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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

vs.

TIVO, INC.,

Defendant

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

For its Complaint against Defendant TiVo Inc. (“Defendant” or “TiVo”), Plaintiff
Microsoft Corporation (“Microsoft”) alleges as follows:

Jurisdiction and Venue

1. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. § 1, *et seq.* The Court has subject matter jurisdiction over the claims pleaded herein under 28 U.S.C. §§ 1331 and 1338(a).
2. The Court has personal jurisdiction over Defendant TiVo because Defendant does business in this District and has committed acts of infringement in this District.
3. Under 28 U.S.C. §§ 1391 and 1400(b), venue is proper in this District because

1 Defendant is subject to personal jurisdiction in this District, has sold, offered to sell and/or
2 imported products and services at issue in and into this District and has committed acts of
3 infringement in this District.

4 **The Parties**

5 4. Microsoft is a corporation organized under the laws of the State of Washington,
6 with its principal place of business in Redmond, Washington. Microsoft is a long-time leader
7 in the development and innovation of software technologies, including technologies for digital
8 home entertainment.

9 5. Microsoft is informed and believes that: Defendant TiVo is a Delaware
10 corporation that maintains its principal place of business and corporate headquarters in Alviso,
11 California. Defendant offers for sale, sells, distributes and imports products and services in
12 and into the United States for use in audio-video home entertainment systems. Such products
13 and services include set-top boxes known as digital video recorders or "DVRs," and
14 subscription services provided through network connections between such set-top boxes and
15 computer servers. Defendant's subscriber base includes approximately 1.3 million households.
16 Defendant further licenses and provides software for use in set-top boxes and servers that are
17 used, sold and/or distributed by or through media content providers. Defendant's set-top box
18 products and subscription services permit users to obtain, control and watch television, videos,
19 movies, pictures and other content from cable, broadcast, broadband, satellite and/or other
20 sources.

21 **Count 1:**
Infringement of U.S. Patent No. 5,585,838

22 6. Microsoft incorporates by this reference the allegations set out in paragraphs 1-
23 5 above.

1 7. Microsoft owns by assignment all the right, title and interest in and to U.S.
2 Patent No. 5,585,838 (“the ’838 patent”) entitled “Program Time Guide.” The ’838 patent
3 issued on December 17, 1996, based on Application No. 08/435,968 filed on May 5, 1995 by
4 inventors Frank A. Lawler and Joseph H. Mathews, III. A certified copy of the patent is
5 attached as Exhibit A.

6 8. Microsoft is informed and believes that: Defendant has infringed, either literally
7 and/or under the doctrine of equivalents, the ’838 patent by using, offering for sale, selling,
8 and/or importing products, systems, services and/or processes in or into the United States, and
9 within the scope of one or more claims of the ’838 patent, without license or authority. Such
10 infringing products, systems, services and/or processes include (without limitation)
11 Defendant’s set-top box products, subscription services and software.

12 9. Microsoft is informed and believes that: Defendant has induced and/or
13 contributed to and continues to induce and/or contribute to the infringement of the ’838 patent
14 by using, offering for sale, selling, and/or importing systems, services, processes, products or
15 components of products that constitute a material part of the invention(s) claimed in the ’838
16 patent, without license or authority, knowing that such systems, services, processes, products
17 or components of products are especially made or especially adapted for use in practicing the
18 invention(s) claimed in the ’838 patent and not staple articles or commodities of commerce
19 suitable for substantial noninfringing uses. Such systems, services, processes, products or
20 components of products include (without limitation) those associated with Defendant’s set-top
21 box products, subscription service and software.

22 10. Microsoft is informed and believes that: Defendant has infringed the ’838 patent
23 by supplying or causing to be supplied in or from the United States, without license or
24 authority, components or products that are combined and/or used outside the United States in a
25 manner that falls within the scope of one or more claims of the ’838 patent. Such products or

1 components include (without limitation) those associated with Defendant's set-top box
2 products, subscription services and software.

3 11. Defendant's infringement, inducement and contributory infringement of the
4 '838 patent is ongoing. Unless enjoined, Defendant will continue to infringe the '838 patent,
5 and Microsoft will suffer irreparable injury as a direct and proximate result of Defendant's
6 conduct.

7 12. Microsoft has been damaged by Defendant's conduct, and until an injunction
8 issues, will continue to be damaged in an amount yet to be determined.

