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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Media Rights Technologies, Inc.,

Plaintiff,

vs.

Microsoft Corporation,

Defendant.

Case No. CV 13-01916

PSG

COMPLAINT FOR PATENT
INFRINGEMENT AND JURY DEMAND

Case No.

Complaint For Patent Infringement And Jury Demand

1 **COMPLAINT**

2 Plaintiff Media Rights Technologies, Inc. (“MRT”), files this Complaint against Defendant
3 Microsoft Corporation (“Microsoft”) and alleges as follows:

4 **PRELIMINARY STATEMENT**

5
6 1. MRT has been involved in creating and developing software-based, content-control
7 solutions for more than ten years. MRT’s multifaceted business includes the operation, through a
8 subsidiary, of the website www.bluebeat.com. MRT also owns an extensive portfolio of patents
9 covering the foundational and groundbreaking inventions of Hank Risan and Edward Vincent
10 Fitzgerald. When Microsoft struggled to solve the problem of effective digital rights management in
11 the emerging Internet, MRT came up with the solution. MRT disclosed its technology and solution
12 to Microsoft, and engaged in extensive discussions with Microsoft. Microsoft, without permission
13 or authorization, implemented MRT’s solutions and technology to Microsoft’s significant
14 commercial benefit. Microsoft continues using MRT’s patented technology to this day in its
15 operating systems, software applications, and platforms.
16

17 **JURISDICTION**

18 2. This is a civil action for patent infringement arising under the patent laws of the
19 United States, Title 35, United States Code, including 35 U.S.C. §§ 271 *et seq.* and 281-285.
20 Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).
21

22 **VENUE**

23 3. Microsoft is transacting and/or has transacted business within the State of California.
24 Microsoft, directly or through intermediaries, is committing and/or has committed acts of
25 infringement in the State of California, including at the very least, developing, distributing, selling,
26 offering for sale, advertising, using and/or supporting products or services that fall within one or
27 more claims of the Asserted Patents (as described below). Microsoft is therefore subject to the
28

1 personal jurisdiction of this Court.

2 4. Microsoft, directly or through intermediaries, has committed acts of infringement in
3 this District, including at the very least, developing, distributing, selling, offering for sale,
4 advertising, using and/or supporting products or services that fall within one or more claims of
5 MRT's patents-in-suit. Accordingly, venue to adjudicate whether the Asserted Patents are infringed
6 is appropriate in the Northern District of California pursuant to 28 U.S.C. §§ 1391, 1400(b), and
7 1404(a).
8

9 **PARTIES**

10 5. MRT is duly incorporated, organized and existing under the laws of the State of
11 California, with its principal place of business and corporate headquarters in Santa Cruz, California.
12

13 6. Microsoft is incorporated, organized and existing under the laws of the State of
14 Washington. Microsoft operates at least three offices in the Northern District of California
15 including offices in Mountain View, Sunnyvale and San Francisco. Microsoft may be served with
16 process through its registered agent Corporation Service Company, doing business in California as
17 CSC - Lawyers Incorporating Service, 2710 Gateway Oaks Dr. STE 150N, Sacramento CA 95833.
18

19 **BACKGROUND**

20 7. MRT was founded in 2001. It develops technologies that enable the effective
21 transmission, protection and monetization of digital content. It also protects and monetizes royalties
22 for copyright owners such as artists, filmmakers and songwriters, and safeguards the interests of
23 their partners, publishers and broadcasters. MRT operates BlueBeat Music (BlueBeat;
24 BlueBeat.com), an Internet broadcast music service.

