

**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

JAKKS PACIFIC, INC.’S FIRST SET OF INTERROGATORIES

[Nos. 1 - 23]

TO PLAINTIFF AARON CLARK, AND TO HIS ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant JAKKS Pacific, Inc. (“JAKKS”), hereby requests that Plaintiff Aaron Clark (“Clark”), answer separately and individually, each of the following interrogatories, in writing, under oath within thirty days from service hereof.

DEFINITIONS

1. The term “Clark,” “You” or “Your” means Plaintiff Aaron Clark and any agent, employee, servant, representative, or any other person or entity in privity with or controlled by Clark.

2. The term “Inotrend” means Inotrend, Inc., and any parent, affiliate, or subsidiary (whether owned in whole or in part), any agent, officer, director, employee, servant, representative, shareholder, and any predecessor company, and any other person or entity in privity with or controlled by Inotrend.

3. The term “Defendants” means the Defendants named in this action, and any parent, affiliate, subsidiary (whether owned in whole or in part), agent, officer, director, employee, servant, representative, shareholder and any predecessor company, and any other person or entity in privity with or controlled by any Defendant.

4. The term “Prior Art” means the same thing as used in 35 U.S.C. § 103, and includes every item or event within the scope of 35 U.S.C. § 102, as those statutory sections apply to the Patent-in-Suit, defined below.

5. “Patent-in-Suit” means U.S. Patent No. 5,548,272.

6. “Related Patent Matters” means any U.S. continuation, continuation-in-part, or divisional patent application claiming priority from a patent application resulting in the Patent-

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:

Dated: February 11, 2009

Respectfully submitted,

By: /s/ Michael C. Lueder

Michael C. Lueder
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Trial Attorney

/s/ Grant E. Kinsel

Grant Kinsel
(Pro Hac Vice)
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555 South Flower St., Suite 3500
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*Attorneys for JAKKS Pacific, Inc., Play
Along Toys, KB Toys, and Toys "R" Us, The
Walt Disney Company*

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 by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: February 11, 2009

/s/ Grant E. Kinsel

<p>Brian Edward Dickerson The Dickerson Law Group 5003 Horizons Drive Suite 200 Upper Arlington , OH 43220 614-339-5370 Fax: 614-442-5942 bdickerson@dickerson-law.com</p> <p>Kevin R Connors 5003 Horizons Drive Suite 101 Columbus , OH 43220 614-562-5877 kevinconnors@kevinconnors.com</p> <p>Sharlene I Chance The Dickerson Law Group 5003 Horizons Drive Suite 200 Columbus , OH 43220 614-339-5370 Fax: 614-442-5942 schance@dickerson-law.com</p>	<p>Attorneys for Plaintiff Aaron Clark</p>
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**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 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 responses to Defendant JAKKS Pacific Inc.’s (hereinafter “Defendant”) First Set of Interrogatories (hereinafter the “Interrogatories”).

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

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.

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.

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.

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.*

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.*

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.

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.

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

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.

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.*

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.*

Respectfully submitted,



Brian E. Dickerson (0069227)
Lead Trial Attorney
Sharlene I. Chance (0070999)
Kevin R. Conners (0042012)
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Attorneys for Plaintiff Aaron Clark

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2009, I served via electronic mail and Regular U.S.

Mail, postage prepaid, the foregoing upon:

Michael C. Lueder
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Grant Kinsel
Pro Hac Vice
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Sharlene I. Chance (0069227)
Attorney for Plaintiff Aaron Clark



ATTORNEYS AT LAW

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March 13, 2009

CLIENT/MATTER NUMBER
094622-0101

Sharlene I. Chance
Dickerson Law Group
5003 Horizons Drive
Suite 101
Columbus, Ohio 43220

Re: *Clark v. The Walt Disney Company, et al.*
US District Court, Southern District of Ohio Case No. 2:08CV982

Dear Sharlene:

We write pursuant to Local Rule 37.1 to request a conference to attempt to resolve our concerns with Plaintiff's responses to discovery requests served today.

We believe Plaintiff's discovery responses are inadequate in multiple respects and must be immediately supplemented. Specifically:

1. *Requests for Production*

In Plaintiff's responses to JAKKS' requests for production, Plaintiff indicates that he will produce responsive documents, but no such documents have been produced. When can we expect to receive the documents? Please confirm that we will receive all responsive documents by Friday, March 20, 2009. After we have received and reviewed the documents, we will inform you as to whether we believe additional productions are necessary.

2. *Interrogatories*

Plaintiff's responses to virtually all of the interrogatories are insufficient. For instance, Interrogatory No. 2 asks Plaintiff to identify each "accused apparatus, product, device, process, method, act or other instrumentality" and to make that identification as specifically as possible by identifying the "name or model number" of each accused product. Plaintiff has not identified even a single specific product in his response. We are entitled to know what products are specifically accused of infringement. This response must be supplemented.

Interrogatory No. 3 asks Plaintiff to identify where each limitation from the patent-in-suit can be found on each accused infringing product. Plaintiff's response simply incorporates his response to interrogatory number 2, which itself merely regurgitates the elements of the patent. This response provides no substantive information and must be supplemented.

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WASHINGTON, D.C.



FOLEY & LARDNER LLP

Sharlene I. Chance
March 13, 2009
Page 2

Interrogatory No. 4 asks Plaintiff to identify specific acts of indirect infringement. Plaintiff identifies 35 U.S.C. s 271 (b) and (c) as relevant to this case (see, response to interrogatory number 1). Therefore, Plaintiff must be aware of acts of indirect infringement, but no such acts have been stated in response to this interrogatory. This response must be supplemented.

Interrogatory No. 5 asks Plaintiff to state the complete basis on which he claims that any element is present in the accused products under the doctrine of equivalents and to state the complete factual basis supporting that contention. Plaintiff claims that some elements are present under the doctrine of equivalents, but fails to identify what those elements are or what facts support that contention. This response must be supplemented.

Interrogatory No. 7 asks Plaintiff to identify all of his products that are covered by the patent-in-suit. Plaintiff has not identified a single product. Please confirm that none of Plaintiff's products are covered by the patent-in-suit. Alternatively, if Plaintiff's products are covered by the patent-in-suit, then those products must be identified with specificity.

Interrogatory Nos. 8 and 9 ask Plaintiff to state Plaintiff's construction of the terms of the patent and to identify all supporting intrinsic and extrinsic evidence. Plaintiff's response offers no construction whatsoever, and fails to provide citations to any supporting intrinsic or extrinsic evidence. Defendants are entitled to know how Plaintiff construes the terms of the patent, and what evidence supports that construction. Plaintiff, therefore, must supplement both responses.

Interrogatory No. 13 asks Plaintiff to state his gross and net sales. Plaintiff has provided essentially no response at all. This response must be supplemented.

Interrogatory No. 14 asks Plaintiff to state his costs of goods sold for each covered product. Plaintiff identifies no covered products and does not state the cost of goods sold for any particular units. This response must be supplemented.

Interrogatory No. 21 asks Plaintiff to identify all of his covered products. Plaintiff provides no substantive answer. This response must be supplemented to specifically identify all models of supposedly covered products.

Interrogatory No. 22 asks Plaintiff to identify all facts, witnesses, and documents supporting his claim that Defendants violated the Lanham Act. No specific facts of any kind have been provided and no witnesses or facts identified. This response must be supplemented.

Interrogatory No. 23 asks for facts, documents and witnesses supporting Plaintiff's claim relating to the Ohio Deceptive Trade Practices Act. Plaintiff has simply objected, providing no substantive response. This response must be supplemented to provide a substantive response.



FOLEY & LARDNER LLP

Sharlene I. Chance
March 13, 2009
Page 3

Finally, the interrogatory responses have not been verified. Federal Rule of Civil Procedure 33(b)(5) requires that responses to interrogatories be verified. Please confirm that a verification will be immediately forthcoming.

As you can see, Plaintiff's responses to JAKKS' interrogatories are woefully incomplete. Please confirm that the responses will be supplemented by no later than March 20, 2009. In the alternative, please contact me to arrange for a telephone conference to further discuss these responses. If we have not heard from you by the end of the day March 16, 2009, we will assume that the parties have exhausted their efforts to reach an informal resolution to the discovery disputes and will immediately move to compel.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Grant E. Kinsel', written over the typed name below.

Grant E. Kinsel



COLUMBUS • NAPLES

Sharlene I. Chance
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(614) 339-5373 (direct dial)

March 16, 2009

VIA ELECTRONIC MAIL

Grant Kinsel
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555 South Flower Street
Suite 3500
Los Angeles, CA 90071

RE: *Clark v. The Walt Disney Company, et al*
Case No.: 2:08CV982
United States District Court for the Southern District of Ohio

Dear Mr. Kinsel,

Our office is in receipt of your electronic letter dated March 13, 2009 regarding Plaintiff Aaron Clark's responses to Defendant JAKKS Pacific Inc.s' discovery requests and hereby responds accordingly:

1. *Requests for Production*

Plaintiff's discovery responses provides that Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, that are responsive to Defendants JAKKS' requests. Plaintiff is not intentionally withholding the production of documents which are responsive to the discovery requests. Because the documents Defendant demands are voluminous, it is unfair and burdensome for Plaintiff to have to pay for copying and shipping of documents to Los Angeles, California. Rule 34 allows the Defendant "to inspect and copy" relevant documents and does not require Plaintiff to pay for copying costs of voluminous materials. Fed.R.Civ.P. 34. As such, Defendant may have access to the documents demanded at Plaintiff's counsel's office. Defendant may inspect and copy whatever documents it wishes by either bringing its own portable copying machine or by paying Plaintiff's counsel reasonable copying costs.

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dickerson-law.com

This matter is before the Southern District of Ohio. Under Rule 34, Plaintiff is only required to make the requested documents available for inspection and copying. As such, documents which are responsive are available for inspection at the undersigned Columbus, Ohio office. Please confirm when someone from Foley & Lardner LLP's Los Angeles office or local counsel would like to make the necessary arrangements to inspect and copy the documents at the undersigned Columbus office.

2. Interrogatories

Plaintiff's responses to the interrogatories posed are not insufficient. Plaintiff answered each question to the best of his ability and although the questions called for a legal conclusion, Plaintiff has expressed his opinion as to what constitutes infringement by the Defendants. Answers to interrogatories may well narrow the issues, however an answer which would require legal conclusions is best left for Plaintiff's attorneys. *United States v. Selby*, 25 F.R.D. 12 (N.D. Ohio 1960). Furthermore, Plaintiff reserved the right to amend any answers to his interrogatory pending further discovery.

Interrogatory No. 2 specifically asked Plaintiff to:

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

Plaintiff responded to Interrogatory No. 2 to the best of his ability. Plaintiff is unable, at this stage of the discovery to identify each "accused apparatus, product, device, process, method, act or other instrumentality." The two accused products or infringing posters, to which Defendant is already aware of, have been identified and provided to Defendant in the Amended Complaint and Rule 26 Disclosures. These two examples of the infringing posters are not an exclusive sampling of each infringing poster. The interrogatory asked for information if known to Plaintiff. Plaintiff responded accordingly and even more Defendant is already aware of the products that are infringing.

Interrogatory No. 3 asks Plaintiff to provide "a chart identifying specifically where each limitation of each Asserted Claim is found within each Accused Instrumentality." In patent suits, charts covering tests of subject patent could not be obtained under Rule 33, but is better accomplished under Rule 34. Irrespective, Plaintiff responded sufficiently and to the best of his ability to Interrogatory No. 3 with his answer provided in Interrogatory No. 2.

Plaintiff responded to Interrogatory Nos. 4, 5 and 8 to the best of his ability and Plaintiff's response will be supplemental as he discovers additional information. Plaintiff has previously responded to Interrogatory Nos. 4, 5 and 8 as provided for in his answer to Interrogatory No. 2.

Interrogatory Nos. 7 and 21 asks Plaintiff to identify his covered products. Plaintiff's response confirms that Plaintiff's Talking Poster is covered by the patent-in-suit. The covered product has been identified in the Amended Complaint and in Rule 26 disclosures. Plaintiff responded to these interrogatories to the best of his ability.

As to Interrogatory No. 9, Defendant argues that Plaintiff's response must be supplemented as Plaintiff failed to state the construction of the asserted claims and failed to provide supporting intrinsic and extrinsic evidence. The fact that Defendant is not satisfied with the content of Plaintiff's answer does not amount to insufficiency. Plaintiff responded to the best of his ability, provided references to the prosecution history of the '272 Patent and further suitably answered Interrogatory No. 9 in his answer to Interrogatory No. 2.