9 **Count 2:**
10 **Infringement of U.S. Patent No. 5,731,844**

11 13. Microsoft incorporates by this reference the allegations set out in paragraphs 1-
12 12 above.

13 14. Microsoft owns by assignment all the right, title and interest in and to U.S.
14 Patent No. 5,731,844 ("the '844 patent") entitled "Television Scheduling System for
15 Displaying a Grid Representing Scheduled Layout and Selecting a Programming Parameter for
16 Displaying or Recording." The '844 patent issued on March 24, 1998, based on Application
17 No. 08/713,588 filed on August 13, 1996 by inventors Adam Christopher Rauch, Gregory
18 Riker, Nathan Paul Myhrvold, and Edwin Thorne, III. A certified copy of the '844 patent is
19 attached as Exhibit B hereto.

20 15. Microsoft is informed and believes that: Defendant has infringed, either
21 literally and/or under the doctrine of equivalents, the '844 patent by using, offering for sale,
22 selling, and/or importing products, systems, services and/or processes in or into the United
23 States, and within the scope of one or more claims of the '844 patent, without license or
24 authority. Such infringing products, systems, services and/or processes include (without
25 limitation) Defendant's set-top box products, subscription services and software.

1 16. Microsoft is informed and believes that: Defendant has induced and/or
2 contributed to and continues to induce and/or contribute to the infringement of the '844 patent
3 by using, offering for sale, selling, and/or importing systems, services, processes, products or
4 components of products that constitute a material part of the invention(s) claimed in the '844
5 patent, without license or authority, knowing that such systems, services, processes, products
6 or components of products are especially made or especially adapted for use in practicing the
7 invention(s) claimed in the '844 patent and not staple articles or commodities of commerce
8 suitable for substantial noninfringing uses. Such systems, services, processes, products or
9 components of products include (without limitation) those associated with Defendant's set-top
10 box products, subscription services and software.

11 17. Microsoft is informed and believes that: Defendant has infringed the '844 patent
12 by supplying or causing to be supplied in or from the United States, without license or
13 authority, components or products that are combined and/or used outside the United States in a
14 manner that falls within the scope of one or more claims of the '844 patent. Such products or
15 components include (without limitation) those associated with Defendant's set-top box
16 products, subscription service and software.

17 18. Defendant's infringement, inducement and contributory infringement of the
18 '844 patent is ongoing. Unless enjoined, Defendant will continue to infringe the '844 patent,
19 and Microsoft will suffer irreparable injury as a direct and proximate result of Defendant's
20 conduct.

21 19. Microsoft has been damaged by Defendant's conduct, and until an injunction
22 issues, will continue to be damaged in an amount yet to be determined.

Count 3:
Infringement of U.S. Patent No. 6,028,604

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2 20. Microsoft incorporates by this reference the allegations set out in paragraphs 1-
3 19 above.

4 21. Microsoft owns by assignment all the right, title and interest in and to U.S.
5 Patent No. 6,028,604 (“the ‘604 patent”) entitled “User Friendly Remote System Interface
6 Providing Previews of Applications.” The ‘604 patent issued on February 22, 2000, based on
7 Application No. 08/917,739 filed on August 27, 1997, by inventors Joseph Matthews, III,
8 David Wm. Plummer, and David A. Barnes. A certified copy of the patent is attached as
9 Exhibit C hereto.

10 22. Microsoft is informed and believes that: Defendant has infringed, either literally
11 and/or under the doctrine of equivalents, the ‘604 patent by using, offering for sale, selling,
12 and/or importing products, systems, services and/or processes in or into the United States, and
13 within the scope of one or more claims of the ‘604 patent, without license or authority. Such
14 infringing products, systems, services and/or processes include (without limitation)
15 Defendant’s set-top box products, subscription services and software.

16 23. Microsoft is informed and believes that: Defendant has induced and/or
17 contributed to and continues to induce and/or contribute to the infringement of the ‘604 patent
18 by using, offering for sale, selling, and/or importing systems, services, processes, products or
19 components of products that constitute a material part of the invention(s) claimed in the ‘604
20 patent, without license or authority, knowing that such systems, services, processes, products
21 or components of products are especially made or especially adapted for use in practicing the
22 invention(s) claimed in the ‘604 patent and not staple articles or commodities of commerce
23 suitable for substantial noninfringing uses. Such systems, services, processes, products or
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1 components of products include (without limitation) those associated with Defendant's set-top
2 box products, subscription service and software.

