

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FLATFROG LABORATORIES AB,

Plaintiff,

v.

PROMETHEAN LTD. and PROMETHEAN
INC.,

Defendants.

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C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff FlatFrog Laboratories AB (“FlatFrog” or “Plaintiff”), by way of Complaint against Defendants Promethean Ltd. and Promethean Inc. (together “the Promethean Defendants”), alleges as follows:

THE PARTIES

1. FlatFrog is a Swedish corporation with its principal place of business Alfa 2 Scheelevägen 15 A, 223 63 Lund, Sweden.

2. FlatFrog is a pioneer and technology leader for large screen interactive displays, often referred to as “touch screens,” which allow multiple users to work together on a large display, in person or through real time collaboration across the globe. FlatFrog’s award-winning InGlass™ touch technology, when embedded within large displays, allows multiple users to touch and write on display screens with a passive pen or finger and with no annoying lag or latency (unlike conventional touch screens). FlatFrog’s patented InGlass™ experience is as natural as writing on paper, and the user can erase with a finger or fist.

3. FlatFrog’s patented InGlass™ technology also provides the lowest contact detection height (“CDH”) in the touch screen industry. Touch screens enabled with FlatFrog’s

patented InGlass™ technology, including its low CDH configuration, prevent the touch screen from picking up user interactions near the touch screen which are not intended by the user to register with the touch screen. Visual artifacts caused by conventional touch screens sold by competitors are noticeable by, for example, hooks at the end of a character or line as the user raises his or her finger (or stylus) from a touch screen. Because of its advantages over conventional touch screen technologies, FlatFrog's InGlass™ technology has been adopted by the world's leading touch screen display companies, including Samsung, Sharp, Dell, NEC, Smart, and ViewSonic. FlatFrog and products containing FlatFrog's InGlass™ technology have won many industry awards, including Aragon Research Hot Vendor 2019, Rapidus Company of the Year 2018, ISTE Best of Show Award 2017, and Rave Best of Infocomm 2016.

4. FlatFrog's considerable research and development investments in InGlass™ and related touch screen technologies are also protected by more than 119 patents worldwide and more than 110 pending patent families.

5. Upon information and belief, Defendant Promethean Ltd. is a United Kingdom corporation having a principal place of business at Promethean House, Lower Philips Road, Blackburn, BB1 5TH, United Kingdom.

6. Upon information and belief, Defendant Promethean Inc. is a Delaware corporation having a principal place of business at 1165 Sanctuary Pkwy., Ste. 400, Alpharetta, Georgia, 30009-4798.

7. On information and belief, the Promethean Defendants are both subsidiaries of immediate parent company Promethean (Holdings) Ltd., a United Kingdom corporation that is itself a subsidiary of Promethean World, Ltd., a United Kingdom Corporation.

NATURE OF THE ACTION

8. This is an action for patent infringement of U.S. Patent No. 10,282,035 (“the ’035 patent”) arising under the patent laws of the United States, Title 35, United States Code, §§ 100 *et seq.*, including 35 U.S.C. § 271. This action relates to the Promethean Defendants’ promotion, offers for sale, importation, and sales of ActivPanel Titanium products and all reasonably similar products (“Accused Products”), which are accused of infringing the ’035 patent.

JURISDICTION AND VENUE

9. FlatFrog realleges, and incorporates in full herein, each preceding paragraph.

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

11. Upon information and belief, venue is proper for this proceeding.

12. This Court also has personal jurisdiction over the Promethean Defendants because, on information and belief, the Promethean Defendants have worked as a team and in concert to establish promotion and sales channels for the Accused Products in the United States (including Delaware), and have worked as a team and in concert, together and with Promethean Partners, to promote, offer for sale, sell, and/or import the Accused Products in the United States and in Delaware.

13. This Court has personal jurisdiction over Promethean Inc. because it is a Delaware corporation.

14. Upon information and belief, Defendant Promethean Ltd. operates a website (www.prometheanworld.com) that, among other things, promotes and markets the Accused Products for importation and sale in the United States, including in Delaware.

15. The prometheanworld.com website includes a “How to Buy” button that when clicked invites and instructs the user to buy a Promethean product (including the Accused Products) through any of several methods.

16. For example, the prometheanworld.com website invites the user to “Contact Us By Phone” to “Speak to a Promethean representative by calling 678-336-8189,” which on information and belief connects the caller to a sales team member at Promethean Inc. in the State of Georgia, who answers product questions and encourages and assists callers in purchasing Promethean products, including the Accused Products.

17. The prometheanworld.com website also alternatively invites the user to provide his/her name and contact information in a “How to Buy” form that, on information in belief, will also be answered by a representative of Promethean Inc. who will provide product and sales information for the Accused Products and assist the buyer in purchasing them.

