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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SONY ELECTRONICS INC.,  
  
Plaintiff,  
  
v.  
  
MEDIOSTREAM, INC.,  
  
Defendant.

Case No.

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

Plaintiff Sony Electronics Inc. ("SEL") by and through its undersigned attorneys alleges,  
upon knowledge as to its own acts and upon information and belief as to the acts of others, that:

**NATURE OF THE ACTION**

1. This is an action for a declaratory judgment of noninfringement, invalidity, and  
unenforceability of U.S. Patent No. 7,843,508 (the "508 Patent").

## THE PARTIES

2. Plaintiff SEL is a Delaware corporation with its principal place of business at 16530 Via Esprillo, San Diego, CA, 92127.

3. Upon information and belief, Defendant MedioStream, Inc. ("MedioStream") is a California corporation with its principal place of business at 4962 El Camino Real, Suite 201, Los Altos, CA, 94022.

## JURISDICTION

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 and the patent laws of the United States, Title 35, U.S.C. § 1 et seq. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over MedioStream because its principal place of business is in Los Altos, Santa Clara County, California.

6. This Court has declaratory judgment jurisdiction under 28 U.S.C. § 2201 because, as shown below, there is an actual controversy between Plaintiff SEL and Defendant MedioStream regarding the noninfringement, invalidity, and unenforceability of the '508 Patent.

7. On November 9, 2007, MedioStream filed a complaint against SEL in the United States District Court for the Eastern District of Texas, alleging infringement of U.S. Patent No. 7,009,655 (the "'655 Patent") and U.S. Patent No. 7,283,172 (the "'172 Patent") ("Texas Litigation"). This lawsuit against SEL remains pending. A true and correct copy of the pending Fourth Amended Complaint against SEL is attached hereto as Exhibit A. The '655 Patent is attached to the Fourth Amended Complaint as its Exhibit A and the '172 Patent is attached to the Fourth Amended Complaint as its Exhibit B.

8. In the Texas Litigation, MedioStream alleges that SEL directly infringes, contributes to infringement, and induces infringement of the '655 Patent and the '172 Patent through the manufacture, sale, offer to sell, use, and importation of hundreds of products, such as VAIO computers, Blu-ray disc drives, and disc-authoring software. A true and correct copy of the current list of accused SEL products in Texas Litigation is attached hereto as Exhibit B.

9. Upon information and belief, the '508 Patent issued on November 30, 2010 from

1 U.S. Patent Application No. 11/847,190 (the “‘190 application”). The ‘190 application is a  
 2 continuation of U.S. Patent Application No. 11/342,280 (the “‘280 application”), which is a  
 3 continuation of the U.S. Patent Application No. 10/202,999 (the “‘999 application”). The ‘280  
 4 application issued as the ‘172 Patent on October 16, 2007 and the ‘999 application issued as the  
 5 ‘655 Patent on March 7, 2006. The ‘508 Patent is entitled “Method and System for Direct  
 6 Recording of Video Information onto a Disk Medium.” A true and correct copy of the ‘508  
 7 Patent is attached hereto as Exhibit C. A true and correct copy of the ‘190 application  
 8 prosecution history (insofar as can be accessed from the United States Patent and Trademark  
 9 Office (“USPTO”) website) is attached hereto as Exhibit D.

10 10. Because of the familial link between the ‘508 Patent, the ‘655 Patent, and the ‘172  
 11 Patent, the ‘508 Patent shares the same written description as the ‘655 Patent and the ‘172 Patent.  
 12 Each of these three patents lists Qiang Huang as the sole inventor and MedioStream as the  
 13 assignee.

14 11. Through the course of the Texas Litigation, SEL identified dozens of prior art  
 15 references that invalidate the claims of the ‘655 and ‘172 Patents. SEL furnished MedioStream  
 16 with detailed claim charts showing how these prior art references anticipate the claims of the ‘655  
 17 and ‘172 Patents or render them obvious. During prosecution of the ‘508 Patent, MedioStream  
 18 submitted all of these exact same claim charts to the USPTO (to the extent permitted under the  
 19 Texas Litigation’s Protective Order) in an attempt to insulate the ‘508 Patent against validity  
 20 attacks from SEL in future litigation.

21 12. On August 27, 2010, the Eastern District of Texas construed the claims of the ‘655  
 22 and ‘172 Patents. Memorandum Opinion and Order, *MedioStream Inc. v. Microsoft Corp.*, No.  
 23 08-cv-369 (CE) (E.D. Tex. August 27, 2010) (“Texas Litigation Claim Construction Order”). A  
 24 true and correct copy of the Texas Litigation Claim Construction Order is attached as Exhibit E.  
 25 Throughout the course of claim construction proceedings, which culminated in the Texas  
 26 Litigation Claim Construction Order, MedioStream realized that if the claims of the ‘655 and  
 27 ‘172 Patents were construed as argued by SEL, that many of MedioStream’s positions with  
 28 respect to infringement and validity would be compromised. Accordingly, through the ‘508

1 Patent, MedioStream attempted to incorporate its claim construction positions into the claims  
2 themselves. MedioStream has, in essence, re-written the claims of the '655 and '172 Patents and  
3 included those rewritten claims in the '508 Patent in an attempt to strengthen MedioStream's  
4 infringement and validity positions against SEL.

5 13. For example, SEL argued throughout the Texas Litigation that the claims of the  
6 '655 and '172 Patents require the "resizing" of video data prior to the "adjusting" of its frame  
7 rate. SEL has further maintained that, because of this requirement, many of its products do not  
8 meet the claims of the '655 or '172 Patents and thus SEL cannot infringe the '655 or '172 Patents  
9 with respect to these products. Fully aware of this issue, MedioStream rewrote the claims of the  
10 '655 and '172 Patents to strengthen its infringement case against SEL on this issue, *i.e.*,  
11 MedioStream removed this requirement from the claims of the '508 Patent. Indeed, in the Texas  
12 Litigation Claim Construction Order, the Eastern District of Texas agreed with SEL and  
13 construed the claims of the '655 and '172 Patents to require resizing prior to frame rate  
14 adjustment.

