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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**WAG ACQUISITION, L.L.C.,**

Plaintiff,

v.

**FLYING CROCODILE, INC., d/b/a FCI,  
Inc.;**

**FCI, Inc., f/k/a Flying Crocodile, Inc.;**

**ACCRETIVE TECHNOLOGY GROUP,  
INC., d/b/a Accretive Networks;**

**ICF TECHNOLOGY, INC.;**

**RISER APPS LLC;**

**STREAMATES LIMITED;**

**STREAMATES LIMITED DBA  
STREAMATES LIMITED, LLC; and**

**DOES 1-20,**

Defendants.

Case No.: **2:14-cv-2674-ES-MAH**

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT  
AND DEMAND FOR JURY TRIAL**

Plaintiff WAG ACQUISITION, L.L.C., for its First Amended Complaint against Defendants, alleges infringement of United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839 (the “patents-in-suit”). Defendants are leading worldwide providers of live adult “webcam” services on the Internet, broadcasting live pornographic performances by a large lineup of webcam “models” to a claimed

audience of 35 million viewers per day. Plaintiff alleges that Defendants, operating without authority or license, rely on Plaintiff's patented streaming technology to conduct this business, thereby infringing Plaintiff's patents. Plaintiff seeks appropriate compensation for Defendants' infringement.

### **THE PARTIES**

1. Plaintiff WAG ACQUISITION, L.L.C. is a New Jersey limited liability company with its principal place of business at 3 Gold Mine Road, Suite 104, Flanders, New Jersey 07836.
2. On information and belief, Defendant FLYING CROCODILE, INC. ("Flying Croc") is (or at times relevant hereto was) a Washington corporation with a business address at 417 Virginia Avenue, Seattle, Washington 98121.
3. On information and belief, Defendant FCI, INC. ("FCI") is (or at times relevant hereto was) a Washington corporation with offices at 2019 Third Avenue, Seattle, Washington 98121.
4. On information and belief, Defendant ICF TECHNOLOGY, INC. ("ICF") is a Washington corporation with offices at 2019 Third Avenue, Suite 200, Seattle, Washington 98121, and 800 Stewart Street, Seattle, Washington 98101. On information and belief, in addition to its live webcam streaming operations, Defendant ICF does business under trade names including but not limited to Mtree and Money Tree.
5. On information and belief, Defendant ACCRETIVE TECHNOLOGY GROUP, INC. ("ATG") is a Washington corporation with offices at 2019 Third Avenue, Suite 200, Seattle, Washington 98121 and 800 Stewart Street, Seattle,

Washington 98101. On information and belief, Defendant ATG also does business under the name “Accretive Networks” as well as under the name of “Wolfe Networks,” a company that ATG acquired in 2005.

6. On information and belief, Defendant RISER APPS LLC (“Riser Apps”) is a Washington limited liability company with offices at 2019 Third Avenue, Suite 200, Seattle, Washington 98121.

7. On information and belief, Defendant Streamates Limited (“Streamates-Cyprus”) is a corporation organized under the laws of Cyprus with offices at Margarita House 15, Themistocles Dervis Street, P.O. Box 27, Nicosia 1642, Cyprus, and/or 196 Arch Makarios Avenue, Ariel Corner, 1st Floor, Office 102, Post Office Box 57528, Limassol 3316, Cyprus.

8. On information and belief, Defendant STREAMATES LIMITED DBA STREAMATES, LLC (“Streamates-Seattle”) is a Washington limited liability company with offices at 2019 Third Avenue, Suite 200, Seattle, Washington 98121.

9. On information and belief, Defendants DOE 1 – DOE 20 are entities whose precise identities are unknown to Plaintiff at this time, which operate in concert with Defendants Flying Croc, FCI, ATG, ICF, Streamates-Cyprus, and Streamates-Seattle in connection with the conduct complained of herein. Plaintiff believes that information obtained in discovery will lead to identification of each such Defendant’s true identity and permit Plaintiff to amend this complaint to state the same.

### **JURISDICTION AND VENUE**

10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

### **PLAINTIFF'S BUSINESS AND DEVELOPMENTS**

12. Plaintiff, operating under the trade name SurferNETWORK, is in the business of providing Internet broadcasting services for live and on-demand audio and video program material. Plaintiff began this business in 1998 and has been one of the leading providers of such services to the terrestrial radio stations and other content providers that comprise its customer base.

13. Early in developing its business, two of Plaintiff's principals, William A. Grywalski ("Grywalski") and Harry Emerson ("Emerson"), recognized a need that existed in the field of Internet delivery of broadcast media due to the shortcomings in the then current Internet streaming technologies. They observed that long startup delays due to "buffering" and frequent program interruptions (sometimes referred to as "jitter") made the experience of trying to listen to or view streaming Internet content frustrating to the end user, and therefore impractical as a content delivery mechanism. They were interested in making the Internet streaming experience more like radio or television, including the immediacy of having the programming appear to start instantly on demand (*e.g.*, turning on a radio or flipping channels), and continue playing once started without random interruptions.

14. Plaintiff engaged the assistance of a software design engineer, Harold Price (“Price”), to develop solutions for the shortcomings that Grywalski and Emerson saw in the then current technology, with respect to streaming media playback performance, as well as other technological issues concerning Internet delivery of broadcast media. Price worked on several aspects of this matter for Plaintiff over the period 1999-2001.

15. Price was aware of the then current approach to streaming, which attempted to overcome streaming transmission delays and jitter by a variety of techniques, including, for example, establishing a content buffer of 20-seconds or so in duration, on the receiving (user or “client”) end of the communication, within the client’s media player or media player browser plugin. After the user selected (*e.g.*, clicked on) a stream, the player would start filling this buffer at the playback rate and then start playing when the buffer was full. While this method did provide some protection against interruptions for the duration of whatever content was initially buffered, it entailed an undesirable startup delay for “buffering,” and provided no means for graceful recovery once the 20 seconds worth of content in the buffer was consumed.

16. Price conceived of solutions to these problems. He built a prototype that implemented one embodiment of those solutions, and he demonstrated that a system according to his new design could overcome the problems put to him by Grywalski and Emerson.

17. Plaintiff and its predecessors in interest filed a number of U.S. patent applications on these solutions, as enumerated below. To date, this family of patent

applications has resulted in seven issued U.S. patents, including the patents-in-suit. All of these patent applications were assigned to Plaintiff, or to a predecessor-in-interest of Plaintiff and reassigned to Plaintiff.

18. Plaintiff has been conducting an active, operating business ever since the developments described above, and has actively practiced technology taught in the patents-in-suit, from then to the present. Plaintiff has developed commercial arrangements under which it streams content for numerous terrestrial radio stations and content providers in New Jersey, regionally, nationally, and internationally. It also provides a One-Click Royalty Reporter™ for radio stations to report streaming media performance royalty information to SoundExchange (a performing rights organization that collects royalties on behalf of sound recording copyright owners ), among other services.

#### **DEFENDANTS' BUSINESS ACTIVITIES**

19. Defendants are part of a substantial enterprise, headquartered in Seattle, Washington, that operates an enormous network of adult live interactive webcam performers and Internet sites having broad, worldwide reach. Defendants' Internet sites, led by their flagship site, streamate.com, stream a huge volume of live, paid, on-camera sex performances, put on by "webcam models" (performers) recruited in volume by Defendants from dozens of countries around the world. Defendants have in excess of 500 web sites carrying their streaming content, tens of thousands of performers, and a claimed 280,000 marketing affiliates. On information and belief, Defendants constitute the largest enterprise of its type in the world.

20. Defendants stream live webcam video for a long list of web sites, including without limitation streamates.com, streamen.com, tsmate.com, xhamstercams.com, pornhublive.com, redtubelive.com, youjizzlive.com, ypmate.com, cam4ultimate.com, livefreefun.com, streev.com, perfectcamgirls.com, privatehdcams.com, camonster.com, tube8live.com, keezlive.com, spankwirecams.com, fuckcams.com, xvideoslive.com, livefreefun.net, cam4ultimate.net, wantlive.com, and literally hundreds of other similar sites.

**Involvement of the Named Defendants in the Matters Alleged**

21. The named defendants herein operate as a unitary group under the direction, management and control of Defendant ATG and its principals, Shawn Boday and Ross Perkins. On information and belief, at its downtown Seattle locations, Defendant ATG employs over 150 employees who run Defendants' worldwide live streaming and content distribution operations. On information and belief, all substantial business operations of the Defendants worldwide, including without limitation technological development, marketing, affiliate site relations, webcam model recruiting, management, and finance are provided through ATG personnel based in Seattle.

22. On information and belief, all of the named defendants are affiliated by common ownership and/or control. Within this group, FCI and ICF are successors of Flying Croc, and at least Defendants FCI, ICF, and Riser Apps are wholly-owned subsidiaries of ATG.

23. Defendant Flying Croc has a long history of involvement in the adult live webcam business, and involvement in aggressive marketing practices, including

mass distribution of spam email, and dissemination of “tracking cookies,” falsified “invites” on instant messaging systems, and other technical mechanisms used to generate “popup” pornographic advertisements and drive traffic to Defendants’ web sites. Some of these activities were conducted through an Internet domain of Flying Crocs called naiadsystems.com, which has been flagged for distributing “malware.” A former Project Manager for Defendant Flying Croc has publicly claimed to have “invented” spyware in the course of his work for Flying Croc, and that his “invention” created “in excess of [\$]400 million/year in online advertising as well as over [\$]100 million/year in spyware removal.”

24. On information and belief, during the applicable limitations period relevant hereto, Defendant FCI succeeded to a substantial part of Flying Croc’s business.

25. On information and belief, effective on or about June 1, 2013, Defendant ICF acquired substantially all of the business of Defendant FCI.

26. Defendant Riser Apps is nominally the developer of an iPhone app called the “B-Line Browser” specially designed for viewing Defendants’ web sites. On information and belief, Defendant Riser Apps operates from the same Seattle address as Defendant ATG and is owned and controlled by Defendant ATG.

27. Defendant Streamates-Cyprus has served as the nominal registrant of the streamate.com Internet domain, as well as other Internet domains and Internet address allocations material to Defendants’ operations, and has been named as the contracting party on written contracts for individuals to perform as “WebCam

Models” on Defendants’ sites. Streamates.com and several of Defendants’ other Internet domains have recently been transferred to Defendant ICF.

28. On information Defendant Streamates-Seattle is the U.S. alter ego of Defendant Streamate-Cyprus.

### **Defendants’ Business Activities**

29. Defendants stream live adult webcam performances over the Internet in extremely high volume. Though limited “free” viewing is available on Defendants’ web sites, Defendants charge for most services. Live performances are priced to users of Defendants’ web sites at various pricing levels, ranging from approximately \$3.00 to \$10.00 per minute. Users of Defendants’ web sites pay for these services with their credit cards. On information and belief, this activity results in net revenues to Defendants (after revenue split payments to the performers and to marketing affiliates) of several hundred million dollars per year. On information and belief, a proportionate (and considerable) amount of these revenues are derived from users in New Jersey.

30. Defendants’ performers are recruited worldwide. On information and belief, this recruitment is conducted by signups through Defendants’ web sites, as well as by wholesale recruitment through “agencies” in the United States and numerous foreign countries, including countries in Eastern Europe, the former Soviet States, Latin America, and Asia. On information and belief, among the recruiting agencies used by Defendants is a recruiting agency called “Cam Sharks” ([www.camsharks.com](http://www.camsharks.com)), which on information is owned and controlled by Defendants ATG and/or ICF.

31. On information and belief, Defendants' deep international lineup of performers include a substantial number of performers from New Jersey, who perform from New Jersey over network facilities provided by Defendants. Further, on information and belief, Defendants have a long-standing business relationship with a "talent agency" named Sticky Studios LLC in Palmyra, New Jersey, which recruits webcam performers for Defendants and features the logos of several of Defendants' web sites on its recruiting site.

32. Defendants provide an "Affiliate" program, under which Defendants' webcam sites can be adapted ("white labeled") for other Internet service providers on a revenue splitting basis, or simply linked to, on a similar basis. Through such affiliation, providers of other prominent pornography sites (frequently "Tube" (Youtube-style) sites offering short, low-quality, prerecorded clips on a free basis), provide a paid, revenue-generating webcam adjunct service under the Tube site provider's own branding. The live webcam Affiliate site will appear to the user of the Tube site as a click-through site, or in a window that pops over the Tube site. Though branded and decorated to look like the Tube site, the Affiliate site is actually served by ATG and/or one of the other Defendants herein. The Affiliate site provider and the Defendants split the revenue resulting from the Affiliate site activity, in accordance with the terms of Defendants' Affiliate program.

### **Defendants' Internet Operations**

33. Defendants' business success is attributable in substantial part to Defendants' technological capability to deliver streaming media content in a

responsive, smooth, and scalable manner, such as made possible by Plaintiff's patents.

34. Defendants derive great value as a result of operating under Plaintiff's patented technology, for which they have not compensated Plaintiff.

35. Defendants have deployed a substantial computer and network infrastructure to receive webcam feeds from Defendants' numerous live performers and redistribute these feeds in real time to large audiences. Defendants stream the videos using at least two different delivery schemes (as will be addressed in greater detail below) to diverse user equipment, including, *inter alia*, desktop computers and mobile devices (collectively referred to herein as "Players").

36. Defendants' services on the Internet are provided by computers, referred to as "servers." Each such server is reachable over the Internet by its "address" on the Internet, referred to as its Internet Protocol (IP) address. Every device publicly accessible on the Internet has its own globally unique (*i.e.*, non-duplicated) IP address.

37. IP addresses are represented as a four-part string of numbers, in the format of four numbers, each in the range 0-255, separated by dots – as in, for example, 192.22.245.2 – resembling a telephone number. To make the Internet addressing system more user-friendly, the numeric IP addresses are often given names ("domain names"), such as google.com or ebay.com, so that users can reach the desired services by a memorable name, rather than a number (*e.g.*, www.google.com as opposed to 74.125.228.80). An Internet mechanism called the Domain Name Service (DNS) maps the domain names to the numeric IP addresses of

the machines that serve content for the domains, so that the requests directed to domain names (*e.g.*, google.com) will reach the proper numerical IP addresses (in this example, 74.125.228.80), and thereby the proper servers. “Subdomains” may also be assigned within individual domains, for example, **www**.google.com, **mail**.google.com, **voice**.google.com, etc. Each subdomain represents a different server reachable through the main domain (google.com), but mapped to a separate IP address. (That is, the subdomain mail.google.com (aka “gmail”) maps to 74.125.228.246, as opposed to the 74.125.228.80 address for main google.com search engine site.)

38. Internet domain names and IP addresses are given out, generally in “blocks” of multiple adjacent addresses, by a process that involves registration with accredited registrars.

39. A given IP address will be assigned to a registrant at a listed business address, but the use of the IP address is not tied to the location of the registrant’s business address. The registrant can locate its servers anywhere it wishes, geographically, and use the IP addresses it owns (or rents) to identify those servers on the Internet. The physical location of the server will bear upon the speed at which content can be delivered to users. Generally, the closer the server is to the user, the better the delivery will be. In high-volume operations, where performance is important, multiple servers may be deployed over a “Content Distribution Network” (CDN), in a manner such that individual users will be directed to different servers based on their proximity to the respective servers.

40. The web site [www.streamate.com](http://www.streamate.com) serves content for the primary web page at the Defendants' domain [streamate.com](http://streamate.com). On information and belief, the domain [streamate.com](http://streamate.com) was first registered in 2003 by Defendant Streamate-Cyprus (listing Defendant FCI as the "Technical Contact") and is currently held in the name of Defendant ICF. On information and belief (based on LinkedIn postings by ATG's employees), Defendant ATG exercises direct control over the design and operation of the site. The IP address associated with [www.streamate.com](http://www.streamate.com) (and [streamate.com](http://streamate.com) itself) is 207.248.147.194, which is in the IP address block 207.246.128.0/19 registered to "Accretive Networks," which on information and belief is the trade name of Defendant ATG.

41. When a user visiting [www.streamate.com](http://www.streamate.com) clicks on the live stream of an individual performer, the streaming video for the performance is served, in a manner invisible to the ordinary user, from the [naiadsystems.com](http://naiadsystems.com) – the same domain mentioned in Par. 23 above that was widely accused of distributing malware. The [naiadsystems.com](http://naiadsystems.com) domain is currently registered in the name of Defendant Streamate-Cyprus. The original domain name registration for [naiadsystems.com](http://naiadsystems.com) listed Defendant "FCI" as the "Domain Service Provider." The DNS service for the domain is provided from a domain named "[flyingcroc.net](http://flyingcroc.net)," registered to Defendant ICF. On information and belief, all of Defendants' video streams accused of infringement in this case – both Defendants' directly operated sites and their white-label sites – originate from [naiadsystems.com](http://naiadsystems.com) at this time.

42. Content is served from the domain naiadsystems.com from different subdomains – and different physical servers – depending on the identification of the type of Player requesting the stream.

43. For certain Players, including without limitation certain “Desktop” platforms, the streams from naiadsystems.com are served via the Real Time Messaging Protocol (RTMP) protocol, in a manner that infringes Plaintiff’s ’611 and ’839 patents as alleged in Counts V and VI below. These streams are served from servers in the address block 207.66.128.0/17, which is registered in the name of Wolfe Networks, which on information and belief is another trade name of Defendant ATG. On information and belief, Defendant ATG, as “Wolfe Networks,” operates these addresses as part of a Content Distribution Network, with server “Points of Presence” (PoPs) throughout the United States. The ATG/Wolfe Networks PoPs include, *inter alia*, servers in Newark, New Jersey, and Piscataway, New Jersey, in close proximity to this Court.

44. For other types of Players, including without limitation certain mobile platforms and platforms using Defendants’ B-Line Browser, the streams from naiadsystems.com are served from subdomains including str7.naiadsystems.com, also operating in the United States from Defendant ATG’s IP address block at 207.66.128.0/17, but using a different protocol, which in this case infringes Plaintiff’s ’141 and ’011 patents as alleged in Counts I-IV below.

45. On information and belief, each and every streaming video delivery by Defendants to users in this District, and elsewhere throughout the United States, infringes one or more claims of the patents-in-suit, as set forth in detail below.

**THE PATENTS-IN-SUIT**

46. The patents-in-suit comprise the following United States Patents, which were duly and legally issued on the dates indicated:

Pat. No.	Issued	Title	Reference
8,122,141	Feb. 21, 2012	STREAMING MEDIA BUFFERING SYSTEM	'141 patent
8,327,011	Dec. 4, 2012	STREAMING MEDIA BUFFERING SYSTEM	'011 patent
8,185,611	May 22, 2012	STREAMING MEDIA DELIVERY SYSTEM	'611 patent
8,364,839	Jan. 29, 2013	STREAMING MEDIA DELIVERY SYSTEM	'839 patent

47. The patents-in-suit were developed in the course of Plaintiff's business and were assigned by Price (the inventor) to Plaintiff's predecessors in that business, which reassigned them to Plaintiff, the current operator of the business. Plaintiff owns all rights to recover for past and ongoing infringement of the patents-in-suit.

48. The text of the claims of each of the patents-in-suit is incorporated herein by reference. Any descriptive matter contained herein that references said claims is provided for purposes of explanation and notice and does not limit the scope of the claims.

**Notice of the Patents-In-Suit and Infringement Thereof**

49. Pursuant to 35 U.S.C. § 287(a), Defendants had notice of the patents-in-suit, and of their manner of infringement thereof, by reason of the filing of this action on April 25, 2014.

50. Further, on April 25, 2014, Plaintiff sent a letter (the "Demand Letter") to Defendant ATG, also giving notice of the patents-in-suit and of the manner in which Defendants infringe those patents, and enclosing a copy of the Complaint. Counsel for Defendant ATG confirmed shortly thereafter that ATG had received the Demand Letter. On information and belief, the Demand Letter was received by ATG within approximately 3-5 days after having been sent on April 25, 2014.

51. Defendants Flying Croc, FCI, ICF, Riser Apps, and Streamates-Seattle were duly served in this action on May 14, 2014, by personal delivery to one of Defendants' principals, Shawn Boday.

52. On information and belief, Mr. Boday is sufficiently involved in the operations of each of the named defendants herein such that his knowledge of Plaintiffs' patents may be imputed to each of them.

53. The earliest of the dates alleged in Pars. 49-51 by which Defendants had notice of the patents-in-suit and of their infringement thereof is herein referred to (separately as to each Defendant, to the extent if any that different Defendants may have received such notice on different dates) as the "Notice Date."

**COUNT I: DIRECT INFRINGEMENT OF THE '141 PATENT**

54. Plaintiff repeats and realleges the allegations of paragraphs 1- 53 above as if fully set forth at length herein.

55. 35 U.S.C. § 271(a) provides in pertinent part as follows:

"(a) . . . whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent."

56. Defendants, acting together as well as in their respective roles as alleged above, have directly infringed and are still directly infringing at least claims 1-8 and 28, 10-17, 19 and 21-23, and 24-27 of the '141 patent by making, selling, offering to sell, performing, and using apparatus and methods that embody one or more of said claims, by conduct including without limitation the acts alleged in the paragraphs that follow.

57. The patent claims that Defendants are accused of directly infringing in this Count I and in Counts III, V, and VI are each of a nature that, in each case, may be infringed by the acts of a single actor. Plaintiff alleges that one or more of the Defendants commit such direct infringement as a result of their operating one or more of the servers referenced in paragraphs 43 and 44. The alleged direct infringement is carried out in some circumstances by one or more Defendants acting completely on their own, and in other circumstances in whole or in part as a result of one or more Defendants directing and controlling (and thereby causing) infringing conduct of others. These circumstances include (i) where one or more Defendants performs all method steps or makes or uses apparatus (*i.e.*, a server) or an article of manufacture (*i.e.*, recorded software) covered by a patent claim, or (ii) where one or more Defendants exercises direction and control causing another person (*e.g.*, a user) to use apparatus (*i.e.*, a Player) or an article of manufacture (*i.e.*, recorded Player Software) covered by a patent claim. In either scenario, the entire direct infringement is attributable to the acts of one single Defendant (or at most one group of related Defendants acting in concert), responsible for operating the relevant server. Defendants have not been forthcoming, however, as to which of

them operates or has operated its servers at all relevant times. IP address registrations reflect that the party currently responsible for operating said servers is Defendant ATG, and as alleged above, ATG appears to be responsible for technical development and operations of the Defendant group as a whole. Domain name registrations, however, name Streamate-Cyprus. But the legal notices on Defendants' Streamate web site are in the name of Defendant ICF, and as alleged above Defendant ICF recently took over the business of Defendant FCI, which in turn is believed to have formerly performed in the same role that Defendant ICF performs currently. Furthermore, it is alleged above that Defendant ICF itself is a successor of Defendant Flying Croc, which conducted such operations at an earlier time. Since there is evidence as alleged herein that implicates each of the named Defendants in the operation of Defendants' servers, Plaintiff has named each of the Defendants as responsible for the direct infringement herein alleged. Plaintiff alleges that there is sufficient evidence pleaded herein plausibly to implicate each of the Defendants in the operation of Defendants' servers, and the resulting infringement, during the statute of limitations period relevant to this complaint. In the alternative, Plaintiff further alleges that the Defendants have acted jointly in concert to commit said acts of direct infringement.

58. As alleged above, Defendants provide their services through a large Internet server infrastructure, at least a material portion of which is located in the United States. Defendants' direct infringement of the '141 patent results from the operation of the servers, referenced in Par. 44 above, which serve the content for Defendants' accused infringing web sites. Such infringement results because, *inter*

*alia*, claims 10-17, 19, and 21-23 of the '141 patent read on those servers and their software, and Defendants make and use those servers and their software.

59. More particularly, Defendants' servers referenced in Par. 58 include servers that use the same "divide and conquer" approach described in the '141 patent to deliver streaming data. Defendants' servers, *inter alia*, assign serial identifiers to sequential media data elements comprising the stream. The servers receive, from a user system, requests for these elements, specifying the identifiers. The servers then serve the elements responsive to the requests, at a rate more rapid than the rate at which said streaming media is played back by a user. This mechanism provides for a fast start of streaming playback, and at the same time allows the Player to moderate media flow by "pulling" data as needed, based on its own rate of consuming content. Defendants' servers incorporate each and every element of claims 10-17 of the '141 patent and are therefore infringing. By operating such servers, Defendants, by their actions alone, directly infringe claims 10-17 of the '141 patent.

60. Claims 19 and 21-23 of the '141 patent concern recorded computer software that runs servers such as Defendants' servers described in Par. 59. The software that operates Defendants' servers meets each and every limitation set forth in claims 19 and 21-23 of the '141 patent and is therefore infringing. By operating said servers, and thereby using such computer programs, Defendants, by their actions alone, directly infringe claims 19 and 21-23 of the '141 patent. On information and belief, Defendants also "make" such software and directly infringe for that reason also.

61. Claims 1-8 and 28 of the '141 patent concern (i) providing a server essentially as described in Par. 59, as well as (ii) providing software ("Player Software") to implement specified functionality of a Player. Defendants provide servers that meet the first set of requirements recited in these claims. Through such servers, in response to requests identified by the server as having come from certain types of Players, Defendants direct and control the Players (as further alleged below) to provide Player Software in accordance with the second set of requirements recited in these claims. The combination of Defendants' actions in operating the servers and in directing and controlling Players to provide Player Software directly infringe claims 1-8 and 28 of the '141 patent.

62. More particularly, Defendants, through their servers, direct and control users' Players as alleged in Par. 61 by, including without limitation, the following acts. Defendants' servers read encoded information in network packets received from Players and identify the type of Player that sent the packet. When Defendants identify a Player as compatible with Defendants' video stream, Defendants' servers send such Players electronic instructions that cause the Players, without any user intervention, to load and execute the Player Software (thereby putting the Players and Player Software into service), so that the Player may then request and receive the serialized streaming transmissions from Defendants' servers. Defendants' servers also send electronic data to the Players containing the serial identifiers used by the Players to request streaming media elements, thereby further controlling the operation of the Players.

63. Further in the alternative, and without limiting any of the foregoing allegations, Defendants also directly infringe claims 1-8 and 28 of the '141 patent under 35 U.S.C. § 271(a) by Defendants' acts combined with those of their users, with knowledge that each step of said patented methods will be performed through the combined action of Defendants and the user.

64. Claims 24-27 of the '141 patent concern Player Software. In summary, Defendants directly infringe claims 24-27 of the '141 patent by using (as alleged below) the Player Software claimed in said claims, which Plaintiff alleges meets each and every limitation set forth in said claims and is infringing, and by directing and controlling (as further alleged below) users' use of such infringing Player Software.

65. Defendants use infringing Player Software and thereby directly infringe claims 24-27 of the '141 patent by putting the Player Software into service by the acts alleged in Par. 62 and making beneficial use of the Player Software by using the Player Software as part of a delivery mechanism whereby Defendants deliver their streaming video content to end users through the users' Players.

66. In the alternative, and without limiting the foregoing, Defendants also directly infringe claims 24-27 of the '141 patent by directing and controlling users' Players to use infringing Player Software in the manner alleged in Par. 62.

67. Plaintiff is entitled to recover all past, present, and ongoing damages it has sustained as a result of Defendants' direct infringement of the '141 patent.

68. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a reasonable royalty for the use made by the Defendants under the '141 patent, in an

amount subject to proof at trial, together with interest and costs as fixed by the Court.

**COUNT II: INDUCED INFRINGEMENT OF THE '141 PATENT**

69. Plaintiff repeats and realleges the allegations of paragraphs 1-68 above as if fully set forth at length herein.

70. 35 U.S.C. § 271(b) provides:

“Whoever actively induces infringement of a patent shall be liable as an infringer.”

71. In addition and in the alternative to Plaintiff’s allegations of direct infringement of claims 24-27 of the ’141 patent, and without limiting anything alleged in connection therewith, Plaintiff alleges that Defendants, by conduct more particularly alleged in the paragraphs that follow, also actively induce infringement, by users, of claims 24-27 of the ’141 patent.

72. The relevant “direct infringement” for purposes of this Count II and Count IV is direct infringement by consumers (users), who infringe by using Player Software (Count II) and/or Players (Count IV).

73. Defendants’ induced infringement as alleged in this Count II and in Count IV results from a number of different actions by one or more Defendants that each induce users to directly infringe. In some cases, the inducement is provided through Defendants’ web servers, and in such cases the same Defendants that are responsible for operating the web server, as alleged in Par. 57, are also responsible for inducing the user’s direct infringement. In other cases, for example where the user’s infringement results from the use of Defendants’ B-Line Browser, Defendants’

responsibility for inducement is based in part on providing the browser and in part through promoting it through Defendants' web sites. Further, because knowledge of Plaintiff's patents and intent to induce infringement results, *inter alia*, from matters that have been brought to each Defendant's attention by the various forms of notice alleged in Pars. 49-52, Plaintiff alleges that each Defendant is equally chargeable with such knowledge and intent.

74. The Player Software meets each and every limitation of claims 24-27 of the '141 patent, and is therefore infringing. When users use the infringing Player Software, each such user, considering only his or her acts alone, puts the Player Software, as claimed, into service, and obtains its beneficial use, thereby directly infringing claims 24-27 of the '141 patent.

75. Defendants actively induce such direct infringement by users in a number of ways, including without limitation the following acts. Defendants, through their servers, as aforesaid, provide to users video streams that are specially adapted to be viewed on Players running compatible Player Software, thereby inducing users to use such Players and such software. Defendants' servers provide such streams when they identify that the user is using compatible Player Software. These streams provide a superior viewing experience that further induces the user to use Players running such Player Software when they use Defendants' service. Defendants' servers send electronic instructions causing the Players to load and execute compatible Player Software, and electronic data containing the serial identifiers for the Players to use to request sequential media data elements.

76. In addition, Defendant Riser Apps and/or other Defendants provide the B-Line Browser mobile Apps, specially adapted to run on users' Players and utilize their Player Software, in order to view Defendants' websites, further inducing the use of the users' Players and Player Software. Defendants further provide "redirects" on their web sites, redirecting users of certain Players to "App Store" pages for downloading the B-Line Browser.

77. The users of such Players are thereby induced by Defendants to directly infringe claims 24-27 of the '141 patent (*e.g.*, by using Player Software within the scope of said claims, whereby said users directly infringe such claims as aforesaid).

78. As a consequence of the foregoing, since at least as early as the Notice Date, Defendants have engaged in such inducement with knowledge of the '141 patent; with knowledge that users' Players use Player Software meeting the limitations of claims 24-27 of the '141 patent; with knowledge that the users directly infringe claims 24-27 of the '141 patent when they use Player Software; with knowledge of how Defendants' conduct actively induces users to use infringing Player Software and thereby infringe the '141 patent; and with the specific intent to cause such infringement, knowing that the users' acts constitute direct infringement of the '141 patent.

79. Plaintiff is entitled to recover all damages it has sustained since at least as early as the Notice Date, and all such ongoing damage, as a result of Defendants' induced infringement of the '141 patent.

80. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a reasonable royalty for Defendants' induced infringement of the '141 patent, in an

amount subject to proof at trial, together with interest and costs as fixed by the Court.

**COUNT III: DIRECT INFRINGEMENT OF THE '011 PATENT**

81. Plaintiff repeats and realleges the allegations of paragraphs 1- 80 above as if fully set forth at length herein.

82. Defendants, acting together as well as in their respective roles as alleged above, have directly infringed and are still directly infringing claims 1-4 of the '011 patent by using Players that embody one or more of said claims, by conduct including without limitation the acts alleged in the paragraphs that follow.

83. Defendants infringe such claims directly, (i) by using said Players, which Plaintiff alleges meet each and every limitation set forth in said claims and are infringing, and (ii), independently of the infringement that exists as a result of such use, by directing and controlling users' use of such infringing Players.

84. Defendants use infringing Players and thereby directly infringe claims 1-4 of the '011 patent by putting the Players into service by the acts alleged in Par. 62 and making beneficial use of the Players by making the Players part of a delivery mechanism whereby Defendants deliver their streaming video content to end users.

85. Defendants direct and control users' Players by, including without limitation, the following acts. Defendants' servers read encoded information in network packets received from Players and identify the type of Player that sent the packet. When Defendants identify a Player as compatible with Defendants' video stream, Defendants' servers send such Players electronic instructions that cause the Players, without any user intervention, to load and execute the Player Software

(thereby putting the Players and Player Software into service), so that the Player may then request and receive the serialized streaming transmissions from Defendants' servers. Defendants' servers also send electronic data to the Players containing the serial identifiers used by the Players to request streaming media elements, thereby further controlling the operation of the Players.

86. Plaintiff is entitled to recover all past, present, and ongoing damages it has sustained as a result of Defendants' direct infringement of the '011 patent.

87. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a reasonable royalty for the use made by the Defendants under the '011 patent, in an amount subject to proof at trial, together with interest and costs as fixed by the Court.

#### **COUNT IV: INDUCED INFRINGEMENT OF THE '011 PATENT**

88. Plaintiff repeats and realleges the allegations of paragraphs 1-87 above as if fully set forth at length herein.

89. In addition and in the alternative to Plaintiff's allegations of direct infringement of claims 1-4 of the '011 patent, and without limiting anything alleged in connection therewith, Plaintiff alleges that Defendants, by conduct more particularly alleged in the paragraphs that follow, also actively induce infringement, by users, of claims 1-4 of the '011 patent.

90. The users' Players meet each and every limitation of claims 1-4 of the '011 patent, and are therefore infringing. When users use infringing Players, each such user, considering only his or her acts alone, puts the Player, as claimed, into

service, and obtains its beneficial use, thereby directly infringing claims 1-4 of the '011 patent.

91. Defendants actively induce such direct infringement by users in a number of ways, including without limitation, the following acts. Defendants, through their servers, as aforesaid, provide to users video streams that are specially adapted to be viewed on Players running compatible Player Software, thereby inducing users to use such Players. Defendants' servers provide such streams when they identify that the user is using a compatible Player. These streams provide a superior viewing experience that further induces the user to use such Players when they use Defendants' service. Defendants' servers send electronic instructions causing the Players to load and execute compatible Player Software, and electronic data containing the serial identifiers for the Players to use to request sequential media data elements.

92. In addition, Defendant Riser Apps and/or other Defendants provide the B-Line Browser mobile Apps, specially adapted to run on users' Players and utilize their Player Software, in order to view Defendants' websites, further inducing the use of the users' Players and Player Software. Defendants further provide "redirects" on their web sites, redirecting users of certain Players to "App Store" pages for downloading the B-Line Browser.

93. The users of such Players are thereby induced by Defendants to directly infringe claims 1-4 of the '011 patent (*e.g.*, by using Players within the scope of said claims, whereby said users directly infringe such claims as aforesaid).

94. As a consequence of the foregoing, since at least the Notice Date, Defendants have engaged in such inducement with knowledge of the '011 patent; with knowledge that users' Players use Player Software meeting the limitations of claims 1-4 of the '011 patent; with knowledge that the users directly infringe claims 1-4 of the '011 patent when they use Player Software; with knowledge of how Defendants' conduct actively induces users to use infringing Players and thereby infringe the '011 patent; and with the specific intent to cause such infringement, knowing that the users' acts constitute direct infringement of the '011 patent.

95. Plaintiff is entitled to recover all damages it has sustained since at least as early as the Notice Date, and all such ongoing damage, as a result of Defendants' induced infringement of the '011 patent.

96. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a reasonable royalty for the use made by the Defendants under the '011 patent, in an amount subject to proof at trial, together with interest and costs as fixed by the Court.

#### **COUNT V: DIRECT INFRINGEMENT OF THE '611 PATENT**

97. Plaintiff repeats and realleges the allegations of paragraphs 1-96 above as if fully set forth at length herein.

98. Defendants, acting together as well as in their respective roles as alleged above, have directly infringed and are still directly infringing the '611 patent by making, selling, offering to sell, performing, and using apparatus and methods that embody one or more claims thereof, by conduct including without limitation the acts alleged in the paragraphs that follow.

99. Among the servers that Defendants operate are servers that employ the buffering (temporary storage) scheme claimed in the '611 patent, to control transmission of streaming media to achieve fast startup of the playback and rapid recovery from interruptions. Those servers send initial streaming media elements to Players at an initial sending rate more rapid than the playback rate of the media stream to fill a buffer in the user's Player, and thereafter send further streaming media data elements to the Player at about the playback rate. Defendants' servers perform these functions in a manner that meets each and every limitation of one or more claims of the '611 patent. Defendants, by using and operating, and on information and belief, making, such servers, directly infringe the '611 patent.

