IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTERNATIONAL BUSINESS MACHINES CORPORATION,	)	
	)	C.A. No. _____
Plaintiff,	)	
	)	**JURY TRIAL DEMANDED**
v.	)	
	)	
ZYNGA INC., and CHARTBOOST, INC.,	)	
	)	
Defendants.	)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff International Business Machines Corporation ("IBM"), for its Complaint for Patent Infringement against Zynga, Inc. ("Zynga") and Chartboost, Inc. ("Chartboost") (collectively, "Defendants"), demands a trial by jury on all issues so triable and alleges as follows:

INTRODUCTION

1. IBM is in the innovation business. Every year, IBM spends billions of dollars on research and development to invent, market, and sell new technology. These investments over the decades have led to innovations touching every industry and changing the way the world connects, including foundational advancements in computer hardware and software, big data analytics, artificial intelligence, and natural language processing. Even in the new frontier of quantum information science, once thought to be a purely academic exercise, IBM has capitalized on its early investments and innovations to become the leader in commercializing this revolutionary technology. IBM's Q Network service—a community of Fortune 500 companies, academic institutions, research organizations, and startups working with IBM to advance quantum computing—now has over 100 members. IBM believes that the application of intelligence, reason and science can improve business, society and the human condition.

14. After almost eight years without meaningful progress toward a resolution, IBM has brought this lawsuit to address Zynga and Chartboost's unauthorized use of IBM's patented technology.

NATURE OF THE CASE

15. This action arises under 35 U.S.C. § 271 for Zynga, Inc.'s infringement of IBM's United States Patent Nos. 7,072,849 (the "'849 patent"), 7,631,346 (the "'346 patent"), and 7,702,719 (the "'719 patent"), and Chartboost, Inc.'s infringement of the '849 patent and 8,315,904 (the "'904 patent") (collectively the "Patents-In-Suit").

THE PARTIES

16. Plaintiff IBM is a New York corporation, with its principal place of business at 1 New Orchard Road, Armonk, New York 10504.

17. Defendant Zynga, Inc. is a Delaware corporation, with its principal place of business at 699 Eighth Street, San Francisco, California, 94103. Zynga, Inc. is the parent company to Chartboost, Inc.

18. Defendant Chartboost, Inc. is a Delaware corporation with its principal place of business at One Sansome Street, Floor 21, San Francisco, California, 94104.

JURISDICTION AND VENUE

19. IBM incorporates by reference paragraphs 1–18.

20. This action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq*. The jurisdiction of this Court over the subject matter of this action is proper under 28 U.S.C. §§ 1331 and 1338(a).

21. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b). Zynga, Inc. and Chartboost, Inc. are entities organized under the laws of Delaware and reside in Delaware for purposes of venue under 28 U.S.C. § 1400(b). Additionally, Zynga, Inc. and

section. Chartboost has and continues to encourage and instruct customers and end users to use Chartboost's website and the associated mobile applications in a manner that infringes the '904 patent by advertising the website and mobile applications, providing customer support, and designing their website and mobile applications in such a way that the use of the website and mobile applications by an end user or customer infringes the '904 patent.

155. On information and belief, to the extent Chartboost was not aware that it was encouraging its customers and end users to infringe the '904 patent, its lack of knowledge was based on being willfully blind to the possibility that its acts would cause infringement.

156. IBM has been damaged by the infringement of its '904 patent by Chartboost and will continue to be damaged by such infringement. IBM is entitled to recover from Chartboost the damages sustained by IBM as a result of Chartboost's wrongful acts.

157. The continued infringement by Chartboost of the '904 patent is deliberate and willful, entitling IBM to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

158. IBM has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Chartboost is enjoined therefrom by this Court.

COUNT FIVE

ZYNGA'S INFRINGEMENT OF THE '719 PATENT

159. IBM incorporates by reference paragraphs 1–158.

160. IBM is the owner of all right, title and interest in the '719 patent. The '719 patent was duly and properly issued by the USPTO on April 20, 2010. The '719 patent was duly assigned to IBM. A copy of the '719 patent is attached hereto as Exhibit D.

