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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GTX CORP., PLAINTIFF, v. **PLAYSAURUS INC.** DEFENDANT	Case No. **[DRAFT] ORIGINAL COMPLAINT** **PATENT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

Plaintiff GTX Corp ("GTX"), by and through its attorneys, brings this Complaint for Patent Infringement and for Libel Per Se against Defendant Playsaurus Inc. ("Playsaurus"), and alleges as follows:

NATURE OF THIS ACTION

1. This is an action brought by GTX against Playsaurus based on Playsaurus' ongoing willful infringement of U.S. Patent No. 7,177,838 and 7,328,189 (the "Patents-in-Suit") arising under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., and seeking damages and injunctive relief under 35 U.S.C. §§ 271, 281, 283-285;and based on Playsaurus' libelous statement made to the media for dissemination to the public regarding GTX's efforts to protect its rights in U.S. Patent No. 7,177,838.

PARTIES

2. Plaintiff GTX is a corporation organized under the laws of the State of Delaware, and has a principal place of business at 13430 N. Scottsdale Rd., Suite #300, Scottsdale, Arizona 85254.

3. Upon information and belief, Defendant Playsaurus is a company organized under the laws of Delaware, with a principal place of business at 3530 Wilshire Blvd, Suite 1375, Los Angeles, California 90010.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the United States patent statutes, 35 U.S.C. § 1 et. seq.

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 under diversity of citizenship. The parties are citizens of different states and the amount in controversy exceeds $75,000. The acts giving rise to GTX's cause of action have had an impact in California, nationwide, including in this District, and internationally.

6. On information and belief, this Court has personal jurisdiction over Defendant Playsaurus because it serves and intends to continue to serve the United States market via its browser-based online games and server(s), including customers in Delaware.

7. Venue is proper in this District under 28 U.S.C. § 1391(c)(3) and § 1400(b).

FACTUAL BACKGROUND

GTX

8. GTX is a corporation founded by Dr. Marvin T. Ling over thirty years ago. Dr. Ling is the named inventor on numerous patents, including the Patents-in-Suit. GTX also produces patented Computer Aided Design (CAD) software, tools and other solutions which have been successful in the marketplace. Many of GTX patents, including the Patents-in-Suit, have also been successfully licensed to several companies from small businesses to Fortune 100 companies. GTX has acquired considerable goodwill and positive business reputations in the intellectual property market and among GTX's business partners. The licensing of intellectual property by GTX depends on its reputation as a good faith actor when it seeks business partners with which to commercialize its intellectual property.

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Playsaurus
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9. Upon information and belief, Playsaurus is an online game developer and publisher
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that enables consumers to acquire virtual currency and digital products (via the use of virtual
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currency) as part of Playsaurus's games supported by its server(s).
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10. On February 20, 2018, GTX attempted to notify Playsaurus of its infringement of
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U.S. Patent No. 7,177,838 by way of a letter sent via Federal Express and by electronic mail
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to Playsaurus's CEO, Mr. Thomas Wolfley, identifying the Patents-in-Suit and providing
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notice that Playsaurus infringed the same.
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11. Enclosed with the February 20, 2018, letter was a copy of U.S. Patent No. 7,177,838
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along with a draft Complaint, which explained Playsaurus's infringement of an exemplary
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claim, on an element-by-element basis.
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12. On information and belief, Playsaurus received GTX's February 20, 2018 letter and
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accompanying draft Complaint on February 23, 2018.
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13. On information and belief, thereafter on March 1, 2018, Playsaurus's CEO, Mr.
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Thomas Wolfley wrote the following libelous statement ("the Wolfley Libelous Statement
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One") on a blog (https://www.clickerheroes2.com/patent_trolls.php): "We (Playsaurus,
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developers of Clicker Heroes and Clicker Heroes 2) are getting shaken down by patent trolls
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for using 'virtual currency' in our game. GTX Corp., owners of U.S. Patent No. 7,177,838,
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claims that we're infringing on their patent for using 'electronic tokens'…. I believe their
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claims are completely meritless and their behavior to be abusive and terribly unethical. As I
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am a major owner of Playsaurus. … I am concerned that they may be preying on a lot of
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other small studios, in a final attempt for them to profit off this bogus patent."
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14. On informant and belief, an article was thereafter published on line dated March 3,
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2018, entitled "Clicker Heroes maker compares new lawsuit from 'patent troll' to extortion",
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which referred to the aforementioned blog. *See* https://arstechnica.com/tech-policy/2018/03/clicker-heroes-maker-compares-new-lawsuit-from-patent-troll-to-extortion/. On information and belief, Playsaurus's CEO, Mr. Thomas Wolfley, had provided the following libelous statement ("the Wolfley Statement Two") to Ars Technica, the publisher of the online magazine, who printed it in the March 3, 2018, article regarding GTX: "I kind of feel like it's as if someone walked into my home with a knife and asked me for $35,000, except it's legal."