15 14. As a second example, SEL and MedioStream heavily contested the proper  
16 construction of the "presentation format" claim limitation in the '655 and '172 Patents in the  
17 Texas Litigation. While SEL disagreed, MedioStream argued that "presentation format" should  
18 be construed to mean a format "for writing" to an optical disk. Throughout the Texas Litigation,  
19 SEL contended that several prior art products invalidate the claims of the '655 and '172 Patents,  
20 but MedioStream believed that many of these prior art products would not meet the "presentation  
21 format" limitation if the term were construed to mean a format "for writing." Accordingly,  
22 MedioStream rewrote the claims of the '655 and '172 Patents to strengthen its validity case  
23 against SEL on this issue, *i.e.*, MedioStream defined "presentation format" in the claims of the  
24 '508 Patent to explicitly mean a format "for writing." Indeed, in the Texas Litigation Claim  
25 Construction Order, the Eastern District of Texas agreed with SEL on this point and did not  
26 construe the "presentation format" limitation to mean a format "for writing."

27 15. As a third example, SEL argued throughout the Texas Litigation that none of its  
28 products meet the limitation of "adjusting an uncompressed format," and thus SEL cannot

1 infringe the '655 or '172 Patents. In response, MedioStream rewrote the claims of the '655 and  
 2 '172 Patents to strengthen its infringement case against SEL on this issue, *i.e.*, MedioStream  
 3 rewrote this limitation into "adjusting the raw video information" and included this rewritten  
 4 version of the limitation into the claims of the '508 Patent.

5 16. Based on MedioStream's past actions with respect to the '655 Patent and the '172  
 6 Patent, combined with the clear attempts to strengthen its infringement and validity case against  
 7 SEL by including rewritten claims of the '655 and '172 Patents into the '508 Patent, an actual  
 8 case or controversy exists between Plaintiff SEL and Defendant MedioStream regarding the  
 9 noninfringement, invalidity, and unenforceability of the '508 Patent.

10 17. SEL denies infringement of the '508 Patent and disputes its validity.

#### 11 VENUE

12 18. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c). MedioStream  
 13 conducts business within this district and its principal place of business is within this district.  
 14 Additionally, events giving rise to this suit occurred in this district.

#### 15 INTRADISTRICT ASSIGNMENT

16 19. This is an Intellectual Property Action. Pursuant to Civil Local Rule 3-2(c), the  
 17 action may be assigned on a district-wide basis.

#### 18 FIRST COUNT

##### 19 DECLARATORY JUDGMENT OF NONINFRINGEMENT

20 20. SEL incorporates by reference the allegations of paragraphs 1 through 19 as if  
 21 fully set forth herein.

22 21. SEL does not and has not directly infringed, contributed to the infringement of, nor  
 23 actively induced others to infringe any valid and enforceable claim of the '508 Patent.

#### 24 SECOND COUNT

##### 25 DECLARATORY JUDGMENT OF PATENT INVALIDITY

26 22. SEL incorporates by reference the allegations of paragraphs 1 through 21 as if  
 27 fully set forth herein.

28 23. At least one claim of the '508 Patent is invalid for failure to comply with one or

1 more of the conditions and requirements of the patent laws, including, but not limited to, 35  
 2 U.S.C. §§ 101, 102, 103 and 112, and the rules, regulations and laws pertaining to those  
 3 provisions.

### 4 **THIRD COUNT**

#### 5 **DECLARATORY JUDGMENT OF UNENFORCEABILITY**

#### 6 **DUE TO INEQUITABLE CONDUCT**

7 24. SEL incorporates by reference the allegations of paragraphs 1 through 23 as if  
 8 fully set forth herein.

9 25. As described in detail below, the '508 Patent is unenforceable under the doctrine  
 10 of infectious unenforceability because one or more persons involved in the prosecution of the  
 11 '655 Patent or the '172 Patent violated their duty of candor and good faith in dealing with the  
 12 USPTO by intentionally and deceptively failing to disclose to the USPTO information material to  
 13 the patentability of the '655 Patent and the '172 Patent. The '508 Patent is related to the '172  
 14 Patent and the '655 Patents because it issued from a continuation application of the applications  
 15 which issued as the '172 Patent and the '655 Patent. Because the inequitable conduct during the  
 16 prosecution of the '655 Patent or the '172 Patent is immediately related to the claims of the '508  
 17 Patent, the '508 Patent is unenforceable by the doctrine of infectious unenforceability. The  
 18 averments of inequitable conduct herein parallel the averments made in the Texas litigation with  
 19 respect to the '172 and '655 Patent.

20 26. The Court in the Texas Litigation ruled that the allegations of inequitable conduct  
 21 during the prosecution of the '655 and '172 Patents set forth in the Texas Defendants' answers  
 22 were pleaded sufficiently to comply with the requirements of Federal Rules of Civil Procedure,  
 23 Rules 12(f) and 12(b)(6) as interpreted by the Federal Circuit in *Exergen Corp. v. Wal-Mart*  
 24 *Stores, Inc.*, 575 F.3d 1312, 1328 (Fed. Cir. 2009) ("*Exergen*"). Memorandum Opinion and  
 25 Order, *MedioStream Inc. v. Microsoft Corp.*, No. 08-cv-369-CE (E.D. Tex. Oct. 27, 2010)  
 26 ("*Texas Inequitable Conduct Order*"). A true and correct copy of the Texas Inequitable Conduct  
 27 Order is attached as Exhibit F. Under the doctrine of infectious unenforceability, all of those acts  
 28



1 of inequitable conduct committed during the prosecution of the '655 and '172 Patents taint the  
2 '508 Patent and render it unenforceable.

3 27. Specifically, the Court in the Texas Litigation concluded:

4 In their answers to Plaintiff's complaints, Defendants have asserted  
5 an inequitable conduct affirmative defense and counterclaim  
6 premised on several acts that Defendants allege constitute  
7 inequitable conduct. Specifically, Defendants allege that Plaintiff  
8 engaged in inequitable conduct by failing to disclose neoDVD,  
9 CAMpeg RT, Ulead, and Sonic Solutions prior art, failing to  
disclose prior rejections in related applications, failing to disclose  
cited references from related applications, and generally failing to  
disclose any material information to the patent office. (e.g. Dkt. No.  
193, pp. 8-28).

10 (Texas Inequitable Conduct Order at 2).

