UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LODSYS, LLC, Plaintiff, v. ATARI INTERACTIVE, INC.; COMBAY, INC.; ELECTRONIC ARTS, INC.; ICONFACTORY, INC.; ILLUSION LABS AB; MICHAEL G. KARR D/B/A SHOVELMATE; QUICK OFFICE, INC.; ROVIO MOBILE LTD.; RICHARD SHINDERMAN; SQUARE-ENIX LTD.; TAKE-TWO INTERACTIVE SOFTWARE, INC. Defendants.	CIVIL ACTION NO. 2:11-cv-272-TJW

STATEMENT IN SUPPORT OF APPLE'S MOTION TO INTERVENE

Defendants Atari Interactive, Inc., Electronic Arts Inc., Quickoffice, Inc., and Square-Enix Ltd. (collectively, the "Supporting Defendants") respectfully submit this statement in support of the motion to intervene filed by Apple Inc. ("Apple") in this matter.

I.

INTRODUCTION

All but one of the undersigned Supporting Defendants were first named as a defendant in this action in an Amended Complaint filed by plaintiff Lodsys, LLC ("Lodsys") on July 21,

2011, after the filing of Apple's motion to intervene.[1] And with only one exception, the Supporting Defendants have not yet been served with process in this action. Given the long period of time within which a complaint and summons may be served under the Federal Rules of Civil Procedure, the Supporting Defendants are filing this statement now to ensure that their voices are heard in connection with the pending motion to intervene.[2]

The Amended Complaint alleges that certain mobile games made or published by the Supporting Defendants for the Apple iPhone and iPad platforms infringe U.S. Patent Nos. 7,222,078 and 7,620,565 (collectively, the "Asserted Patents").

II.

APPLE'S INTERVENTION AS A PARTY IN THIS ACTION IS CRITICAL TO THE SUPPORTING DEFENDANTS' ABILITY TO DEFEND THEMSELVES AGAINST THE CHARGES OF INFRINGEMENT

Apple's motion to intervene states that Apple has a license to the Asserted Patents, and that the terms of this license operate to immunize application developers (such as the Supporting Defendants) from any infringement of the Asserted Patents on account of iPhone or iPad games such as those made or published by the Supporting Defendants.

If this were proven to be correct (the Supporting Defendants do not yet have access to the confidential license at issue), *the Supporting Defendants would each have a complete defense to the claims of Lodsys in this matter*, regardless of whether the Asserted Patents are valid, enforceable and infringed (all of which the Supporting Defendants dispute).

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[1] Of the Supporting Defendants, only Quickoffice was named as a defendant in the initial complaint in this action.

[2] By filing this statement, none of the Supporting Defendants is making a general appearance in this action, nor are they waiving or compromising in any way any right, claim, position, or defense they may have in response to the Amended Complaint if and when it is served, including, but not limited, to any defenses based on deficiencies in service, venue or jurisdiction.

The Supporting Defendants strongly support Apple's motion to intervene because the participation of Apple as a party in this lawsuit is critical to the development of the very evidence needed to establish what may prove to be a complete defense to the infringement claims in this action. Apple has the very best information available to *anyone* on the subject of the nature and operation of its own licensed technology. Similarly, as one of the two contracting parties, Apple will have vital information regarding the negotiation, nature and scope of its license.

Moreover, Apple is uniquely positioned to respond to any claim made by Lodsys that the scope of its license does not operate to the benefit of Apple's application developers. To do so, however, Apple must be a party to this action, not a third-party.

For example, as a party in this action, Apple and its counsel would have access under this Court's protective order to all written discovery and testimony on the subject of the background and scope of its license, as well as the nature and operation of its own, licensed technology. Were Apple's participation in this action limited to that of a third-party, Lodsys would be able to insulate the testimony of Lodsys's documents and witnesses—as well as the reports of Lodsys's experts—from review, critique and response by Apple. This would give Lodsys an unfair advantage, and substantially prejudice the Supporting Defendants' ability to develop a full and fair record in this action because of Apple's unique knowledge regarding its license and its licensed technology.

It is for this reason that Apple's full participation as a *party* in this action, rather than as a third-party, is vital to the Supporting Defendants' ability to defend themselves against the infringement claims asserted by Lodsys.

In view of the Supporting Defendants' critical need to rely upon Apple's assistance in developing the evidence in this matter, Apple's willingness to participate as a party in this action,

and the lack of any cognizable prejudice to Lodsys, the Supporting Defendants respectfully urge this Court to grant the pending motion to intervene.

Dated: August 9, 2011

Respectfully submitted,

/s/ Wayne M. Barsky

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ATTORNEYS FOR DEFENDANTS ATARI INTERACTIVE, INC., ELECTRONIC ARTS INC., QUICKOFFICE, INC. AND SQUARE ENIX LTD.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this response was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Fed. R. Civ. P. (5)(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 9th day of August 2011.

By: */s/ Wayne M. Barsky*
Wayne M. Barsky