15. The Wolfley Statement One and Wolfley Statement Two ("the Wolfley Statements") are entirely false as it pertains to GTX because GTX is not a "Patent Troll", the Patents-in-Suit is not "a bogus patent", GTX's claims are not "meritless", and GTX's communications are not "abusive" and "unethical." The U.S. Patent No. 7,177,838 has been successfully licensed to many Fortune 500 companies, not just small companies. The draft Complaint enclosed with GTX's February 20, 2018, letter was supported by an Expert Report that belies the Wolfley Statements.

16. Because the Wolfley Statements are explicitly made with reference to GTX, on information and belief, those reading the statement, including the media and their readers, on information and belief, would reasonably understand that the statement was about GTX. The Wolfley Statements expose GTX to hatred, contempt, ridicule and obloquy even though GTX was founded by a respected innovator, whose contributions are reflected in a myriad of patents that GTX has successfully licensed to other companies. On information and belief, Playsuarus' CEO, Mr. Thomas Wolfley, failed to use reasonable care to determine the truth or falsity of the Wolfley Statements.

17. As a proximate result of the above-described publication of the Wolfley Statements, GTX has suffered a loss to its reputation, all to its general damages.

18. Upon information and belief, in engaging in the above conduct, Playsaurus acted with malice and oppression, entitling GTX to exemplary and punitive damages.

19. On March 23, 2018, GTX provided Playsaurus with an updated draft complaint alleging infringement of U.S. Patent No. 7,177,838 by way of electronic mail to Playsaurus's outside counsel, again identifying U.S. Patent No. 7,177,838 and providing notice that Playsaurus infringed the same.

20. On March 26, 2018, GTX attempted to notify Playsaurus of its infringement of U.S. Patent No. 7,328,189 (in addition to reasserting infringement of U.S. Patent No. 7,177.838) by way of a letter sent via Federal Express and by electronic mail to Playsaurus's outside counsel, identifying U.S. Patent No. 7,328,189 and providing notice that Playsaurus infringed the same. Enclosed with the March 26, 2018, letter was a copy of U.S. Patent No. 7,177,838 along with a second updated draft Complaint, which explained Playsaurus's infringement of an exemplary claim of each of the Patents-in-Suit, on an element-by-element basis.

21. Despite GTX's attempt to seek a resolution with Playsaurus, Playsaurus has continued its ongoing willful infringement of the Patents-in-Suit. As such, GTX has brought this action to seek just compensation for Playsaurus' past and ongoing indirect infringement of the Patents-in-Suit.

PATENTS-IN-SUIT

22. U.S. Patent No. 7,177,838 ("the '838 Patent"), entitled "Method and Apparatus for Conducting Electronic Commerce Transactions Using Electronic Tokens", was duly and legally issued to Marvin T. Ling by the United States Patent and Trademark Office ("USPTO") on February 13, 2007. A true and correct copy of U.S. Patent No. 7,177,838 is

attached as Exhibit B. GTX is the lawful owner by assignment of the '838 Patent and holds all rights, title and interest in that patent.

23. U.S. Patent No. 7,328,189 ("the '189 Patent"), entitled "Method and Apparatus for Conducting Electronic Commerce Transactions Using Electronic Tokens", was duly and legally issued to Marvin T. Ling by the United States Patent and Trademark Office ("USPTO") on February 5, 2008. A true and correct copy of U.S. Patent No. 7,328,189 is attached as Exhibit C. GTX is the lawful owner by assignment of the '838 Patent and holds all rights, title and interest in that patent.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,177,838)

24. GTX repeats and realleges the allegations contained in Paragraphs 1 through 23 above as fully set forth herein.

Direct Infringement By Playsaurus' Web Portal

25. Playsaurus has indirectly infringed and continues to indirectly infringe, literally or under the doctrine of equivalents, one or more claims of the '838 Patent in violation of 35 U.S.C. § 271(b) in the United States. Playsaurus' infringement includes having induced and continuing to induce a web portal ("Kongregate") to use the "method" of at least independent claim 1 of the '838 Patent.

26. Playsaurus' infringement includes, without limitation, actively maintaining in the United States, its browser-based online games on Kongregate's "website", so that consumers can purchase virtual currency and digital products (with the virtual currency) via Playsaurus's browser-based online games via Kongregate's "web site".