11 28. The court in the Texas Litigation further concluded:

12 Defendants have pled with particularity as required by Rule 9(b)  
13 and have met the heightened pleading standard of *Exergen*. For  
14 each individual alleged act of inequitable conduct, Defendants have  
15 identified at least one individual knew of the withheld information  
and/or withheld the information, and supported those allegations  
with facts. Defendants' factual allegations are sufficient to infer a  
specific intent to deceive.

16 (Texas Inequitable Conduct Order at 7).

17 29. In sum, the Texas Court ruled that each of the enumerated failures to disclose both  
18 separately and collectively were sufficiently pleaded to establish inequitable conduct: "Because  
19 Defendants' individual allegations sufficiently allege inequitable conduct, Defendants' collective  
20 failure to disclose allegation is sufficient to survive Rule 12(f) and Rule 12(b)(6) under *Exergen*."  
21 (Texas Inequitable Conduct Order at 11). That conclusion would apply with equal force to the  
22 '508 patent.

23 30. The Protective Order entered in the Texas Litigation and the absence of a  
24 protective order entered yet in this action, prevent SEL from repeating herein all of the detailed  
25 allegations considered by the Texas Court. Set forth below are some of the factual allegations  
26 considered by the Texas Court with respect to the inequitable conduct with respect to the '655  
27 and '172 Patents that are not covered by the Protective Order, as well as additional allegations  
28 that pertain to the '508 Patent.

1           31.     Qiang Huang is listed as the sole named inventor of the '655, '172, and '508  
2 Patents. Mr. Huang was personally involved in the prosecution of these patents. Mr. Huang's  
3 signature appears on an inventor declaration under 37 C.F.R. § 1.63 in the prosecution histories of  
4 all three of the patent applications that issued as the '655, '172, and '508 Patents. In those  
5 declarations, Mr. Huang "acknowledge[s] the duty to disclose to the United States Patent and  
6 Trademark Office all information known to me/us to be material to patentability as defined in 37  
7 CFR 1.55 . . . ." Mr. Huang is personally involved in the litigation against SEL in the Eastern  
8 District of Texas, having been retained as a paid consultant by MedioStream.

9           32.     Stephen Pang is an attorney at OGAWA Professional Corporation and was  
10 previously an attorney at the law firm of Townsend and Townsend and Crew LLP ("Townsend").  
11 MedioStream retained Townsend as patent prosecution counsel for the filing of the applications  
12 that led to the '655, '172, and '508 Patents. Mr. Pang was personally involved in the prosecution  
13 of the '655 and '172 Patents. Mr. Pang's signature appears on several communications with the  
14 USPTO in the prosecution histories of both of the '655 and '172 Patents.

15           33.     Richard Ogawa is also an attorney at OGAWA Professional Corporation and was  
16 also previously an attorney at the Townsend firm. Mr. Ogawa was personally involved in the  
17 prosecution of at least the '655 Patent. Mr. Ogawa's signature appears on the application  
18 transmittal form that was filed with the USPTO in the prosecution history of the '655 Patent.

19           34.     Kenneth Allen is an attorney at the Townsend firm. Mr. Allen was personally  
20 involved in the prosecution of the '172 and '508 Patent. Mr. Allen's signature appears on several  
21 communications with the USPTO in the prosecution history of the '172 Patent and the '508  
22 Patent. Mr. Pang, Mr. Ogawa, and Mr. Allen are collectively referred to herein as the "Townsend  
23 attorneys."

24           35.     Allston L. Jones is an attorney at Peters Verny, LLP. Mr. Jones was personally  
25 involved in the prosecution of the '508 Patent. Mr. Jones's signature appears on several  
26 communications with the USPTO in the prosecution history of the '508 Patent.  
27  
28



1           36. Steve Y. Cho is an attorney at the AMPACC Law Group. Mr. Cho was personally  
2 involved in the prosecution of the '508 Patent. Mr. Cho's signature appears on several  
3 communications with the USPTO in the prosecution history of the '508 Patent.

4           37. Philip Otto is a former employee of MedioStream who was MedioStream's Chief  
5 Executive Officer and Chief Financial Officer at the time MedioStream filed the parent  
6 application that later issued as the '655 and '172 Patents. Upon information and belief, Mr. Otto  
7 was "substantially involved," under 37 C.F.R. § 1.56, in the prosecution of the '655 Patent. Mr.  
8 Otto affixed his signature to assignment forms that appear in the prosecution histories of both the  
9 '655 and '172 Patents.

10           38. Stephane Desproges is currently MedioStream's Vice President and Chief  
11 Technology Officer. Mr. Desproges has been an employee of MedioStream since late 2000, and  
12 has held the titles of Chief Operating Officer, Director of Application Engineering, Director of  
13 Product Marketing, and Vice President of Engineering. Upon information and belief, under 37  
14 C.F.R. § 1.56, Mr. Desproges was "substantially involved," in the prosecution of the '655, '172,  
15 and '508 Patents. Mr. Desproges affixed his signature to a statement of assignment form during  
16 the prosecution of the '508 Patent.

17           39. Yang Cai is a former employee of MedioStream who was MedioStream's Senior  
18 Vice President of Engineering at the time MedioStream filed the parent application that later  
19 issued as the '655 and '172 Patents. Upon information and belief, Mr. Cai was "substantially  
20 involved," under 37 C.F.R. § 1.56, in the prosecution of the '655 Patent.

21           40. Cheng Kao is the current President of MedioStream, from at least March 17, 2004,  
22 and has been a member of the board of directors since 1999. Upon information and belief, Mr.  
23 Kao, was "substantially involved" under 37 C.F.R. § 1.56, in the prosecution of the '655, '172,  
24 and '508 Patents since at least March 17, 2004. *See* Exhibit G. Mr. Kao affixed his signature to  
25 forms that revoke the power of attorney with a new attorney and a statement of assignment during  
26 the prosecution of the '508 Patent.

27           41. Upon information and belief, Mr. Huang, Mr. Cai, Mr. Pang, Mr. Ogawa, Mr.  
28 Kao, Mr. Desproges, and Mr. Otto were involved in the application for and prosecution of the

1 '999 application from the date the '999 application was filed on July 23, 2002 to the date the '655  
2 Patent issued on March 7, 2006. None of these individuals submitted any prior art to the USPTO  
3 during the prosecution of the '999 application.