25 8. MRT developed and owns a patent portfolio including but not limited to United States
26 Patent No. 7,316,033 (the "'033 patent"), United States Patent No. 7,578,002 (the "'002 patent"),
27 United States Patent No. 7,904,964 (the "'964 patent"), and United States Patent No. 8,132,263 (the
28

1 “‘263 patent”). The applications resulting in the ‘033 patent, ‘002 patent, ‘964 patent and ‘263
2 patent were originally filed in the United States Patent and Trademark Office (the “PTO”) by Music
3 Public Broadcasting, Inc. (“MPB”). Each of the inventors listed in these patents was an employee of
4 MPB when the inventions contained in the ‘033 patent, ‘002 patent, ‘964 patent and ‘263 patent
5 applications were filed and assigned the aforementioned patent applications to MPB. In July 2004,
6 MPB changed its name to Media Rights Technologies, Inc.
7

8 9. MRT’s patent portfolio revolves around the concept MRT refers to as the “Controlled
9 Data Pathway.” MRT’s Controlled Data Pathway technology, including the inventions disclosed in
10 the above identified patents, resolves persistent issues such as securing digital content during
11 storage, transmission, and presentation. MRT’s Controlled Data Pathway technology was designed
12 to prevent unauthorized use of, for example, media content that is subject to (or potentially subject
13 to) use restrictions so that the owners of the media content could secure and monetize their legally
14 protected works in the context of the relevant distribution network. The claims of the Asserted
15 Patents (as described and identified below) specifically describe some of these inventions.
16

17 10. MRT engaged in discussions with the industry about the benefits of its technology,
18 including the Controlled Data Pathway. For example, MRT had discussions with the Recording
19 Industry Association of America (“RIAA”) and provided the RIAA with background material and
20 its software for testing and evaluation.
21

22 11. MRT had detailed discussions with Microsoft about its technology. MRT made its
23 technology available to Microsoft for review and analysis. On information and belief, Microsoft
24 used the information it learned from MRT, including information relating to the Controlled Data
25 Pathway technology, to build what Microsoft refers to as the “Protected Media Path” technology and
26 architecture. Microsoft incorporated the Protected Media Path technology and architecture into the
27 Windows Operating Systems including Windows Vista, Windows 7, and Windows 8; Windows
28

Media Center, and Windows Media Player.

12. Many different Microsoft applications, software programs, operating systems, platforms, and services utilize the Protected Media Path technology. These applications, software programs, operating systems, platforms, and services infringe MRT's patent portfolio including the '033 patent, '002 patent, '964 patent and '263 patent. Microsoft is infringing the '033 patent, '002 patent, '964 patent, and '263 patent in California and elsewhere in the United States by, for example, its making, selling, offering for sale, and using the applications, software programs, operating systems, platforms, and services that utilize the Protected Media Path technology including Windows Operating Systems, Windows Media Center and Windows Media Player. Upon information and belief, Microsoft is currently developing, marketing and selling its products and services, including its Windows Operating Systems, Windows Media Center and Windows Media Player, in California (including the Northern District) and elsewhere in the United States. Defendant Microsoft also has commercial relationships with various technology partners to promote, sell, offer for sale, and/or advertise the above identified Microsoft products and services in this State and this District.

THE PATENTS

13. United States Patent No. 7,578,002 (referred to herein as the "'002 patent"), entitled "Controlling Interaction of Deliverable Electronic Media," was duly and legally issued after a complete and thorough examination to inventors Hank Risan and Edward Vincent Fitzgerald on August 18, 2009. MRT owns by assignment the entire right, title, and interest in the '002 patent, and is entitled to sue for past and future infringement. A true and correct copy of the '002 patent is attached as Exhibit A and incorporated herein by reference.

14. United States Patent No. 7,316,033 (referred to herein as the "'033 patent"), entitled "Method of Controlling Recording of Media," was duly and legally issued after a complete and

1 thorough examination to inventors Hank Risan and Edward Vincent Fitzgerald on January 1, 2008.
2 MRT owns by assignment the entire right, title, and interest in the '033 patent, and is entitled to sue
3 for past and future infringement. A true and correct copy of the '033 patent is attached as Exhibit B
4 and incorporated herein by reference.

