

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

DUAL DIGITAL MEDIA LLC,

Plaintiff,

vs.

ONLIVE, INC.,

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Dual Digital Media LLC (“Plaintiff”) hereby alleges for its Complaint against OnLive, Inc. (“Defendant”), on personal knowledge as to its own activities and on information and belief as to the activities of others, as follows:

I. THE PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of Texas, with a place of business at 1100 Judson Road, Suite 722, in Longview, Texas, 75601.

2. Plaintiff is the current owner of all right, title, and interest in United States Patent No. 7,925,897 (“’897 Patent” or “patent in suit”), titled “System, Method and Apparatus for Controlling the Dissemination of Digital Works,” duly and properly issued by the U.S. Patent and Trademark Office on April 12, 2011. A true and correct copy of the ’897 Patent is attached as Exhibit A.

3. Defendant is an entity organized and existing under the laws of Delaware with a principal place of business at 1091 N Shoreline Blvd, Suite 100, in Mountain View, California 94043.

II. JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

6. This Court has personal jurisdiction over Defendant. By way of example and without limitation, Defendant, directly or through intermediaries (including distributors, retailers, and others), makes, manufactures, distributes, advertises, markets, offers for sale, and/or sells digital media products and/or services covered by one or more claims of the patent in suit (hereinafter the “accused products”), which include without limitation products sold or distributed through the OnLive service, in the United States, the State of Texas, and the Eastern District of Texas. Further, on information and belief, Defendant, either directly or through intermediaries, has established minimum contacts with the forum, has conducted business within the State of Texas and this District, and has engaged in systematic and continuous contacts with the State of Texas. On information and belief, Defendant has committed acts of infringement of one or more claims of the patent in suit in this District.

7. By way of further example and without limitation, Defendant has purposefully and voluntarily placed the accused products into the stream of commerce with the expectation that they will be purchased in the Eastern District of Texas, and the products are actually purchased in the Eastern District of Texas.

III. THE DEFENDANT’S INFRINGEMENTS

8. The ’897 Patent relates to a method for providing digital media files to an end-user by double-encrypting a digital media file using two encryption keys provided by the end-user and then transmitting the encrypted digital media file to the end-user. The first encryption key is associated with the end-user, and the second encryption key is associated with end-user’s device where the digital media file is being transmitted. This method was conceived to meet a need to facilitate the dissemination of a protected digital work while at the same time maintaining control over its dissemination.

9. Defendant has committed the tort of patent infringement within the State of Texas, and more particularly, within the Eastern District of Texas, by virtue of the fact that Defendant has made, manufactured, distributed, offered for sale, and/or sold the accused

products in this District, and continues to do so, using products and/or processes that practice one or more inventions claimed in the patent in suit.

IV. DIRECT INFRINGEMENTS

10. Defendant's employees, agents, and representatives who create, encrypt, distribute, and/or transmit Defendant's accused products, have infringed one or more claims of the patent in suit.

11. The accused products made, manufactured, distributed, advertised, offered for sale, and sold by Defendant are encrypted based on at least two encryption keys, which it receives from the end-user. The first encryption key is associated with the end-user, such as an e-mail address and password. The second encryption key is based on the end-user's device to which the encrypted digital media file is to be transmitted. By using these two keys to encrypt its digital media products and then transmitting the encrypted files to its end-users, Defendant infringes one or more claims of the patent in suit.

12. This infringing method of encrypting digital media files is evidenced on Defendant's website, which explains that a user must be signed in (the first encryption key) and the user's device to be authenticated (the second encryption key) before the accused product may be accessed. *See, e.g.*, "Simultaneous Gameplay on Multiple Computers or Devices," <https://support.onlive.com/entries/22293596-Simultaneous-Gameplay-on-Multiple-Computers-or-Devices> ("... you can only be signed in to one computer or device at a time."); "Terms of Service," <http://games.onlive.com/legal/termssofservice> ("... you do not have the right to share your Account with any third party."); "End-User License Agreement," <http://games.onlive.com/legal/eula> ("During the period of time that you have an account on the Service ... you are granted the revocable, limited right to install one copy of the Materials onto your device ...").

13. Defendant has encouraged and/or is aware of the fact that its employees, agents, and representatives create, encrypt, distribute and/or transmit the accused products and practice the methods disclosed in one or more claims of the patent in suit, and these employees, agents,

and representatives are acting under Defendant's direction and control when practicing those methods.

14. Therefore, Defendant is a direct infringer of one or more claims of the patent in suit, and Defendant practices the methods as set forth in one or more claims of the patent in suit.

V. FIRST CAUSE OF ACTION

Infringement of U.S. Patent No. 7,925,897

15. Plaintiff repeats and re-alleges the allegations of the foregoing paragraphs of this Complaint as if fully set forth herein.

16. Defendant has in the past and still is literally and directly infringing or directly infringing under the doctrine of equivalents one or more claims of United States Patent No. 7,925,897 by, among other things, making, using, selling, and offering for sale the accused products and practicing one or more methods covered by at least claims 1, 2 and 4 of the '897 Patent, including, by way of example and not limitation, its sale and distribution of digital media files through its OnLive service to its end-users, and will continue to do so unless enjoined by this Court.

17. In addition to the fact that Defendant makes, sells, distributes and offers for sale the accused products, further examples of Defendant's direct infringements include, without limitation, the fact that Defendant has encouraged and/or is aware of the fact that its employees, agents, and representatives practice the methods disclosed in one or more claims of United States Patent No. 7,925,897, and these employees, agents, and representatives are acting under Defendant's direction and control when practicing those methods.

18. Defendant has encouraged and is aware that these persons create, encrypt, distribute, and/or transmit Defendant's accused products, and that these persons are acting under Defendant's direction and control, and therefore Defendant is directly practicing the methods disclosed in United States Patent No. 7,925,897.

19. Defendant's activities have been without express or implied license by Plaintiff.

20. As a result of Defendant's acts of infringement, Plaintiff has suffered and will continue to suffer damages in an amount to be proved at trial.

21. As a result of Defendant's acts of infringement, Plaintiff has been and will continue to be irreparably harmed by Defendant's infringements, which will continue unless Defendant is enjoined by this Court.

VI. PRAYER FOR RELIEF

1. A declaration that Defendant has infringed the patent in suit, under 35 U.S.C. §§ 271 *et seq.*;

2. That permanent injunctions be issued by this Court restraining Defendant, its officers, agents, servants, directors, and employees, and all persons in active concert or participation with each, from directly or indirectly infringing, or inducing or contributing to the infringement by others of, the patents in suit;

3. That Defendant be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendant's infringement of the patent in suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

4. That Plaintiff be awarded its interest and costs of suit incurred in this action;

5. Compensatory damages; and

6. Punitive damages.

Date: July 2, 2013

/s/Andrew W. Spangler
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