4 42. The '280 application, which later issued as the '172 Patent, was a continuation  
5 application claiming priority to the '999 application. Upon information and belief, Mr. Huang,  
6 Mr. Kao, and Mr. Desproges, along with Mr. Pang and Mr. Allen of the Townsend firm, were  
7 involved in the application for and prosecution of the '280 application from the date the '999  
8 application was filed on January 27, 2006 to the date the '172 Patent issued on October 16, 2007.  
9 None of these individuals submitted any prior art to the USPTO during the prosecution of the  
10 '280 application independent of nine references which the USPTO had cited against  
11 MedioStream during the prosecution of the parent '999 application.

12 43. The '190 application, which later issued as the '508 Patent, was a continuation  
13 application claiming priority to the '999 application. Upon information and belief, Mr. Huang,  
14 Mr. Kao, and Mr. Desproges, along with Mr. Allen of the Townsend firm, Mr. Jones of Peters  
15 Verny, L.L.P., and Mr. Cho of the AMPACC Law Group, were involved in the application for  
16 and prosecution of the '190 application from the date the '190 application was filed on August 29,  
17 2007 to the date the '508 Patent issued on November 30, 2010.

18  
19 A. Failure to disclose MedioStream's own neoDVD prior art

20 44. Upon information and belief, MedioStream's neoDVDstandard is a software  
21 product made and sold by MedioStream, and in public use in this country more than one year  
22 prior to the effective filing date of the '655, '172, and '508 Patents.

23 45. Upon information and belief, MedioStream previewed neoDVDstandard at the PC  
24 EXPO trade show, Booth #2956, in New York, NY during the period of June 26-28, 2001, which  
25 is more than one year prior to the effective filing date of the '655, '172, and '508 Patents. *See*  
26 Exhibit H. The PC EXPO 2001 show was a public event attended by large numbers of computer  
27 enthusiasts, computer industry representatives, and media representatives.

1           46.     Upon information and belief, the version of neoDVDstandard demonstrated at PC  
2 EXPO 2001 embodies the claims from each of the '655 and '172 Patents and at least claim 1 of  
3 the '508 Patent.

4           47.     Upon information and belief, Mr. Desproges was aware of the neoDVD  
5 demonstration at PC EXPO 2001, as he is listed as a contact on the press release announcing  
6 MedioStream's attendance on June 22, 2001. *See* Exhibit H.

7           48.     Upon information and belief, MedioStream attended and participated in the NAB  
8 trade show, Booth# E-5845, in Las Vegas, NV from April 23-26, 2001, which is more than one  
9 year prior to the effective filing date of the '655, '172, and '508 Patents. *See* Exhibit I.

10          49.     The NAB 2001 trade show is a public event attended by large numbers of  
11 computer enthusiasts, computer industry representatives, and media representatives.

12          50.     Upon information and belief, MedioStream demonstrated a version of neoDVD at  
13 the NAB 2001 trade show.

14          51.     Upon information and belief, Mr. Huang, as a director of engineering at  
15 MedioStream in June 2001, would have been aware that a version of neoDVDstandard was  
16 previewed at the PC EXPO on June 26-28, 2001 and at NAB 2001 on April 23-26, 2001 and  
17 aware of neoDVDstandard's technical features.

18          52.     Upon information and belief, Mr. Cai, as Senior VP of engineering would have  
19 been aware that a version of neoDVDstandard was previewed at the PC EXPO on June 26-28,  
20 2001 and at NAB 2001 on April 23-26, 2001 and aware of neoDVDstandard's technical features.

21          53.     Neither Mr. Huang, Mr. Desproges, Mr. Otto, Mr. Kao, Mr. Cai, nor the Townsend  
22 attorneys, however, disclosed any information about neoDVDstandard or the above-mentioned  
23 public uses of neoDVDstandard to the USPTO during prosecution of the '655 or '172 Patent  
24 applications.

25          54.     During prosecution of '655 and '172 Patents, the examiner allowed all of the  
26 claims over the prior art cited to the USPTO. Thus, the examiner believed the cited prior art did  
27 not disclose each and every element of the claims. Upon information and belief,  
28 neoDVDstandard embodies all the claim elements of the '655 and '172 Patent, and at least claim

1 of the '508 Patent, such that MedioStream's preview of this product at PC EXPO 2001 and demonstration of this product at the NAB 2001 trade show is invalidating under at least 35 U.S.C. § 102(b) and/or § 103.

55. Moreover, during the prosecution of the '172 Patent, the USPTO determined that MedioStream's submitted claims would only be allowable subject to a terminal disclaimer due to obviousness-type double patenting in view of the '655 Patent. Similarly, during the prosecution of the '508 Patent, the USPTO determined that MedioStream's submitted claims would only be allowable subject to a terminal disclaimer due to obviousness-type double patenting in view of the '655 and '172 Patent. Accordingly, for the same reasons that neoDVDstandard is material to the patentability of the '655 and '172 Patents' claims, neoDVDstandard is material to the patentability of the '508 Patent's claims, *i.e.*, a reasonable examiner would consider neoDVDstandard important in deciding whether to allow the '508 Patent application to issue as a patent. Thus, neoDVDstandard is material prior art to the claims of the '655, '172, and '508 Patents because neoDVDstandard anticipates and/or renders obvious each and every claim of the '655 and '172 Patents and at least claim 1 of the '508 Patent.

56. neoDVDstandard is not cumulative of the art of record because none of the art of record was found by the USPTO to anticipate or render obvious the asserted claims of the '655 and '172 Patents.

57. Upon information and belief, had Mr. Huang, Mr. Desproges, Mr. Kao, Mr. Otto, Mr. Cai, or the Townsend attorneys notified the USPTO of public uses of neoDVDstandard prior to July 23, 2001, the USPTO would have found the claims of the '655, '172, and '508 Patents unpatentable. Upon information and belief, Mr. Huang, Mr. Kao, Mr. Desproges, Mr. Cai, and Mr. Otto had knowledge of these public uses as part of their normal responsibilities at MedioStream. This knowledge of the public uses, in combination with the high materiality of these uses and the USPTO's difficulty in knowing of them absent MedioStream's disclosure, indicate that at least Mr. Huang, Mr. Kao, Mr. Cai, Mr. Desproges, and Mr. Otto intended to withhold the disclosure with intent to deceive the USPTO. This intentional and deceptive withholding constitutes inequitable conduct that renders the '655 and '172 Patents unenforceable.

