

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS
MACHINES CORPORATION

Plaintiff

v.

ZYNGA INC., and CHARTBOOST, INC.

Defendants.

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C.A. No. 22-590-GBW

JURY TRIAL DEMANDED

DEFENDANTS' FINAL INVALIDITY CONTENTIONS

Pursuant to the Court's Scheduling Order (D.I. 89, 136, 214), Defendants Zynga, Inc. and Chartboost Inc. (collectively, "Zynga" or "Defendants") hereby serve their Final Invalidity Contentions (the "Final Invalidity Contentions") for U.S. Patent Nos. 7,027,849 and 7,702,719 (collectively, the "Asserted Patents").¹

I. INTRODUCTORY STATEMENT

Zynga understands that Plaintiff International Business Machines Corporation ("Plaintiff" or "IBM") has asserted the following claims, which are collectively referred to herein as the "Asserted Claims":

Asserted Patent	Asserted Claims
7,027,849 (the "'849 Patent")	1-22 and 25
7,702,719 (the "'719 Patent")	1-2, 12, and 26

¹ On November 30, 2023, U.S. Patent No. 7,631,346 (the "'346 Patent")—which IBM asserts against Zynga—was stayed pending appeal of *inter partes* review ("IPR") proceedings, IPR2022-00646 and IPR2023-00259. D.I. 210. Zynga reserves all rights to serve final invalidity contentions for the '346 Patent at a later date if/when the Court lifts the stay.

because they recite only the result of splitting information processing between two places and performing it in parallel, without any specific technique for doing so, following a conventional MVC model that the patent specification expressly attributes to the prior art. Moreover, at the time of the '719 Patent, network-based client/server applications were well known and common place, as was the fact that application logic could reside on both a client and a server. And that in at least the case of “fat-client applications”, a client was able to perform parts of an application without server interaction. Each asserted claim of the '719 Patent is therefore directed to an abstract idea and is not patentable under 35 U.S.C. § 101.

Zynga’s investigation concerning invalidity of the Asserted Patents under Section 101 is ongoing. For example, Plaintiff has not provided adequate infringement contentions and discovery is ongoing. Zynga thus reserves the right to supplement and/or amend its invalidity contentions with respect to Section 101.

B. Invalidity Based on 35 U.S.C. §§ 102 and 103

1. Background of the Prior Art

As shown below, the asserted claims of the '719 Patent, and each of the elements of the asserted claims, were well known in the art prior to the date of the alleged inventions. Examples of these disclosures and embodiments are identified in the following sections and in the attached Invalidity Claim Charts in Exhibits C-1 through C-16.

2. Identification of Prior Art References and Products

Subject to the reservations of rights above, Zynga identifies prior art that anticipates and/or renders obvious one or more of the Asserted Claims of the '719 Patent. The prior art references and products identified are also relevant to show the state of the art and reasons and motivations for making improvements, additions, modifications, and combinations.

The following prior art references and products anticipate and/or render obvious the asserted claims of the '719 Patent and/or illustrate the state of the art at the time of the alleged invention:

Ex. No.	Prior Art Ref.	Country of Origin	Filing Date	Publication, Issue Date, or Date of Availability / Sale
Ex. C-1	US 6,446,111 ("Lowery" or "'111 patent")	United States	June 18, 1999	September 3, 2002
Ex. C-2	US 6,108,687 ("Craig" or "'687 patent")	United States	March 2, 1998	August 22, 2000
Ex. C-3	Interactive Mail Access Protocol – Version 2" ("Crispin")	United States	N/A	August, 1990
Ex. C-4	US 6,161,136 ("Hyndman" or "'136 patent")	United States	October 16, 1998	December 12, 2000
Ex. C-5	US 5,768,510 ("Gish" or "'510 patent")	United States	July 1, 1996	June 16, 1998
Ex. C-6	US 6,170,109 ("Dresel" or "'109 patent")	United States	December 10, 1997	January 2, 2001
Ex. C-7	US 6,224,486 ("Walker" or "'486 patent")	United States	February 24, 1998	May 1, 2001
Ex. C-8	Rover: A Toolkit for Mobile Information Access ("Rover")	United States	N/A	December 3, 1995
Ex. C-9	Dynamic Documents: Wireless Access to the WWW ("Kaashoek")	United States	N/A	1994
Ex. C-10	US 5,838,906 ("Doyle" or "'906 patent")	United States	October 17, 1994	November 17, 1998

Ex. C-11	US 6,409,602 ("Wiltshire" or "602 patent")	United States	November 24, 1998	June 25, 2002
Ex. C-12	US 6,356,933 ("Mitchell" or "933 patent")	United States	September 7, 1999	March 12, 2002
Ex. C-13	US 5,838,909 ("Roy")	United States	May 23, 1996	November 17, 1998
Ex. C-14	US 6,415,317 ("Yelon")	United States	October 1, 1999	July 2, 2002
Ex. C-15	<i>Experience with Distributed Smalltalk</i> ("Bennett")	United States	N/A	February 1990
Ex. C-16	Diablo, patch version 1.07 ("Diablo")	United States	N/A	December 3, 1998
N/A ¹⁷	<i>The Videotex and Teletex Handbook</i> ("Hurly")	United States	N/A	1985

In addition, Zynga incorporates by reference each and every prior art reference of record in the prosecution of the '719 Patent and any related patent or application, the statements made therein by the applicant, as well as the prior art discussed in the specification.

3. Past Disclosures

Zynga incorporates by reference all invalidity contentions and any supplemental or amended invalidity contentions or equivalent disclosure of prior art for the '719 Patent served on IBM in other litigation or patent office proceedings (past, present/ongoing, or future).

4. Anticipation and Obviousness

The references in Exhibits C-1 through C-16 disclose elements of the asserted claims explicitly and/or inherently. These references may also be relied upon to show the state of the art at the relevant time and/or that elements of the asserted claims, or any asserted claim as a whole,

¹⁷ Hurly is a secondary reference used for obviousness combinations and has not been charted separately.

comprises the logic that processes user requests, and causes the model to be changed and the view to be refreshed.”

Zynga’s investigation concerning invalidity under 35 U.S.C. § 112 is ongoing. For example, Plaintiffs have not provided adequate infringement contentions and discovery is ongoing. Thus, Zynga reserves the right to supplement and/or amend its invalidity contentions with respect to § 112. Such supplementation and/or amendments may include, but are not limited to, invalidity contentions based on indefiniteness, lack of written description, and/or lack of enablement should the claims be construed under 35 U.S.C. § 112(6).

Dated: December 12, 2023

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

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***Attorneys for Defendants Zynga Inc. and
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CERTIFICATE OF SERVICE

I, Brian E. Farnan, hereby certify that on December 12, 2023, a copy of Defendants'

Final Invalidity Contentions was served on the following as indicated:

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