

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CUSTOMPLAY, LLC,

Plaintiff,

CASE NO.

v.

APPLE, INC.,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

CustomPlay, LLC (“CustomPlay”) hereby sues Apple, Inc. (“Apple”) for patent infringement, and alleges as follows:

THE PARTIES

1. CustomPlay is a limited liability company organized and existing under the laws of the State of Florida with a principal place of business in Delray Beach, Florida. CustomPlay is engaged in the business of developing, marketing, and distributing innovative movie-information applications and related technologies. CustomPlay currently has nineteen employees at its principal place of business.

2. Apple is a corporation organized and existing under the laws of the State of California with a principal place of business in Cupertino, California.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, codified at Title 35 of the United States Code.

4. This Court has federal question jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because CustomPlay seeks relief under the Patent Act, 35 U.S.C. § 271 *et seq.*,

including remedies for infringement of a United States patent owned by CustomPlay.

5. Apple is subject to personal jurisdiction in this state under § 48.193, Florida Statutes, because it has transacted and continues to transact business in this state, has contracted to supply services or products in this state, and/or has caused tortious injury in this state.

6. Venue is proper pursuant to 28 U.S.C. § 1400(b) because Apple has committed acts of patent infringement in this district, including sales and offers for sale of infringing products, and because Apple has a regular and established place of business in this district, including a retail store located at 6000 West Glades Road, Boca Raton, Florida 33431.

CUSTOMPLAY'S '128 PATENT

7. CustomPlay is the owner of United States Patent No. 6,408,128 B1 (“the ’128 Patent”), entitled “Replaying With Supplementary Information A Segment Of A Video.” Mr. Max Abecassis, the founder, CEO, and owner of CustomPlay, is the inventor of the ’128 Patent. The application that matured into the ’128 Patent was filed on November 12, 1998. The ’128 Patent was duly and lawfully issued on June 18, 2002 by the United States Patent and Trademark Office and is now, and has been at all times since its date of issue, valid and enforceable. A copy of the ’128 Patent is attached hereto as Exhibit 1.

8. The ’128 Patent teaches a function for “receiving, during a playing of a video, a replay request to replay a portion of a video, the replay request comprising a voice command; storing a request position of the playing of the video responsive to the replay request . . . enabling a playing of supplementary information; playing the video and the supplementary information from the replay position; and discontinuing the playing of supplementary information responsive to the request position.” (Ex. 1, Abstract.) The ’128 Patent discloses “providing an elegant means and method for replaying for a viewer a non-understood segment of

the video. Accordingly, a Multimedia Player's software is enhanced to serve those situations in which a viewer has failed to understand the dialogue, i.e. 'What was said?'" (*Id.* at 47:21-25.)

9. The '128 Patent refers to this as the "What" function, and explains that:

"A remote control capable of activating a replay function comprises a WHAT? button, key, or other replay function key or means, to enable a viewer by activating the replay function to automatically cause the system to: i) rewind or skip backwards the playing of the video a system default or a viewer specific previously defined amount, e.g. 20 seconds; ii) turn on the subtitle to a system default or a viewer specific previously selected subtitle language, e.g. English; iii) turn off the subtitle at either the point the WHAT? button was pressed or at some viewer specific previously defined point with respect to the time at which the WHAT? button was pressed, e.g. five seconds prior to, or after, the point the WHAT? button was pressed; and iv) increase the audio/dialogue volume during the segment replayed."

(*Id.* at 47:26-39.)

10. The '128 Patent continues:

"A viewer may activate the replay function in a Multimedia Player (100 FIG. 1) by, for example, pressing the WHAT? key (289 FIG. 2) on a remote control (200 FIG. 2), a WHAT? function key in a personal computer keyboard, a mouse click on a WHAT? button on a monitor display (311 FIG. 3), or a voice command comprising the verbalization, speaking, or pronouncement of, for example, the word 'What'."

(*Id.* at 47:47-59.)

11. By way of example, claim 1 of the '128 Patent covers:

A method of replaying a portion of a video comprising the steps of:
receiving, during a playing of a video, a replay request to replay a portion of a video;

storing a request position of the playing of the video responsive to the replay request;

skipping, responsive to the replay request, the video to a replay position that is responsive a preestablished replay preference;

enabling a playing of subtitles;

playing the video and the subtitles from the replay position; and discontinuing the playing of subtitles responsive to the request position.