5
6 15. United States Patent No. 7,904,964 (referred to herein as the "'964 patent"), entitled
7 "Method and System for Selectively Controlling Access to Protected Media on a Media Storage
8 Device," was duly and legally issued after a complete and thorough examination to inventors Hank
9 Risan and Edward Vincent Fitzgerald on March 8, 2011. MRT owns by assignment the entire right,
10 title, and interest in the '964 patent, and is entitled to sue for past and future infringement. A true
11 and correct copy of the '964 patent is attached as Exhibit C and incorporated herein by reference.

12
13 16. United States Patent No. 8,132,263 (referred to herein as the "'263 patent"), entitled
14 "Method and System for Selectively Controlling Access to Protected Media on a Media Storage
15 Device," was duly and legally issued after a complete and thorough examination to inventors Hank
16 Risan and Edward Vincent Fitzgerald on March 6, 2012. MRT owns by assignment the entire right,
17 title, and interest in the '263 patent, and is entitled to sue for past and future infringement. A true
18 and correct copy of the '263 patent is attached as Exhibit D and incorporated herein by reference.

19
20 17. The '002 patent, '033 patent, '964 patent, and '263 patent (collectively, the "Asserted
21 Patents") cover inventions relating to MRT's Controlled Data Pathway technology and may be
22 applied to methods and systems utilized by software, applications, and operating systems running on
23 computers.

24 **CLAIM FOR PATENT INFRINGEMENT**

25 18. MRT refers to and incorporates herein the allegations of Paragraphs 1-17 above.

26 19. Microsoft directly infringes one or more claims of each of the Asserted Patents under
27 35 U.S.C. § 271. Microsoft is making, using, selling, offering for sale, exporting and/or importing
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1 accused products and services which infringe one or more claims of each of the Asserted Patents.
2 The accused products and services of Microsoft include the software, operating systems,
3 applications, platforms, and services that utilize the Microsoft Protected Media Path technology
4 including Windows Operating Systems, Windows Media Center and Windows Media Player
5 (collectively, the “Accused Products and Services”). Further discovery may reveal additional
6 infringing products.
7

8 20. Microsoft indirectly infringes one or more claims of each of the Asserted Patents
9 under 35 U.S.C. § 271(b). Upon information and belief, Microsoft has induced and continues to
10 induce its customers and/or users of the Accused Products and Services to infringe one or more
11 claims of the Asserted Patents. Upon information and belief, Microsoft specifically intends for its
12 customers and/or users of the Accused Products and Services to infringe one or more claims of the
13 Asserted Patents in the United States because Microsoft knew, upon information and belief, of the
14 Asserted Patents and designed the Accused Products and Services such that they would each
15 infringe one or more claims of each of the Asserted Patents if made, used, sold, offered for sale or
16 imported into the United States. On information and belief, Microsoft knows that the customers
17 and/or users of the Accused Products and Services infringe one or more claims of the Asserted
18 Patents when those customers and/or users make, use, sell, offer to sell, and/or import into the
19 United States, the Accused Products and Services. In addition, Microsoft has failed to redesign the
20 Accused Products and Services to cease infringement.
21
22

23 21. Microsoft indirectly infringes one or more claims of the Asserted Patents by
24 contributory infringement under 35 U.S.C. § 271(c). Microsoft has contributed to and continues to
25 contribute to the direct infringement of one or more claims of the Asserted Patents by customers
26 and/or users of the Accused Products and Services. Upon information and belief, Microsoft knew of
27 the Asserted Patents. Upon information and belief, Microsoft has sold, offered to sell, and/or
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1 imported in and into the United States the Accused Products, which Microsoft has known to be
2 especially made or adapted for use in infringing the Asserted Patents and which have no substantial
3 non-infringing uses. Upon information and belief, Microsoft designed the Accused Products and
4 Services such that they would infringe one or more claims of the Asserted Patents if made, used,
5 sold, offered for sale, or imported into the United States. The Accused Products and Services have
6 no substantial use that does not infringe one or more claims of the Asserted Patents.
7

