

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**NORTHERN DIVISION**

IA Labs CA, LLC,  
10516 Tulip Lane  
Potomac, MD 20854

Plaintiff

v.

Nintendo Co., Ltd.  
11-1, Kamitoba Hokotatecho  
Minami-ku, Kyoto, 601-8501  
Japan

and

Nintendo of America, Inc.  
4820 150<sup>th</sup> Avenue N.E.  
Redmond, Washington 98052

Defendants

Civil Action No. \_\_\_\_\_

**Jury Trial Demanded**

**COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND**

Plaintiff IA Labs CA, LLC, (“Plaintiff” or “IA Labs”), by and through its attorneys, for its Complaint against Defendants demanding trial by jury, hereby alleges as against Defendants Nintendo Co., Ltd. (“Nintendo Japan”) and Nintendo of America, Inc. (“Nintendo of America”) as follows:

**I. NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendants’ unauthorized manufacture, use, sale, offer to sell and/or importation into the United

States for subsequent use or sale of products, methods, processes, services and/or systems that infringe one or more claims of United States Patent No. 7,121,982, issued on October 17, 2006, for “Computer Interactive Isometric Exercise System and Method for Operatively Interconnecting the Exercise System to a Computer System for use as a Peripheral” naming Philip Feldman as the inventor (the “’982 Patent), a true and correct copy of which is attached hereto as **Exhibit 1**; and United States Patent No. 7,331,226, issued on February 19, 2008, for “Force Measurement System for an Isometric Exercise Device” naming Philip Feldman, Peter Tsai, Greg Merrill, Jason Grimm, and Jeff Schott as the inventors (the “’452 patent”), a true and correct copy of which is attached hereto as **Exhibit 2**.

2. This action for patent infringement involves Defendants’ manufacture, use, sale, offer for sale, and/or importation into the United States of infringing products, methods, processes, services and systems that operate using the Wii™ console” video game machines and related “Wii™ Fit”, “Wii™ Fit Plus”, “Wii™ Balance Board”, “Wii™ Remote”, “Wii™ Nunchuck”, “Wii™ MotionPlus”, “Wii™ Wheel”, and “Wii™ Zaper” peripheral devices and software (collectively the “Accused Products”<sup>1</sup>).

## II. PARTIES

3. IA Labs is a limited liability company, headquartered in Potomac, MD.

4. Nintendo Japan is a foreign corporation organized and existing under the laws of Japan, with a principal place of business at 11-1, Kamitoba Hokotatecho, Minami-ku, Kyoto,

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<sup>1</sup> The term “Accused Products” encompasses all of Nintendo’s video game machines and related peripheral devices with functionality that comes within the scope of the Asserted Patents’ claims. Upon further investigation and discovery, IA Labs may identify additional Accused Products and/or seek to assert additional claims.

601-8501, Japan. Service upon Nintendo Japan is proper through the means authorized by the Hague Convention. In accordance with Articles 3 and 5 of the Hague Convention, a properly-formatted request, summons, and complaint can be forwarded to the Central Authority of Japan at The Minister of Foreign Affairs, 2-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8919, Japan. Pursuant to Article 5a of the Hague Convention, Nintendo Japan can be served by the Central Authority of Japan in the method prescribed by the internal laws of Japan for the service of documents and domestic actions upon persons who are within its territory.

5. Nintendo of America is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at 4820 150<sup>th</sup> Avenue N.E., Redmond, Washington 98052. Nintendo of America may be served with process by serving its registered agent, The Corporation Trust Incorporated, 351 West Camden Street, Baltimore, Maryland 21201.

### **III. JURISDICTION AND VENUE**

6. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

7. Defendants are subject to personal jurisdiction in Maryland because they regularly transact business in this judicial district and division by, among other things, offering their products and services to customers, business affiliates and partners located in this judicial district and division. In addition, the Defendants have committed acts of direct infringement, contributory infringement, and/or inducement of infringement, of one or more of the claims of one or more of the '982 and '226 Patents (the "Patents-in-Suit") in this judicial district and division.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because the Defendants are subject to personal jurisdiction in this district, and have committed acts of infringement in this district.