(*Id.* at 76:20-33.)

12. Also by way of example, dependent claim 2 of the '128 Patent covers “[t]he method of claim 1, wherein the replay request is a voice command.” (*Id.* at 76:35-36.)

CUSTOMPLAY PRACTICES ITS '128 PATENT

13. CustomPlay’s products and services practice the ‘128 Patent.

14. Since as early as January 2014, CustomPlay has made proprietary software that practices the ‘128 Patent available for download to end-users at <http://www.customplay.com>.

15. CustomPlay has also developed and intends to make available to end-users the CustomPlay “One Screen” software application. The “One Screen” application contains a feature set that practices the ‘128 Patent.

16. CustomPlay’s website describes the One Screen application as containing a feature that “rewinds the movie a user-defined amount of time, e.g. 20 seconds, and continues playback with the subtitles automatically enabled only during the replayed portion.” *See* <http://www.customplay.com/one-screen.php> (last accessed July 20, 2017). CustomPlay refers to this feature as the “What?” feature. *Id.*

17. CustomPlay’s End User License Agreement for the software applications that practices the ‘128 Patent provides notice of CustomPlay various patents, pursuant to and in compliance with 35 U.S.C. § 287. A copy of CustomPlay’s End User License Agreement is included as part of the application download and is published on CustomPlay’s website.

CUSTOMPLAY’S PRIOR CORRESPONDENCE WITH APPLE

18. In a letter dated July 24, 2014 (copy attached hereto as Exhibit 2), CustomPlay contacted Apple with the intention to enter into a business relationship centered on CustomPlay’s

“extensive set of creative and entertaining movie playback capabilities that can serve to further materially differentiate iTunes Movies from all other movie streaming/downloading services.”

19. The letter informed Apple that CustomPlay:

“produced for Apple, a two-minute video showcasing Custom Play's features and in-video functions...The CustomPlay website also provides access to a more comprehensive nine-minute video and a download of the beta release of a Custom Play movie application.”

(Id.)

20. The nine-minute video explained the features and functions of the CustomPlay movie application, and provided a demonstration of the “What” function.

21. The CustomPlay movie application made available to Apple contained the CustomPlay features, including the “What” function.

22. CustomPlay also wrote to Apple on August 15, 2014 and September 30, 2014 (copies attached hereto as Exhibits 3 and 4, respectively) and again sought an opportunity to discuss mutually beneficial business arrangements centered on CustomPlay’s patented technology.

23. Instead, and without a license, Apple proceeded to implement CustomPlay’s patented technology.

24. Upon information and belief, Apple has knowledge of CustomPlay’s ’128 Patent and, despite such knowledge, uses the ’128 Patent without authorization and with the intent to infringe and to cause its customers to infringe the ’128 Patent.

APPLE’S NEW APPLE TV

25. During an Apple media event held on September 9, 2015 (the “2015 Apple Media Event”), a video of which is available at <https://www.youtube.com/watch?v=0qwALOOvUik>,

Apple premiered the all-new Apple TV (the “Apple TV”) for, inter alia, watching movies and television programs. The Apple TV includes a voice-enabled remote control capable of receiving a user’s voice requests.

26. During the 2015 Apple Media Event, and as a movie played on the display screen, a Senior Designer of the Apple TV explained the “What?” feature found in the newly released Apple TV. (*Id.* at 1:02:13).

27. The Senior Designer stated that “...for those times when I just missed what was said”, utilized the Siri Remote, asked: “What did she say?”, and explained that “Siri will skip back 15 seconds and temporarily turn on the captions... So cool!” (*Id.*)

28. The demonstration of the “What?” feature at the 2015 Apple Media event was met with enthusiastic applause by the audience.

29. Shortly after the Apple TV release, a *Time* magazine article dated November 3, 2015 and titled “*This Is the New Apple TV's Single Best Feature*” stated:

To call the new Apple TV a step up from its predecessor would be an understatement. The look and feel of the whole interface is completely different, Siri's there to sort through content and find specific titles for you, the remote has been redesigned, and for the first time ever you can download apps onto the device.

While all of those developments are welcome additions, there's one Apple TV feature that truly makes the viewing experience a lot easier and more convenient. If you've missed a piece of dialogue, you can hold down the Siri button on the remote control and ask, "What did he/she say?"

Siri will then rewind your TV show or movie by 15 seconds, turning on closed captioning until the show or film has reached the point where you initially asked the question.