58. The inequitable conduct during the prosecution of the '655 and '172 Patents taints the '508 Patent and renders it unenforceable under the doctrine of infectious unenforceability. Upon information and belief, if Mr. Huang, Mr. Desproges, Mr. Cai, Mr. Otto, Mr. Kao, or the Townsend attorneys, had disclosed the public uses of neoDVDstandard to the USPTO during the prosecution of the '655 and '172 Patents, those patents would have been invalid and the '508 Patent would not have issued.

59. Furthermore, in the Texas Litigation, MedioStream is aware that SEL contends that MedioStream's activities with neoDVD prior to July 23, 2001 anticipate the claims of the '655 and '172 Patents or render them obvious. Despite this knowledge, Mr. Desproges, Mr. Kao, Mr. Jones, and Mr. Cho failed to disclose material information to the USPTO during prosecution of the '508 Patent. Such material information would include, for example, the executable files and source code of the particular versions of neoDVD demonstrated at the PC EXPO 2001 trade show and the NAB 2001 trade show. These individuals' knowledge of (1) the public uses, (2) SEL's contentions in the Texas Litigation concerning those uses, and (3) highly relevant information underlying the uses (*e.g.*, executable files and source code), in combination with the high materiality of these items and the USPTO's difficulty in knowing such information absent MedioStream's disclosure, indicate that at least Mr. Desproges, Mr. Kao, Mr. Jones, and Mr. Cho intended to withhold the disclosure with intent to deceive the USPTO. This intentional and deceptive withholding constitutes inequitable conduct that renders the '508 Patent unenforceable.

B. Failure to disclose MedioStream's own CAMpeg RT prior art

60. CAMpeg RT is a software product made by MedioStream that allows users to create digital video in multiple audio/video formats on desktop PCs from DV camcorders, live video feeds, or multiple format video files. Upon information and belief, MedioStream sold CAMpeg RT to the United States public over one year prior to the filing of the application that led to the '655 Patent.

61. Upon information and belief, as a director of engineering at MedioStream, Mr. Huang would have been aware of the technical features of CAMpeg RT. Mr. Desproges, who

1 was a director of Application Engineering at MedioStream as of late 2000, would also be aware  
2 of the technical features of CAMpeg RT. Mr. Cai, as Senior Vice President of Engineering at  
3 MedioStream, would have been aware of the technical features of CAMpeg RT.

4 62. The claims of the '655 Patent and the '172 Patent are anticipated under 35 U.S.C.  
5 § 102 and/or rendered obvious under 35 U.S.C. § 103 by CAMpeg RT. Upon information and  
6 belief, Mr. Huang, Mr. Cai and Mr. Desproges were aware of the CAMpeg RT product and that it  
7 is material to the patentability of the claims of the '655 Patent and the '172 Patent.

8 63. CAMpeg RT is not cumulative of the art of record because none of the art of  
9 record was found by the USPTO to anticipate or render obvious the asserted claims of the '655  
10 and '172 Patents.

11 64. During the prosecution of the '655 Patent, the USPTO found that no prior art of  
12 record taught the system claimed in independent claim 1 of the '655 Patent. The limitations of  
13 the other asserted claims of the '655 Patent are similarly featured in CAMpeg RT, or rendered  
14 obvious in light of CAMpeg RT. Because of these highly material teachings, if Mr. Huang, Mr.  
15 Desproges, Mr. Kao, Mr. Otto, Mr. Cai, or the Townsend attorneys had informed the USPTO  
16 about MedioStream's sales of CAMpeg RT more than one year before the date the '655 Patent  
17 was filed, the examiner would have found the '655 Patent's claims unpatentable.

18 65. Moreover, during the prosecution of the '172 Patent, the USPTO determined that  
19 MedioStream's submitted claims would only be allowable subject to a terminal disclaimer due to  
20 obviousness-type double patenting in view of the '655 Patent. Thus, for the same reasons that the  
21 CAMpeg RT reference is material to the patentability of the '655 Patent's claims, CAMpeg RT is  
22 also material to the patentability of the '172 Patent's claims.

23 66. Upon information and belief, Mr. Huang's, Mr. Desproges's, Mr. Cai's, Mr.  
24 Kao's, Mr. Otto's, and the Townsend attorneys' familiarity with this product, along with its  
25 materiality, indicates that these individuals intended to withhold the CAMpeg RT reference  
26 during the prosecution of the '655 and '172 Patent applications with intent to deceive the USPTO.  
27 This intentional and deceptive withholding constitutes inequitable conduct that renders the '655  
28



1 and '172 Patents unenforceable. Furthermore, the inequitable conduct from the prosecution of the  
2 '655 and '172 Patents taints the '508 Patent rendering it unenforceable.

3  
4 C. Failure to disclose Ulead prior art

5 67. Upon information and belief, more than one year prior to the filing date of the  
6 '655, '172 and '508 Patent applications, Ulead Systems Inc. ("Ulead") sold and marketed in the  
7 United States an integrated PC video editing software package called VideoStudio 5.0 DVD  
8 Edition ("VideoStudio").<sup>1</sup> See Exhibit J.

9 68. Upon information and belief, important MedioStream employees, such as Mr.  
10 Huang, the director of engineering at MedioStream, Mr. Desproges, the director of Application  
11 Engineering as of late 2000 and Mr. Cai, the Senior Vice President of Engineering at  
12 MedioStream, would have been aware of the technical features of VideoStudio as Ulead was a  
13 rival competitor with successful video editing and DVD authoring software.

14 69. VideoStudio renders the claims of the '655 Patent and the '172 Patent invalid  
15 under 35 U.S.C. § 102 and/or § 103. Thus, VideoStudio is material to the patentability of the  
16 '655 and '172 Patents. However, Mr. Huang, Mr. Otto, Mr. Cai, Mr. Kao, Mr. Desproges, and  
17 the Townsend attorneys failed to bring VideoStudio (or material information regarding this prior  
18 art) to the attention of the USPTO during prosecution of the '655 and '172 Patent applications.

