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16							
17	I IN ITALIA						
			TRICT COURT				
18	1	DISTRICT OF N	NEVADA				
19							
20	NXP B.V.,	CA	ASE NO.: 2:13-cv	-00453-MMD-VCF			
21	Plaintiff,						
22	V.		RST AMENDEL ATENT INFRIN(	O COMPLAINT FOR GEMENT			
23	NINTENDO CO. LTD., NINTENDO OF AMERICA, INC.						
24	Defendants.	П	IRY DEMAND				
25	Derendants.	JC					
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27							
28							
	First Amend	ED COMPLAINT FOR	PATENT INFRINGEME	NT			

Plaintiff NXP B.V. ("NXP") for its first amended complaint against Defendants Nintendo
 Co. Ltd. ("Nintendo Japan") and Nintendo of America Inc. ("Nintendo USA") (collectively
 "Nintendo") on personal knowledge as to its own actions and on information and belief as to all
 others based on its investigation, hereby alleges as follows:

JURISDICTION AND VENUE

6 1. This is an action for patent infringement arising under the Patent Laws of the
7 United States, 35 U.S.C. §§ 100, *et seq.* This Court has subject matter jurisdiction over this action
8 under 28 U.S.C. §§ 1331, 1332 and 1338(a).

9 2. This Court has personal jurisdiction over Nintendo. Nintendo manufactures 10 (directly or indirectly through third party manufacturers) and/or assembles products that are and 11 have been used, offered for sale, sold, and purchased in the District of Nevada. Nintendo also, 12 directly and/or through its distribution network, places electronic products within the stream of 13 commerce, which stream is directed at the District of Nevada, with the knowledge and/or 14 understanding that such products will be sold in this District. Nintendo has purposefully availed 15 itself of the privilege of conducting business activities within the State of Nevada and this 16 District, which activities, upon information and belief, infringe one or more claims of the United 17 States patents owned by NXP, causing injury in the State of Nevada and this District.

3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and
1400(b). Plaintiff believes and based thereon, allege, that Nintendo resides in this judicial district
within the meaning of 28 U.S.C. § 1391(c), and further, that Nintendo has committed, contributed
to, and/or induced acts of patent infringement in this judicial district and provides goods or
services and does business in this judicial district.

4. Some of Nintendo's recent Nevada activities include the following. Nintendo
showcased and promoted the Nintendo Wii U in Las Vegas, Nevada. Upon information and
belief, at the International Consumer Electronics Show ("CES") 2012 event held in Las Vegas,
Nevada on January 8-13, 2012, Nintendo advertised, demonstrated, used, offered to sell, and/or
sold its Wii U product. Upon information and belief, several Nintendo executives and employees

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attended the CES 2012 event to market and promote the Wii U, including but not limited to
 Reggie Fils-Aime, President; Cindy Gordon, Vice President of Corporate Affairs; and Scott
 Moffitt, Executive Vice President of Sales and Marketing.

4 5. Upon information and belief, Nintendo Wii U products prominently displaying
5 infringing features were also showcased by Nintendo accessory vendors at the CES 2013 event
6 held in Las Vegas, Nevada on January 8-11, 2013.

6. Upon information and belief, Nintendo has established Wii U demonstration
kiosks in the recent past at several Las Vegas retail locations for consumers to test the Wii U
product. The Nintendo Wii U products are also sold at these and many other retail locations in the
Las Vegas area and throughout the State of Nevada.

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#### **PARTIES**

Plaintiff NXP is incorporated under the laws of The Netherlands with its
principal place of business at High Tech Campus 60, 5656 AG, Eindhoven, The Netherlands.

14 8. Upon information and belief, Defendant Nintendo Japan is incorporated under
15 the laws of Japan with its principal place of business at 11-1 Kamitoba Hokotate-cho, Minami-ku,
16 Kyoto 601-8501, Japan. Upon further information and belief, the design and development of the
17 infringing Nintendo products at issue, including the Wii U product, occurred at the principal place
18 of business of Nintendo Japan, and such products are imported into the United States.

Upon information and belief, Defendant Nintendo USA is a U.S. corporation
 having its principal place of business at 4600 150th Avenue NE, Redmond, Washington, 98052.
 Nintendo USA is a wholly owned subsidiary of Nintendo Japan that sells the infringing products,
 including the Wii U product, in the United States on behalf of Nintendo Japan.

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#### **STATEMENT OF FACTS**

United States Patent No. 6,563,882 ("the '882 patent"), titled *Write/Read Device For Communication With Transponders, Having First Coding Means And Second Coding Means*,
was duly and lawfully issued May 13, 2003. NXP is the sole owner of all rights, title and interest
in the '882 patent. A true and correct copy of the '882 patent is attached as Exhibit 1.

