

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

KONAMI DIGITAL ENTERTAINMENT  
CO., LTD., a Japanese Corporation,  
and KONAMI DIGITAL ENTERTAINMENT,  
INC., an Illinois Corporation,

Plaintiffs,

v.

HARMONIX MUSIC SYSTEMS, INC.,  
a Delaware Corporation, MTV NETWORKS,  
CO., a Delaware Corporation, and VIACOM, INC.,  
a Delaware Corporation,

Defendants.

CASE NO. 6:08-CV-286

DEMAND FOR JURY TRIAL

**COMPLAINT FOR PATENT INFRINGEMENT OF UNITED STATES  
PATENT NOS. 6,390,923, 6,425,822 AND 6,645,067**

Plaintiffs Konami Digital Entertainment Co., Ltd., and Konami Digital Entertainment, Inc., (collectively, “Konami”), for its Complaint against Defendants Harmonix Music Systems, Inc., and MTV Networks, Co., and Viacom, Inc. (collectively, “Defendants”) allege:

**THE PARTIES**

1. Konami Digital Entertainment Co., Ltd., is a corporation organized under the laws of Japan with its corporate headquarters at 9-7-2, Akasaka, Minato-ku, Tokyo, 107-8323 Japan. Konami Digital Entertainment Co. Ltd. is the owner of record for each of the patents asserted herein.

2. Konami Digital Entertainment, Inc., is an Illinois corporation with its principal place of business at 2381 Rosecrans Ave., Suite 200, El Segundo, CA 90245. Konami Digital

Entertainment, Inc. is the exclusive licensee in the United States for each of the patents asserted herein.

3. Konami is informed and believes, and on that basis alleges, that Defendant Harmonix Music Systems, Inc., is a Delaware corporation with its principal place of business at 625 Massachusetts Avenue, 2nd Floor, Cambridge, MA 02139 and is the developer of the videogames sold under the tradename “Rock Band” that are at issue in this case. Upon information and belief, Harmonix is a wholly-owned subsidiary or business unit of defendants MTV Networks and/or Viacom.

4. Konami is further informed and believes, and on that basis alleges, that MTV Games, a business unit of Defendant MTV Networks, Co., is the publisher of the videogames sold under the tradename “Rock Band.” Konami is informed and believes, and on that basis alleges, that Defendant MTV Networks, Co., is a Delaware corporation with its principal place of business at 1515 Broadway, New York, NY 10036. Konami is also informed and believes, and on that basis alleges, that Defendant MTV Networks, Co., is a wholly-owned subsidiary and/or a division of Viacom, Inc.

5. Konami is further informed and believes, and on that basis alleges, that Defendant Viacom, Inc., is a Delaware corporation with its principal place of business at 1515 Broadway, New York, New York, 10036. Konami is informed and believes, and on that basis alleges, that defendants Harmonix and MTV Networks are business units or wholly owned subsidiaries of Viacom and conduct the activities complained of herein for the benefit of defendant Viacom.

#### **JURISDICTION AND VENUE**

6. This is an action for patent infringement. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). Upon information

and belief, Konami alleges that this Court has personal jurisdiction over the parties because Defendants have transacted and are transacting business, and have solicited and are regularly soliciting business, in Texas and specifically in this District, and have thus purposefully availed themselves of the jurisdiction of this District.

7. Venue is proper in this District under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claim occurred in this District. Upon information and belief, Konami alleges that Defendants have committed, and will continue to commit, acts of infringement throughout the United States, including Texas and specifically in this District.

8. Venue is also proper in this District under 28 U.S.C. § 1391(c) and 28 U.S.C. § 1400(b) because Defendants' contacts with this District are sufficient to render Defendants' amenable to personal jurisdiction in this District. Upon information and belief, Konami alleges that Defendants' contacts with this judicial district include without limitation (1) advertising and offering for sale the Rock Band products in Texas and specifically in this District; and (2) transacting business and soliciting business in Texas and specifically in this District.

### **FIRST CAUSE OF ACTION**

#### **(Infringement of U.S. Patent No. 6,390,923)**

9. Konami hereby incorporates by reference paragraphs 1 through 8, above, as though set forth herein in their entirety.

10. On May 21, 2002, United States Patent No. 6,390,923 (the "923 Patent") was duly and legally issued for inventions entitled "Music Playing Game Apparatus, Performance Guiding Image Display Method, and Readable Storage Medium Storing Performance Guiding

Image Forming Program.” Konami holds all rights and interest in the ‘923 Patent. A true and correct copy of the ‘923 Patent is attached hereto as Exhibit A.

11. Upon information and belief, Defendants have infringed and continue to infringe, literally and/or under the doctrine of equivalents, the ‘923 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the videogame “Rock Band” and components thereof, active inducement of others to manufacture, use, sell, import, and/or offer for sale the videogame “Rock Band” and components thereof, and contributing to the manufacture, use, sale, importation, and/or offer for sale of the videogame “Rock Band” and components thereof. Defendants are liable for infringement of the ‘923 Patent pursuant to 35 U.S.C. § 271.