3 25. Microsoft is informed and believes that: Defendant has infringed the '604 patent
4 by supplying or causing to be supplied in or from the United States, without license or
5 authority, components or products that are combined and/or used outside the United States in a
6 manner that falls within the scope of one or more claims of the '604 patent. Such products or
7 components include (without limitation) those associated with Defendant's set-top box
8 products, subscription services and software.

9 26. Defendant's infringement, inducement and contributory infringement of the
10 '604 patent is ongoing. Unless enjoined, Defendant will continue to infringe the '604 patent,
11 and Microsoft will suffer irreparable injury as a direct and proximate result of Defendant's
12 conduct.

13 27. Microsoft has been damaged by Defendant's conduct, and until an injunction
14 issues, will continue to be damaged in an amount yet to be determined.

15 **Count 4:**
16 **Infringement of U.S. Patent No. 5,758,258**

17 28. Microsoft incorporates by this reference the allegations set out in paragraphs 1-
18 27 above.

19 29. Microsoft owns by assignment all the right, title and interest in and to U.S.
20 Patent No. 5,758,258 ("the '258 patent") entitled "Selective Delivery of Programming for
21 Interactive Televideo System." The '258 patent issued on May 26, 1998, based on Application
22 No. 08/517,939 filed on August 21, 1995, by inventors Daniel J. Shoff and Joseph H.
23 Matthews, III. A certified copy of the patent is attached as Exhibit D.

24 30. Microsoft is informed and believes that: Defendant has infringed, either literally
25 and/or under the doctrine of equivalents, the '258 patent by using, offering for sale, selling,

1 and/or importing products, systems, services and/or processes in or into the United States, and
2 within the scope of one or more claims of the '258 patent, without license or authority. Such
3 infringing products, systems, services and/or processes include (without limitation)
4 Defendant's set-top box products, subscription services and software.

5 31. Microsoft is informed and believes that: Defendant has induced and/or
6 contributed to and continues to induce and/or contribute to the infringement of the '258 patent
7 by using, offering for sale, selling, and/or importing systems, services, processes, products or
8 components of products that constitute a material part of the invention(s) claimed in the '258
9 patent, without license or authority, knowing that such systems, services, processes, products
10 or components of products are especially made or especially adapted for use in practicing the
11 invention(s) claimed in the '258 patent and not staple articles or commodities of commerce
12 suitable for substantial noninfringing uses. Such systems, services, processes, products or
13 components of products include (without limitation) those associated with Defendant's set-top
14 box products, subscription services and software.

15 32. Microsoft is informed and believes that: Defendant has infringed the '258 patent
16 by supplying or causing to be supplied in or from the United States, without license or
17 authority, components or products that are combined and/or used outside the United States in a
18 manner that falls within the scope of one or more claims of the '258 patent. Such products or
19 components include (without limitation) those associated with Defendant's set-top box
20 products, subscription service and software.

21 33. Defendant's infringement, inducement and contributory infringement of the
22 '258 patent is ongoing. Unless enjoined, Defendant will continue to infringe the '258 patent,
23 and Microsoft will suffer irreparable injury as a direct and proximate result of Defendant's
24 conduct.

1 34. Microsoft has been damaged by Defendant's conduct, and until an injunction
2 issues, will continue to be damaged in an amount yet to be determined.

3 **Requested Relief**

4 Microsoft requests the entry of judgment that:

- 5 a. The '838, '844, '604 and '258 patents are valid and enforceable;
- 6 b. Defendant is liable for infringement of the '838, '844, '604 and '258
7 patents;
- 8 c. Defendant and all affiliates, subsidiaries, officers, directors, employees,
9 agents, representatives, licensees, successors, assigns, and all those acting in concert
10 with, or for or on behalf of, Defendant shall be enjoined from direct or indirect
11 infringement of the '838, '844, '604 and '258 patents;
- 12 d. Defendant shall pay damages to Microsoft;
- 13 e. This action be determined to be an exceptional case and Microsoft be
14 awarded its attorney's fees, costs and expenses; and
- 15 f. Microsoft be awarded such further relief as the Court deems appropriate.

16 **Demand for Jury Trial**

17 Microsoft demands a trial by jury of all issues that are triable to a jury.

18 DATED this 24th day of January, 2011.

19 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

20
21 By /s/ Arthur W. Harrigan, Jr.
22 Arthur W. Harrigan, Jr., WSBA #1751
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