19 70. During the prosecution of the '655 Patent, the USPTO found that no prior art of  
20 record taught the system claimed in claim 1 of the '655 Patent. VideoStudio features all of the  
21 elements of claim 1 of the '655 Patent. Because of this highly material reference, had Mr. Huang,  
22 Mr. Otto, Mr. Cai, Mr. Kao, Mr. Desproges, or the Townsend attorneys notified the prosecuting  
23 examiner of VideoStudio during the prosecution of the '655 Patent, the examiner would have  
24 found the '655 Patent's claims unpatentable.

25 71. During the prosecution of the '172 Patent, the USPTO determined that  
26 MedioStream's submitted claims would only be allowable subject to a terminal disclaimer due to

27  
28 <sup>1</sup> Ulead's archived website is available at  
<http://web.archive.org/web/20010603150249/http://www.ulead.com/vs/runme.htm>.

obviousness-type double patenting in view of the '655 Patent. Thus, for the same reasons that VideoStudio is material to patentability of the '655 Patent's claims, VideoStudio is material to the '172 Patent's claims as well.

72. VideoStudio is not cumulative of the art of record because none of the art of record was found by the USPTO to anticipate the asserted claims of the '655 and '172 Patents.

73. Upon information and belief, Mr. Huang's, Mr. Desproges's, Mr. Cai's, Mr. Kao's, Mr. Otto's, and the Townsend attorneys' familiarity with this product, along with its materiality, indicates that these individuals intended to withhold the VideoStudio reference during the prosecution of the '655 and '172 Patent applications with intent to deceive the USPTO. This intentional and deceptive withholding constitutes inequitable conduct that renders the '655 and '172 Patents unenforceable. Furthermore, the inequitable conduct from the prosecution of the '655 and '172 Patents taints the '508 Patent rendering it unenforceable.

#### D. Failure to disclose prior art software made by Sonic Solutions

74. More than one year prior to the filing date of the '655 and '172 Patents, Sonic Solutions sold and marketed in the United States two DVD video authoring products known as DVDit! and MyDVD (collectively, "Sonic Prior Art"). A version of DVDit! called DVDit! 2 ("DVDit!") was available to the United States public as of at least July 2000. A version of MyDVD called MyDVD 2.3 ("MyDVD") was available to the United States public as of November 2000.

75. MedioStream included Sonic Solutions' MyDVD product with its own CAMpeg RT product as of February 21, 2001. *See* Exhibit K. Upon information and belief, important MedioStream employees, such as Mr. Huang, the director of engineering at MedioStream, Mr. Desproges, the director of Application Engineering as of late 2000 and Mr. Cai, the Senior Vice President of Engineering at MedioStream, would have been aware of the technical features of MyDVD and DVDit! prior to July 23, 2001.

76. Despite MedioStream's including Sonic Solutions' MyDVD product with its own CAMpeg RT product, none of Mr. Huang, Mr. Desproges, Mr. Cai, Mr. Kao, Mr. Otto, or the

1 Townsend attorneys brought the Sonic Prior Art to the attention of the USPTO during prosecution  
2 of the '655 and '172 Patent Applications.

3 77. During the prosecution of the '655 Patent, the USPTO found that no prior art of  
4 record taught the system claimed in issued independent claim 1 of the '655 Patent. However, the  
5 Sonic Prior Art anticipates (or renders obvious) the claims of the '655 Patent. Because of these  
6 highly material teachings, if Mr. Huang, Mr. Desproges, Mr. Cai, Mr. Kao, Mr. Otto, or the  
7 Townsend attorneys had submitted the Sonic Prior Art to the prosecuting examiner during the  
8 prosecution of the '655 Patent, the examiner would have found the '655 Patent's claims  
9 unpatentable.

10 78. During the prosecution of the '172 Patent, the USPTO determined that  
11 MedioStream's submitted claims would only be allowable subject to a terminal disclaimer due to  
12 obviousness-type double patenting in view of the '655 Patent. Thus, for the same reasons that the  
13 Sonic Prior Art is material to patentability of the '655 Patent's claims, the Sonic Prior Art is  
14 material to the '172 Patent's claims as well.

15 79. The Sonic Prior Art is not cumulative of the art of record because none of the art  
16 of record was found by the USPTO to anticipate the asserted claims of the '655 and '172 Patents.

17 80. Because of the high materiality of the Sonic Prior Art it is clear that the USPTO  
18 would have found the '655 and '172 Patent claims unpatentable if it had known of these  
19 references. Upon information and belief, Mr. Huang's, Mr. Desproges', Mr. Cai's, Mr. Kao's,  
20 Mr. Otto's, and the Townsend attorneys familiarity with the Sonic Prior Art, along with its clear  
21 materiality, indicates that these individuals intended to withhold the Sonic Prior Art during the  
22 prosecution of the '655 and '172 Patent Applications with intent to deceive the USPTO. This  
23 intentional and deceptive withholding constitutes inequitable conduct that renders the '655 and  
24 '172 Patents unenforceable. Furthermore, under the doctrine of infectious unenforceability, the  
25 inequitable conduct from the prosecution of the '655 and '172 Patents taints the '508 Patent  
26 rendering it unenforceable as well.

1 E. Failure to disclose prior rejection of claims submitted in '172 prosecution

2 81. During the prosecution of the '999 application that later issued as the '655 Patent,  
3 Mr. Pang initially submitted 16 method claims (original claims 1-15 and 20) and 4 system claims  
4 (original claims 16-19) to the USPTO.

5 82. On March 22, 2005 the USPTO rejected the 16 method claims. The USPTO  
6 rejected original claims 1-12, 15, and 20 as anticipated under 35 U.S.C. § 102(e) by U.S. Patent  
7 No. 6,370,198 (the "Washino" reference). The USPTO rejected original claims 13 and 14 under  
8 35 U.S.C. § 112 ¶ 2 as indefinite.

9 83. On August 16, 2005, in an Amendment signed by Mr. Pang, the applicants  
10 substantially amended 14 of the 16 rejected claims to depend from an allowed system claim  
11 (original claim 16, subsequently renumbered as issued claim 1). They canceled the remaining  
12 two method claims (original claims 1 and 20). Mr. Huang and Mr. Pang did not traverse the  
13 examiner's rejections of these 16 method claims. The USPTO subsequently allowed the amended  
14 claims on September 12, 2005.