#### IV. FACTUAL ALLEGATIONS

##### INTERACTION LABORATORIES, INC. (“INTERACTION LABS”)

9. Interaction Labs, also known as Powergrid Fitness, was founded by Greg Merrill and Phil Feldman in March 2002. The Company developed computer interface technologies for immersive physical interactions. They focused on adding resistance and mass to virtual objects in video games, military simulations and other digital content.

10. Interaction Labs filed its first patent application on December 4, 2002, which resulted in the '982 Patent.

11. Interaction Labs developed several products incorporating the technology of the '982 Patent. These products include the Kilowatt Sport, the Exer-Station controller, Exer-Station PRO, and the PowerSquad™ Leg Joystick, among others.

12. In 2005, Interaction Labs was awarded the CES Innovation of the Year for the Kilowatt Sport. **Exhibit 3.** The Kilowatt Sport engages the player's full body to play any off-the-shelf video game on a PlayStation, Xbox, Nintendo Gamecube, or PC.

13. In 2006, Interaction Labs was again awarded the CES Innovation of the Year for the Exer-Station controller. **Exhibit 4.** Exer-Station engages the player's core muscles to play any off-the-shelf video game on a PlayStation, Xbox, Nintendo Gamecube, or PC.

14. Interaction Labs received an international ISPO BrandNew award-for the Exer-Station PRO. Exer-Station PRO is a commercial healthclub-targeted resistance-based exercise product that integrates the fun of video games.

15. With the increasing abilities of motion-based game controllers such as the Wii™, Interaction Labs developed the prototype Squeeze game controller for the PC and the Wii™ gaming system to enhance the fitness capabilities of these gaming systems. The Squeeze game controller is designed to make gaming systems more physically active.

16. Interaction Labs developed the PowerSquad™ Leg Joystick as a military training application. It is used by branches of the U.S. Military to enhance urban combat training by requiring soldiers to use their leg muscles to simulate walking and running in computer-based training scenarios. The PowerSquad™ Leg Joystick is a widely deployed locomotion interface device in the military simulation market.

### **IA LABS**

17. In 2009, IA Labs acquired ownership of the Asserted Patents from Interaction Labs.

18. IA Labs focuses its business on continuing the development of, as well as licensing and enforcing, the patented technology disclosed in the Asserted Patents.

**IA LABS HAS BEEN IRREPARABLY HARMED  
BY DEFENDANTS' CONTINUED INFRINGEMENT**

19. Plaintiff IA Labs has been irreparably harmed by Defendants' infringement of its valuable patent rights. Moreover, Defendants' unauthorized, infringing use of systems and methods covered by the Patents-in-Suit threatens the value of this intellectual property because Defendants' conduct has resulted in IA Labs' loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing the patented inventions.

20. Defendants' disregard for IA Labs' property rights similarly threatens IA Labs' relationships with potential licensees of this intellectual property. Defendants will derive a competitive advantage over any of IA Labs' future licensees by using IA Labs' patented technology without paying compensation for such use. Accordingly, unless and until Defendants' acts of infringement are enjoined, IA Labs will suffer irreparable harm for which there is no adequate remedy at law.

**NINTENDO**

21. Nintendo Japan is the corporate parent of a multinational corporation that designs, develops, manufactures, exports, and distributes the Accused Products.

22. On information and belief, Nintendo of America is a wholly-owned subsidiary of Nintendo Japan.

23. On information and belief, Nintendo of America has distribution centers in Atlanta, Georgia and North Bend, Washington, and imports, sells, and offers for sale the Accused Products throughout the United States.

24. On information and belief, Nintendo Japan is the owner of United States Patent Application No. 12/010,033 entitled “Weight Applying Unit for Calibration and Weight Applying Method for Calibration” (**Exhibit 5**). The “Wii™ Balance Board” is an embodiment of the technology disclosed in this Patent Application. Defendants have no knowledge of any misleading or false statement contained in this patent application, and believe each statement and opinion contained therein is true and correct.