18. The prometheanworld.com website also alternatively invites the user to “Find a Promethean Partner Near You,” and includes a drop-down menu that identifies Promethean Partners in or near a particular state (including Delaware).

19. The prometheanworld.com website provides the names and contact information for authorized Promethean Partners in the United States who, upon information and belief, will complete the final steps of the sale and arrange shipment to the end customer in the United States, pursuant to terms and agreements with the Promethean Defendants.

20. Thus, upon information and belief, the Promethean Defendants have acted in concert to: import and sell the Accused Products to Promethean Partners and/or end customers in the United States (including Delaware) and induce the importation and sale of the Accused

Products in the United States (including Delaware) by at least their designated Promethean Partners.

21. Upon information and belief, the Promethean Defendants have also acted in concert with their authorized Promethean Partners to import, offer for sale, and sell the Accused Products to customers in the United States.

22. In addition, Defendant Promethean Ltd. is identified as the manufacturer on the labels on ActivPanel Titanium products, and on information and belief either manufacturers or has those products manufactured to its specifications and with the express knowledge and intent that at least some of the products will be sold in the United States.

23. For example, on information and belief Defendant Promethean Ltd. commissioned an FCC Test Report for the Promethean WIFI Module (Titanium) for the express purpose of obtaining FCC approval to sell the accused ActivPanel Titanium product in the United States.

BACKGROUND

24. From 2016 until approximately the summer of 2019, the Promethean Defendants purchased and proudly touted FlatFrog's InGlass™ technology in Promethean's earlier ActivPanel products, and FlatFrog considered Promethean a valued customer and business ally during that time.

25. For example, as recently as January 2018, Promethean issued a press release stating "The ActivPanel continues to offer the industry's most natural writing experience using InGlass™ technology, enabling both teachers and students to collaborate in front of the class with ease. . . . Powered with innovative InGlass technology, the ActivPanel automatically detects differences between pen, touch, and palm erase – allowing teachers to teach efficiently without switching between tools. The new instant whiteboard brings the InGlass technology to life through free-form

writing with practically no script-lag, pinch-zoom navigation, and pre-loaded teaching tools to enhance productivity.” <https://www.prometheanworld.com/news-article/promethean-expands-education-display-portfolio/>

26. In 2017, Promethean’s ActivPanel, also powered with FlatFrog’s InGlass technology, won the Best of Show award at the International Society for Technology in Education (ISTE) annual conference, which recognizes technologies that could have the most impact in the classroom.

27. In touting the ISTE Best of Show award on its website, Promethean stated “[t]he ActivPanel with InGlass™ touch and writing technology provides a natural and smooth writing experience.” <https://www.prometheanworld.com/press-release/activpanel-wins-iste-2017-best-of-show-award/>

28. The Promethean Defendants have long been well aware that FlatFrog has invested considerable time, effort, and money into research and development for its InGlass™ technology, and that FlatFrog has diligently pursued and obtained broad international patent protection for this technology.

29. For example, on or about March 7, 2018, FlatFrog employee Anders Krook sent an email to several Promethean executives (Ravi Angadi, Paul Edmond, and Enron Usow) specifically advising Promethean that FlatFrog’s patent portfolio then exceeded 90 patents with “significant[ly] more in the pipeline.” Promethean’s Mr. Angadi responded “Congratulations Anders and the FlatFrog team. Well done.” Mr. Usow asked Mr. Krook whether he would identify patents that applied to “the technology we are currently implementing with the P and C lines?” FlatFrog’s outside counsel, Mr. Dominic Davies, replied by email to Mr. Usow and also to Ms. Allyson Krause. Ms. Krause is identified on the Promethean World website as “responsible for

all commercial matters globally,” and that she became “Head of Legal for Promethean, globally in 2014.” (<https://www.prometheanworld.com/about-us/leadership/allyson-krause/>)

30. On or about October 15, 2018, Mr. Davies emailed Ms. Krause and Mr. Usow a PDF document identifying a sampling of FlatFrog’s granted and pending patents, including FlatFrog’s PCT application publication number WO2018106176 (titled “An Improved Touch Screen Device”), which corresponds to PCT application number PCT/SE2017/051233 from which the ’035 patent is a continuation.

31. In that same email, Mr. Davies reminded Promethean that as of October 15, 2018, “FlatFrog has over 90 granted patents and more than 100 pending patent families,” and that “New engineering solutions and feature opportunities for its InGlass™ technology are continually identified and patented.” Mr. Davies’ email stated he was “happy to answer questions you have.” No one from Promethean ever took up Mr. Davies on that offer. Additional patents have issued to FlatFrog since October 15, 2018, and FlatFrog has continued to file additional patent applications to protect its intellectual property and investments in InGlass™ and related touch screen technologies since that date.