Defendant raises issues with Plaintiff's responses to Interrogatory Nos. 13 and 14. Plaintiff adequately responded to both Interrogatories posed. Interrogatory No. 13 requested Plaintiff's gross and net sales. Plaintiff responded that his sales are not tracked by monthly or annual basis, but rather by project or property. Interrogatory No. 14 asked for Plaintiff's monthly and annual costs of goods for each Covered Products, including royalty payments. Plaintiff identified the per unit costs for the Covered Product. Plaintiff responded to the Interrogatory as posed. If Defendant wishes to seek additional or follow up information based on Plaintiff's answers to Interrogatory Nos. 13 and 14, Defendant is free to propound such request upon Plaintiff.

Finally, Plaintiff's responses to Interrogatory Nos. 22 and 23 involved mixed questions of law and fact. Although these responses call for legal conclusions, Plaintiff previously provided answers responsive to Defendant's requests in his responses to Interrogatory Nos. Nos. 2, 4, 7, 9, 12 and 20 and further provided that he will supplement his answers with additional information, if any, discovered through further discovery.

At this stage, your complaints about Plaintiff's responses are without merit. Plaintiff has fully complied with his discovery obligations and responses. Plaintiff has acted in good faith and provided responses to the best of his ability with the information the he has before him at this state of the proceedings.

Plaintiff's verification is attached.

Thank you,


Sharlene I. Chance

Encl.

cc: Brian E. Dickerson (via e-mail)



ATTORNEYS AT LAW

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March 17, 2009

CLIENT/MATTER NUMBER
094622-0101

VIA E-MAIL

Magistrate Mark Abel
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208 U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215

Re: *Clark v. The Walt Disney Company, et al.*
US District Court, Southern District of Ohio Case No. 2:08CV982

Dear Magistrate Abel:

We represent the Defendants in the above-entitled action. We write in advance of the discovery conference set for March 19, 2009 at 2:30 p.m. (Eastern Time). We appreciate the Court's willingness to review this matter on such short notice.

The issue at hand concerns Plaintiff's refusal to provide substantive responses to JAKKS Pacific, Inc.'s ("JAKKS") First Set of Interrogatories. As requested in the Preliminary Pretrial Order [Docket No. 20], JAKKS attaches to this letter the following materials: (1) Plaintiff's Responses to JAKKS' Interrogatories (Ex. "1"); (2) letter from Grant Kinsel to Sharlene Chance dated March 13, 2009 (Ex. "2"); and (3) letter from Sharlene Chance to Grant Kinsel dated March 16, 2008 (Ex. "3"). JAKKS also attaches as Exhibit "4," U.S. Patent No. 5,548,272 (the "'272 patent"). The Interrogatories to which Plaintiff has refused to substantively respond are: 2, 3, 4, 5, 7, 8, 9, 13, 14, 21, 22, and 23.

Background

This is a patent infringement case in which Plaintiff accuses Defendants of infringing the '272 patent. The '272 patent concerns a poster with a sound producing mechanism in which the housing for the sound device is covered by art that matches the portions of the poster art over which the housing is placed. The concept is that by covering the sound device's housing with art that matches the art over which the housing is placed, the sound device will blend into the surrounding art work.

The accused posters in this case have sound devices, but they do not infringe the '272 patent. Indeed, as will become clear through the course of this case, this lawsuit is frivolous, and there is *no* plausible reading of the '272 patent under which the accused posters infringe.

On February 11, 2009, JAKKS propounded twenty three basic interrogatories to Plaintiff in an attempt to get at the root of this case so that it can be disposed of through summary judgment (if

BOSTON
BRUSSELS
CHICAGO
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LOS ANGELES
MADISON
MIAMI

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NEW YORK
ORLANDO
SACRAMENTO

SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
SHANGHAI

SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO
WASHINGTON, D.C.



FOLEY & LARDNER LLP

Magistrate Mark Abel

March 17, 2009

Page 2

necessary).¹ The interrogatories (and document demands that were propounded with the interrogatories) were modeled on the mandatory disclosures required by a patent plaintiff pursuant to the local patent rules for the Northern District of California and the Eastern District of Texas. That is, both courts recognize that there is some information that is so fundamental in a patent infringement action that a patent plaintiff must disclose that information without awaiting discovery requests. For instance, the rules mandate disclosures such as identification of the accused instrumentalities, a claim chart showing where and how the accused instrumentalities allegedly infringe, whether the doctrine of equivalents is relevant and if so how, how the plaintiff construes the claims at issue, and what evidence such a construction is based upon. *See, e.g.*, ND Cal. Local Patent Rule 3-1, *et seq.*; and ED Tex Patent Rules 3-1, *et seq.* The interrogatories in this case requested the same fundamental information—information necessary to enable JAKKS to prepare its defense and move for summary judgment to terminate this frivolous lawsuit. Unfortunately, Plaintiff has refused to take his disclosure obligations seriously, and refuses to provide substantive responses. This conference was, therefore, necessary.

Interrogatories At Issue

Interrogatory No. 2:

Interrogatory No. 2 requests that Plaintiff identify with specificity the products that he accuses of infringing. His response fails to identify any products. His counsel's letter (Ex. 3) explains that JAKKS should read the complaint and that JAKKS knows which products allegedly infringe. Obviously, JAKKS is entitled to a sworn response as to the specific products—by model number if possible—that Plaintiff accuses of infringement. Plaintiff must be required to identify, under oath, what products he accuses of infringement.

Interrogatory No. 3:

Interrogatory No. 3 requests that Plaintiff provide a chart identifying where on the accused products each element of the claims at issue can be found. Again, this is fundamental stuff, required as a matter of course in every patent case. For instance, both the Northern District of California and the Eastern District of Texas require this information be disclosed without even requiring discovery requests. *See, e.g.*, ND Cal. Local Patent Rule 3-1(c), ED Tex. Local Patent Rule 3-1(c) (Note that both courts require disclosure of this information a mere *ten days* after the initial status conference, which was much less time than Plaintiff had in this case to respond to JAKKS' interrogatories.) Indeed, virtually every court to look at the issue of basic infringement contention interrogatories has found that they are appropriate, and must be fully answered.² *See e.g., Exxon Research & Eng. Co.*

¹ JAKKS has already filed a motion to dismiss. That motion is pending.

² Plaintiff's counsel's letter states—contrary to all existing law—that “[i]n patent suits, charts covering tests of [sic] subject patent could not be obtained under Rule 33.” No law is cited for this dubious proposition.



FOLEY & LARDNER LLP

Magistrate Mark Abel

March 17, 2009

Page 3

v. U.S., 44 Fed. Cl. 597, 601-602 (Fed. Cl. 1999) (infringement contentions appropriate); *Protective Optics, Inc. v. Panoptx, Inc.*, 2007 WL 963972, *2 (N.D. Cal. 2007) (same); *Suncase Technologies, L.L.C. v. Patrician Products, Inc.*, 2008 WL 179648, *10-11 (S.D. Fla. 2008) (same).

Plaintiff's response to this interrogatory merely incorporates by reference his response to Interrogatory No. 2. Interrogatory No. 2 fails to identify with specificity where *any element* from the claims at issue can be found on the accused products. Instead, Interrogatory No. 2 regurgitates the elements of the claims at issue, without showing where those elements are found on the accused devices. (Compare, Plaintiff's response to Interrogatory No. 2 to Claims 1 and 5 of the '272 patent). As the court pointed out in *Suncase, supra*:

Plaintiffs in this case have claimed literal infringement . . . To prevail on that position, Plaintiffs "must supply sufficient evidence to prove that the accused product . . . meets every element or limitation of a claim." Consequently, there can be no doubt that Defendant's request for Plaintiff's element-by-element infringement allegations involves relevant material that is properly the subject of contention interrogatories. Plaintiffs, therefore, have an obligation to respond fully to Defendant's demand for Plaintiffs' contentions regarding how the Accused Product infringes each element of each claim allegedly infringed.

Id. at *11, quoting *Rohm and Haas Co. v. Brotech Corp.*, 127 F.3d 1089, 1092 (Fed. Cir. 1997).

The same is no less true here.

Interrogatory No. 4:

The point of Interrogatory No. 4 is that it requires the Plaintiff to state whether he is pursuing theories of secondary liability—that is, contributory infringement or induced infringement—and if so, for the Plaintiff to state what role each defendant played in the alleged secondary infringement. Plaintiff contends that both contributory and inducement liability are at issue here, as he states in response to Interrogatory No. 1 that "subsections A, B and C and possibly others" of section 35 U.S.C. § 271 are at issue. 35 U.S.C. § 271(b) relates to inducement of infringement, and 271(c) relates to contributory infringement. Yet, Plaintiff refuses to state how any particular Defendant either induced or contributed to infringement. JAKKS is entitled to a full response.

Interrogatory No. 5:

This interrogatory seeks information relating to the doctrine of equivalents. Here, Plaintiff confirms that infringement "at minimal [sic], [] satisfies the doctrine of equivalents." Thus, JAKKS is entitled to know what structures are literally absent and what the purportedly equivalent structures are. *See, e.g.*, N.D. of Cal. Local Patent Rules 3-1(c).



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Magistrate Mark Abel

March 17, 2009

Page 4

Interrogatory No. 7:

This interrogatory relates to which of Plaintiff's own products are covered by the '272 patent. This information, among other things, goes to damages as Plaintiff claims to be entitled to lost profits. Plaintiff would only be entitled to lost profits on products that are covered by the '272 patent, and, thus, JAKKS is entitled to Plaintiff's statement as to which, if any, products are covered by the patent. Plaintiff's general description "Talking Poster" fails to identify any particular covered product to enable JAKKS to inquire as to supposedly lost sales.

Interrogatory No. 8:

This interrogatory seeks basic claim construction information. JAKKS is entitled to know what constructions Plaintiff proposes for each of the limitations in each of the claims at issue. For instance, JAKKS is entitled to know what Plaintiff believes the phrases such as "matching art," "substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers" mean. As with Interrogatory Nos. 2 and 3, this information is part of the mandatory disclosure process in every court in which local patent rules are applicable and is standard faire in every patent suit in the country. *See, e.g.*, ND Cal. Local Patent Rules 4-1, 4-2; ED Tex Local Patent Rules 4-1 and 4-2. Plaintiff must take a position as to the meaning of these terms, and simply regurgitating the language of the claims is not sufficient.

Interrogatory No. 9:

This interrogatory requests that Plaintiff identify his support for the constructions stated in responses to Interrogatory No. 8. Plaintiff refers elliptically to "several references in the patent history . . ." but never identifies what those references are or how they supposedly support any of Plaintiff's claim constructions. Similarly, the response states "reference can be found . . .," but fails to state where such references can, in fact, be found. Plaintiff claims that the patent office was convinced "of the uniqueness of the overall 'spirit of the invention'" but fails to hint at what evidence supports this absurd claim. In short, Plaintiff offers not a single reference to a single supporting piece of evidence. JAKKS is entitled to know what evidence Plaintiff believes supports these constructions.



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Magistrate Mark Abel
March 17, 2009
Page 5

Interrogatory No. 21:

This interrogatory asks Plaintiff to identify his products that are covered by the '272 patent. Such information is relevant to damages and infringement, among other things. But Plaintiff does not identify with specificity even a single such product.³

Interrogatory Nos. 22 and 23:

These interrogatories relate to Plaintiff's claims for violation of the Lanham Act and Ohio Deceptive Trade Practices Act. These interrogatories seek basic factual information—the who, what, where, when of Plaintiff's claims. Plaintiff refuses to provide anything substantive, and indeed, flat-out refuses to respond to Interrogatory No. 23, relying instead on boiler-plate objections. Plaintiff must disclose the basic facts that supposedly support his claims. If he can't do that (which he can't), the claims should be dismissed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Grant E. Kinsel", written over a horizontal line.

Grant E. Kinsel

cc: Sharlene Chance (via email w/enclosures)

³ To the extent that Plaintiff provides a complete response to Interrogatory No. 7, Plaintiff may simply incorporate that information by reference in response to this interrogatory.

**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”). 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.

Pursuant to Order of the Honorable Magistrate Judge Abel, supplemental responses are due on April 3, 2009 for Interrogatory Nos. 2-5, 7, 13-14 and 21-23. Such responses are provided for below. Plaintiff is required to provide supplemental responses to Interrogatory Nos. 8 and 9 on April 24, 2009.

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.

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

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.*

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.