25. On information and belief, Nintendo Japan is the owner of United States Patent Application No. 12/073,327 entitled “Game Controller, Storage Medium Storing Game Program, and Game Apparatus” (**Exhibit 6**). The “Wii™ Balance Board” is an embodiment of the technology disclosed in this Patent Application. Defendants have no knowledge of any misleading or false statement contained in this patent application, and believe each statement and opinion contained therein is true and correct.

26. On information and belief, Nintendo Japan is the owner of United States Patent Application No. 12/216,828 entitled “Storage Medium Storing Load Detection Program, Load Detection Apparatus, and Load Detection Method” (**Exhibit 7**). The “Wii™ Balance Board” is an embodiment of the technology disclosed in this Patent Application. Defendants have no knowledge of any misleading or false statement contained in this patent application, and believe each statement and opinion contained therein is true and correct.

27. On information and belief, Nintendo Japan is the owner of United States Patent Application No. 12/230,922 entitled “Storage Medium Storing Load Detecting Program and Load Detecting Apparatus” (**Exhibit 8**). The “Wii™ Balance Board” is an embodiment of the technology disclosed in this Patent Application. Defendants have no knowledge of any

misleading or false statement contained in this patent application, and believe each statement and opinion contained therein is true and correct.

28. On information and belief, Nintendo Japan is the owner of United States Patent Application No. 12/230,934 entitled "Storage Medium Storing a Load Detecting Program and Load Detecting Apparatus" (**Exhibit 9**). The "Wii™ Balance Board" is an embodiment of the technology disclosed in this Patent Application. Nintendo Japan has no knowledge of any misleading or false statement contained in this patent application, and believes each statement and opinion contained therein is true and correct.

**NINTENDO'S INTERACTION WITH IA LABS**

29. Greg Merrill is the past President of Interaction Labs and the present Chief Technology Officer of IA Labs.

30. Genyo Takeda is the General Manager of the Integrated Research Division for Nintendo Japan.

31. Howard Cheng is the Vice President of Research and Development for Nintendo of America.

32. Sandy Hatcher is Director of Licensing for Nintendo of America.

33. Zach Fountain is an employee of Nintendo of America in the Nintendo Gateway Products division.

34. In December of 2007, Greg Merrill met with Genyo Takeda in Kyoto, Japan to discuss development of peripherals and related games for the Wii™ gaming system.



35. During the December 2007 meeting, Genyo Takeda acknowledged he was aware of force feedback technology developed by Greg Merrill and that Mr. Takeda had personally experienced a demonstration of simulation products embodying this technology.

36. During the December 2007 meeting, Genyo Takeda requested a review of Interaction Labs' intellectual property and patents.

37. During the December 2007 meeting, Greg Merrill informed Genyo Takeda that Nintendo should review specific patents that relate to Wii™ Fit.

38. During the December 2007 meeting, Genyo Takeda requested Greg Merrill continue to communicate with Howard Cheng to follow-up with Defendants in connection with Interaction Labs' intellectual property and patents.

39. Upon returning to the United States from the December 2007 meeting, Greg Merrill contacted Howard Cheng to discuss Interaction Labs' intellectual property and patents.

40. On information and belief, the Wii™ Fit was released in the United States on or about May 19, 2008.

41. On September 11, 2008, Greg Merrill sent an email to Howard Cheng discussing licensing by Defendants of Interaction Labs' intellectual property and patents. A true and correct copy of the email is attached as **Exhibit 10**.

42. On September 17, 2008, Greg Merrill sent an email to Sandy Hatcher and Howard Cheng discussing licensing by Defendants of Interaction Labs' intellectual property and patents relevant to the Wii™ Fit. A true and correct copy of the email is attached as **Exhibit 11**.