27. By way of example, claim 1 of the '838 Patent recites as follows:

- A method of conducting electronic commerce over the Internet using micropayments, the method comprising::

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- opening a user account with a vendor for a user;
- issuing one or more electronic tokens from the vendor to the user account, wherein no physical manifestation, other than a database entry, of the user account occurs, each electronic token having a value of at least a fraction of a dollar;
- providing products and services that may be purchased from the vendor at micropayment levels, wherein prices for the products and services are listed in units of electronic tokens;
- permitting the user to select, at any participating vendor web site, a subset of the products and services for purchase from the vendor;;
- computing at the participating vendor web site a total price for the selected subset of the products and services in units of electronic tokens;
- authorizing a purchase transaction at the participating vendor web site without requiring any third party authentication and a physical manifestation of the user account; and
- if the user account contains electronic tokens having a value equal to or greater than the total price, permitting the user to purchase the selected subset of the products and services without requiring the user to disclose personal information to the vendor, and subtracting the total price from the user account, wherein the purchase transaction is not subject to a minimum processing fee.

28. As noted in the "Background of the Invention" section of the '838 Patent, there were problems with Internet based ecommerce systems in that they frequently required purchasers to provide sensitive personal information to facilitate transactions. *See* Expert Declaration of John Rizzo Regarding U.S. Patent No. 7,177,838 (*i.e.*, "the Rizzo '838 Declaration") at Para. 9. A true and correct copy of the Expert Declaration of John Rizzo Regarding U.S.

Patent No. 7,177,838 is attached as Exhibit D. To address this concern for potential fraud, the ‘838 Patent indicates that it would be desirable “to provide their purchasers the convenience of minimizing the requirement for interaction between a client computer and the ASP server in order to complete the purchasing or rental transaction, as the case may be. It would also be desirable for ASPs to minimize or limit the frequency of asking the purchaser to transmit the user's private, sensitive information, such as credit card information. Although the purchaser's credit card number is encrypted during the transmission, it will be highly desirable to minimize its exposure through the Web.” *See* Rizzo ‘838 Declaration at Para. 9; *see also* ‘838 Patent at 2:11-23.

29. In addition, the ‘838 Patent indicates that "‘micropayment’ transactions, sometimes amounting to only fractions of a cent, may also occur in the context of providing access to media, or Web-based services, such as search engines. In each of these cases, it is necessary to provide a way for users to pay for such transactions without incurring the overhead of a credit card charge.” *See* Rizzo ‘838 Declaration at Para. 10; *see* ‘838 Patent at 2:27-33. To this end, the ‘838 Patent indicates that it is “an object of the present invention to provide electronic currency or tokens that may be issued and used with minimal overhead, and that do not require on-line communications with a bank or other organization to issue or use the tokens.” *See* Rizzo ‘838 Declaration at Para. 10; *see* ‘838 Patent at 4:8-12; *see also* 3:60-63.

30. The inventor of the ‘838 Patent, Dr. Marvin Ling, had to address how this object would be implemented from a technical standpoint in an environment in which vendor computers, service provider computers and user devices would ordinarily interact over computer networks. *See* Rizzo ‘838 Declaration at Para. 11.

31. The solution Dr. Ling adopted was to provide “a system for conducting business transactions in a networked environment using ‘electronic tokens’ (or ‘tokens’) as a price for each item or product being offered for sale or rental by a vendor.” *See* Rizzo ‘838

Declaration at Para. 12; see *also* '838 Patent at 5:46-50. "Since electronic tokens are used for the business transaction, the need to transmit the user's credit card number and other personal sensitive information between the user's computer and the vendor's computer for each transaction is eliminated. Thus, the method and system of the present invention provides users the convenience of minimizing interactions between the user's computer (the client computer) and the vendor's computer (the server) thus reducing overhead. Furthermore, security for the user's personal sensitive information is improved." *See* Rizzo '838 Declaration at Para. 12; *see also* '838 Patent at 5:58.

32. The "benefit of using the vendor-issued electronic tokens of the present invention is that privacy risks are decreased. Since all purchases or business transactions are done using tokens, very little or no personal sensitive information, such as the user's credit card number, need be transmitted over communication lines, such as the Internet. Although information transmitted via the Internet may be encrypted, it is still desirable to eliminate or minimize such transmissions, since they may be intercepted and decrypted. Furthermore, since the vendor and user interact directly for the purchase and use of electronic tokens, rather than relying on a third party such as a bank, users may be selective about which vendors they are willing to trust with their private information." *See* Rizzo '838 Declaration at Para. 13; *see also* '838 Patent at 6:29-42.

33. "Because the user need not use a credit card for his purchases, it is unnecessary for the user to have a credit card, or for the user's computer or the vendor's computer to interact over the network with a bank or other financial institution to process credit card transactions. Additionally, since orders can be handled without credit card transactions, the overhead associated with such transactions can be reduced or eliminated, permitting micropayments." *See* Rizzo '838 Declaration at Para. 14; *see also* '838 Patent at 6:17-24.