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

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)

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Attorneys for Plaintiff Aaron Clark

CERTIFICATE OF SERVICE

I hereby certify that on April, 3, 2009, I served via electronic mail and Regular U.S. Mail, postage prepaid, the foregoing upon:

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

Supplemental Interrogatories Response

Question #3

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster; (Note: Although defendant's product gives the look of having two speakers, it actually only contains one speaker inside the housing. They are tricking the consumer)

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster; (Note: Said electronics are inside housing shown.)

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



Housing artistically blends in with poster art

Prepared with matching art color

Additional Comments for Claim One (1):

The definition of **Art**, stated by The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company.

Art (noun) - The conscious production or arrangement of sounds, colors, forms, movements, or other elements in a manner that affects the sense of beauty, specifically the production of the beautiful in a graphic or plastic medium.

Defendants have consciously/intentionally produced and arranged the color of their housing in a manner that affects the sense of beauty with the plastic medium in relation to the surrounding art of the infringing product. Do not be fooled, clearly the defendants have prepared the housing with matching art, which clearly blends in with surrounding poster art. Infringement of claim one (1) of the 272 patent is as obvious and blatant as could possibly be.

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 in patent);

Blend (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;

Blend (v.intr). - To create a harmonious effect or result: Example: *picked a tie that blended with the jacket.*

Definition of Blend from Random House Unabridged Dictionary

Blend Verb (used without object) -To fit or relate harmoniously; accord; go –*the brown sofa did not blend with the purple wall*

Supplemental Interrogatories Response

Question #3

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

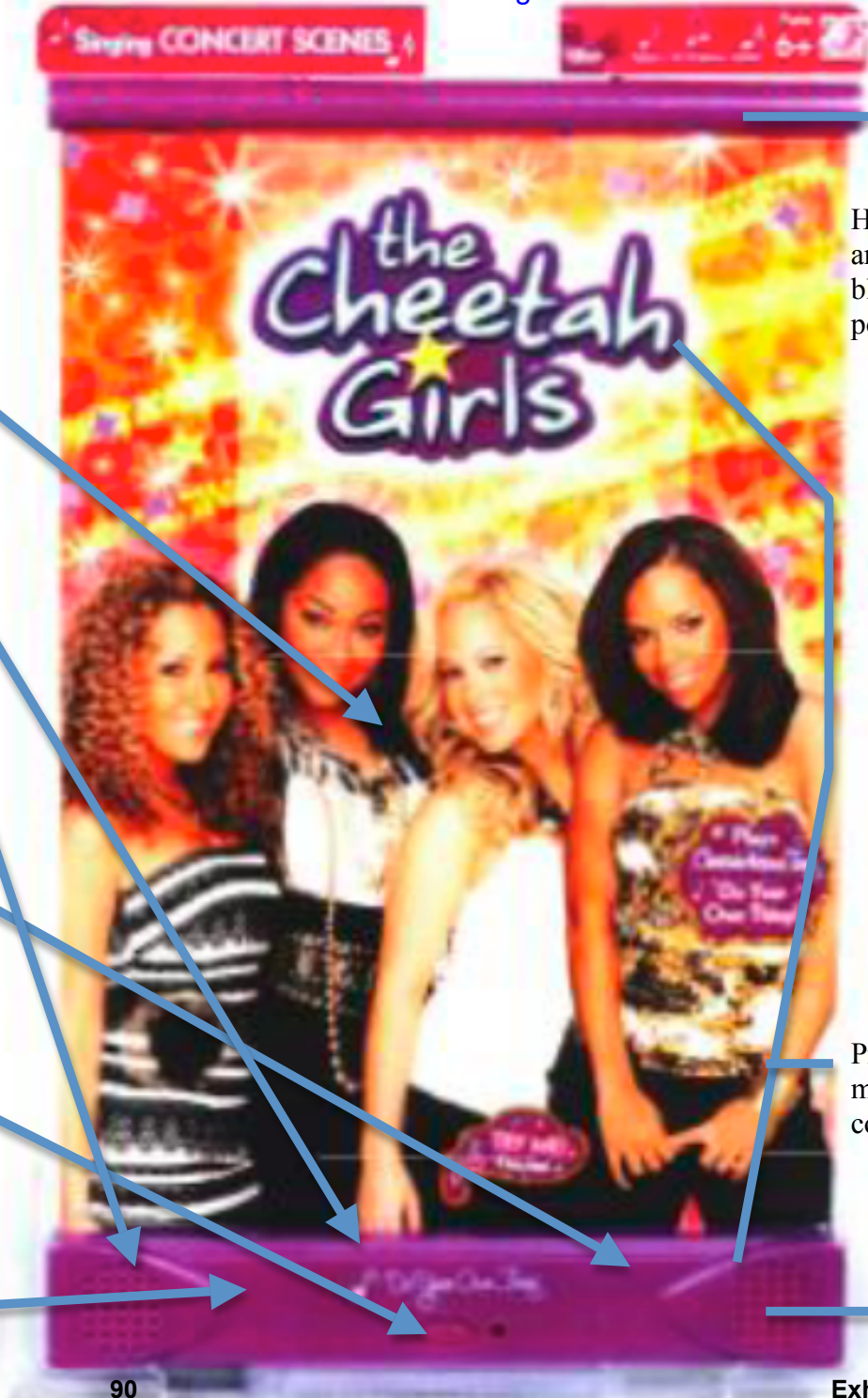
a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster; (Note: Although defendant's product gives the look of having two speakers, it actually only contains one speaker inside the housing. They are tricking the consumer)

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster; (Note: Said electronics are inside housing shown.)

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing. (See Additional Comments on next page)



Housing artistically blends in with poster art

Prepared with matching art color

Additional Comments for Claim One (1):

The definition of **Art**, stated by The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company.

Art (*noun*) - The conscious production or arrangement of sounds, colors, forms, movements, or other elements in a manner that affects the sense of beauty, specifically the production of the beautiful in a graphic or plastic medium.

Defendants have consciously/intentionally produced and arranged the color of their housing in a manner that affects the sense of beauty with the plastic medium in relation to the surrounding art of the infringing product. Do not be fooled, clearly the defendants have prepared the housing with matching art, which clearly blends in with surrounding poster art. Infringement of claim one (1) of the 272 patent is as obvious and blatant as could possibly be.

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 in patent);

Blend (*intransitive verb*) **1 a:** to mingle intimately or unobtrusively **b:** to combine into an integrated whole **2:** to produce a harmonious effect

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Blend (*v.intr.*) - To create a harmonious effect or result: Example: *picked a tie that blended with the jacket.*

Definition of Blend from Random House Unabridged Dictionary

Blend *Verb (used without object)* -To fit or relate harmoniously; accord; go –*the brown sofa did not blend with the purple wall*

Supplemental Interrogatories Response

Question #3

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

providing a poster with poster art on a first surface thereof;

providing human actuatable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and (Note/Comment: Defendants have artistically designed and applied a specific shade of pink (art), as opposed to some random color which would not match or blend in. Color of housing artistically matches colors found on poster and artistically blends in with surrounding poster art.) See Additional Comments on next page.

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



Housing artistically blends in with poster art

Matching Art Color

Additional Comments for Claim Five (5):

The definition of **Art**, stated by The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company.

Art (*noun*) - The conscious production or arrangement of sounds, colors, forms, movements, or other elements in a manner that affects the sense of beauty, specifically the production of the beautiful in a graphic or plastic medium.

Defendants have consciously/intentionally produced and arranged the color of their housing in a manner that affects the sense of beauty with the plastic medium in relation to the surrounding art of the infringing product. Do not be fooled, clearly the defendants have applied matching art to the housing, which clearly blends in with surrounding poster art, and have secured housing onto the poster and the housing conceals the sound components. Infringement of claim five (5) of the 272 patent is as obvious and blatant as could possibly be.

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 in patent);

Blend (*intransitive verb*) **1 a:** to mingle intimately or unobtrusively **b:** to combine into an integrated whole **2:** to produce a harmonious effect

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Blend (*v.intr.*) - To create a harmonious effect or result: Example: *picked a tie that blended with the jacket.*

Definition of Blend from Random House Unabridged Dictionary

Blend *Verb (used without object)* -To fit or relate harmoniously; accord; go –*the brown sofa did not blend with the purple wall*

Supplemental Interrogatories Response Question #3

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

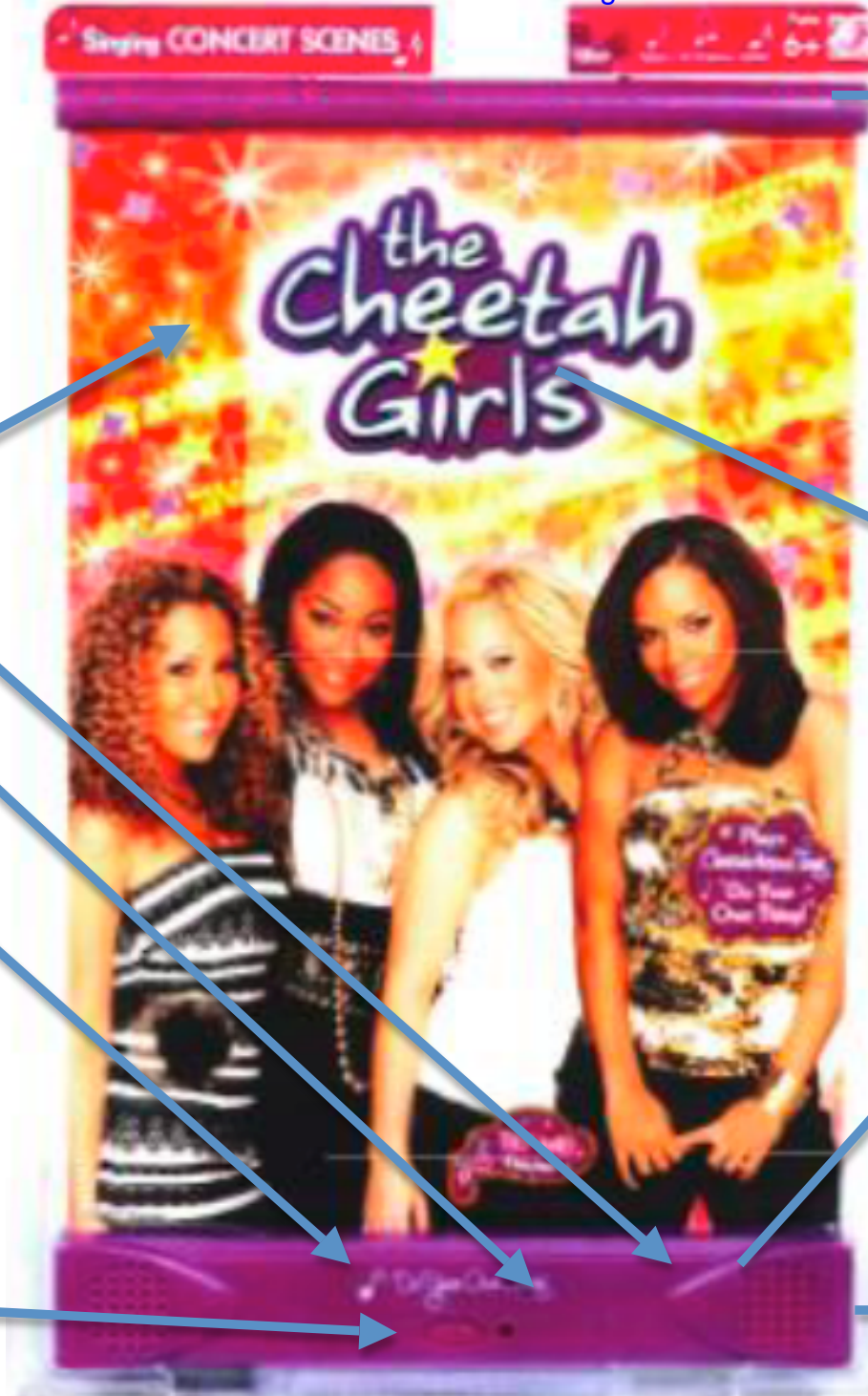
providing a poster with poster art on a first surface thereof;

providing human actuatable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and (Note/Comment: Defendants have artistically designed and applied a specific shade of purple (art), as opposed to some random color which would not match or blend in. Color of housing artistically matches colors found on poster and artistically blends in with surrounding poster art.) See Additional Comments on next page.

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



Housing artistically blends in with poster art

Matching Art Color

Additional Comments for Claim Five (5):

The definition of **Art**, stated by The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company.

Art (*noun*) - The conscious production or arrangement of sounds, colors, forms, movements, or other elements in a manner that affects the sense of beauty, specifically the production of the beautiful in a graphic or plastic medium.