1 United States Patent No. 7,570,716 ("the '716 patent"), titled Data Carrier 11. 2 *Provided With At Least* Two *Decoding Stages*, was duly and lawfully issued August 4, 2009. 3 NXP is the sole owner of all rights, title and interest in the '716 patent. A true and correct copy of 4 the '716 patent is attached as Exhibit 2. 5 12. United States Patent No. 8,203,432 ("the '432 patent"), titled Method Of Reading 6 A Plurality Of Non-Contact Data Carriers, Including An Anti-Collision Scheme, was duly and 7 lawfully issued June 19, 2012. NXP is the sole owner of all rights, title and interest in the '432 8 patent. A true and correct copy of the '432 patent is attached as Exhibit 3. 9 13. United States Patent No. 8,150,316 ("the '316 patent"), titled Communication 10 Partner Appliance With Automatic Send Mode Activation, was duly and lawfully issued April 3, 11 2012. NXP is the sole owner of all rights, title and interest in the '316 patent. A true and correct 12 copy of the '316 patent is attached as Exhibit 4. 13 14. United States Patent No. 8,249,503 ("the '503 patent"), titled Communication 14 Partner Appliance With Automatic Send Mode Activation, was duly and lawfully issued August 15 21, 2012. NXP is the sole owner of all rights, title and interest in the '503 patent. A true and 16 correct copy of the '503 patent is attached as Exhibit 5. 17 COUNT I 18 (Infringement of the '882 Patent) 19 15. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above 20 as if fully set forth herein. 21 16. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and 22 has been directly infringing, contributing to the infringement of, and/or inducing others to infringe 23 the '882 patent by making, using, selling, and/or offering to sell in the United States, or importing 24 into the United States, without authority, products or processes that practice the inventions 25 claimed in the '882 patent, including without limitation, Nintendo's Wii U. 26 17. Upon information and belief, Nintendo has induced the infringement and/or 27 contributed to the infringement of the '882 patent by knowingly and with intent, actively 28

## Case 2:13-cv-00453-MMD-VCF Document 28 Filed 05/23/13 Page 5 of 10

1 encouraging customers to use Nintendo's infringing products, including without limitation, 2 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the 3 '882 patent.

4 18. Upon information and belief, Nintendo intends to continue its unlawful 5 infringing activity related to the '882 patent.

6 19. Nintendo's acts of infringement have caused damage to NXP, and NXP is 7 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's 8 wrongful acts in an amount subject to proof at trial.

**COUNT II** 

## (Infringement of the '716\_Patent)

11 20. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above 12 as if fully set forth herein.

13 21. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and 14 has been directly infringing, contributing to the infringement of, and/or inducing others to infringe 15 the '716 patent by making, using, selling, and/or offering to sell in the United States, or importing 16 into the United States, without authority, products or processes that practice the inventions 17 claimed in the '716 patent, including without limitation, Nintendo's Wii U.

18 22. Upon information and belief, Nintendo has induced the infringement and/or 19 contributed to the infringement of the '716 patent by knowingly and with intent, actively 20 encouraging customers to use Nintendo's infringing products, including without limitation, 21 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the 22 '716 patent.

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23. Upon information and belief, Nintendo intends to continue its unlawful 24 infringing activity related to the '716 patent.

25 24. Nintendo's acts of infringement have caused damage to NXP, and NXP is 26 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's 27 wrongful acts in an amount subject to proof at trial.

1	<u>COUNT III</u>		
2	(Infringement of the '432_Patent)		
3	25.	NXP incorporates by reference the allegations of Paragraphs 1 through 9 above	
4	as if fully set for	th herein.	
5	26.	Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and	
6	has been directly infringing, contributing to the infringement of, and/or inducing others to infringe		
7	the '432 patent by making, using, selling, and/or offering to sell in the United States, or importing		
8	into the United States, without authority, products or processes that practice the inventions		
9	claimed in the '432 patent, including without limitation, Nintendo's Wii U.		
10	27.	Upon information and belief, Nintendo has induced the infringement and/or	
11	contributed to th	e infringement of the '432 patent by knowingly and with intent, actively	
12	encouraging customers to use Nintendo's infringing products, including without limitation,		
13	Nintendo's Wii	U, in a manner that constitutes direct infringement of one or more claims of the	
14	'432 patent.		
15	28.	Upon information and belief, Nintendo intends to continue its unlawful	
16	infringing activity related to the '432 patent.		
17	29.	Nintendo's acts of infringement have caused damage to NXP, and NXP is	
18	entitled to recove	er from Nintendo the damages sustained by NXP as a result of Nintendo's	
19	wrongful acts in	an amount subject to proof at trial.	
20		<u>COUNT IV</u>	
21	(Infringement of the '316_Patent)		
22	30.	NXP incorporates by reference the allegations of Paragraphs 1 through 9 above	
23	as if fully set for	th herein.	
24	31.	Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and	
25	has been directly infringing, contributing to the infringement of, and/or inducing others to infringe		
26	the '316 patent by making, using, selling, and/or offering to sell in the United States, or importing		
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		5 First Amended Complaint for Patent Infringement	

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1 into the United States, without authority, products or processes that practice the inventions
2 claimed in the '316 patent, including without limitation, Nintendo's Wii U.