32. In or about 2019, however, Promethean dropped FlatFrog and its revolutionary InGlass™ products and began to sell Promethean’s infringing Accused Products instead.

FIRST COUNT FOR PATENT INFRINGEMENT

33. FlatFrog realleges, and incorporates in full herein, each preceding paragraph.

34. The U.S. Patent and Trademark Office issued the ’035 patent on May 7, 2019, titled “Touch Device.” A copy of the ’035 patent is attached hereto as Exhibit A.

35. The ’035 patent is a continuation of PCT application number PCT/SE2017/051233, as stated on the face of the ’035 patent.

36. The technology claimed in the '035 patent enables FlatFrog's revolutionary InGlass™ technology (including low CDH) and the natural writing experience touted by Promethean, and is the subject of numerous awards from the education and touch screen industries.

37. FlatFrog is the owner of the '035 patent by virtue of assignment.

38. The Promethean Defendants had actual knowledge of the '035 patent and FlatFrog's allegations of infringement by the ActivPanel Titanium and reasonably similar products prior to the filing of this lawsuit.

39. Counsel for FlatFrog, Dominic Davies, sent an email on December 9, 2019, to Ms. Krause, Promethean's Global Head of Legal, specifically advising that the ActivePanel Titanium products infringe the '035 patent and asking the Promethean Defendants to cease selling same in the United States.

40. Upon information and belief, the ActivPanel Titanium products and all reasonably similar products ("Accused Products") infringe, either literally or under the doctrine of equivalents, at least claim 10 of the '035 patent.

41. The Accused Products are rectangular-shaped touch sensing apparatuses that include, among other things, a parabolic shaped touch surface and a display panel that are supported by a frame assembly.

42. Claim 10 of the '035 patent recites, and the Accused Products include, the following elements:

- a. A touch sensing apparatus having a long edge and a short edge, the apparatus comprising:
- b. a display panel;
- c. a plate including a touch surface; and

- d. a frame assembly comprising a plurality of frame elements configured to support the display panel and the plate;
- e. said the touch surface including:
- f. a center point;
- g. a first edge and a second edge parallel to the short edge; and
- h. a third edge and a fourth edge parallel to the long edge;
- i. wherein a first plane defined by the touch surface is curved with respect to a second plane defined by the short edge and the long edge; and
- j. wherein a distance between a first line in the first plane that passes through the center point and the second plane varies according to a parabolic function.

43. On information and belief, the Promethean Defendants are liable for direct infringement under 35 U.S.C. § 271(a) by, without authority, using, offering to sell and/or selling the Accused Products within the United States and/or importing the Accused Products into the United States directly and/or through their designated Preferred Partners acting as their agents for same.

44. On information and belief, the Promethean Defendants are liable for induced infringement under 35 U.S.C. § 271(b) by intentionally taking action that has actually induced and continues to induce direct infringement of the '035 patent by Promethean Partners who act in concert with and assist the Promethean Defendants in offering for sale, selling and/or importing the Accused Products in the United States, which the Promethean Defendants know infringe the '035 patent, or have been willfully blind to their infringement.

45. On information and belief, the Promethean Defendants have infringed the '035 patent in an egregious and willful manner and with knowledge of the '035 patent, or have been willfully blind to their infringement of that patent.

46. The Promethean Defendants' infringement of the '035 patent has caused and continues to cause damages and irreparable harm to FlatFrog, which has made significant investment in developing its market-leading and patented InGlass™ technology.

REQUEST FOR RELIEF

WHEREFORE, FlatFrog respectfully requests that the Court enter judgment in FlatFrog's favor and against each of the Promethean Defendants on the patent infringement claim set forth above and respectfully requests that this Court:

1. Enter a judgment in favor of FlatFrog that the Promethean Defendants have infringed, individually and together, and directly and by inducement, at least claim 10 of the '035 patent;
2. Preliminary and permanently enjoin the Promethean Defendants, individually and together, and their officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from further infringing the '035 patent;
3. Award FlatFrog actual damages adequate to compensate for infringement by the Promethean Defendants (individually and together) pursuant to 35 U.S.C. § 284, in an amount to be determined at trial, as a result of their infringement of the '035 patent;
4. Award FlatFrog pre- and post-judgment interest on all damages awarded, as well as supplemental damages;

5. Find this to be an exceptional case and award FlatFrog its costs and attorneys' fees under 35 U.S.C. § 285;

6. Find that infringement by the Promethean Defendants (individually and together) has been and continues to be egregious and willful misconduct, and award FlatFrog enhanced damages for willful patent infringement under 35 U.S.C. § 284; and

7. Award and grant FlatFrog such other and further relief as the Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

FlatFrog respectfully requests a jury trial on all issues and matters triable by jury.

ASHBY & GEDDES

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