It's a clever and useful feature. It also provides an excellent example of how voice controls can be used to enhance the TV viewing experience beyond simply retrieving search results. The Apple TV is far from being the only set-top box to support voice

input, but Apple applies voice controls in a way its competitors haven't.

(<http://time.com/4097458/best-feature-new-apple-tv/> (last accessed June 24, 2017)).

30. At all relevant times since the Apple Media Event, Apple has offered to sell and sold the Apple TV online at <https://www.apple.com/shop/buy-tv/apple-tv>. Figure 1, shown below, was captured from the apple.com website on July 11, 2017.

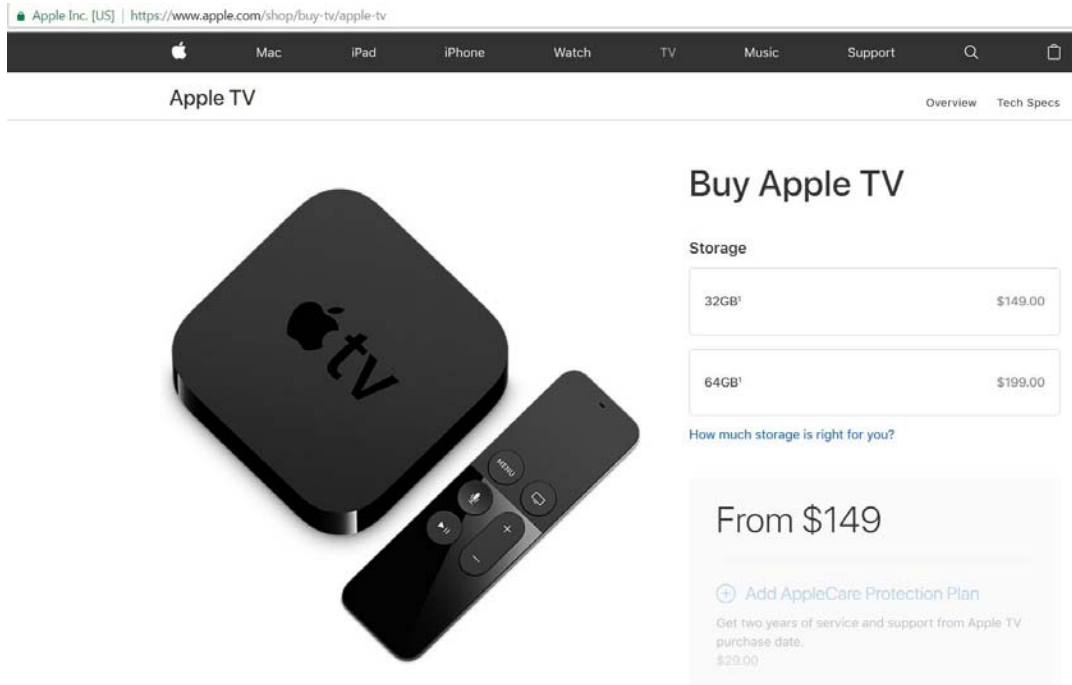


Figure 1 –Apple TV

31. Apple also offers to sell and sells the Apple TV in retail stores including the Apple store located at 6000 West Glades Road, Boca Raton, Florida 33431.

APPLE’S INFRINGEMENT OF THE ’128 PATENT

32. CustomPlay repeats and realleges each and every allegation contained in paragraphs 1 through 31 above as though fully set forth herein.

33. CustomPlay’s ’128 Patent covers a function, referred to as the “What?” function,

that automatically enables the display of subtitles during a replayed portion of a video.

34. The Apple TV implements the '128 patent's "What?" function.

35. Apple describes the Apple TV's "What?" function as follows:

"...for those times when I just missed what was said", asked: "What did she say?", and "Siri will skip back 15 seconds and temporarily turn on the captions."

(<https://www.youtube.com/watch?v=0qwALOOvUik> (last accessed July 20, 2017).

36. Figure 2, shown below, depicts a menu in the Apple TV enabling users to choose among a selection of movies from Apple's iTunes Store.