Defendants have consciously/intentionally produced and arranged the color of their housing in a manner that affects the sense of beauty with the plastic medium in relation to the surrounding art of the infringing product. Do not be fooled, clearly the defendants have applied matching art to the housing, which clearly blends in with surrounding poster art, and have secured housing onto the poster and the housing conceals the sound components. Infringement of claim five (5) of the 272 patent is as obvious and blatant as could possibly be.

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 in patent);

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Blend *Verb (used without object)* -To fit or relate harmoniously; accord; go –*the brown sofa did not blend with the purple wall*



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April 7, 2009

CLIENT/MATTER NUMBER
 094622-0101

VIA E-MAIL AND U.S. MAIL

Ms. Sharlene I. Chance
 Dickerson Law Group
 5003 Horizons Drive
 Suite 101
 Columbus, Ohio 43220

Re: *Clark v. The Walt Disney Co., et al.*
 Case No. 2:08CV982 (S.D. Ohio)

Dear Sharlene:

To facilitate our scheduled conference on April 8, 2009 at 2:00 pm (EST) pursuant to Local Rule 37.1, we identify our concerns with Plaintiff's Responses and Supplemental Responses to Defendant JAKKS' First Set of Interrogatories. As detailed below, we believe Plaintiff's Supplemental Responses remain inadequate and must be further supplemented immediately to comply with Magistrate Judge Mark Abel's Order. In addition, as detailed below, we believe Plaintiff's Responses to other Interrogatories are deficient.

Interrogatory No. 2: We remind you of Plaintiff's continuing duty to supplement or correct its response to an interrogatory in a timely manner if you learn that the response is incomplete or incorrect. *See* FED. R. CIV. P. 26(e)(1)(A).

Interrogatory No. 3: Plaintiff's Supplemental Response to Interrogatory No. 3 continues to fail to identify where on the accused poster the element is met that requires the housing to be prepared with matching art "which is substantially the same as that area of said poster which appears on said portion of said poster that said housing covers." The Supplemental Response does not indicate that the housing somehow matches the art that is covered by the housing. The only indications on the image point to art that is not covered by the housing. Plaintiff's Supplemental Response is deficient.

Interrogatory No. 4: Interrogatory No. 4 asks Plaintiff to identify specific acts of indirect infringement, including "identification of any direct infringement and a description of the acts of the alleged indirect infringer." Plaintiff identifies 35 U.S.C. § 271(b) and (c) as relevant to this case. *See* Plaintiff's Response to Interrogatory No. 1. Plaintiff's Supplemental Response, however, merely tracks the language of § 271(b) and (c), and thus fails to provide any meaningful response. Thus, Plaintiff's Supplemental Response remains woefully deficient. Each allegation of indirect infringement is discussed below:

Induced Infringement under § 271(b): Plaintiff's Supplemental Response states that JAKKS "induced manufactures to make, induced licensors (Disney) to license, induced distributors

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Ms. Sharlene I. Chance

April 7, 2009

Page 2

to distribute, induced retailers to sell Talking Posters.” *First*, with the exception of Disney, Plaintiff fails to identify any actual direct infringer, but instead refers ambiguously to manufacturers, distributors and retailers. *Second*, Plaintiff fails to describe the acts of the alleged infringer, but instead merely states that JAKKS “induced.” Such boilerplate allegations are deficient.

Contributory Infringement under § 271(c): Plaintiff’s Supplemental Response states that JAKKS “upon information and belief, sold within U.S., offered to sell within U.S., imported into U.S., manufactured components for, used patented process especially adapted for use in an infringement of the Talking Poster patent.” *First*, Plaintiff fails to even identify the “component of a patented machine, manufacture, combination, or composition” that JAKKS offered for sale or sold in the United States, or imported into the United States. *Second*, Plaintiff’s claim that JAKKS “used patented process especially adapted for use in an infringement of the Talking Poster patent” is not an act giving rise to liability for contributory infringement. Instead, § 271(c) involves the offer for sale, sale, or importing of “*a material or apparatus for use in a patented process.*” *See* 35 U.S.C. § 271(c) (emphasis supplied). *Third*, Plaintiff fails to identify the material or apparatus constituting a material part of the invention and especially made or adapted for use in an infringement that JAKKS has offered for sale or sold in the United States, or imported into the United States. *Fourth*, Plaintiff’s qualification that its response is “upon information and belief” highlights the fact that Plaintiff’s Supplemental Responses remain deficient.

Interrogatory No. 5: Interrogatory No. 5 asks Plaintiff to state the complete basis on which he claims that any *element* is present in the accused product under the doctrine of equivalents and to state the complete factual basis supporting that contention. Plaintiff’s Supplemental Response states that “the infringing posters also perform substantially the same function *as the ‘272 patent’* and “[t]he infringing posters also perform in substantially the same way” and “[t]he infringing posters also yield substantially the same result.” *See* Plaintiff’s Supplemental Response to JAKKS’ Interrogatory No. 5 at 9-12 (emphasis supplied). Thus, Plaintiff has not identified a single claim *element* that is present under the doctrine of equivalents, but instead argues that *the entire invention as a whole* is infringed under the doctrine of equivalents. This is improper, as the Supreme Court has long held:

Each element contained in a patent claim is deemed material to defining the scope of the patented invention, and thus *the doctrine of equivalents must be applied to individual elements of the claim, not to the invention as a whole*. It is important to ensure that the application of the doctrine, even as to an individual element, is not allowed such broad play as to effectively eliminate that element in its entirety.

Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 29 (1997) (emphasis supplied). Thus, Plaintiff’s Supplemental Response remains deficient.

Interrogatory No. 6: Interrogatory No. 6 requests that Plaintiff state the priority date to which each Asserted Claim is allegedly entitled. Plaintiff responded that the priority date is “Spring



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Ms. Sharlene I. Chance

April 7, 2009

Page 3

of 1992.” Defendants are entitled to know the claimed priority date with more specificity. Thus, Plaintiff’s Response is deficient.

Interrogatory No. 7: We remind you of Plaintiff’s continuing duty to supplement or correct its response to an interrogatory in a timely manner if you learn that the response is incomplete or incorrect. See FED. R. CIV. P. 26(e)(1(A)).

Interrogatory No. 11: Interrogatory No. 11 asks Plaintiff to identify and describe all analyses performed to assess whether any of Defendants’ products infringe the Patent-in-Suit. Plaintiff’s Response states that “[a]dditional analysis has been performed by other parties to which all non-privileged expert witness testimony to this Interrogatory will be produced.” Plaintiff is required to produce a privilege log identifying any documents that Plaintiff withholds as privileged.

Interrogatory No. 12: Interrogatory No. 12 requests that Plaintiff describe the circumstances of any lost sales, including without limitation, dates, customer names, quantity of lost sales, and any evidence which supports Plaintiff’s contention. Plaintiff’s Response fails to identify any dates, customer names, quantity of lost sales or any evidence supporting Plaintiff’s lost sales theory. Thus, Plaintiff’s Response is deficient.

Interrogatory No. 13: Interrogatory No. 13 requests Plaintiff’s monthly and annual gross and net sales, by dollar and unit volume for each Covered Product. While Plaintiff’s Supplemental Response lists an “estimated gross” for each identified Covered Product, Plaintiff fails to identify whether this “estimated gross” is monthly or annual. In addition, Plaintiff fails to provide the monthly and annual gross and net sales, by dollar and unit volume. Plaintiff’s Supplemental Response remains deficient.

Interrogatory No. 14: Interrogatory No. 14 requests Plaintiff state its monthly and annual cost of goods, per unit and overall, for each Covered Product, including with limitation any royalty payments. While Plaintiff’s Supplemental Response lists “wholesale costs” and “royalty rates” by percentage, it remains deficient. *First*, Plaintiff fails to identify whether this “wholesale cost” is on a monthly or annual basis. This information is important because Plaintiff admits that the unit costs depend on the quantity manufactured. *Second*, Plaintiff fails to identify its monthly and annual overall cost of goods. Again, this information is important because Plaintiff admits that the unit costs depends on the quantity manufactured. *Third*, there is a discrepancy between Plaintiff’s original response and Plaintiff’s supplemental response. For example, in its original response, Plaintiff responded that the per unit cost ranges from \$3.50 to \$5.50, depending on licensing fees and quantity manufactured, but its supplemental response identifies costs ranging from \$3.95 to \$6.97.¹ Similarly, in its original response, Plaintiff responded that license fees ranged from \$0.50 to \$0.75 per unit, but its supplemental response identifies royalty rates ranging from 10-12%. Applying these

¹ Excluding the Ohio State University Talking Poster which Plaintiff inexplicably claims to have \$0.00 wholesale cost, but a licensing fee under a 10% royalty rate.



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Ms. Sharlene I. Chance
April 7, 2009
Page 4

royalty rates to the wholesale costs identified, the license fees would range from \$0.395 to \$0.8364. Plaintiff fails to identify whether its Supplemental Response completely replaces its original response.

Interrogatory No. 15: Plaintiff fails to provide any information relating to licenses for the Patents-in-Suit. In its Supplemental Response to Interrogatory No. 7, however, Plaintiff identified at least two possible licensees (OSP Co. and Resaurus Corp.). Thus, Plaintiff's Response to Interrogatory No. 15 is deficient.

To the extent that Plaintiff will rely on documents in response to Interrogatory No. 15, Plaintiff is required to "specify[] the records that must be reviewed in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could." *See* FED. R. CIV. P. 33(d)(1). Thus, if Plaintiff relies on the option to produce business records in response to Interrogatory No. 15, Plaintiff must specifically identify the documents by Bates number.

Interrogatory No. 17: Plaintiff responded that it first sold any Covered Product to Wal-Mart in "1994 or 1995." Plaintiff must identify the date of first sale with much more specificity. In addition, Plaintiff fails to identify the first date any Covered product was offered for sale. Thus, Plaintiff's Response is deficient.

Interrogatory No. 21: We remind you of Plaintiff's continuing duty to supplement or correct its response to an interrogatory in a timely manner if you learn that the response is incomplete or incorrect. *See* FED. R. CIV. P. 26(e)(1)(A).

Interrogatory No. 22: We remind you of Plaintiff's continuing duty to supplement or correct its response to an interrogatory in a timely manner if you learn that the response is incomplete or incorrect. *See* FED. R. CIV. P. 26(e)(1)(A).

Interrogatory No. 23: We remind you of Plaintiff's continuing duty to supplement or correct its response to an interrogatory in a timely manner if you learn that the response is incomplete or incorrect. *See* FED. R. CIV. P. 26(e)(1)(A).

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael J. Song', with a long horizontal flourish extending to the right.

Michael J. Song



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April 14, 2009

CLIENT/MATTER NUMBER
094622-0101

VIA E-MAIL

Magistrate Mark Abel
208 U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215
Abel_Chambers@ohsd.uscourts.gov

Re: *Clark v. The Walt Disney Co., et al.*
Case No. 2:08-CV-00982 (S.D. Ohio)

Dear Magistrate Abel:

We represent Defendants in the above-entitled action. We write in advance of the discovery conference set for April 16, 2009 at 2:00 p.m. (Eastern Time). We appreciate the Court's willingness to review this matter on such short notice.

The issue at hand concerns Plaintiff's continued refusal to provide complete, substantive responses to JAKKS Pacific, Inc.'s ("JAKKS") First Set of Interrogatories in compliance with Your Honor's rulings on March 19, 2009 and Order on April 14, 2009 (Dkt. No. 37), as well as additional interrogatories not addressed at the prior discovery conference. Pursuant to S. D. Ohio Civ. R. 37.1, the parties met-and-conferred on April 8, 2009 but were unable to resolve the dispute. As requested in the Preliminary Pretrial Order (Dkt. No. 20), JAKKS attaches to this letter the following materials:

- (1) Plaintiff's Supplemental Responses to JAKK's Interrogatories, attached as Ex. A;
- (2) Plaintiff's Supplemental Response to Interrogatory No. 3, attached as Ex. B;
- (3) Plaintiff's Supplemental Response to Interrogatory No. 4, attached as Ex. C;
- (4) letter from Michael Song to Sharlene Chance dated April 7, 2009, attached as Ex. D; and
- (5) U.S. Patent No. 5,548,272 ("the '272 patent"), attached as Ex. E.

The interrogatories to which Plaintiff has failed to provide complete, substantive responses are: Nos. 3, 4, 5, 6, 11, 12, 13, and 17.

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Magistrate Mark Abel
April 14, 2009
Page 2

Background

As set forth in more detail in our prior letter to Your Honor on March 17, 2009, Plaintiff continues to refuse to provide substantive responses to basic interrogatories in this patent infringement case. Each interrogatory is discussed in detail below.