1 34. Although the claimed "method/server" is applied in an ecommerce system, it
2 addresses technical computer integration issues which exist solely in the context of
3 computer networks with a technical solution that is tied to the "method/server" and
4 implemented in a way that improves the functionality of the computer system by reducing
5 the number and complexity of integrations required between vendors, users, and service
6 providers. *See* Rizzo '838 Declaration at Para. 15. The invention serves to reduce the
7 complexity of integrations in two ways. Firstly, it reduces the vendor's touch points to
8 outside financial systems by reducing the number of times that a credit card or other
9 financial vehicle needs to be used by the end user to make a purchase. *See* Rizzo '838
10 Declaration at Para. 15. This also reduces the risk of users credit cards or other financial
11 vehicles being exposed to malicious forces. *See* Rizzo '838 Declaration at Para. 15.
12 Secondly, due to the challenges of reconciliation for financial micro transactions, vendors
13 would need to build out systems for caching user purchases in order to hit credit card or
14 financial system purchase amount thresholds. *See* Rizzo '838 Declaration at Para. 15. The
15 invention removes the need for these caching systems and thus lowers the overhead in
16 development, support, and maintenance costs. *See* Rizzo '838 Declaration at Para. 15. It
17 further reduces lost revenues due to any particular user never reaching the financial
18 threshold. *See* Rizzo '838 Declaration at Para. 15.
19 35. The use of the claimed "method/server" does not simply reflect the use of generic
20 computer technology in a conventional or routine manner. *See* Rizzo '838 Declaration at
21 Para. 16. Indeed, the prosecution history of the '838 Patent suggests otherwise. As noted
22 by the P.T.O Examiner at the close of prosecution, "[t]he prior art taken alone or in
23 combination failed to teach or suggest a vendor registering user to purchase electronic
24 tokens wherein each token having a value of at least a fraction of a dollar and authorizing a
25 purchase at a participating vendor web site without requiring any third party authentication
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1 and a physical manifestation of the user account." *See* Rizzo '838 Declaration at Para. 16;
2 Notice of Allowability, dated April 1, 2006, at pg. 2., a true and correct copy of which is
3 attached as Exhibit E.
4 36. There are other ways of implementing a server for facilitating transactions between
5 vendors and users without operating a server in the manner called for by the claims of the
6 '838 Patent. *See* Rizzo '838 Declaration at Para. 17. For example, a vendor computer need
7 not rely on electronic tokens to facilitate "microtransactions", but instead could require
8 credit card payments for each transaction without the use of "electronic tokens" issued by or
9 on behalf of the vendor. *See* Rizzo '838 Declaration at Para. 17. So, the claimed invention
10 of the '838 Patent does not cover all ways of facilitating transactions among vendors and
11 users. *See* Rizzo '838 Declaration at Para. 17.
12 37. The prior art cited during the prosecution of the '838 Patent (including all references
13 cited on the face of the '838 Patent) does not disclose information that would lead one
14 skilled in the art to conclude that the operation of the claimed "method/server" including its
15 constituent elements reflected a conventional approach to addressing the integration issues
16 identified above. *See* Rizzo '838 Declaration at Para. 18.
17 38. Playsaurus indirectly infringes at least Claim 1 of the '838 Patent by actively
18 maintaining its browser-based online games such as its CLICKER HEROES game (as well
19 as other games that rely on virtual currency) on the Kongregate "website", which meets
20 every limitation of independent Claim 1 of the '838 Patent. Playsaurus has been placed on
21 notice of indirect infringement at least by way of its receipt of GTX's letter of February 20,
22 2018, and accompanying draft Complaint.
23 39. Upon information and belief, Playsaurus facilitates at least the use of a "method of
24 conducting electronic commerce over the Internet using micropayments" by actively
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1 maintaining Playsaurus's browser-based online games, such as CLICKER HEROES, on
2 Kongregate's "website".
3 40. Upon information and belief, the software employed in connection with Playsaurus'
4 online games, such as Clicker Heroes, includes "opening a user account with a vendor for a
5 user." By way of example, upon information and belief, the software employed in
6 connection with Playsaurus' online game, registers an account associated with a customer to
7 facilitate the acquisition and use of online currency (e.g., Kreds).
8 41. The software employed in connection with Playsaurus' online games, such as
9 Clicker Heroes, also issues one or more electronic tokens (e.g., Kreds) from Kongregate to
10 the user account, wherein no physical manifestation, other than a database entry, of the user
11 account occurs, each electronic token (e.g., Kreds) having a value of at least a fraction of a
12 dollar without any physical manifestation other than a database entry of the user account
13 made in connection with the purchase of virtual currency (e.g., Kreds). Upon information
14 and belief, different amounts of Kreds can be purchased via Kongregate's "website":
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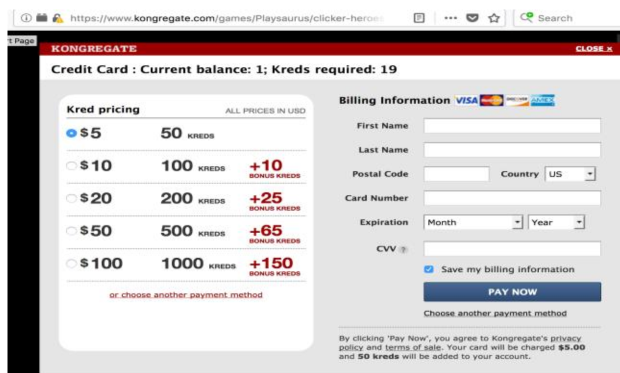