43. On October 24, 2008, Greg Merrill sent an email to Zach Fountain discussing Interaction Labs' intellectual property and patents relating to the Wii™ Fit. This email included an attached memo discussing how specific claims of the '982 Patent read on the Wii™ Fit, and a technology overview of Interaction Labs. A true and correct copy of the email and attachments are attached as **Exhibits 12, 13 and 14**, respectively.

44. On October 24, 2008, Zach Fountain responded to Greg Merrill's email dated October 24, 2008 (Exhibit 12 and 13), acknowledging receipt of the email and attachment and indicating he would ask questions to determine the right person at Nintendo with whom to speak regarding licensing by Defendants of Interaction Labs' intellectual property and patents. A true and correct copy of the email is attached as **Exhibit 15**.

45. On November 4, 2008, Greg Merrill responded to Zach Fountain's email dated October 24, 2008 and renewed his request for a contact person with whom to discuss licensing by Defendants of Interaction Labs' intellectual property and patents. A true and correct copy of the email is attached as **Exhibit 16**.

46. On November 4, 2008, Zach Fountain responded to Greg Merrill's email dated November 4, 2008 and indicated Greg Merrill should "contact Howard [Cheng], but I will see if there's a legal contact I can provide." A true and correct copy of the email is attached as **Exhibit 17**.

47. On November 4, 2008, Greg Merrill sent an email to Howard Cheng discussing Interaction Labs intellectual property and patents relating to the Wii™. This email included an

attached memo discussing how specific claims of the '982 Patent read on the Wii™. A true and correct copy of the email and attachment are attached as **Exhibits 18 and 19**, respectively.

48. On November 4, 2008, Greg Merrill sent Zach Fountain a second email advising that Greg Merrill had sent an email to Howard Cheng. A true and correct copy of the email is attached as **Exhibit 20**.

49. Neither Zach Fountain nor Howard Cheng responded further to these emails sent by Greg Merrill.

## V. CLAIMS

### COUNT ONE – INFRINGEMENT OF THE '982 PATENT

50. IA Labs incorporates by reference its allegations in Paragraphs 1-49 as if fully restated in this paragraph.

51. IA Labs is the assignee and owner of all right, title and interest to the '982 Patent. IA Labs has the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

52. Defendants have been infringing and continue to infringe one or more of the claims of the '982 Patent through at least the acts of making, using, selling, offering for sale and/or importing the Accused Products. The Accused Products include, without limitation, Wii™ console” video game machines and related “Wii™ Fit”, “Wii™ Fit Plus”, “Wii™ Balance Board”, “Wii™ Remote”, “Wii™ Nunchuck”, “Wii™ MotionPlus”, “Wii™ Wheel”, and “Wii™ Zaper” peripheral devices and software.

53. Defendants have indirectly infringed the '982 Patent by inducing the infringement of the '982 Patent and contributing to the infringement of the '982 Patent. Defendants have actively and knowingly induced infringement of the '982 Patent by providing its customers and others with detailed explanations, instructions, information, and support services related to arrangements, applications, and uses of its products and services that promote and demonstrate how to use its products and services in an infringing manner, and upon information and belief, those customers and others have used the products and services in an infringing manner.

54. Defendants have contributed to the infringement of the '982 Patent by actively and knowingly providing its customers and others with products and services that are used as a material element in the customers' or others' infringing products and services, and the products and services provided by Defendants are not staples of commerce with substantial noninfringing uses.

55. Defendants' wrongful conduct has caused IA Labs to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions. On information and belief, Defendants will continue these infringing acts unless enjoined by this Court.

56. Defendants, without permission of IA Labs, have been and still are infringing the '982 Patent as infringement is defined by 35 U.S.C. § 271. IA Labs requests an award of its actual damages caused by such infringement pursuant to 35 U.S.C. § 284.