15 84. On January 27, 2006, during prosecution of the '280 application that ultimately  
16 issued as the '172 Patent, Mr. Pang and Mr. Allen submitted the same 16 method claims (original  
17 claims 1-15, 20) that the USPTO had rejected in the '999 application.

18 85. Whereas the USPTO had found these 16 claims either invalid under § 102(e) or  
19 indefinite under § 112 during the prosecution of the '999 application, on February 5, 2007, the  
20 USPTO sent the applicants an Office Action in the '280 application stating that it would allow  
21 these identical claims. The USPTO ultimately did allow substantially similar claims in the '280  
22 application on August 8, 2007, after Mr. Pang and Mr. Allen submitted a terminal disclaimer in  
23 compliance with 37 C.F.R. § 1.321.

24 86. Because of the exact identity between the 16 method claims previously rejected in  
25 the '999 application and the 16 method claims submitted in the '280 application, the USPTO's  
26 prior rejection of these claims was highly material to the examination of the '280 application. If  
27 Mr. Pang and Mr. Allen had notified the USPTO that these exact claims had been previously  
28 rejected in the prosecution of a related patent application, the USPTO would have had substantial

1 reason to reassert the same rejections. Nowhere in the prosecution histories of the '172 Patent  
2 Application did Mr. Pang or Mr. Allen traverse the rejections of the originally filed 16 method  
3 claims under § 102 and § 112.

4 87. Upon information and belief, Mr. Pang and Mr. Allen had direct knowledge of the  
5 previous rejection of these claims. Given the materiality of this information and their direct  
6 knowledge, Mr. Pang and Mr. Allen intentionally withheld this information with an intent to  
7 deceive. The withholding of this information constitutes inequitable conduct that renders the  
8 '172 Patent unenforceable.

9 88. The inequitable conduct that renders the '172 Patent unenforceable also taints the  
10 prosecution of the '508 Patent, rendering the '508 Patent unenforceable as well.

11  
12 F. Failure to disclose Auwens reference in '172 and '508 prosecution

13 89. On November 6, 2002, Mr. Ogawa, Mr. Allen, and Mr. Huang submitted U.S.  
14 Patent Application No. 10/290,047 ("the '047 application") to the USPTO. The '047 application's  
15 title is "Method and System for Writing Video Presentation and Navigation Information Direct to  
16 Optical Disc."

17 90. According to an Application Data Sheet submitted by Mr. Ogawa on November 6,  
18 2002, the '047 application is related to and claims priority from the '999 application, which later  
19 issued as the '655 Patent.

20 91. On February 12, 2007, the USPTO mailed an Office Action rejecting all twenty  
21 pending claims of the '047 application as unpatentable over U.S. Patent 6,370,198 (the  
22 "Washino" reference) in view of U.S. Patent Application No. 2002/0131767 (the "Auwens"  
23 reference). Specifically, the USPTO stated:

24 Washino does not specifically teach the continuous transfer of video and  
25 audio information in final format over a common buss [sic] to a disc writer  
26 without an intermediary storage of the video and audio information from  
start to finish.

27 Auwens et al. does teach the continuous transfer of video and audio  
28 information in final format over a common buss [sic] to a disc writer  
without an intermediary storage of the video and audio information from  
start to finish. [Auwens et al. - Pg 1 ¶ 0005]. It would be obvious to one

1 skilled in the art at the time the invention was made to combine the  
 2 Washino's invention with the invention of Auwens et al to reduce the  
 3 complexity and expense in recording.

4 92. On July 31, 2007, in an amendment signed by Mr. Allen, the applicants traversed  
 5 the USPTO's rejection of the pending claims over Washino in view of Auwens. In this  
 6 amendment, Mr. Allen distinguished the submitted invention over the Auwens reference by  
 7 arguing (emphasis in original):

8 Claims 1-20 stand rejected under 35 U.S.C. 103(a) over Washino in view  
 9 of a published patent application to Auwens et al. A patent related to the  
 10 Auwens publication has also been cited .... Auwens has been cited for  
 11 teaching continuous transfer of video and audio in final format *over a*  
 12 *common bus* to a disc writer without intermediary storage, citing paragraph  
 13 [0005] of the Auwens publication.

14 Auwens does not teach the utilization of a common bus, as in the present  
 15 claimed invention. . . . While it recites use of a buffer IC, nowhere does it  
 16 teach or suggest the continuous transfer of audio and video over a common  
 17 bus. In fact, at the time the invention was made, the use of a common bus  
 18 for continuous transfer of video and audio was not only uncommon, it was  
 19 unknown. Each processing step would have been carried out using a  
 20 dedicated channel in the continuous transfer mode. The present invention,  
 21 by contrast, involves a more complex design, including solving the  
 22 problem of bus overload.

23 93. As seen above, in Mr. Allen's remarks to the USPTO, Mr. Allen distinguished the  
 24 Auwens reference from the claimed invention on the ground that it allegedly did not teach use of  
 25 a common bus to transfer audio and video. The applicants did not, however, dispute the  
 26 USPTO's characterization of Auwens as teaching "the continuous transfer of video and audio  
 27 information in final format" and "without intermediary storage." Rather, the applicants  
 28 emphasized that Auwens used "a dedicated channel in the continuous transfer mode."

94. Upon information and belief, the Auwens reference is material to the patentability  
 of the claims of the '172 Patent because claims 1-19 of the '172 Patent are anticipated under 35  
 U.S.C. § 102 and/or rendered obvious under 35 U.S.C. § 103 under Washino in combination with  
 Auwens. In particular, Auwens' teaching of processing of video via a continuous pass conversion  
 system free from intermediary files is directly relevant to all claims of the '172 Patent. *See*  
 Exhibit L.



1           95.     Upon information and belief, Auwens is not cumulative of the art of record  
2 because the art of record also does not teach the combination of Auwens and Washino that led the  
3 USPTO to reject all of the claims of the '047 application.

