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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **OAKLAND DIVISION**

13
 14 QUINTAL RESEARCH GROUP, INC.,
 15
 Plaintiff,
 16
 v.
 17 NINTENDO OF AMERICA, INC., and
 18 NINTENDO COMPANY LTD.,
 19 Defendants.

Case No. 13-CV-0888 SBA
FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT OF U.S.
PATENT NO. 7,425,944
DEMAND FOR JURY TRIAL

20 Quintal Research Group, Inc. (“Quintal”), hereby alleges for its First Amended Complaint
 21 for Patent Infringement against defendants Nintendo Co., Ltd. and Nintendo of America, Inc.
 22 (collectively “Nintendo”) as follows.

23 **THE PARTIES**

- 24 1. Plaintiff, Quintal, is a corporation organized under the laws of the State of
 25 California with its principal place of business located at San Francisco, California.
 26 2. On information and belief, defendant, Nintendo Co. Ltd., is a Japanese corporation
 27 with its principal place of business at 11-1 Kamitoba Hokotate-Cho, Minami-Ku, Kyoto 601-
 28

1 8501, Japan.

2 3. On information and belief, defendant Nintendo of America, Inc., is a Washington
3 corporation with its principal place of business at 4600 15th Avenue, NE, Redmond, WA 98052.

4 **JURISDICTION AND VENUE**

5 4. This action arises under the patent laws of the United States, Title 35 of the United
6 States Code. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and
7 1338(a).

8 5. On information and belief, defendants transacted business in this District,
9 contracted to supply goods or services in this District directly or through their agents, offered for
10 sale, sold and/or advertised their products and services in this District, and otherwise purposely
11 availed themselves of the privileges and benefits of the laws of the State of California.

12 6. Venue is proper in this Court under 28 U.S. C. §§ 1391(b) and 1391(c) and/or
13 1400(b).

14 **INTRADISTRICT ASSIGNMENT**

15 7. This is an Intellectual Property Action under this Court's Assignment Plan, and
16 therefore assignment to any Division of the Court is proper per local rules.

17 **BACKGROUND**

18 8. Quintal is a San Francisco company and has been researching and developing
19 innovative solutions for a broad range of technologies. As part of its research and development
20 program, Quintal expended funds and resources developing a patent portfolio, which it licenses to
21 others, including fortune 500 companies.

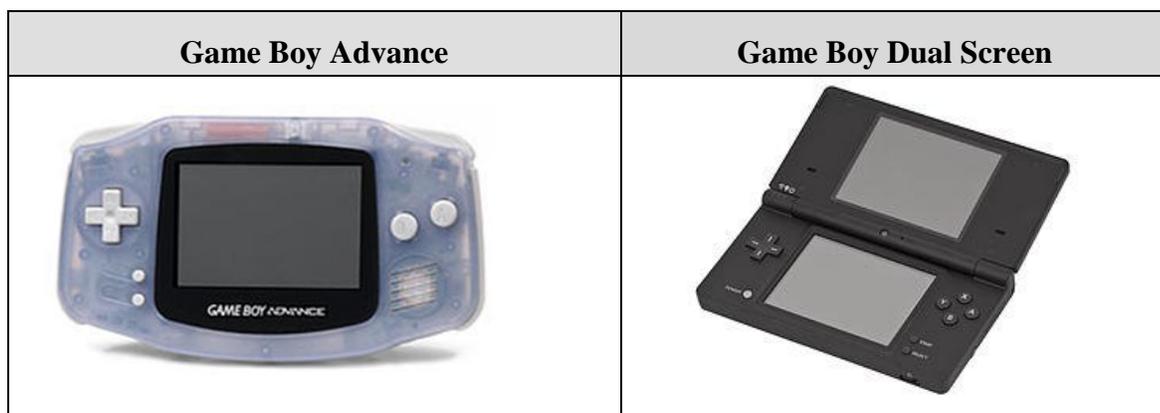
22 9. On September 16, 2008, the U.S. Patent Office issued a patent, U.S. Patent No.
23 7,425,944 (the '944 patent), entitled, "Computerized Information Retrieval System," to Richard
24 Esty Peterson ("Peterson"), the inventor. A true and correct copy of the '944 patent, as corrected,
25 is attached hereto as **Exhibit 1**. The '944 patent descends from a parent application filed on July
26 31, 1991. The '944 patent has a specification virtually identical to another patent in the family,
27 U.S. Patent No. 6,643,656 (the '656 patent), which was filed on February 4, 1994 and which
28 issued on November 4, 2003. Nintendo was also offered a license to the '656 patent, which was

1 refused.

2 10. Quintal is the sole and exclusive owner by assignment from Peterson of all rights,
 3 title, and interest in and to the '944 patent. A true and correct copy of the assignment is attached
 4 hereto as **Exhibit 2**.

5 11. The '944 patent teaches, among other features, an innovative user-friendly
 6 arrangement of finger and thumb controls around the screen of a small handheld deck designed to
 7 operate as a game player or a personal digital assistant (a "PDA").

