro Hac Vice
GKinsel@foley.com
Foley & Lardner LLP
555 South Flower Street
Suite 3500
Los Angeles, CA 90071



Sharlene I. Chance (0069227)
Attorney for Plaintiff Aaron Clark