- 3 32. Upon information and belief, Nintendo has induced the infringement and/or
  4 contributed to the infringement of the '316 patent by knowingly and with intent, actively
  5 encouraging customers to use Nintendo's infringing products, including without limitation,
  6 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
  7 '316 patent.
- 8 33. Upon information and belief, Nintendo intends to continue its unlawful
  9 infringing activity related to the '316 patent.

34. Nintendo's acts of infringement have caused damage to NXP, and NXP is
entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
wrongful acts in an amount subject to proof at trial.

<u>COUNT V</u>

# (Infringement of the '503\_Patent)

15 35. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above
16 as if fully set forth herein.

17 36. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and
18 has been directly infringing, contributing to the infringement of, and/or inducing others to infringe
19 the '503 patent by making, using, selling, and/or offering to sell in the United States, or importing
20 into the United States, without authority, products or processes that practice the inventions
21 claimed in the '503 patent, including without limitation, Nintendo's Wii U.

37. Upon information and belief, Nintendo has induced the infringement and/or
contributed to the infringement of the '503 patent by knowingly and with intent, actively
encouraging customers to use Nintendo's infringing products, including without limitation,
Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
'503 patent.

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1	38.	Upon information and belief, Nintendo intends to continue its unlawful
2	infringing activ	rity related to the '503 patent.

3 39. Nintendo's acts of infringement have caused damage to NXP, and NXP is 4 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's 5 wrongful acts in an amount subject to proof at trial.

DAMAGES 7 40. As a result of Nintendo's acts of infringement, NXP has suffered and will suffer 8 actual and consequential damages; however, NXP does not yet know the full extent of such 9 infringement and such extent cannot be ascertained except through discovery and special 10 accounting. To the fullest extent permitted by law, NXP seeks recovery of damages at least for 11 lost profits, reasonable royalties, and other benefits received by Nintendo as a result of using the 12 misappropriated technology. NXP seeks any other damages to which it would be entitled in law 13 or in equity.

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## **DEMAND FOR JURY TRIAL**

15 41. NXP respectfully demands a trial by jury pursuant to Rule 38 of the Federal 16 Rules of Civil Procedure.

#### PRAYER FOR RELIEF

18 42. WHEREFORE, Plaintiff NXP respectfully prays for judgment against the 19 Defendant for the following: 20

A. Patent infringement;

21 Β. Actual economic damages;

22 C. Exemplary treble damages as allowed by law;

23 D. Injunctive relief as allowed by law;

Attorneys' fees; E.

Pre-judgment interest as allowed by law; F.

Costs of suit; and G.

> 7 FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

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1	H. All other relief in law or in equity to which Plaintiff may show itself justly entitled.
2	DATED: May 23, 2013 BUNSOW DE MORY SMITH & ALLISON LLP
3	
4	By: <u>/s/ Denise M. De Mory</u> Denise M. De Mory, (CA Bar No. 168076)
5	<i>(admitted Pro Hac Vice)</i> Cliff Win, Jr., (CA Bar No. 270517)
6	<i>(admitted Pro Hac Vice)</i> BUNSOW DE MORY SMITH & ALLISON LLP
7	600 Allerton Street, Suite 101 Redwood City, CA 94063
8	Telephone: 650-351-7248 Facsimile: 650-351-7253
9	Email: <u>ddemory@bdiplaw.com</u> Email: <u>cwin@bdiplaw.com</u>
10	Michael D. Rounds (Nevada Bar No. 4734)
11	Adam P. McMillen (Nevada Bar No. 10678) WATSON ROUNDS
12	10000 West Charleston Boulevard Suite 240
13	Las Vegas, NV 89135 Telephone: 702-636-4902
14	Facsimile: 702-636-4904 Email: mrounds@watsonrounds.com
15	Email: <u>amcmillen@watsonrounds.com</u>
16	Attorneys for Plaintiff NXP B.V.
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	FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

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1	CERTIFICATE OF SERVICE		
2			
3	Pursuant to FRCP 5(b), I certify that I am an employee of Watson Rounds, and that on this		
4 5	date a true and correct copy of the foregoing document, <b>FIRST AMENDED COMPLAINT FOR</b>		
6	<b>PATENT INFRINGEMENT</b> , will be served upon counsel of record via electronic mail through		
7	the United States District Court's CM/ECF system.		
8	DATED May 23, 2013 /s/ Jeff Tillison An Employee of Watson Rounds		
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	FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT		