

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**TYLER DIVISION**

<b>PATENT HARBOR, LLC,</b>	§	
	§	
<i>Plaintiff,</i>	§	<b>Civil Action No. 6:13-CV-10</b>
	§	
<b>v.</b>	§	
	§	<b>JURY TRIAL DEMANDED</b>
<b>P&amp;F USA, INC.,</b>	§	
<b>FUNAI ELECTRIC CO., LTD.</b>	§	
<i>Defendants.</i>	§	

**ORIGINAL COMPLAINT**

This is an action for patent infringement in which Patent Harbor, LLC, (“Patent Harbor”) makes the following allegations against P&F USA, Inc. (“P&F”) and Funai Electric Co., Ltd. (“Funai”) (collectively, “Defendants”). Plaintiff seeks damages for Defendants’ infringement, as well as an enhancement of said damages due to Defendants’ willful infringement.

**PARTIES**

1. Patent Harbor is a corporation organized under the laws of the State of Texas. Patent Harbor maintains its principal place of business at 4455 Camp Bowie Blvd., Suite 114, Fort Worth, Texas 76107.

2. Upon information and belief, Defendant P&F is, and at all relevant times mentioned herein that it was in existence was, a corporation organized and existing under the laws of the State of Georgia with a principal place of business at 3015 Windward Plaza, Windward Fairways II, Suite 100, Alpharetta, GA 30005. Upon information and belief, Defendant Funai is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of Japan, with a principle place of business at 7-7-1 Nakagaito, Daito

City, Osaka 574-0013, Japan. On information and belief, P&F is a wholly-owned sales subsidiary of Funai, and is an importer and/or distributor of the products accused in this lawsuit under the brand name “Philips.” P&F sells accused DVD Recorders that are manufactured by Funai to consumers in the United States and, more particularly, in the Eastern District of Texas. P&F may be served with process by serving its registered agent, C T Corporation System, located at 1201 Peachtree St. NE, Atlanta, Georgia 30361. Funai may be served with process pursuant to the terms of the Hague Convention.

### **JURISDICTION AND VENUE**

3. This is an action for violation of the patent laws of the United States, Title 35, United States Code, more particularly, 35 U.S.C. §§ 271 *et seq.*

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over the Defendants. Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises (including the provision of an interactive web page) its products in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, each Defendant has purposefully and voluntarily placed one or more of its infringing products, as described below, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Texas. Upon information and belief, these infringing products have been purchased by consumers in the Eastern District of Texas. Each Defendant has committed the tort of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

6. This Court has managed multiple cases related to the patent-in-suit through final claim construction, and, with respect to Civil Action No. 6:10-cv-361-LED-JDL, up through jury trial, which concluded with a verdict finding validity and infringement of the patent-in-suit by another Funai subsidiary, Funai Corporation, Inc., on December 17, 2012.

7. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

**COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 5,684,514**

8. Patent Harbor refers to and incorporates all preceding paragraphs as though fully set forth herein.

9. United States Patent No. 5,684,514 (“the ‘514 Patent”), entitled “Apparatus and Method for Assembling Content Addressable Video” was duly and legally issued by the United States Patent and Trademark Office on November 4, 1997, after full and fair examination. Patent Harbor is the assignee of all rights, title, and interest in and to the ‘514 Patent and possesses all rights of recovery under the ‘514 Patent, including the right to recover damages for past infringements. A true and correct copy of the ‘514 Patent is attached as Exhibit A.

10. Upon information and belief, Defendants manufacture, use, sell, offer to sell and/or distribute DVD Recorders, including, but not limited to, the Philips-branded DVD recorder/VCR DVDR3545V/F7. The Philips DVDR3545V/F7 is a DVD Recorder that allows a user to take pre-recorded video and create a title list (similar to the scene selection menu provided on a commercial DVD/BD disc), where the title list has a description (pictorial and/or written) of the video that will be accessed if the viewing user selects a particular title from the Title List menu. The exemplary DVDR3545V/F7 P&F DVD Recorder, and all other P&F DVD Recorders having comparable Title List creation functionality to the aforementioned

DVDR3545V/F7 infringe claim 1 of the '514 Patent. Claim 1 has been construed by the Court as set forth in Exhibit B.

11. Upon information and belief, Defendants have had actual notice of the '514 Patent since on or around the time Civil Action No. 6:10-cv-361-LED-JDL was filed against another Funai subsidiary, Funai Corporation, Inc., in July of 2010. Upon further information and belief, Defendants may also have had actual notice of the '514 Patent since on or around the time Philips Electronics North America Corporation, another Defendant in Civil Action No. 6:10-cv-361-LED-JDL that sells Philips-branded, Funai-manufactured products accused under the '514 Patent, may have made an indemnification request upon either P&F, Funai, or both. To the extent Defendants are not on actual notice of the '514 Patent, they are willfully blind to its existence and/or on constructive notice thereof.

12. Upon information and belief, the Defendants are infringing claim 1 of the '514 Patent under 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: making, using, importing, offering to sell, and selling within the United States the patented invention of one or more claims of the '514 Patent. To the extent that Funai is solely a manufacturer that sells to P&F outside the United States, Funai is still liable under 35 U.S.C. § 271 (b) and/or (c) for selling products to P&F that are specifically designed to infringe claim 1 of the '514 patent and for specifically selling those products to P&F for the specific purpose of reselling those products in the United States. Funai has expressly known since at least as early as July 2010 that the DVD Recorders it manufactures are accused by Plaintiff of infringing claim 1 of the '514 Patent.

13. Patent Harbor has been damaged as a result of the Defendants' infringing conduct. Defendants are, thus, liable to Patent Harbor in an amount that adequately compensates

Patent Harbor for their infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 § U.S.C. 284.

14. Patent Harbor is in compliance with the requirements of 35 U.S.C. § 287, and is entitled to past damages. From the date of six years before this suit was filed up to April 4, 2008, there were no authorized sales of commercial products embodying the claims of the ‘514 Patent. As of April 4, 2008, there was a licensee, but that licensee had an obligation to mark. As of May 3, 2011, Patent Harbor entered into a license with a third party that sold DVD Recorders that Patent Harbor accused of infringing claim 1 of the ‘514 Patent, and that license did not contain an obligation to mark accused products with the ‘514 Patent number.

15. As a result of Defendants’ acts of infringement, Patent Harbor has suffered and will continue to suffer damages in an amount to be proved at trial.

16. Patent Harbor believes that Defendants’ infringement has been deliberate and willful, and that this case is therefore an exceptional case, which warrants an award of up to treble damages and attorneys’ fees to Patent Harbor pursuant to 35 U.S.C. § 285.

#### **PRAYER FOR RELIEF**

Patent Harbor prays for the following relief:

A. A judgment that Defendants have directly infringed the ‘514 Patent as alleged herein;

B. A judgment and order requiring Defendants to pay Patent Harbor compensatory damages in an amount no less than a reasonable royalty under 35 U.S.C. § 284.

C. A judgment and order requiring Defendants to pay Patent Harbor pre-judgment and post-judgment interest on the damages awarded;

D. A judgment and order that Defendants pay Patent Harbor an on-going royalty for future acts of infringement if appropriate, at a rate determined by the jury or the Court;

E. A judgment that the damages awarded to Patent Harbor be increased up to three times, in view of Defendants' willful infringement;

F. A judgment that this case be declared an exceptional case in favor of Patent Harbor under 35 U.S.C. § 285, and that Patent Harbor be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action in accordance with 35 U.S.C. § 285 and Rule 54(d) of the Federal Rules of Civil Procedure; and

G. Any and all other relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Patent Harbor, LLC hereby demands that all issues be determined by a jury.

Respectfully submitted,



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