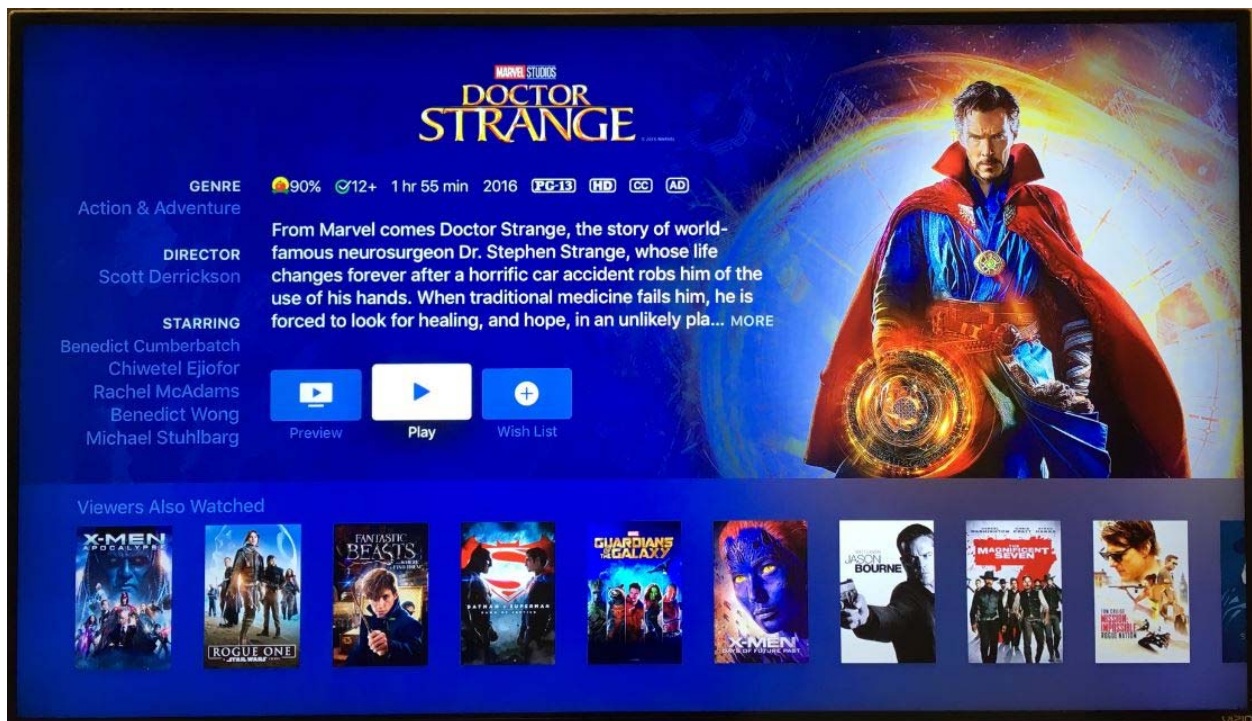


Figure 2 –Apple TV enables playing of a video from Apple's iTunes Store

37. Using the Apple TV, users are able to stream a selection of movies from Apple's iTunes Store.

38. Figure 3, shown below, is a screen capture of a Apple TV user interface superimposed on streaming video content. The figure shows how the Apple TV identifies, under

the heading “Subtitles,” a number of subtitle options available for users.