21 42. Upon information and belief, the software employed in connection with Playsaurus'
22 online games, such as Clicker Heroes, includes listing the prices of the products (which may
23 be purchased from the vendor) in units of electronic tokens. By way of example, the
24 software allows the display of products (e.g., Rubies) and prices in units of electronic tokens
25 (e.g., Kreds) or their equivalent, as shown below:
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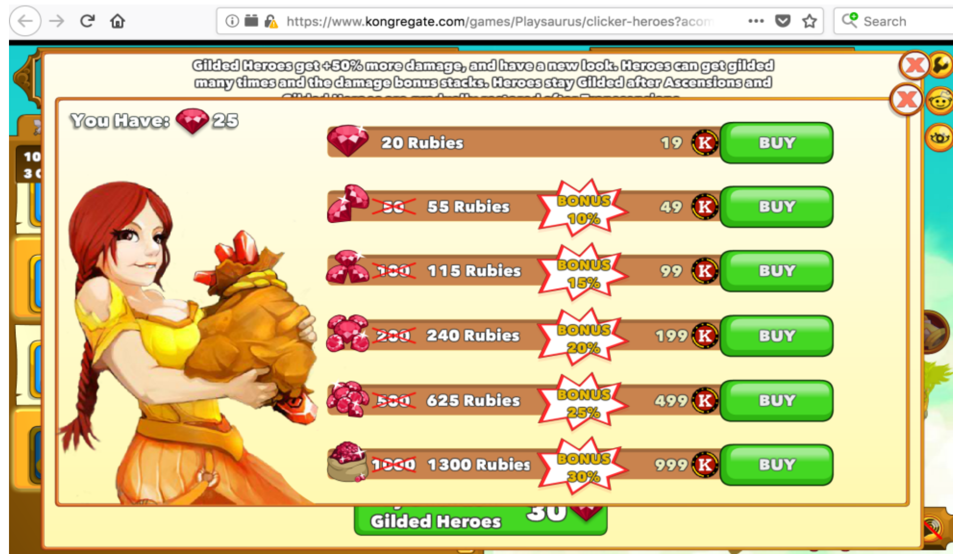


43. Upon information and belief, the software employed in connection with Playsaurus' online games, such as Clicker Heroes, permits a user to select, while at a participating vendor web site (i.e., Kongregate's website), a subset of the products/services for purchase from the vendor. In particular, the software permits the selection of a subset of products/services at prices specified in units of electronic tokens (e.g., Kreds) or their equivalent, as above in Paragraph 39.

44. Upon information and belief the software employed in connection with Playsaurus's online games, such as Clicker Heroes, authorizes a purchase transaction while at the participating vendor web site (e.g., Kongregate's website) without requiring any third party authentication and physical manifestation of the user account and if the user account contains electronic tokens (e.g., Kreds) having a value equal to or greater than the total price, and if so, permits a consumer to purchase the selected subset of products/services without requiring the user to disclose personal information to the vendor, and subtracts the total price from the user account. Upon information and belief, the purchase transaction (made while at the Kongregate's website, for example) is not subject to a minimum processing fee.

45. At least one of the web portals (i.e., Kongregate) --where Playsaurus actively hosts its browser-based games--is liable for direct infringement of one or more claims of the ‘838 Patent under 35 U.S.C. §271(a) based on the use of its “web site” to facilitate the acquisition and virtual currency and digital products (using the virtual currency) from devices in the United States.

46. Upon information and belief, Playsaurus has known of the ‘838 Patent and its infringement since at least February 23, 2018, following its receipt of GTX notice letter dated, February 20, 2018. The letter identified the ‘838 Patent, alleged that Playsaurus indirectly infringed the ‘838 Patent by facilitating the acquisition and utilization of electronic tokens by consumers in the United States, and included a draft Complaint explaining Playsaurus’ infringement of the’838 Patent on an element-by-element basis.

Induced Infringement By Playsaurus

47. Upon information and belief, Playsaurus had knowledge of the ‘838 Patent at least since its receipt of GTX’ February 20, 2018 letter.

48. Upon information and belief, Playsaurus actively and knowingly induced another to infringe one or more claims of the ‘838 Patent and possessed specific intent to encourage such infringement.

49. Despite being notified of infringement of the ‘838 Patent via GTX’ February 20, 2018 letter, upon information and belief Playsaurus continued to actively host its browser based online games on web portals such as Kongregate’s website.