8 22. Microsoft's acts of direct, contributory, and induced infringement have caused damage
9 to MRT, and MRT is entitled to recover damages sustained as a result of Microsoft's wrongful acts.
10 MRT has been irreparably harmed by Microsoft's acts of infringement, and will continue to be
11 harmed unless and until Microsoft's acts of infringement are enjoined and restrained by order of this
12 Court. MRT has no adequate remedy at law to redress Microsoft's continuing acts of infringement.
13 The hardships that would be imposed upon Microsoft by an injunction are less than those faced by
14 MRT should an injunction not issue. Furthermore, the public interest would be served by issuance
15 of an injunction. As a result of Microsoft's acts of infringement, MRT has suffered and will
16 continue to suffer damages in an amount to be proved at trial.
17

18 23. Upon information and belief, Microsoft has known about each of the Asserted Patents.
19 Moreover, Microsoft lacks justifiable belief that there is no infringement, or that the infringed claims
20 are invalid, and has acted with objective recklessness in its infringing activity. Microsoft's
21 infringement is willful, and MRT is entitled to an award of exemplary damages, attorneys' fees, and
22 costs in bringing this action.
23

24 **DEMAND FOR A JURY TRIAL**

25 24. Pursuant to the provisions of Rule 38(b) of the Federal Rules of Civil Procedure and in
26 accordance with Civil Local Rule 3-6, MRT demands a trial by jury of all issues so triable in this
27 matter.
28

PRAYER FOR RELIEF

WHEREFORE, MRT requests the following relief:

A. A judgment that the Microsoft has directly infringed, and/or indirectly infringed by way of inducement and/or contributory infringement, the '002 patent;

B. A judgment that the Microsoft has directly infringed, and/or indirectly infringed by way of inducement and/or contributory infringement, the '033 patent;

C. A judgment that the Microsoft has directly infringed, and/or indirectly infringed by way of inducement and/or contributory infringement, the '964 patent;

D. A judgment that the Microsoft has directly infringed, and/or indirectly infringed by way of inducement and/or contributory infringement, the '263 patent;

E. A judgment and order that Microsoft and its parents, affiliates, subsidiaries, officers, agents, servants, employees, attorneys, successors, and assigns, and all those persons in active concert or participation with them, or any of them, be enjoined from making, using, importing, exporting, distributing, supplying, offering for sale, selling, or causing to be sold any product or service falling within the scope of any claim of the Asserted Patents, or otherwise infringing or contributing to or inducing infringement of any claim thereof;

F. The Court order an accounting for damages through verdict and thereafter until Microsoft is enjoined from further infringing activities;

G. A judgment and order that MRT be awarded its actual damages under 35 U.S.C. § 284 (but in no event less than a reasonable royalty), including supplemental damages for any continuing post-verdict infringement until Microsoft is enjoined from further infringing activities;

H. A judgment and order requiring Microsoft to pay MRT pre-judgment and post-judgment interest on the damages awarded, including an award of pre-judgment interest,

1 pursuant to 35 U.S.C. § 284, from the date of each act of infringement of the Asserted Patents by
2 Microsoft to the day a damages judgment is entered, and further award of post-judgment interest,
3 pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed
4 by law;

5
6 I. A judgment and order finding this to be an exceptional case and requiring
7 Microsoft to pay the costs of this action (including all disbursements) and attorneys' fees as
8 provided by 35 U.S.C. § 285;

9
10 J. A judgment and order finding that Microsoft's infringement is willful and
deliberate, entitling MRT to enhanced damages pursuant to 35 U.S.C. § 284;

11
12 K. In the event an injunction is not awarded, that the Court award a compulsory
13 future royalty; and

14
15 L. That MRT be awarded such other and further relief as the Court deems just
and proper.

16 DATED: April 25, 2013

MCKOOL SMITH HENNIGAN, P.C.

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18
19 By /S/ Courtland L. Reichman
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