100. Plaintiff is entitled to recover all past and continuing damages so sustained by Plaintiff as a result of such infringement.

101. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a reasonable royalty for the use made by the Defendants under the '611 patent, in an amount subject to proof at trial, together with interest and costs as fixed by the Court.

#### **COUNT VI: DIRECT INFRINGEMENT OF THE '839 PATENT**

102. Plaintiff repeats and realleges the allegations of paragraphs 1-101 above as if fully set forth at length herein.

103. Defendants, acting together as well as in their respective roles as alleged above, have directly infringed and are still directly infringing the '839 patent by making, selling, offering to sell, performing, and using apparatus and methods

that embody one or more claims thereof, by conduct including without limitation the acts alleged in the paragraphs that follow.

104. Among the servers that Defendants operate are servers that employ a buffering scheme as claimed in the '839 patent, to control transmission of streaming media to achieve fast startup of the playback and rapid recovery from interruptions. Those servers load a buffer on the server with streaming media data elements, send an initial amount of streaming media elements to Players at an initial sending rate more rapid than the playback rate, and thereafter send further streaming media data elements to the Player at about the playback rate. Defendants' servers perform these functions in a manner that meets each and every limitation of one or more claims of the '839 patent. Defendants, by using and operating, and on information and belief, making, such servers, directly infringe the '839 patent.

105. Plaintiff is entitled to recover all past and continuing damages so sustained by Plaintiff as a result of such infringement.

106. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a reasonable royalty for the use made by the Defendants under the '839 patent, in an amount subject to proof at trial, together with interest and costs as fixed by the Court.

#### **COUNT VII: WILLFUL INFRINGEMENT**

107. Plaintiff repeats and realleges the allegations of paragraphs 1- 106 above as if fully set forth at length herein.

108. 35 U.S.C. § 284 provides in pertinent part as follows:

“When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.”

109. 35 U.S.C. § 285 provides as follows:

“The court in exceptional cases may award reasonable attorney fees to the prevailing party.”

110. From at least the Notice Date, Defendants knew of Plaintiff’s patents, should therefore have known what the claims of those patents covered, and should have understood that their own activities as alleged herein created an objectively high likelihood of infringement of valid patents.

111. Notwithstanding possession of such knowledge for several months, on information and belief, Defendants have continued their infringing conduct without modification or moderation, without compensation to Plaintiff, and without any legal justification, thereby demonstrating their indifference to legal obligations and the property rights of others, and their reckless disregard for Plaintiff’s patents, and/or their intentional infringement thereof.

112. Defendants’ continued infringement since at least the Notice Date is willful and deliberate, entitling Plaintiff to increased damages under 35 U.S.C. § 284.

113. Defendants’ continued reckless or intentional infringement since at least the Notice Date renders this an extraordinary case under 35 U.S.C. § 285, which entitles Plaintiff to an award of reasonable attorneys’ fees.

114. Plaintiff has no available injunctive remedy at this time to mitigate Defendants’ continued willful infringement. Plaintiff provides a “business-to-business” (B2B) service to content providers, and in particular radio station

operators, whereas Defendants operate as direct content providers for users or “business-to-consumer” (B2C) services. Accordingly, despite a high probability of success on the merits, the non-competitive current positioning of the parties cuts against the availability of preliminary injunctive relief, not because of any shortcomings on the merits, but rather because of factors concerning irreparable harm unrelated to the merits. Plaintiff thus lacks an adequate remedy by way of a preliminary injunction to prevent ongoing willful infringement by the Defendants. Not imposing liability for willful infringement for the Defendants’ continued infringing conduct would allow Defendants to continue their knowing infringement with impunity, at no additional cost, and would be unjust.

#### **DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury on all issues.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff WAG ACQUISITION, L.L.C. requests an entry of judgment in its favor and against Defendants as follows:

a) Declaring that each of the Defendants has and/or continues to directly infringe and/or induce infringement of one of more claims of United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839;

b) Declaring that each of Defendants’ infringement has been willful, and awarding enhanced damages at least from the Notice Date as a result of that willfulness under 35 U.S.C. § 284, jointly and severally against the Defendants;

c) Awarding the past and continuing damages arising out of Defendants' direct infringement of United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839 and damages at least from the filing of this action and/or receipt of the Demand Letter for Defendants' indirect infringement as alleged herein, to Plaintiff, together with prejudgment and post-judgment interest, in an amount according to proof, jointly and severally against the Defendants;

d) Awarding attorneys' fees, costs, or other damages pursuant to 35 U.S.C. §§ 284 or 285 or as otherwise permitted by law, jointly and severally against the Defendants;

e) Upon the final judgment of infringement herein, entering an order, pursuant to 35 U.S.C. § 283, permanently enjoining and restraining Defendants and their respective officers, directors, principals, agents, servants, employees, successors and assigns, and all those in active concert or participation with each of the foregoing, from infringing, and/or inducing the infringement of, any claims of United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839;

f) Awarding costs in this action to Plaintiff; and

g) For such other and further relief as the Court may deem just and proper.

Dated: August 4, 2014

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**CERTIFICATE OF SERVICE**

On this 4th day of August, 2014, I certify that I served upon counsel for Defendants herein a copy of the foregoing First Amended Complaint via the Court's ECF filing system.

Dated: August 4, 2014

s/ Ronald Abramson  
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