50. Playsaurus knew or should have known that its actions would induce actual infringement of the ‘838 Patent.

51. In particular, Playsaurus knew or should have known that its actions would induce web portals such as Kongregate’s web site to facilitate the acquisition and use of virtual

currency to buy digital products, and, thus benefit from each and every aspect of the claimed "method" of the '838 Patent.

52. Playsaurus' active maintaining of its browser based online games on Kongregate's "website" to support ongoing transactions provides evidence of an affirmative intent that, for example, the "method" be used to infringe.

53. Playsaurus also knew or should have known that its actions would induce web portals, such as Kongregate, to carry out the "method" that directly infringes the '838Patent.

54. Playsaurus is liable for induced infringement of one or more claims (e.g., claim 1) of the '838 Patent under 35 U.S.C. §271(b).

Willful Infringement

55. Upon information and belief, Playsaurus had actual knowledge of the '838 Patent at least as of its receipt of GTX's notice letter of February 20, 2018 and accompanying claim chart.

56. Upon information and belief, upon gaining knowledge of the '838 Patent, it was, or became, apparent to Playsaurus that the operation and active marketing of its software on Kongregate's computer-based platform resulted in infringements of the '838 Patent. Notwithstanding its knowledge (or willful blindness thereto), Playsaurus continues to host its browser-based online games on Kongregate's computer-based platform.

57. Playsaurus has willfully infringed, and continues to willfully infringe the '838 Patent.

58. As a direct and proximate cause of the direct infringement by Playsaurus, GTX is being and will continue to be substantially and irreparably harmed in its business and property rights unless Playsaurus is enjoined from operating its computer-based Playsaurus platform in the United States.

59. In addition, GTX is suffering injury for which it is entitled to monetary relief as a result of Playsaurus' direct infringement.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 7,328,189)

60. GTX repeats and realleges the allegations contained in Paragraphs 1 through 59 above as fully set forth herein.

Direct Infringement by Playsaurus' Web Portal

61. Playsaurus has indirectly infringed and continues to indirectly infringe, literally or under the doctrine of equivalents, one or more claims of the '189 Patent in violation of 35 U.S.C. § 271(a) in the United States. Playsaurus' infringement includes having induced and continuing to induce a web portal ("Kongregate") to use the "method" of at least independent claim 1 of the '189 Patent.

62. Playsaurus's indirect infringement includes, without limitation, actively maintaining in the United States, its browser-based online games on Kongregate's "website", so that consumers can purchase and exchange virtual currencies and purchase digital products (with one of the virtual currencies) via Playsaurus's browser-based online games via Kongregate's "web site".

63. By way of example, claim 1 of the '189 Patent recites as follows:

- A method of conducting electronic commerce, the method comprising:
- opening a user account with a first member vendor;
- issuing electronic tokens of a first type to a user, and adding the electronic tokens to a user account maintained by the first member vendor;
- exchanging the electronic tokens in the user account for electronic tokens of a second type, the electronic tokens of the second type being issued by a second member vendor;

- purchasing or renting products or services through the second member vendor using the electronic tokens of the second type, wherein prices for the products or services are listed in units of electronic tokens of the second type; and
- transferring compensation from the first member vendor to the second member vendor in an amount equal to the value of the electronic tokens of the second type.

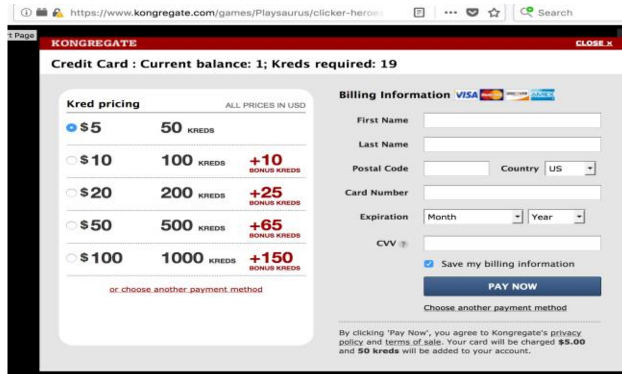
64. Playsaurus indirectly infringes at least Claim 1 of the ‘189 Patent by actively maintaining its browser-based online games such as its CLICKER HEROES game (as well as other games that rely on virtual currency) on the Kongregate “website”, which meets every limitation of independent Claim 1 of the ‘189 Patent. Playsaurus has been placed on notice of indirect infringement at least by way of its receipt of GTX’s letter of March 26, 2018, and accompanying draft Complaint.

65. Upon information and belief, Playsaurus facilitates at least the use of a “method of conducting electronic commerce” by actively maintaining Playsaurus’s browser-based online games, such as CLICKER HEROES, on Kongregate’s “website”.