Interrogatories At Issue

Interrogatory No. 3: This interrogatory requests that Plaintiff provide a chart identifying where on the accused products *each element* of the claims at issue can be found. Your Honor ordered Plaintiff to supplement its response to Interrogatory No. 3 to identify where on the accused products each limitation could be found.

Plaintiff's Supplemental Response to Interrogatory No. 3 continues to fail to identify where on the accused products each element of the claims at issue can be found. *See* Ex. B. Specifically, Plaintiff's Supplemental Response fails to identify where on the accused product the following claim element can be found: "that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster." *See* Ex. E., col. 3, ll. 7-10, col. 4, ll. 12-14.

At the meet-and-confer, Plaintiff contended that its Supplemental Response to Interrogatory No. 3 was sufficient despite this omission. If Plaintiff believes the accused products meet this limitation, they must identify where the limitation is met. If they cannot do this, they should dismiss the case.

Interrogatory No. 4: This interrogatory requests Plaintiff to identify specific acts of indirect infringement, including "identification of any direct infringement and a description of the acts of the alleged indirect infringer." Your Honor ordered Plaintiff to supplement its response to Interrogatory No. 3 on March 19, 2009.

Plaintiff's Supplemental Response, however, merely tracks the boilerplate language of § 271(b) and (c), and thus fails to provide any meaningful response. *See* Ex. C. Each theory of indirect infringement is discussed in further detail below.

Induced Infringement under § 271(b): Plaintiff's Supplemental Response states that Defendants "induced manufactures to make, induced licensors (Disney) to license, induced distributors to distribute, induced retailers to sell Talking Posters." *See* Ex. C at 1. At the meet-and-confer, Plaintiff contended that its Supplemental Response to Interrogatory No. 4 was sufficient

First, with the exception of Disney, Plaintiff fails to identify any actual direct infringer, but instead refers ambiguously to manufacturers, distributors and retailers. *Second*, Plaintiff fails to describe the acts of the alleged indirect infringers, but instead merely states that Defendants



FOLEY & LARDNER LLP

Magistrate Mark Abel
 April 14, 2009
 Page 3

“induced.” In other words, Plaintiff refuses to state *how* any particular Defendant induced infringement.

Contributory Infringement under § 271(c): Plaintiff’s Supplemental Response states that Defendants “upon information and belief, sold within U.S., offered to sell within U.S., imported into U.S., manufactured components for, used patented process especially adapted for use in an infringement of the Talking Poster patent.” See Ex. C at 2. At the meet-and-confer, Plaintiff contended that its Supplemental Response to Interrogatory No. 4 was sufficient.

First, Plaintiff fails to even identify the “component of a patented machine, manufacture, combination, or composition” that Defendants offered for sale or sold in the United States, or imported into the United States. *Second*, Plaintiff’s claim that Defendants “used patented process especially adapted for use in an infringement of the Talking Poster patent” is not an act giving rise to liability for contributory infringement. Instead, § 271(c) involves the offer for sale, sale, or importing of “*a material or apparatus for use in a patented process.*” See 35 U.S.C. § 271(c) (emphasis supplied). *Third*, Plaintiff fails to identify the material or apparatus constituting a material part of the invention and especially made or adapted for use in an infringement that JAKKS has offered for sale or sold in the United States, or imported into the United States. *Fourth*, Plaintiff’s qualification that its response is “upon information and belief” highlights the fact that Plaintiff’s Supplemental Response remains deficient.

Interrogatory No. 5: This interrogatory requests Plaintiff to state the complete basis on which he claims that any *element* is present in the accused product under the doctrine of equivalents and to state the complete factual basis supporting that contention. Your Honor ordered Plaintiff to supplement its response to Interrogatory No. 5 on March 19, 2009.

Plaintiff’s Supplemental Response states that “the infringing posters also perform substantially the same function *as the ‘272 patent’* and “[t]he infringing posters also perform in substantially the same way” and “[t]he infringing posters also yield substantially the same result.” See Ex. A at 9-12 (emphasis supplied). Thus, Plaintiff has not identified a single claim *element* that is present under the doctrine of equivalents, but instead argues that *the entire invention as a whole* is infringed under the doctrine of equivalents. This is improper, as the Supreme Court has long held:

Each element contained in a patent claim is deemed material to defining the scope of the patented invention, and thus *the doctrine of equivalents must be applied to individual elements of the claim, not to the invention as a whole*. It is important to ensure that the application of the doctrine, even as to an individual element, is not allowed such broad play as to effectively eliminate that element in its entirety.

Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 29 (1997) (emphasis supplied). At the meet-and-confer, Plaintiff contended that its Supplemental Response to Interrogatory No. 5 was sufficient. Plaintiff continues to refuse to identify any claim *element* it alleges is met under the doctrine of equivalents and thus fails to provide any meaningful response to this interrogatory.



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Magistrate Mark Abel
April 14, 2009
Page 4

Interrogatory No. 12: This interrogatory requests that Plaintiff describe the circumstances of any lost sales, including without limitation, dates, customer names, quantity of lost sales, and any evidence which supports Plaintiff's contention. Plaintiff's Response fails to identify any dates, customer names, quantity of lost sales or any evidence supporting Plaintiff's lost sales theory. Thus, Plaintiff's Response is deficient.

Interrogatory No. 13: Interrogatory No. 13 requests Plaintiff's monthly and annual gross and net sales, by dollar and unit volume for each Covered Product. Your Honor ordered Plaintiff to supplement its response to Interrogatory No. 13 on March 19, 2009.

Plaintiff's Supplemental Response lists an "estimated gross" for each identified Covered Product. *See* Ex. A at 17. At the meet-and-confer, Plaintiff contended that its Supplemental Response to Interrogatory No. 4 was sufficient because Plaintiff allegedly does not track sales on a monthly or annual basis, but rather "by project (or property)."

Plaintiff, however, refuses to provide dates of sales or unit volume of sales so that Defendants can calculate the information requested. At the meet-and-confer, Plaintiff claimed that Interrogatory No. 13 does not request this information. Defendants request that the Court compel Plaintiff to provide the dates of sales and unit volume of sales in order to fully respond to Interrogatory No. 13.

Interrogatory No. 17: This interrogatory requests the date of Plaintiff's first offer for sale and first sale of any product its sells that is covered by the '272 patent, and the circumstances of such offer and sale. Such information is clearly relevant to the issues in this case, such as Defendants' invalidity defense under 35 U.S.C. § 102(b).

Plaintiff responded that it first sold a Covered Product to Wal-Mart in "1994 or 1995." In addition, Plaintiff fails to identify the first date any Covered product was offered for sale. Plaintiff must identify the date of first sale with much more specificity than a two-year window, especially considering that the '272 patent was filed on March 10, 1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant E. Kinsel". The signature is fluid and cursive, with a large loop at the end.

Grant E. Kinsel

cc: Sharlene Chance (via email w/enclosures)
Brian Dickerson (via email w/ enclosures)



COLUMBUS • NAPLES

Sharlene I. Chance
schance@dickerson-law.com
(614) 339-5373 (direct dial)

April 15, 2009

VIA ELECTRONIC MAIL

Magistrate Judge Mark R. Abel
Mark_Abel@ohsd.uscourts.gov
208 U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215

RE: ***Clark v. The Walt Disney Company, et al.***
Case No. 2:08CV982

Dear Magistrate Judge Abel,

As you are aware, our office represents Plaintiff Aaron Clark in the above-referenced case and hereby submits this letter in response to the April 14, 2009 letter from Grant E. Kinsel (“Kinsel April 14th letter”) on behalf of Defendant JAKKS Pacific Inc. (“Defendant JAKKS”) to this Honorable Court.

As ordered by this Honorable Court on March 19, 2009 and in its April 14, 2009 Discovery Conference Order, Plaintiff has supplemented his discovery responses to Interrogatories Nos. 2-5, 7, 13-14, and 21-23 in sufficient detail and explanation.¹ However, Defendant JAKKS continues to object to Plaintiff’s detailed responses alleging that Plaintiff refuses to provide complete and substantive responses. This Honorable Court’s review of Plaintiff’s Supplemental Responses will demonstrate that Plaintiff has provided sufficient, substantive and detailed responses to Defendant JAKKS interrogatories and that no further supplemental responses are needed.

¹ As provided for in the Discovery Conference Order, Plaintiff will provide supplemental responses, in a claim construction chart, to Interrogatories Nos. 8 and 9 on or before April 24, 2009.

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Further, Defendant JAKKS has raised *additional* objections to interrogatory responses that were never raised prior to or at the March 19, 2009 discovery conference before this Honorable Court. Specifically, Defendant JAKKS now objects to Interrogatory Nos. 6, 11-12 and 17. During the undersigned's meet-and-confer with Michael Song on April 8, 2009, Mr. Song indicated that he could not explain why these interrogatories were not previously objected to, but represented that there will be additional objections to follow as counsel continue their review of Plaintiff's responses. I expressed concern and dissatisfaction with counsel's approach to their piecemeal objections to Plaintiff's discovery responses. I urged Mr. Song that all objections to Plaintiff's initial and now supplemental interrogatory responses should be raised concurrently rather than in the fragmented approach that counsel have chosen to employ.

Plaintiff will address each Interrogatory to which Defendant JAKKS complains as incomplete:

Interrogatory No. 3:

Plaintiff was ordered to supplement his response by identifying where each limitation in the '272 Patent is on each accused device. (*See*, Doc. 37, p. 1). Defendant JAKKS complains that Plaintiff has failed to indicate where on the infringing posters the following claim element can be found: "that area of said poster art which appears on said portion of said poster that housing covers when housing is attached to said poster." The indication on the infringing posters clearly demonstrate that the housing unit is placed on the front and over the top of the poster art so as to artistically blend into the poster that is graphically attractive; is the same color scheme and hue as the underlying poster art; and artistically blends with the surrounding poster art that is not covered and is designed to match the poster art and look attractive as an overall design. Plaintiff has identified this limitation in sufficient detail on both infringing posters (*See*, Kinsel April 14th letter, Ex. B) and as such, no further supplemental response need be given.

Interrogatory No. 4:

At this stage in the proceedings and prior to discovery propounded upon and depositions taken of Defendants, Plaintiff has provided sufficient responses to Interrogatory No. 4 of Defendants infringement. Furthermore, Plaintiff has sufficiently identified the infringing product for which Defendants have offered for sale, sold and imported in the United States, in the proceeding interrogatories, specifically Interrogatory No. 2. Plaintiff is aware of his continuing duty to supplement his interrogatory responses pursuant to Fed.R.Civ.P. 26(e) with further detailed acts of how each Defendant contributed to infringement and/or induced infringement in addition to additional infringing posters by which Defendants have offered for sale, sold and imported into the United States.

Interrogatory No. 5:

For Interrogatory No. 5, Plaintiff was ordered to "set out the structures infringing the device that are equivalent and the factual basis for that assertion." (Doc. 37 p. 2). Plaintiff's supplemental

response, incorporating supplemental responses to Interrogatories No. 2, 3 and 4 (identifying Claims 1 and 5), provides sufficient detail and factual explanations for the limitations present under the doctrine of equivalents. Plaintiff's detailed analysis demonstrates that the infringing products performs substantially the same function in substantially the same way to obtain the same result as claim limitations - Claims 1 and 5. Plaintiff has not applied the doctrine of equivalents to the patented invention as a whole. Plaintiff has not represented that the infringing posters are equivalent overall to the '272 Patent. Plaintiff has sufficiently identified that the infringing product contain elements that are identical or equivalent to Claims 1 and 5 of the '272 Patent. Plaintiff has complied with this Court's order in sufficient detail and thus no further supplemental response need be given.

Interrogatories Nos. 6 and 11:

In Kinsel's April 14th letter, counsel objects for the first time, to Plaintiff's responses to Interrogatories Nos. 6 and 11, but however fails to address those interrogatories within the April 14th letter to this Honorable Court. Due to this failure, Plaintiff respectfully seeks clarification as to whether Defendant JAKKS continues to object to Interrogatories Nos. 6 and 11.

Defendant JAKKS must have determined that Plaintiff's responses to Interrogatories Nos. 6 and 11 were sufficient as any objection to the same would have been raised prior to or at the March 19, 2009 discovery conference. Irrespective of any now raised objections, Plaintiff's responses are sufficient and no further supplemental response is necessary.