161. In violation of 35 U.S.C. § 271(a), Zynga has directly infringed one or more of the claims of the ’719 patent by having made, designed, offered for sale, sold, provided, used, maintained, and/or supported its games (including *Farmville 2: Country Escape*), its websites (including www.zynga.com and www.zyngagames.com) and its mobile applications (including the Zynga applications for mobile devices running on, for example, the Apple iOS and Google Android operating systems). Alternatively, Zynga has contributed to the infringement of the claims of the ’719 patent in violation of 35 U.S.C. § 271(c) by selling, offering to sell, and/or supplying components, materials or apparatuses for use in practicing the patented methods of the ’719 patent by end users and consumers, as described in this section. Alternatively, Zynga has induced others, including end users and customers, to infringe one or more of the claims of the ’719 patent in violation of 35 U.S.C. § 271(b), as described below. Zynga’s infringement is continuing.

162. For example, Zynga directly infringes at least claim 1 of the ’719 patent through the *Farmville 2: Country Escape* game, including through the mobile applications for Android at least by:

a. configuring the server to store a model associated with the application (such as the game stored in the cloud) and to execute view-generating and controller logic associated with the application (such as when the game is available to be played by a user that is online (i.e., connected to the cloud via the Internet));

b. configuring the client to store at least a subset of the model associated with the application (such as the game stored on a user’s device) and to execute at least a subset of the view-generating and controller logic associated with the application (such as when the game is available to be played by a user that is offline (i.e., not connected to the cloud via the Internet));

c. wherein one or more portions of the applications are performed at the client without the client having to interact with the server (such as when the game is available to be played when a user is offline), and further wherein the client and the server both locally maintain at least a portion of the model and execute the view-generating and controller logic associated therewith (as demonstrated by when a user is playing offline, she can view her farm and progress, but when playing online she can also view the farm and progress of another player).

163. Alternatively, to the extent that the "configuring the client" step is performed by a third party (in addition to and/or separate from Zynga's performance), such as a user, browser, or mobile operating system, that performance is attributable to Zynga at least because Zynga has an agency or contractual relationship with said third party, or Zynga directs or controls the performance of said third party. For example, Zynga directs or controls the performance of the "configuring the client" step by user, browsers, and mobile operating systems because Zynga, for example, conditions receipt of a benefit, such as offline access to Zynga's games, on the performance of the claimed steps, and establishes the manner or timing of the performance by, for example, triggering the offline access using its underlying computer code. As another example, Zynga directs or controls the performance of the "configuring the client" step by browsers and mobile operating systems because Zynga profits from such performance by, for example, increasing the number of users and user interactions with Zynga's applications by providing offline access. Zynga has the right to stop or limit infringement by, for example, not enabling offline access.

164. In addition to its *Farmville 2: Country Escape* game, Zynga practices claim 1 of the '719 patent through other games which include substantially identical functionality, including without limitation, *CSR Racing 2*, *Farmville 2: Tropic Escape*, and *Farmville 3*.

165. Zynga has had knowledge of the ’719 patent and its direct and indirect infringement since at least May 20, 2020.

166. Zynga also indirectly infringes one or more claims of the ’719 patent through its websites (including www.zynga.com and www.zyngagames.com) and its mobile applications (including the Zynga applications for mobile devices running on, for example, the Apple iOS and Google Android operating systems). On information and belief, in certain circumstances, client devices and software (e.g., devices and software used by end users and customers of Zynga’s websites and the associated mobile applications) directly infringe the ’719 patent through the use of the websites and mobile applications. In particular, to the extent Zynga does not perform the method steps, in certain circumstances, client devices and software (e.g., devices and software used by end users, customers, and potential customers of Zynga’s websites and the associate mobile applications) perform at least the method of configuring the client to store at least a subset of the model associated with the application and to execute at least a subset of the view-generating and controller logic associated with the application wherein one or more portions of the applications are performed at the client without the client having to interact with the server, and further wherein the client locally maintains at least a portion of the model and executes the view-generating and controller logic associated therewith recited by claim 1 of the ’719 patent.

167. On information and belief, despite knowledge of the infringement of the ’719 patent, Zynga has intended and continues to intend to contribute to patent infringement by third parties by selling, offering to sell, and/or supplying components, materials, or apparatuses for use in practicing the patented methods of the ’719 patent by end users and consumers, as described in this section.