4           96.     MedioStream ultimately abandoned the '047 application. However,  
5 MedioStream's '280 application that later issued as the '172 Patent remained pending for over a  
6 year and a half past the USPTO's citation to MedioStream of the Washino and Auwens reference  
7 in the '047 application and the '508 Patent was pending for over three years, providing the  
8 Townsend attorneys, Mr. Jones, and Mr. Cho ample time to disclose the combination of Washino  
9 and Auwens.

10          97.     Although the USPTO was aware of the Washino reference during the prosecution  
11 of the '172 Patent, it was never made aware of the Auwens reference. When the USPTO was  
12 aware of both the Washino and Auwens references during prosecution of the related '047  
13 application, it continued to reject MedioStream's claims until MedioStream abandoned the  
14 application. A reasonable examiner would have considered it important to be aware of the  
15 Auwens reference during the prosecution of the '172 Patent's or '508 Patent's claims because it  
16 formed the basis for a rejection on a related patent application.

17          98.     Mr. Allen, as the prosecuting attorney for both the '047 application and the '280  
18 application, had direct knowledge of the Auwens reference, its teachings, and the USPTO's views  
19 regarding those teachings. This knowledge, combined with the materiality of Auwens, indicates  
20 that Mr. Allen intentionally withheld Auwens during the prosecution of the '172 Patent with the  
21 intent to deceive the USPTO. This intentional and deceptive withholding constitutes inequitable  
22 conduct that renders the '172 Patent and the '508 Patent unenforceable. Furthermore, the failure  
23 to disclose the material Auwens reference during the prosecution of the '172 Patent taints the  
24 prosecution of the '508 Patent rendering the '508 Patent unenforceable for this reason as well.

25          99.     None of Mr. Huang, Mr. Desproges, Mr. Kao, the Townsend attorneys, Mr. Jones,  
26 or Mr. Cho cured their inequitable conduct during the prosecution of the '508 Patent because  
27 when Mr. Cho finally disclosed the Auwens reference on June 25, 2010, Mr. Cho did not disclose  
28

1 to the USPTO the material information that the Auwens reference had served as a basis for  
2 rejecting the claims of the '047 application.

3  
4 G. Deliberate Failure to List Ian Xie As An Inventor of the MedioStream Patents

5 100. According to a June 18, 2001 press release by MedioStream, in 1998 Mr. Xie  
6 founded MedioStream and "led the development of the industry's first software real-time DV and  
7 MPEG2 codec and also championed the concept of CAMpeg RT, the world's first real-time DV to  
8 MPEG2 transcoder, and neoDVD, the first one-click consumer DVD authoring software." See  
9 Exhibit M.

10 101. Upon information and belief, Xie as the founder of MedioStream and leader in the  
11 development of neoDVD should have been listed as at least a joint inventor on the '655 Patent  
12 Application and all of the following continuing applications, including the application that issued  
13 as the '508 Patent.

14 102. A reasonable examiner at the USPTO would have found the failure to name Mr.  
15 Xie as at least a joint inventor to be material to patentability, because the non-joinder of a true  
16 inventor is fatal to a patent's validity under 35 U.S.C. § 102(f). Upon information and belief, Mr.  
17 Huang's failure to disclose the true inventorship of the MedioStream patents, despite his  
18 knowledge of Mr. Xie's true inventorship, evidences Mr. Huang's intent to deceive the USPTO.  
19 Yet Mr. Xie, who by that time had left the company at the request of key Board members, was  
20 not named even as a joint inventor. Upon information and belief, Mr. Huang's intentional and  
21 deceptive misstatement of inventorship constitutes inequitable conduct that renders the '655,  
22 '172, and '508 Patents unenforceable.

23 103. The inequitable conduct that renders the '655 Patent or the '172 Patent  
24 unenforceable also taints the prosecution of the '508 Patent, rendering the '508 Patent  
25 unenforceable for this reason as well.

1 H. Collective failure to disclose any material information to the USPTO

2 104. The intentional failure of Mr. Huang, Mr. Kao, Mr. Cai, Mr. Desproges, Mr. Otto,  
3 Messrs. Pang, Allen, and Ogawa, Mr. Jones, and Mr. Cho, to submit prior art to the USPTO as  
4 described above constituted a pattern of inequitable conduct.

5 105. As alleged above, each independent act of deceptive and intentional withholding  
6 of material information constitutes inequitable conduct. Additionally, these individual acts of  
7 deceptive and intentional withholding taken together constitute inequitable conduct under *Nilssen*  
8 *v. Osram Sylvania, Inc.*, 504 F.3d 1223, 1235 (Fed. Cir. 2007). Mr. Huang, Mr. Kao, Mr. Cai,  
9 Mr. Desproges, Mr. Otto, Messrs. Pang, Allen, and Ogawa, Mr. Jones, and Mr. Cho engaged in  
10 this pattern of inequitable conduct in order to secure issuance of the '655, '172, and '508 Patents.  
11 Accordingly, this pattern of inequitable conduct renders the '655, '172, and '508 Patents  
12 unenforceable. Furthermore, the inequitable conduct that renders the '655 Patent or the '172  
13 Patent unenforceable also taints the prosecution of the '508 Patent, rendering the '508 Patent  
14 unenforceable for this reason as well.

15 **PRAYER FOR RELIEF**

16 106. Wherefore, Plaintiff SEL requests that the Court enter judgment:

- 17 a. Declaring that Plaintiff does not infringe and has not infringed any claim of the  
18 '508 Patent, either directly or indirectly;  
19 b. Declaring that the claims of the '508 Patent are invalid;  
20 c. Declaring that the '508 Patent is unenforceable;  
21 d. Finding that, pursuant to 35 U.S.C. § 285 and/or other applicable laws,  
22 Defendant's conduct renders this an exceptional case and that Plaintiff be awarded  
23 costs of this action and its attorneys' fees to the extent permitted by law; and  
24 e. Granting such other and further relief as the Court deems just and proper.  
25  
26  
27  
28

1 Dated: November 30, 2010

Respectfully submitted,

2 KENYON & KENYON LLP

3  
4 By: 

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5  
6  
7  
8  
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application to be submitted)  
10 Zaed M. Billah (*pro hac vice* application  
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15 *Attorneys for Plaintiff*  
16 *Sony Electronics Inc.*

**JURY DEMAND**

Sony Electronics Inc. demands a jury trial of all issues so triable.

Dated: November 30, 2010

Respectfully submitted,

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