Interrogatory No. 12:

Defendant JAKKS objects for the first time to Interrogatory No. 12 arguing that Plaintiff's response is deficient as he failed to identify any dates, customer names, and quantity of lost sales to support Plaintiff's claim of lost sales. Similarly with Interrogatories No. 6 and 11, Defendant JAKKS did not object to Plaintiff's responses prior to or at the March 19, 2009 discovery conference. Plaintiff's response to Interrogatory No. 12 is sufficient as it provides detailed information, known to Plaintiff, at this stage of the discovery proceedings as it relates to his lost profits due to Defendants sale of the infringing posters. As provided for in Plaintiff's supplemental responses General Objections ¶ 22, Plaintiff will supplement this discovery response pursuant to Fed.R.Civ.P. 26(e) as more detailed information is obtained through discovery.

Interrogatory No. 13:

Plaintiff was ordered to supplement his interrogatory response and provide information he has "regarding sales, unit volume, profits, licensing fees, cost of goods and any royalty payments." (Doc. 37, p. 2). As provided, Plaintiff's sales are tracked by project. Plaintiff supplemented his response and provided the estimated gross for each Covered Product. Plaintiff supplemented his response as ordered in detail and no further response is needed.

Interrogatory No. 17:

Defendant JAKKS objects for the first time to Interrogatory No. 17, arguing that Plaintiff must identify the date of the first sale of the Covered Product to Wal-Mart with more specificity than his response of "1994 or 1995." Similarly to Interrogatories No. 6, 11, and 12, Defendant JAKKS did not object to Plaintiff's responses prior to or at the March 19, 2009 discovery conference, thereby demonstrating that Plaintiff's response was sufficient. Plaintiff provided the necessary answer and no further supplement is needed.

Finally, as discussed with Mr. Song during the meet-and-confer, Defendant JAKKS is free to depose Plaintiff pursuant to Fed.R.Civ.P. 30.

Plaintiff respectfully submits this response letter and will address this Honorable Court accordingly at the April 16, 2009 discovery conference at 2:00 p.m.

Sincerely,



Sharlene I. Chance

cc: Grant E. Kinsel (via e-mail)
Brian E. Dickerson (via e-mail)
Kevin R. Conners (via e-mail)

**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.

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

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,



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CERTIFICATE OF SERVICE

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

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Attorney for Plaintiff Aaron Clark

Claim Term / Phrase	Clark's Construction ¹
<p>What is claimed is:</p> <p>1. An assembly, comprising:</p> <p>a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;</p>	<p>Poster is printable material upon which art is printed.</p> <p>The definition of art, stated by The American Heritage[®] Dictionary of the English Language: Fourth Edition. 2000 is: <i>Art (noun)</i> – 2a. The conscious production or arrangement of sounds, colors, forms, movements, or other elements in a manner that affects the sense of beauty, specifically the production of the beautiful in a graphic or plastic medium.</p> <p>http://www.bartleby.com/61/9/A0440900.html</p>
<p>a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;</p>	<p>Housing is any material capable of housing electronic components. No limit on size or shape of housing. Housing attached to a portion of poster refers to any location whatsoever on poster, no limit is intended or suggested regarding location. '272 Patent 1:26-28, 58-60. There is no limit or requirement as to an amount of surface of poster being covered. '272 Patent 1:26-28, 2:52-55.</p>
<p>a speaker concealed between said housing and said first surface of said poster;</p> <p>an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;</p>	<p>Intended that electronic components capable of producing sound would be housed in a housing and housing would be attached to the poster. It is intended that a speaker would be involved so that the sound can be heard. It is intended that the speaker and electronics would be concealed. No limitation intended or stated on the electronics or how they are concealed between the housing or first surface. No limitation stated or intended regarding placement of electronics inside housing. '272 Patent 2:52-55. No limitation intended, stated, or required regarding placement or</p>

¹ Plaintiff reserves the right to produce a claim construction chart as it relates to the doctrine of equivalents for Claim 1.

	<p>location of housing on poster. '272 Patent 2:52-55.</p>
<p>a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;</p>	<p>A trigger on the electronics inside the housing which actuates the sound can be activated in some fashion, any fashion through the housing, no limitation or requirement on how. The defendants' product features a trigger attached to electric circuit, concealed within a housing that can be actuated through housing to produce sound.</p>
<p>wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.</p>	<p>This is all one sentence. It is intended that the entire sentence is read as one complete description. It is not intended that one piece of the sentence would be singled out and argued on its own, or that any individual word or description would be taken out of the sentence and argued out of context. The context is the entire, complete, descriptive sentence. Under the Patent, there can be many different embodiments of how and where the housing is attached and the degree to which it blends with the poster art. '272 Patent 2:18-19, 52-55.</p> <p>For instance, the sentence does not simply say "housing prepared with matching art." This sentence in its entirety, read as one singular description, is intended to reflect that the creation of the product is done in a manner that is attractive. The last sentence of claim one on this Patent is intended to say that when the housing is placed on the poster, it will be done in a manner such that the end product is attractive, professional and that the housing does not stick out like a sore thumb. '272 Patent 1:7-15. This sentence of the claim is not concerned with what the housing covers but that the housing, regardless of where and how it is placed, is "prepared with matching art which is substantially the same" and "artistically blends with the surrounding poster."</p>

Broad words were used to convey the concept of “artistically blends.” Certainly, the sentence is carefully crafted to cover a potential future embodiment with a housing that potentially could match exactly, but does not require such, and at the same time is intentionally written in vague enough form with use of broad words so as not to limit the scope of, excuse, exclude or fail to protect in any way use of a housing which simply attractively blends, as is stated in the claim itself. ‘272 Patent 1:55-2:1-55. There is no requirement for housing to match exactly. There is no exclusion for a simple single color housing. The intent was to protect against any copy cat of our Talking Poster concept brought into the marketplace, which would obviously be done in an attractive and professional manner and we have done so.

The American Heritage[®] Dictionary of the English Language: Fourth Edition. 2000:

Match: *transitive verb* **1a.** To be exactly like; correspond exactly. **b.** To be like with respect to specified qualities. **2.** To resemble or harmonize with: *The coat matches the dress.*

<http://www.bartleby.com/61/71/M0147100.html>

Blend: *transitive verb* **1:** MIX; *especially* : to combine or associate so that the separate constituents or the line of demarcation cannot be distinguished **2:** to prepare by thoroughly intermingling different varieties or grades <http://www.merriam-webster.com/dictionary/blend>

Substantial: *adjective* Of, relating to, or having substance; material. <http://www.bartleby.com/61/27/S0852700.html>

Claim Term / Phrase	Clark's Construction ¹
<p>What is claimed is:</p> <p>5. A method for making a talking poster, comprising the steps of:</p> <p>providing a poster with poster art on a first surface thereof;</p>	<p>Poster is printable material upon which art is printed. Defendants have provided such.</p>
<p>providing human actuatable sound components adapted to be contained on said poster;</p>	<p>Human actuatable sound components are any components which create sound and are able to be activated by humans. Adapted to be contained on poster means to attach, apply, adhere or connect to poster in any way that allows poster to contain the components.</p>
<p>providing a housing adapted to be secured onto a portion of said first surface of said poster;</p>	<p>Housing is any material capable of housing actuatable sound components. No limit on size or shape of housing. Housing attached to a portion of poster refers to any location whatsoever on poster, no limit is intended or suggested regarding location. '272 Patent 1:26-28, 58-60. There is no limit or requirement as to an amount of surface of poster being covered. '272 Patent 1:26-28, 2:52-55.</p>
<p>applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and</p>	<p>This is all one sentence. It is intended that the entire sentence is read as one complete description. It is not intended that one piece of the sentence would be singled out and argued on its own, or that any individual word or description would be taken out of the sentence and argued out of context. The context is the entire, complete, descriptive sentence. Under the Patent, there can be many different embodiments of how and where the housing is attached and the degree to which it blends with the poster art. '272 Patent 2:18-19, 52-55.</p> <p>For instance, the sentence does not simply say "housing prepared with matching art." This sentence in its entirety, read as one singular</p>

¹ Plaintiff reserves the right to produce a claim construction chart as it relates to the doctrine of equivalents for Claim 5.

Clark v. The Walt Disney Company, et al.
United States Patent # 5,548,272

description, is intended to reflect that the creation of the product is done in a manner that is attractive. This sentence of claim five on this patent is intended to say that when the housing is placed on the poster, it will be done in a manner such that the end product is attractive, professional and that the housing does not stick out like a sore thumb. '272 Patent 1:7-15. This sentence of the claim is not concerned with what the housing covers but that the housing, regardless of where and how it is placed, is "prepared with matching art which is substantially the same" and "artistically blends with the surrounding poster."

The sentence is carefully crafted to cover a potential future embodiment with a housing that potentially could match exactly, but does not require such, and at the same time is intentionally written in vague enough form with use of broad words so as not to limit the scope of, excuse, exclude or fail to protect in any way use of a housing which simply attractively blends, as is stated in the claim itself. '272 Patent 1:55-2:1-55. There is no requirement for housing to match exactly. There is no exclusion for a simple, single color housing. The intent was to protect against any copy cat of our Talking Poster concept brought into the marketplace, which would obviously be done in an attractive and professional manner and we have done so.

The American Heritage[®] Dictionary of the English Language: Fourth Edition. 2000:

Match: *transitive verb* **1a.** To be exactly like; correspond exactly. **b.** To be like with respect to specified qualities. **2.** To resemble or harmonize with: *The coat matches the dress.*

<http://www.bartleby.com/61/71/M0147100.html>


Blend: *transitive verb* **1:** MIX; *especially* : to combine or associate so that the separate constituents or the line of demarcation cannot be

Clark v. The Walt Disney Company, et al.
United States Patent # 5,548,272

	<p>distinguished 2: to prepare by thoroughly intermingling different varieties or grades http://www.merriam-webster.com/dictionary/blend</p> <p><i>Substantial</i>: adjective Of, relating to, or having substance; material. http://www.bartleby.com/61/27/S0852700.html</p>
<p>securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.</p>	<p>Intended that components capable of producing sound would be housed in a housing, and the housing would be attached to the poster. It is intended that the sound components would be concealed. No limitation intended or stated on the sound components or how they are concealed. No limitation stated or intended regarding placement of sound components inside housing. '272 Patent 2:52-55. No limitation intended, stated, or required regarding placement or location of housing on poster. '272 Patent 2:52-55.</p>

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The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

art¹

PRONUNCIATION:  ärt

NOUN: **1.** Human effort to imitate, supplement, alter, or counteract the work of nature. **2a.** The conscious production or arrangement of sounds, colors, forms, movements, or other elements in a manner that affects the sense of beauty, specifically the production of the beautiful in a graphic or plastic medium. **b.** The study of these activities. **c.** The product of these activities; human works of beauty considered as a group. **3.** High quality of conception or execution, as found in works of beauty; aesthetic value. **4.** A field or category of art, such as music, ballet, or literature. **5.** A nonscientific branch of learning; one of the liberal arts. **6a.** A system of principles and methods employed in the performance of a set of activities: *the art of building*. **b.** A trade or craft that applies such a system of principles and methods: *the art of the lexicographer*. **7a.** Skill that is attained by study, practice, or observation: *the art of the baker; the blacksmith's art*. **b.** Skill arising from the exercise of intuitive faculties: "*Self-criticism is an art not many are qualified to practice*" (Joyce Carol Oates). **8a.** arts Artful devices, stratagems, and tricks. **b.** Artful contrivance; cunning. **9.** *Printing* Illustrative material.

ETYMOLOGY: Middle English, from Old French, from Latin *ars*, *art-*. See [ar-](#) in Appendix I.

SYNONYMS: *art¹, craft, expertise, knack, know-how, technique* These nouns denote skill in doing or performing that is attained by study, practice, or observation: *the art of rhetoric; pottery that reveals an artist's craft; political expertise; a knack for teaching; mechanical know-how; a precise diving technique.*

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blend

2 entries found.

- 1 blend (verb)
- 2 blend (noun)

On Off

Main Entry: **'blend** 

Pronunciation: \ˈblend\
Function: *verb*
Inflected Form(s): **blend-ed** *also* **blent**  \ˈblent\ ; **blend-ing**

Etymology: Middle English, probably from Old Norse *blend-*, present stem of *blanda* to mix; akin to Old English *blandan* to mix, Lithuanian *blandus* impure, cloudy
Date: 14th century

transitive verb
1 : **MIX** ; *especially* : to combine or associate so that the separate constituents or the line of demarcation cannot be distinguished
2 : to prepare by thoroughly intermingling different varieties or grades

intransitive verb
1 a : to mingle intimately or unobtrusively **b** : to combine into an integrated whole
2 : to produce a harmonious effect

synonyms see **MIX**

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substantial

SYLLABICATION: sub-stan-tial

PRONUNCIATION: səb-stān'shəl

ADJECTIVE: **1.** Of, relating to, or having substance; material. **2.** True or real; not imaginary. **3.** Solidly built; strong. **4.** Ample; sustaining: *a substantial breakfast*. **5.** Considerable in importance, value, degree, amount, or extent: *won by a substantial margin*. **6.** Possessing wealth or property; well-to-do.