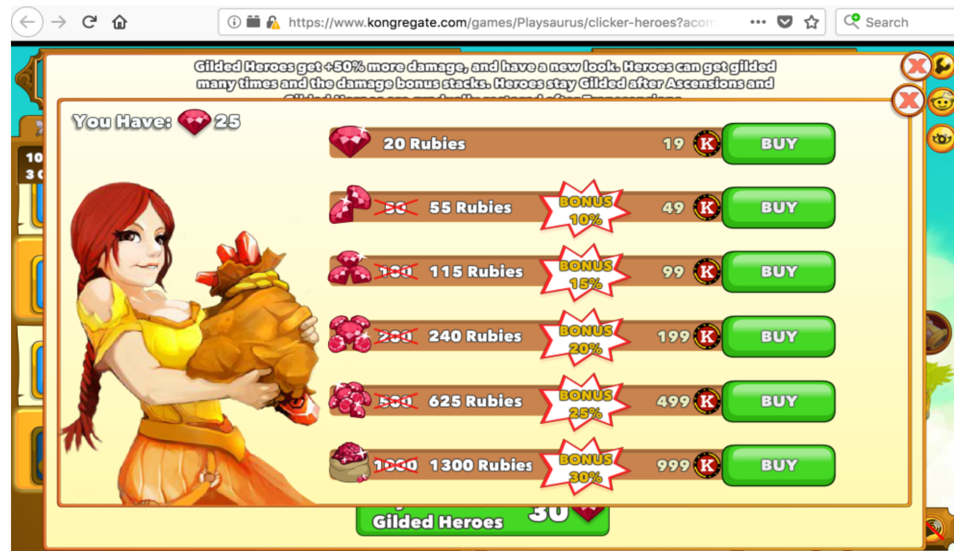
66. Upon information and belief, the software employed in connection with Playsaurus’ online games, such as Clicker Heroes, includes “opening a user account with a first member vendor.” By way of example, upon information and belief, the software employed in connection with Playsaurus’ online game on the Kongregate website, registers an account associated with a customer to facilitate the acquisition and use of online currency (e.g., Kreds).

67. The software employed in connection with Playsaurus’ online games, such as Clicker Heroes, also issues one or more electronic tokens (e.g., Kreds) from Kongregate

adds the electronic tokens to the user account maintained by Kongregate. Upon information and belief, different amounts of Kreds can be purchased via Kongregate's "website":



68. Upon information and belief, the software employed in connection with Playsaurus' online games, such as Clicker Heroes, exchanges the electronic tokens (i.e., Kreds) in the user account for electronic tokens of a second type (e.g., Rubies) that are issued by a second member vendor (i.e., Playsaurus), as shown below:



69. Upon information and belief, the software employed in connection with Playsaurus' online games, such as Clicker Heroes, purchasing or renting products or services through the second member vendor (i.e., Playsaurus) using the electronic tokens of the second type (e.g., Rubies), wherein prices for the products or services are listed in units of electronic tokens of the second type (i.e., Rubies). In particular, the software permits the selection of

products/services at prices specified in units of electronic tokens of the second type (e.g., Rubies), as shown below:

70. Upon information and belief Kongregate transfers compensation to Playsaurus in an amount equal to the value of the electronic tokens of the second type (e.g., Rubies). https://docs.kongregate.com/docs.

71. At least one of the web portals (i.e., Kongregate) --where Playsaurus actively hosts its browser-based games--is liable for direct infringement of one or more claims of the ‘189 Patent under 35 U.S.C. §271(a) based on the use of its “web site” to facilitate the acquisition and exchange of virtual currencies and the acquisition of digital products (using the virtual currency) from devices in the United States.

72. Upon information and belief, Playsaurus has known of the ‘189 Patent and its infringement since at least March 26, 2018, following its receipt of GTX notice letter dated the same date. The letter identified the ‘189 Patent, alleged that Playsaurus indirectly infringed the ‘189 Patent by facilitating the acquisition, excchange and utilization of electronic tokens by consumers in the United States, and included a draft Complaint explaining Playsaurus’ infringement of the’189 Patent on an element-by-element basis.

Induced Infringement By Playsaurus

73. Upon information and belief, Playsaurus had knowledge of the '189 Patent at least since its receipt of GTX' March 26, 2018 letter.

74. Upon information and belief, Playsaurus actively and knowingly induced another to infringe one or more claims of the '189 Patent and possessed specific intent to encourage such infringement.

75. Despite being notified of infringement of the '189 Patent via GTX' March 26, 2018 letter, upon information and belief Playsaurus continued to actively host its browser based online games on web portals such as Kongregate's website.

76. Playsaurus knew or should have known that its actions would induce actual infringement of the '838 Patent.

77. In particular, Playsaurus knew or should have known that its actions would induce web portals such as Kongregate's web site to facilitate the acquisition, exchange, and use of virtual currency to buy digital products, and, thus benefit from each and every aspect of the claimed "method" of the '189 Patent.