12. Defendants’ acts of infringement have caused damage to Konami and Konami is entitled to recover from Defendants the damages sustained by Konami as a result of Defendants’ wrongful acts in an amount subject to proof at trial. Defendants’ infringement of Konami’s exclusive rights under the ‘923 Patent will continue to damage Konami, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

13. Upon information and belief, Defendants have had knowledge of its infringement of the ‘923 Patent, yet Defendants continue to infringe said patent. Defendants’ infringement of the ‘923 Patent is willful and deliberate, entitling Konami to increased damages under 35 U.S.C. § 284 and to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

## **SECOND CAUSE OF ACTION**

### **(Infringement of U.S. Patent No. 6,425,822)**

14. Konami hereby incorporates by reference paragraphs 1 through 13, above, as though set forth herein in their entirety.

15. On July 30, 2002, United States Patent No. 6,425,822 (the “‘822 Patent”) was duly and legally issued for inventions entitled “Music Game Machine with Selectable Controller Inputs.” Konami holds all rights and interest in the ‘822 Patent. A true and correct copy of the ‘822 Patent is attached hereto as Exhibit B.

16. Upon information and belief, Defendants have infringed and continue to infringe, literally and/or under the doctrine of equivalents, the ‘822 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the videogame “Rock Band” and components thereof, active inducement of others to manufacture, use, sell, import, and/or offer for sale the videogame “Rock Band” and components thereof, and contributing to the manufacture, use, sale, importation, and/or offer for sale of the videogame “Rock Band” and components thereof. Defendants are liable for infringement of the ‘822 Patent pursuant to 35 U.S.C. § 271.

17. Defendants’ acts of infringement have caused damage to Konami and Konami is entitled to recover from Defendants the damages sustained by Konami as a result of Defendants’ wrongful acts in an amount subject to proof at trial. Defendants’ infringement of Konami’s exclusive rights under the ‘822 Patent will continue to damage Konami, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

18. Upon information and belief, Defendants have had knowledge of its infringement of the ‘822 Patent, yet Defendants continue to infringe said patent. Defendants’ infringement of the ‘822 Patent is willful and deliberate, entitling Konami to increased damages under 35 U.S.C. § 284 and to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

### **THIRD CAUSE OF ACTION**

#### **(Infringement of U.S. Patent No. 6,645,067)**

19. Konami hereby incorporates by reference paragraphs 1 through 18, above, as though set forth herein in their entirety.

20. On November 11, 2003, United States Patent No. 6,645,067 (the “‘067 Patent”) was duly and legally issued for inventions entitled “Music Staging Device Apparatus, Music Staging Game Method, and Readable Storage Medium.” Konami holds all rights and interest in the ‘067 Patent. A true and correct copy of the ‘067 Patent is attached hereto as Exhibit C.

21. Upon information and belief, Defendants have infringed and continue to infringe, literally and/or under the doctrine of equivalents, the ‘067 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the videogame “Rock Band” and components thereof, active inducement of others to manufacture, use, sell, import, and/or offer for sale the videogame “Rock Band” and components thereof, and contributing to the manufacture, use, sale, importation, and/or offer for sale of the videogame “Rock Band” and components thereof. Defendants are liable for infringement of the ‘067 Patent pursuant to 35 U.S.C. § 271.

22. Defendants’ acts of infringement have caused damage to Konami and Konami is entitled to recover from Defendants the damages sustained by Konami as a result of Defendants’ wrongful acts in an amount subject to proof at trial. Defendants’ infringement of Konami’s exclusive rights under the ‘067 Patent will continue to damage Konami, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

23. Upon information and belief, Defendants have had knowledge of its infringement of the ‘067 Patent, yet Defendants continue to infringe said patent. Defendants’ infringement of

the '067 Patent is willful and deliberate, entitling Konami to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Konami requests entry of judgment in its favor and against Defendants as follows:

- A. Declaring that each of the Defendants has infringed one or more claims of U.S. Patent Nos. 6,390,923, 6,425,822, and 6,645,067;
- B. Permanently enjoining Defendants, its officers, agents, employees, and those acting in privity or in concert with them, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent Nos. 6,390,923, 6,425,822, and 6,645,067;
- C. Awarding the damages arising out of Defendants' infringement of U.S. Patent Nos. 6,390,923, 6,425,822, and 6,645,067, including enhanced damages pursuant to 35 U.S.C. § 284, to Konami, together with prejudgment and post-judgment interest, in an amount according to proof;
- D. Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- E. For such other costs and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Konami respectfully demands a trial by jury as to all issues so triable.

Dated: July 9, 2008

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