NOUN: **1.** An essential. Often used in the plural. **2.** A solid thing. Often used in the plural.

ETYMOLOGY: Middle English *substancial*, from Old French *substantiel*, from Latin *substantiālis*, from *substantia*, substance. See [substance](#).

OTHER FORMS: **sub-stan'ti-al'i-ty** (-shē-āl'ī-tē), **sub-stan'tial-ness** (-shəl-nīs) —NOUN
sub-stan'tial-ly —ADVERB

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match¹

PRONUNCIATION: mäch

NOUN: **1a.** One that is exactly like another; a counterpart. **b.** One that is like another in one or more specified qualities: *He is John's match for bravery.* **2.** One that is able to compete equally with another: *The boxer had met his match.* **3a.** One that closely resembles or harmonizes with another: *The napkins were a nice match for the tablecloth.* **b.** A pair, each one of which resembles or harmonizes with the other: *The colors were a close match.* **4. Sports a.** A game or contest in which two or more persons, animals, or teams oppose and compete with each other: *a soccer match.* **b.** A tennis contest won by the player or side that wins a specified number of sets, usually two out of three or three out of five. **5.** A marriage or an arrangement of marriage: *a royal match.* **6.** A person viewed as a prospective marriage partner.

VERB: Inflected forms: **matched, match·ing, match·es**

TRANSITIVE VERB: **1a.** To be exactly like; correspond exactly. **b.** To be like with respect to specified qualities. **2.** To resemble or harmonize with: *The coat matches the dress.* **3.** To adapt or suit so that a balanced or harmonious result is achieved; cause to correspond: *You should match your deeds to your beliefs.* **4.** To find or produce a counterpart to: *It's difficult to match the color of old paint.* **5.** To fit together or cause to fit together. **6.** To join or give in marriage. **7.** To place in opposition or competition; pit: *She matched her skill against all comers.* **8.** To provide with an adversary or competitor. **9.** To do as well as or better than in competition; equal. **10.** To set in comparison; compare: *beauty that could never be matched.* **11.** To provide funds so as to equal or complement: *The government will match all private donations to the museum.* **12.** To flip or toss (coins) and compare the sides that land face up. **13.** To couple (electric circuits) by means of a transformer.

INTRANSITIVE VERB: To be a close counterpart; correspond.

ETYMOLOGY: Middle English *macche*, from Old English *gemæcca*, companion, mate. See mag- in Appendix I.

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OTHER FORMS: **match'er** —NOUN

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**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 SECOND 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. 2, 3, 4, 5, 12, 13 and 17. 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.

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.

Second Supplemental Answer: Without waiving the foregoing objections, additional infringing posters known to Plaintiff at this time are:

- (1) Hannah Montana "Who Said" Singing Poster
- (2) Hannah Montana "Bigger Than Us" Singing Poster
- (3) Hannah Montana "If We Were A Movie" Singing Poster
- (4) Hannah Montana "Life's What You Make It" Singing Poster
- (5) Hannah Montana "Make Some Noise" Singing Poster
- (6) Hannah Montana "Pumpin' Up The Party"
- (7) The Cheetah Girls "Do Your Own Thing" Singing Poster
- (8) The Cheetah Girls "Party's Just Begun" Singing Poster
- (9) The Cheetah Girls "Amigas Cheetahs" Singing 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.

Second Supplemental Answer: Without waiving the foregoing objections, please see attached Diagram. Plaintiff will supplement responses as discovery continues in this matter.

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.

“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*

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

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2009 I served via electronic mail the foregoing upon:

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Hannah Montana "Bigger Than Us" Singing Poster

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

1. a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster;

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana "Bigger Than Us" Singing Poster

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

providing a poster with poster art on a first surface thereof;

providing human actuable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana "If We Were A Movie" Singing Poster

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

1. a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

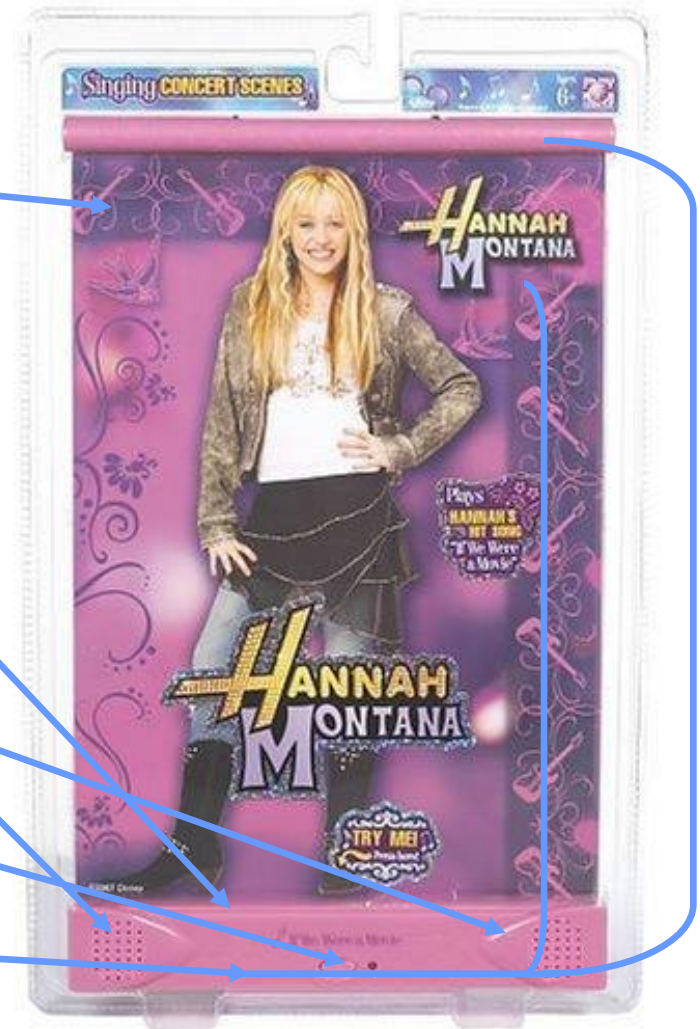
a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster;

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana “If We Were A Movie” Singing Poster

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

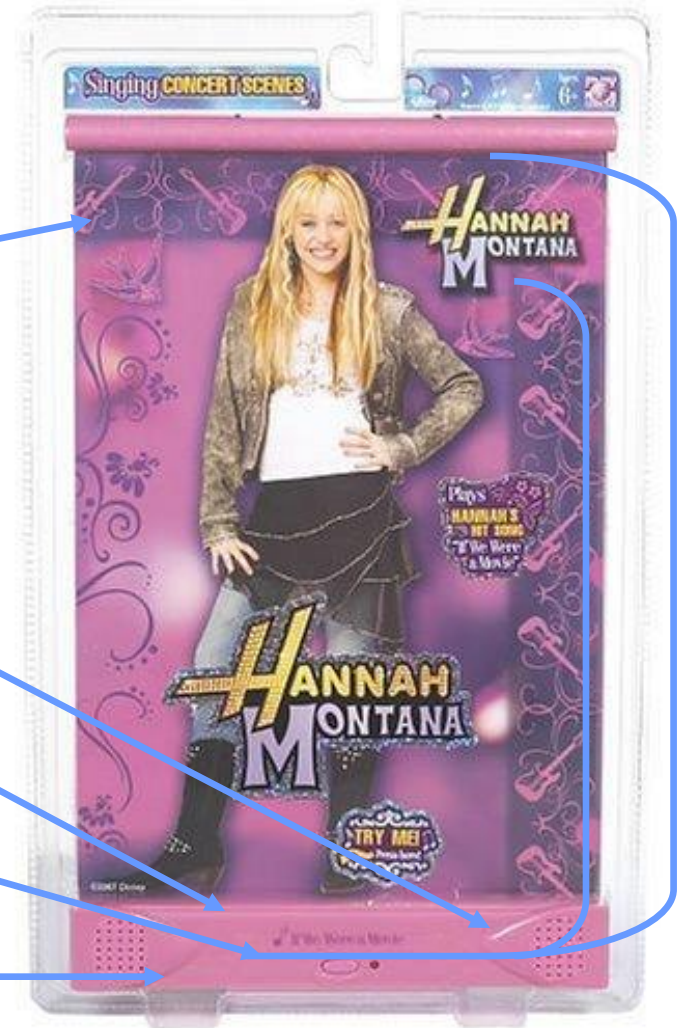
providing a poster with poster art on a first surface thereof;

providing human actuable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana “Make Some Noise” Singing Poster

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

1. a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster;

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana “Make Some Noise” Singing Poster

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

providing a poster with poster art on a first surface thereof;

providing human actuable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana "Pumpin' Up The Party" Singing Poster

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

1. a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

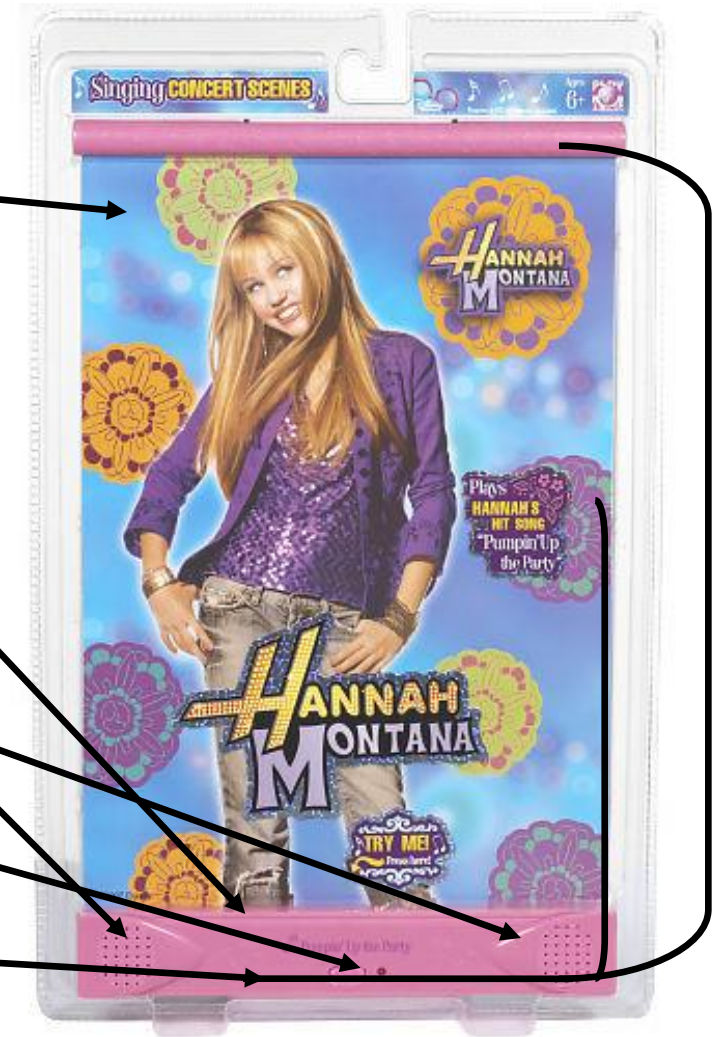
a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster;

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana “Pumpin’ Up The Party” Singing Poster

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

providing a poster with poster art on a first surface thereof;

providing human actuable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana "Life's What You Make It" Singing Poster

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

1. a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster;

