

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

_____	)	
JOHN R. MARTIN,	)	
	)	
Plaintiff,	)	No.: 08 C 1398
	)	
v.	)	Judge Kocoras
	)	Magistrate Judge Cole
NINTENDO OF AMERICA INC.,	)	
	)	
Defendant.	)	
_____	)	

**ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Nintendo of America Inc. (“NOA”) hereby states its Answer and Affirmative Defenses to the Complaint of plaintiff John R. Martin (“Martin”).

**The Parties**

1. NOA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1, and on that basis denies all allegations of paragraph 1.

2. NOA admits that it is a Washington corporation with its principal place of business at 4820 150<sup>th</sup> Avenue N.E., Redmond, Washington 98052, and that it conducts business in this judicial district, but NOA denies that such business includes performing the acts of infringement alleged in the Complaint.

**Nature of Action and Jurisdiction**

3. NOA admits that Martin’s Complaint purports to bring a claim arising under the Patent laws of the United States, Title 35, United States Code, and under 35 U.S.C. §§ 271 *et seq.*, and that this Court has jurisdiction over this action under 28 U.S.C. §§ 1338(a) and 1331.

NOA denies all remaining allegation in paragraph 3.

4. NOA does not challenge this Court's exercise of personal jurisdiction over NOA and denies all of the remaining allegations in paragraph 4.

5. NOA does not challenge venue in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b). NOA denies all of the remaining allegations of paragraph 5.

6. NOA admits that a copy of U.S. Patent No. 6,926,609 (the "'609 patent") is attached to the Complaint as Exhibit A. NOA admits that the face of the '609 patent lists the title as "Method For Operating an Electronic Machine Using a Pointing Device" and further lists that it was issued in the name of John R. Martin on August 9, 2005. NOA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 6, and on that basis denies all remaining allegations of paragraph 6.

7. [The complaint omits paragraph 7.]

8. NOA admits that by letter dated November 7, 2007, James P. Murphy, counsel for Martin in this litigation, provided a copy of the '609 patent to NOA. NOA denies the remaining allegations in paragraph 8.

9. NOA denies the allegations in paragraph 9.

10. NOA admits that 35 U.S.C. § 282 states, among other things, that a patent shall be presumed valid. NOA denies the remaining allegations in paragraph 10.

#### **COUNT I – PATENT INFRINGEMENT**

11. NOA incorporates by reference in this paragraph each of its responses to paragraphs 1 through 10.

12. NOA denies the allegations in paragraph 12.

13. NOA denies the allegations in paragraph 13.

14. NOA denies the allegations in paragraph 14.

15. NOA denies the allegations in paragraph 15.
16. NOA denies the allegations in paragraph 16.
17. NOA denies the allegations in paragraph 17.
18. NOA denies the allegations in paragraph 18.
19. Paragraph 19 makes no allegations to which a response is required, and NOA reserves all rights with respect to any proposed amendment.

**PRAYER FOR RELIEF**

NOA denies that Martin is entitled to any of the relief requested in his prayer for relief.

**AFFIRMATIVE DEFENSES**

Without assuming any burden that it would not otherwise have, NOA alleges the following:

**First Affirmative Defense – Non-Infringement**

NOA is informed and believes that it does not infringe, contribute to the infringement of, or induce the infringement of, either literally or under the doctrine of equivalents, any valid claim of the '609 patent.

**Second Affirmative Defense – Invalidity of '609 Patent**

NOA is informed and believes, and based thereon alleges, that one or more of the claims of the '609 patent are invalid for failure to satisfy conditions of patentability set forth in 35 U.S.C. § 1 *et seq.*, including §§ 102, 103, and/or 112.

**Third Affirmative Defense – Prosecution History Estoppel**

NOA is informed and believes, and based thereon alleges, that Martin is barred or limited from recovery in whole or in part by the doctrine of prosecution history estoppel.

**Fourth Affirmative Defense – Laches, Estoppel, Waiver, Unclean Hands**

NOA is informed and believes, and based thereon alleges, that Martin is barred or limited from recovery in whole or in part by the doctrines of laches, waiver, estoppel and/or unclean hands.

**Fifth Affirmative Defense – 35 U.S.C. §§ 286 and 287**

NOA is informed and believes, and based thereon alleges, that Martin's claims are barred in whole or in part by 35 U.S.C. §§ 286 and 287.

**PRAYER FOR RELIEF**

WHEREFORE, NOA respectfully requests that the Court enter judgment in favor of NOA on the foregoing and enter judgment granting the following relief:

- A. That the Court find that the asserted claims of the '609 patent are invalid;
- B. That the Court find that NOA has not infringed, contributed to the infringement of, or induced the infringement of, either literally or under the doctrine of equivalents, any valid claim of the '609 patent;
- C. That the Court dismiss Martin's Complaint with prejudice;
- D. That the Court find this to be an exceptional case entitling NOA to an award of attorneys fees, expenses and costs pursuant to 35 U.S.C. § 285; and
- E. That the Court award NOA such other and further relief as the Court deems just and appropriate.

**JURY DEMAND**

NOA demands a trial by jury on issues so triable.

Dated: April 29, 2008.

Respectfully submitted,

By: /s/ Brian D. Roche

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