**COUNT TWO – INFRINGEMENT OF THE '226 PATENT**

57. IA Labs incorporates by reference its allegations in Paragraphs 1-49 as if fully restated in this paragraph.

58. IA Labs is the assignee and owner of all right, title and interest to the '226 Patent. IA Labs has the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

59. Defendants have been infringing and continue to infringe one or more of the claims of the '226 Patent through at least the acts of making, using, selling, offering for sale and/or importing the Accused Products. The Accused Products include, without limitation, “Wii™ Fit”, “Wii™ Fit Plus”, and “Wii™ Balance Board” peripheral devices.

60. Defendants have indirectly infringed the '226 Patent by inducing the infringement of the '226 Patent and contributing to the infringement of the '226 Patent. Defendants have actively and knowingly induced infringement of the '226 Patent by providing its customers and others with detailed explanations, instructions, information, and support services related to arrangements, applications, and uses of its products and services that promote and demonstrate how to use its products and services in an infringing manner, and upon information and belief, those customers and others have used the products and services in an infringing manner.

61. Defendants have contributed to the infringement of the '226 Patent by actively and knowingly providing its customers and others with products and services that are used as a material element in the customers' or others' infringing products and services, and the products

and services provided by Defendants are not staples of commerce with substantial noninfringing uses.

62. Defendants' wrongful conduct has caused IA Labs to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions. On information and belief, Defendants will continue these infringing acts unless enjoined by this Court.

63. Defendants, without permission of IA Labs, have been and still are infringing the '226 Patent as infringement is defined by 35 U.S.C. § 271. IA Labs requests an award of its actual damages caused by such infringement pursuant to 35 U.S.C. § 284.

## **VI. WILLFULNESS**

64. IA Labs incorporates by reference its allegations in Paragraphs 1-49 as if fully restated in this paragraph.

65. No later than October 24, 2008, Nintendo Japan had actual knowledge of the '982 Patent and an assertion that the Wii™ Fit conforms to specific claims of the '982 Patent.

66. No later than October 24, 2008, Nintendo of America had actual knowledge of the '982 Patent and an assertion that the Wii™ Fit conforms to specific claims of the '982 Patent.

67. Plaintiff alleges upon information and belief that, as of at least October 24, 2008, Defendants have knowingly or with reckless disregard willfully infringed the Patents-in-Suit. Each Defendant acted despite an objectively high likelihood that their actions constituted

infringement of IA Labs' valid patent rights. This objectively-defined risk was either known or so obvious that it should have been known to each Defendant.

68. The infringement by Defendants is willful, thus entitling IA Labs to the recovery of treble damages pursuant to 35 U.S.C. § 284. In addition, this is an "exceptional case" justifying an award of attorneys' fees and costs to IA Labs pursuant to 35 U.S.C. § 285.

69. IA Labs further alleges that the Defendants will continue to willfully infringe the Patents-in-Suit subsequent to the filing of this Complaint unless enjoined by this Court. IA Labs seeks enhanced damages pursuant to 35 U.S.C. § 284.

#### **VII. JURY DEMAND**

70. Plaintiff IA Labs demands a trial by jury of all matters to which it is entitled to trial by jury, pursuant to FED. R. CIV. P. 38.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, IA Labs prays for judgment and seeks relief against Defendants as follows:

- A. That the Court declare that the '982 and '226 Patents are infringed by all Defendants;
- B. That the Court enter an injunction against further infringement of the '982 and '226 Patents by all Defendants, their officers, agents, servants, employees, affiliates, subsidiaries, licenses, successors and assigns and those persons acting in concert with each, including related individuals and entities, customers, representatives, dealers, and distributors;

- C. That the Court award damages adequate to compensate IA Labs for the patent infringement that has occurred, together with prejudgment and post-judgment interest and costs;
- D. That the Court adjudge defendants as willful infringers and award all other damages permitted by 35 U.S.C. § 284, including increased damages up to three times the amount of compensatory damages found;
- E. That the Court find that this is an exceptional case and award to IA Labs its costs, expenses, and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285; and
- F. That the Court awards such other relief as this Court deems just and proper.

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Dated: April 2, 2010

Respectfully submitted,

/s/  
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