168. For example, Zynga provides computer code (such as HTML, Java, JavaScript, JSON, ActionScript, Objective-C, Swift, and image files) underlying the Zynga websites and mobile applications to customers and end users for use in infringing the ’719 patent, and such computer code does not have substantial non-infringing uses. Such computer code is especially made and/or especially adapted for use in infringing the ’719 patent and is not a staple article or commodity of commerce suitable for substantial non-infringing use. The only substantial use of Zynga’s computer code is for the claimed subject matter involving reducing interactions between a user and a server in association with an application being accessed by the user at the server as described in the ’719 patent.

169. Further, as a part of providing said computer code, Zynga enters into binding contracts with end users and customers to use Zynga’s websites and mobile applications, including in an infringing manner, including by binding the users to a terms of service governing access to and use of the accused websites and mobile applications.

170. Zynga receives valuable consideration from customers and end users located in this judicial district, including information provided by customers and end users, information automatically collected from customers and end users, and monetary consideration from customers and end users who purchase in-game currency and items through Zynga’s websites and mobile applications. When customers and end users in this judicial district use the accused websites and/or mobile applications, Zynga collects information about the customers and end users, their devices, and their interaction with the accused websites and the associated mobile applications. Zynga works with service providers and advertising networks to track and manage information and activities of customers and end users across different websites and devices. Third parties use information collected by Zynga to deliver advertisements to end users and customers based on

their use of the accused websites and mobile applications. Zynga's business is funded in part through advertising. The applications and websites are especially made and/or especially adapted for use in infringing the '719 patent, at least as detailed above, and are not a staple article or commodity of commerce suitable for substantial non-infringing uses because, among other things, the components sent to users are uniquely designed only to access the infringing aspects of Zynga's websites and mobile applications.

171. On information and belief, despite its knowledge of the infringement of the '719 patent, Zynga has intended and continues to intend to induce patent infringement by third parties, including at least the direct infringement by end users and customers, as described in this section. Zynga has and continues to encourage and instruct customers and end users to use Zynga's websites and the associated mobile applications in a manner that infringes the '719 patent by advertising the websites and mobile applications, providing customer support, and designing its websites and mobile applications in such a way that the use of the websites and mobile applications by an end user or customer infringes the '719 patent.

172. On information and belief, to the extent Zynga was not aware that it was encouraging its customers and end users to infringe the '719 patent, its lack of knowledge was based on being willfully blind to the possibility that its acts would cause infringement.

173. IBM has been damaged by the infringement of its '719 patent by Zynga and will continue to be damaged by such infringement. IBM is entitled to recover from Zynga the damages sustained by IBM as a result of Zynga's wrongful acts.

174. The continued infringement by Zynga of the '719 patent is deliberate and willful, entitling IBM to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

175. IBM has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Zynga is enjoined therefrom by this Court.

RELIEF REQUESTED

Wherefore, IBM respectfully requests that this Court enter judgment against Zynga as follows:

A. That the ’849 patent has been and continues to be infringed by Zynga;

B. That Zynga’s infringement of the ’849 patent has been and continues to be willful;

C. An injunction against further infringement of the ’849 patent by Zynga;

D. That the ’849 patent has been and continues to be infringed by Chartboost;

E. That Chartboost’s infringement of the ’849 patent has been and continues to be willful;

F. An injunction against further infringement of the ’849 patent by Chartboost;

G. That the ’346 patent has been and continues to be infringed by Zynga;

H. That Zynga’s infringement of the ’346 patent has been and continues to be willful;

I. An injunction against further infringement of the ’346 patent by Zynga;

J. That the ’904 patent has been infringed by Chartboost;

K. That Chartboost’s infringement of the ’904 patent has been and continues to be willful;

L. An injunction against further infringement of the ’904 patent by Chartboost;

M. That the ’719 patent has been and continues to be infringed by Zynga;

N. That Zynga’s infringement of the ’719 patent has been and continues to be willful;

O. An injunction against further infringement of the ’719 patent by Zynga;

P. An award of damages adequate to compensate IBM for the patent infringement that has occurred, together with pre-judgment interest and costs;

Q. An award of all other damages permitted by 35 U.S.C. § 284, including increased damages up to three times the amount of compensatory damages found;

R. That this is an exceptional case and merits an award to IBM of its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285; and

S. Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

IBM hereby demands trial by jury on all claims and issues so triable

Respectfully submitted,

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