8 12. The novelty and usefulness of the design taught in the '944 patent is further
 9 evidenced by the commercial success of Nintendo infringing devices, iterations of which are
 10 pictured below.



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 19 13. On information and belief, Nintendo's advertising, making, offers for sale, sales,
 20 and encouragement of infringement by others resulted in the sale and use of tens of millions of
 21 infringing devices that, among other elements, utilize the innovative user-friendly arrangement of
 22 finger and thumb controls around the screen of a small handheld deck designed to operate as a
 23 game player or a PDA, including but not limited to the Game Boy Advance and the Game Boy
 24 Dual Screen.

25 **COUNT I**

26 **(Infringement of U.S. Patent 7,425,944)**

27 14. Quintal hereby incorporates paragraphs 1-13 above, inclusive, by this reference.
 28

1 15. On information and belief, Nintendo, without a license from Quintal, during the
2 life of the '944 patent, was and is in the business of, *inter alia*, importing, making, using, selling,
3 and/or offering to sell in this district handheld decks designed to operate as a game player, or
4 PDA, including without limitation, the Game Boy Dual Screen, which infringe one or more
5 claims of the '944 patent, literally or under the doctrine of equivalents, including but not limited
6 to claims 1, 2, 9, and 10.

7 16. On information and belief, by importing, making, using, selling, and/or offering to
8 sell in the United States and its territories infringing devices, including without limitation, the
9 Game Boy Dual Screen, together with the related accessories and cartridge games, Nintendo
10 directly infringed and actively induced others to infringe one or more of the claims of the '944
11 patent under 35 U.S.C. § 271 (a), (b) and/or (f) literally or under the doctrine of equivalents,
12 including but not limited to claims 1, 2, 9, and 10.

13 17. On information and belief, Nintendo imported, sold, or otherwise provided the
14 infringing devices, including without limitation the Game Boy Dual Screen and Game Boy
15 Advance, to consumers, causing consumers to use the infringing devices, thereby infringing at
16 least one claim of the '944 patent. On information and belief, Nintendo induced its customers to
17 use the infringing devices even after receiving notice of the '944 patent from Quintal as set forth
18 below.

19 18. On information and belief, Nintendo, during the life of the '944 patent, actively
20 induced others to infringe the '944 patent. On information and belief, during the life of the '944
21 patent, and even after receiving multiple notices of the '944 patent as set forth in detail below,
22 Nintendo specifically intended to encourage its customers to infringe the '944 patent. Nintendo
23 provided information and documentation via its website, www.nintendo.com, advising its
24 customers and the public how to setup, repair, install, maintain, and otherwise use infringing
25 devices, including without limitation, the innovative user-friendly arrangement of finger and
26 thumb controls around the screen of a small handheld deck, including without limitation the
27 Game Boy Dual Screen and Game Boy Advance, with the specific intent to encourage its
28 customers and the public to infringe at least one claim of the '944 patent.

1 19. Nintendo was informed that a license was needed under the '944 patent and was
2 actually aware of the patent prior to engaging in its infringing activities.

3 20. From as early as October 27, 2004, Nintendo was aware of the prosecution of the
4 family of patents that lead to the issuance of the '944 patent, and was offered a license to the '656
5 patent.

6 21. In a March 30, 2009 letter to Ms. Sayoko Blodgett-Ford, Senior Manager of
7 Intellectual Property at Nintendo of America, Quintal discussed in detail the issuance of the '944
8 patent and offered Nintendo a license to the same. A copy of the '944 patent was enclosed with
9 the March 30, 2009 letter. Several additional overtures were made by Quintal to negotiate a
10 license with Nintendo.

11 22. On April 3, 2009, Quintal again offered Nintendo a license to the '944 patent by a
12 letter addressed to Mr. Blodgett-Ford. Included with the April 3, 2009 letter was another copy
13 the '944 patent.

14 23. On April 9, 2009, Quintal renewed its offer to Nintendo to license the '944 patent
15 by a letter addressed to Reggie Fils-Aime, President of Nintendo of America. In the April 9,
16 2009 letter, Quintal discussed the features of the invention and detailed why Nintendo was
17 infringing. Included with the April 9, 2009 letter was another copy of the '944 patent.

18 24. On May 15, 2009, by letter sent to Fils-Amie, care of the legal department of
19 Nintendo of America, Quintal again offered to license the '944 patent to Nintendo. As of the
20 May 15, 2009 letter, Quintal had not received an acknowledgment from Nintendo of Quintal's
21 communications offering a license.

22 25. By letter dated May 26, 2009, Devon W. Pritchard, Nintendo's Manager of
23 Intellectual Property, responded and noted that they will respond further "in due course." On July
24 1, 2009, Nintendo refused to discuss licensing the '944 patent.

25 26. On information and belief, Nintendo's infringement of the '944 patent has been
26 willful, deliberate, and objectively reckless, entitling Quintal to increased damages under 35
27 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C.
28 § 285.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Quintal requests a trial by jury of all issues so triable.

Dated: May 7, 2013

DONAHUE GALLAGHER WOODS LLP

By: s/Christian J. Martinez/s
Christian J. Martinez
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QUINTAL RESEARCH GROUP, INC.