78. Playsaurus' active maintaining of its browser based online games on Kongregate's "website" to support ongoing transactions provides evidence of an affirmative intent that, for example, the "method" be used to infringe.

79. Playsaurus also knew or should have known that its actions would induce web portals, such as Kongregate, to carry out the "method" that directly infringes the '189 Patent.

80. Playsaurus is liable for induced infringement of one or more claims (e.g., claim 1) of the '189 Patent under 35 U.S.C. §271(b).

Willful Infringement

81. Upon information and belief, Playsaurus had actual knowledge of the '189 Patent at least as of its receipt of GTX's notice letter of March 26, 2018 and accompanying claim chart.

82. Upon information and belief, upon gaining knowledge of the '189 Patent, it was, or became, apparent to Playsaurus that the operation and active marketing of its software on Kongregate's computer-based platform resulted in infringements of the '189 Patent. Notwithstanding its knowledge (or willful blindness thereto), Playsaurus continues to host its browser-based online games on Kongregate's computer-based platform.

83. Playsaurus has willfully infringed, and continues to willfully infringe the '189 Patent.

84. As a direct and proximate cause of the direct infringement by Playsaurus, GTX is being and will continue to be substantially and irreparably harmed in its business and property rights unless Playsaurus is enjoined from operating its computer-based Playsaurus platform in the United States.

85. In addition, GTX is suffering injury for which it is entitled to monetary relief as a result of Playsaurus' direct infringement..

COUNT III

(Libel Per Se)

86. GTX repeats and realleges the allegations contained in Paragraphs 1 through 85 above as though fully set forth herein.

87. GTX alleges, upon information and belief, that Playsaurus has willingly, without justification and without privilege, published false and defamatory statements claiming that

GTX is a “Patent Troll”, the the ‘838 Patent is “a bogus patent”, GTX’s claims are “meritless”and GTX’s communications are “abusive” and “unethical.”

88. The Wolfley Statements published by Playsaurus regarding GTX are libelous on its face under California Civil Code § 45(a), as it has a tendency to injure and has injured GTX’s business reputation in the intellectual property market.

89. On information and belief, the Wolfley Statements were published by Playsaurus on the Internet and to Ars Technica, the publisher of an online magazine, knowing that they would be published widely on the Internet, where it could be read by participants in the intellectual property market and the CAD software market including GTX’ potential and actual business partners.

90. On information and belief, at the time Playsaurus published the Wolfley Statements, Playsaurus knew that the statement was about GTX, knew the statement was false and/or failed to take reasonable care to determine the truth or falsity of the statement.

91. As a direct and proximate result of Playsaurus’s publication, GTX has suffered general damages to its business, including injury to its business reputation, including, but not limited to, numerous negative statements made on GTX’s Facebook page that it relies on to promote its operating CAD-related business. These statements provide evidence that the Wolfley statements had their intended effect of damaging GTX’s business reputation.

PRAYER FOR RELIEF

WHEREFORE, GTX respectfully requests that this Court enter a Judgment and Order:

(a) Declaring that the Patents-in-Suit are valid and enforceable;

(b) Declaring that Playsaurus has indirectly infringed and continues to indirectly infringe, either literally or under the doctrine of equivalents, at least one valid and enforceable claim of the Patents-in-Suit under 35 U.S.C. §271(b);

(c) Declaring that Playsaurus' infringement is willful and that GTX is entitled to treble damages under 35 U.S.C. § 284 for past infringement;

(d) Awarding GTX damages adequate to compensate for Playsaurus' infringement, but in no event less than a reasonable royalty for past infringement;

(e) Either (1) permanently enjoining Playsaurus, its officers, agents, servants, and employees and those unlicensed persons in active concert or participation with any of them, including app stores or web portals, from operating and marketing its software via their computer-based platforms to facilitate the acquisition and use of "in-app" virtual currency to buy digital products, including engaging in communications with any of such app stores, web portals, or consumers to facilitate the "in-app" acquisition and use of virtual currency to buy digital products, or (2) awarding damages in lieu of an injunction, in an amount consistent with the fact that for future infringement Playsaurus will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law;

(f) Declaring that this is an exceptional case under 35 U.S.C. §285 and awarding GTX its attorney's fees, costs, and expenses, based in part on, but not limited to, Playsaurus' willful infringement;

(g) For a judgment that Playsaurus has committed libel per se under California Civil Code § 45 against GTX;

(h) For an entry of preliminary and thereafter permanent injunctive relief restraining and enjoining Playsaurus, and all of its agents, successors, and assigns, and all

persons in active concert or participation with any of them, from making or publishing any further defamatory statements against GTX;

(i) For an award of compensatory damages in an amount to be determined at trial;

(j) For an award of punitive damages in an amount to be determined at trial; and

(k) Granting GTX such other and further relief, including costs as this Court deems just, proper, and equitable.

Dated: March 30, 2018

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