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



2nd Supplemental Response to Interrogatory No. 3

Hannah Montana “Life’s What You Make It” Singing Poster

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

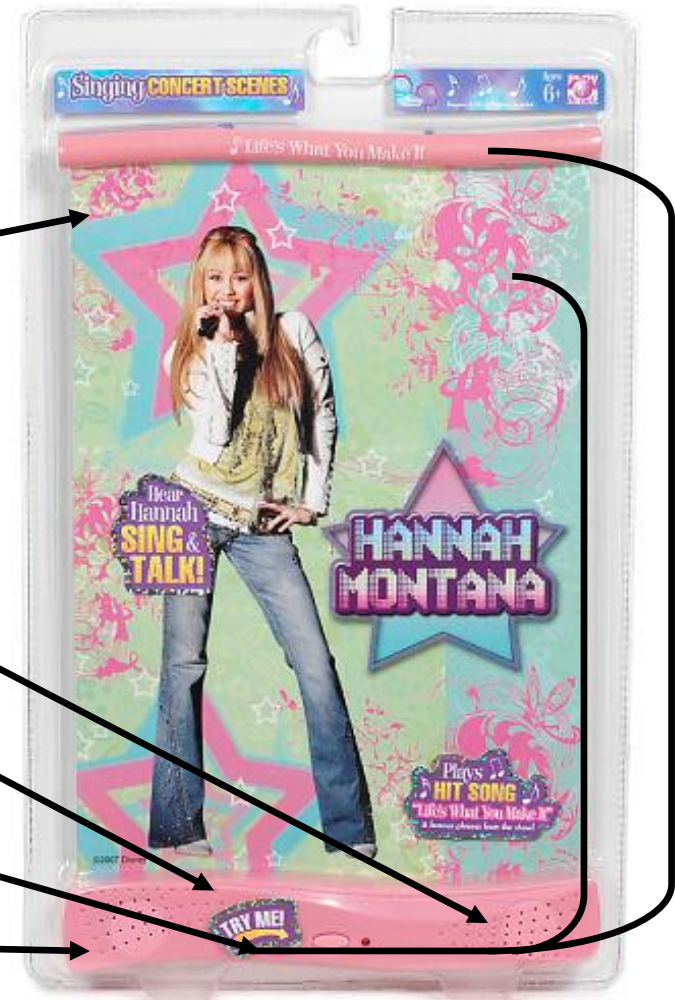
providing a poster with poster art on a first surface thereof;

providing human actuable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



2nd Supplemental Response to Interrogatory No. 3

Cheetah Girls – “Amigas Cheetahs” Singing Poster

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

1. a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

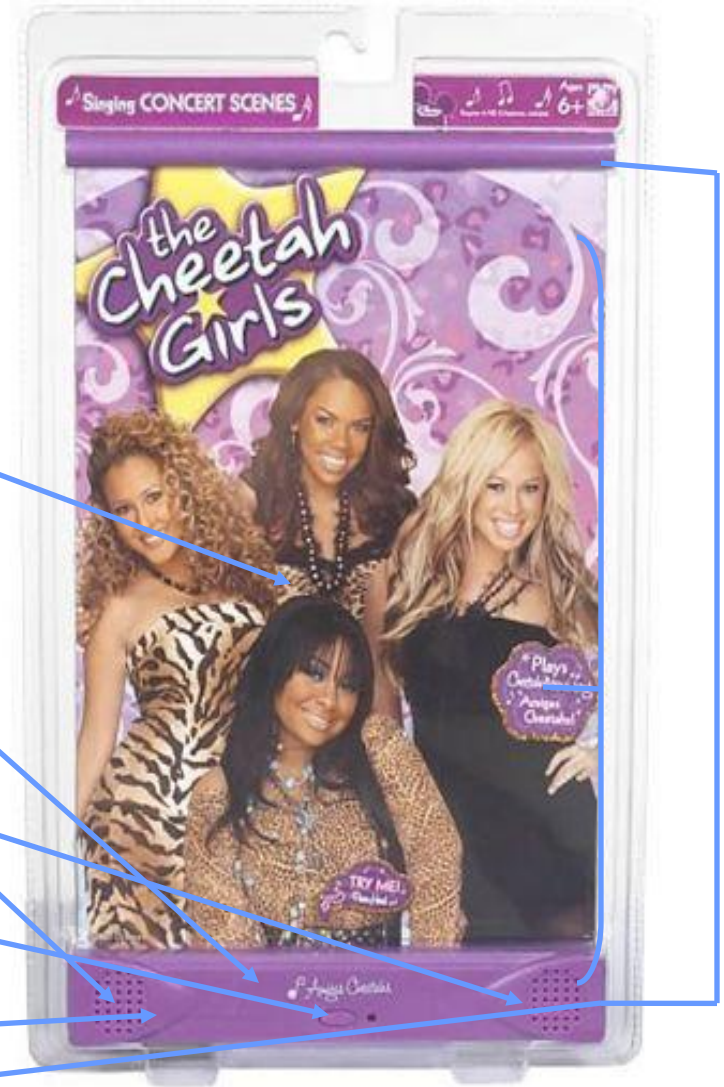
a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster;

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



2nd Supplemental Response to Interrogatory No. 3

Cheetah Girls – “Amigas Cheetahs” Singing Poster

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

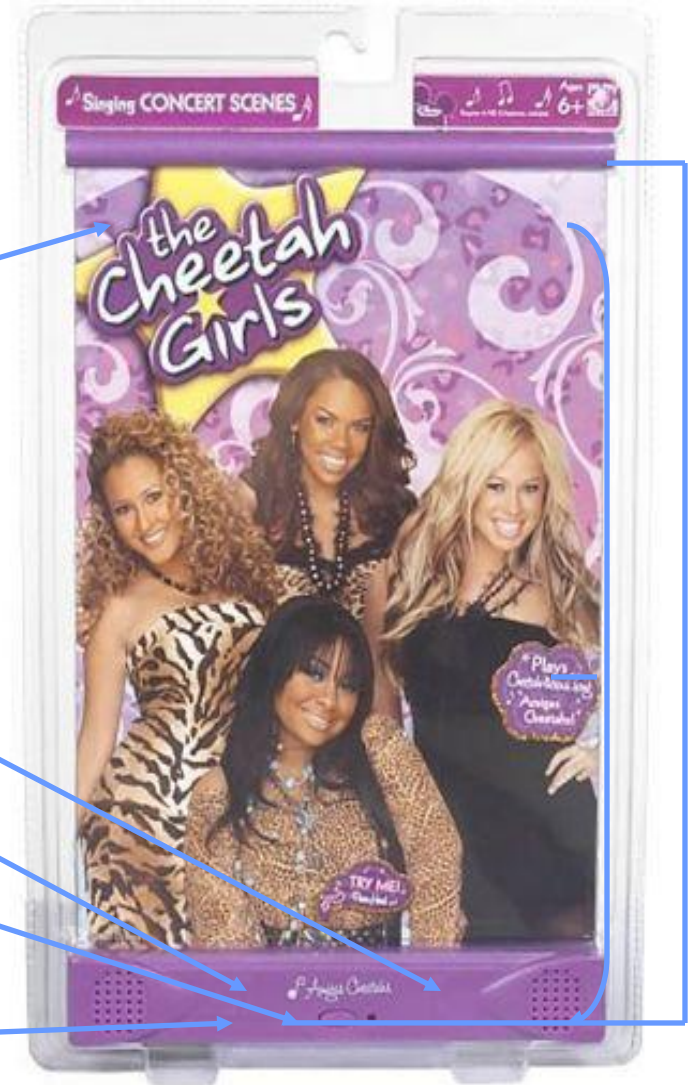
providing a poster with poster art on a first surface thereof;

providing human actuable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



2nd Supplemental Response to Interrogatory No. 3

Cheetah Girls – “Party’s Just Begun” Singing Poster

Where elements from claim one (1.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

1. a poster comprised of a first material, said poster having a first surface, said first surface including poster art thereon;

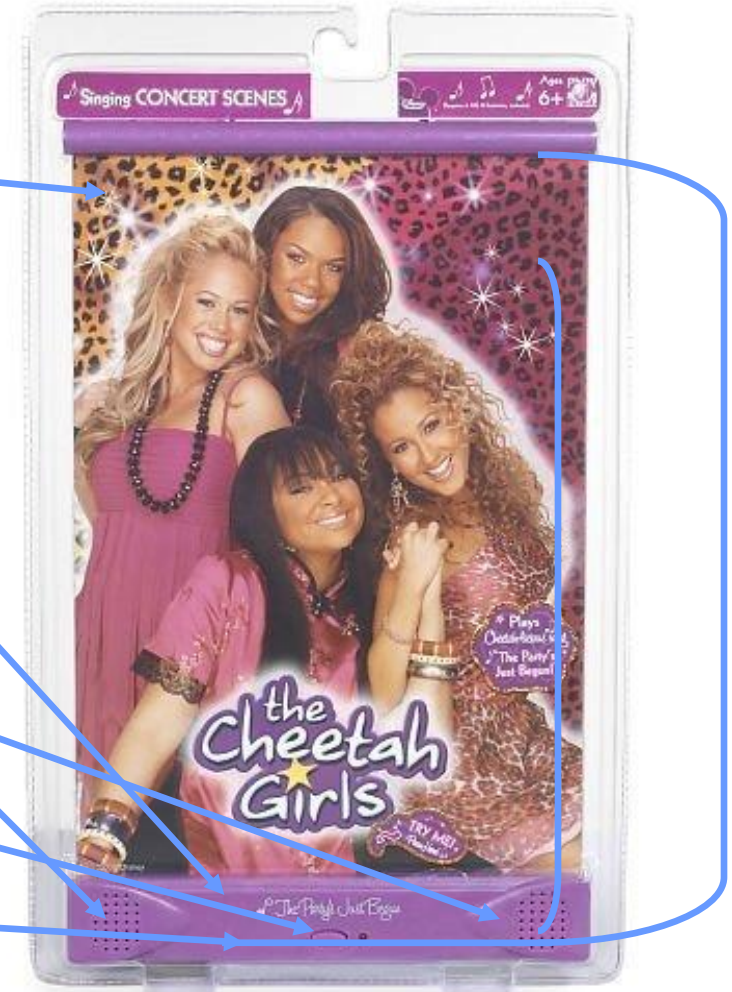
a housing comprised of a second material, said housing attached to a portion of said first surface of said poster;

a speaker concealed between said housing and said first surface of said poster;

an electric circuit including a sound production component, operatively connected to said speaker and concealed between said housing and said first surface of said poster;

a trigger attached to said electric circuit and concealed within said housing, said trigger adapted to be actuated through said housing to produce said sound;

wherein a surface of said housing is prepared with a matching art which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing.



2nd Supplemental Response to Interrogatory No. 3

Cheetah Girls – “Party’s Just Begun” Singing Poster

Where elements from claim five (5.) appear on the infringing product.

United States Patent # 5,548,272

What is claimed is:

5. A method for making a talking poster, comprising the steps of:

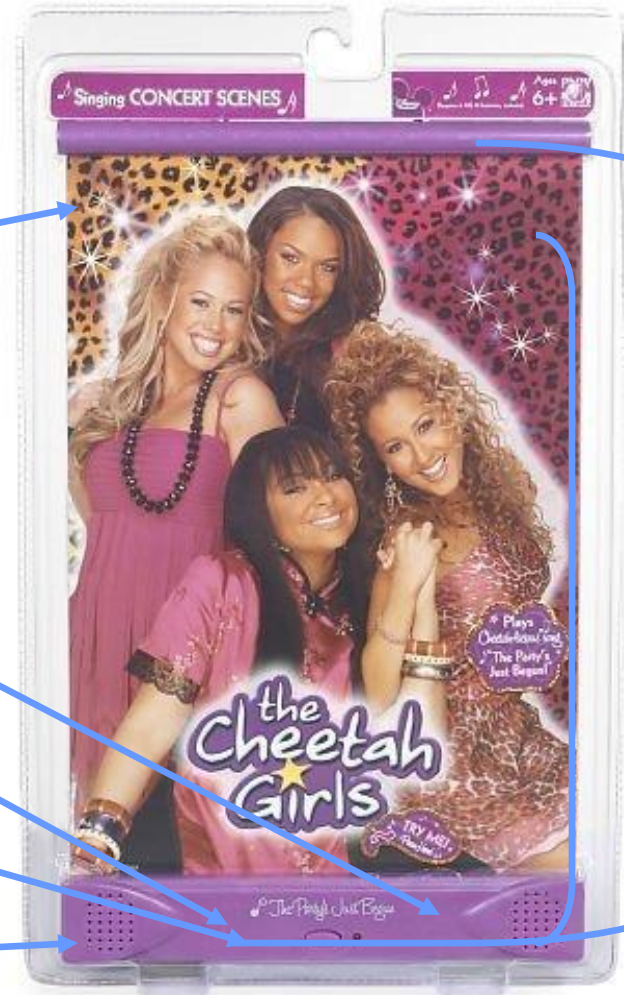
providing a poster with poster art on a first surface thereof;

providing human actuable sound components adapted to be contained on said poster;

providing a housing adapted to be secured onto a portion of said first surface of said poster;

applying matching art to said housing which is substantially the same as that area of said poster art which appears on said portion of said poster that said housing covers when said housing is attached to said poster, such that said housing artistically blends in with the surrounding poster art that is not covered by said housing; and

securing said housing onto said portion of said first surface of said poster, such that said housing conceals said sound components.



2nd Supplemental Response to Interrogatory No. 3