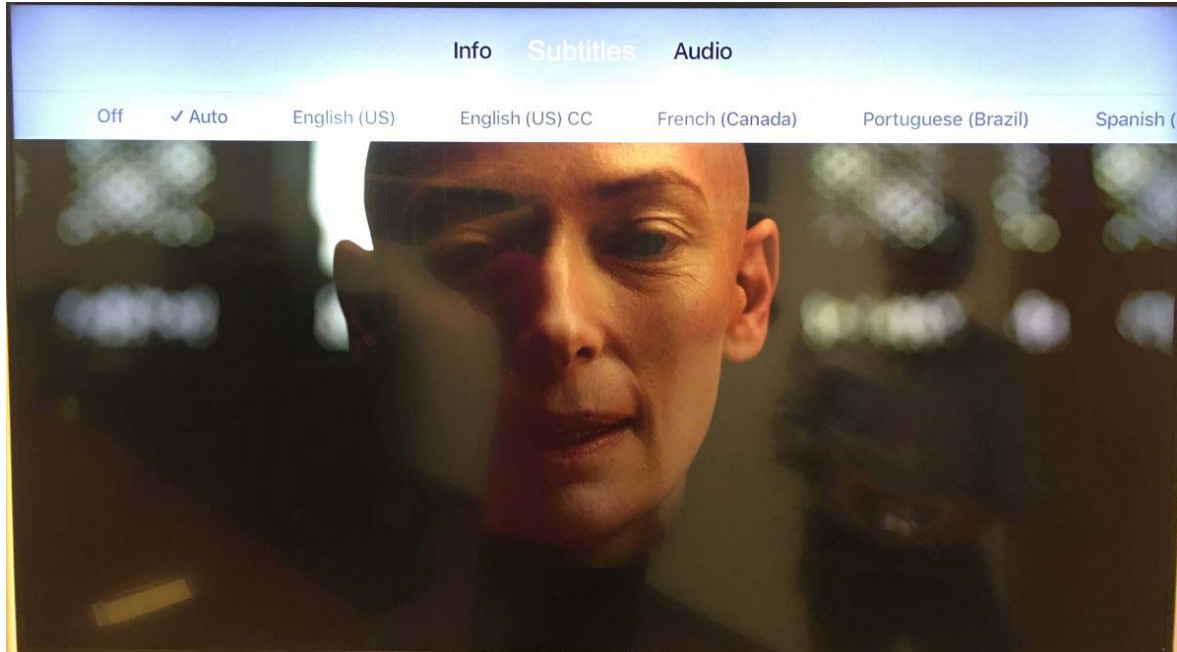


Figure 3 –Apple TV identifies the available subtitle options

39. The specification of the '128 Patent teaches the establishing of subtitles as a subset of closed captioning, text, or other textual, video, and/or audio information that may supplement or complement the content being played:

“Herein, the enabling and/or playing of ‘supplementary information’ ought to be understood as the enabling and/or playing, by a hardware, firmware, and/or software processing, of a display, presentation, and/or playing of subtitles, closed captioning, text, or other textual, video, and/or audio information that may supplement, complement, the information being played, and/or substitute, the audio dialogue and/or segment of a video.”

(Ex. 1 at 50:37-43.)

40. The Apple TV receives - from its remote control’s Siri function - a user’s replay request.

41. Figure 4, shown below, illustrates the Apple TV acknowledging receipt of a user’s request to replay a portion of a video in connection with the “What?” function.

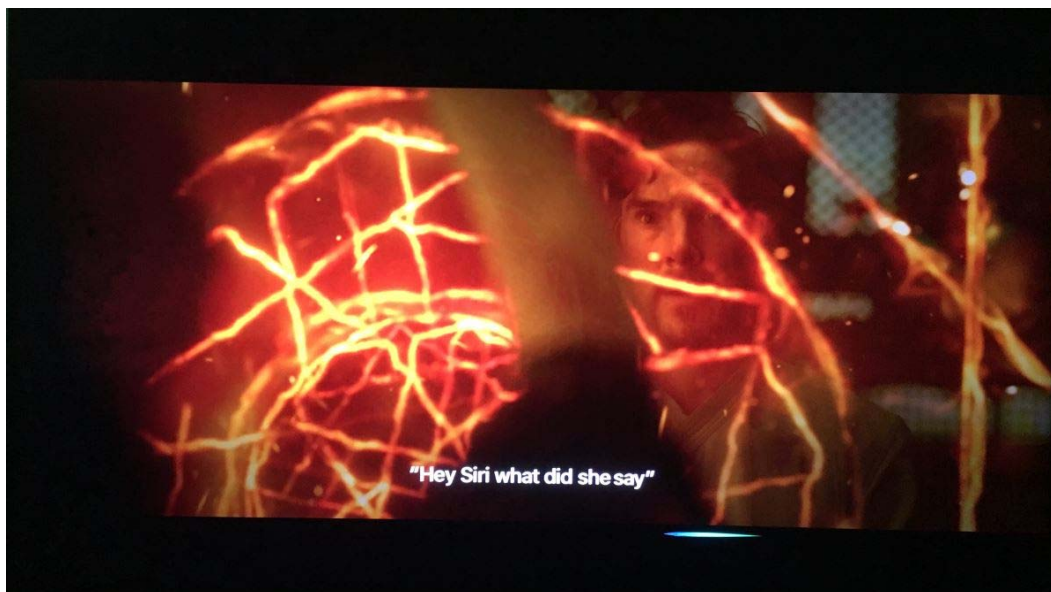


Figure 4 –Apple TV receives replay request

42. As depicted in Figure 5, below, Apple TV skips the video to a replay position that is responsive to a preestablished replay preference (*i.e.*, 15 seconds) from the request position, and enables the playing of subtitles.

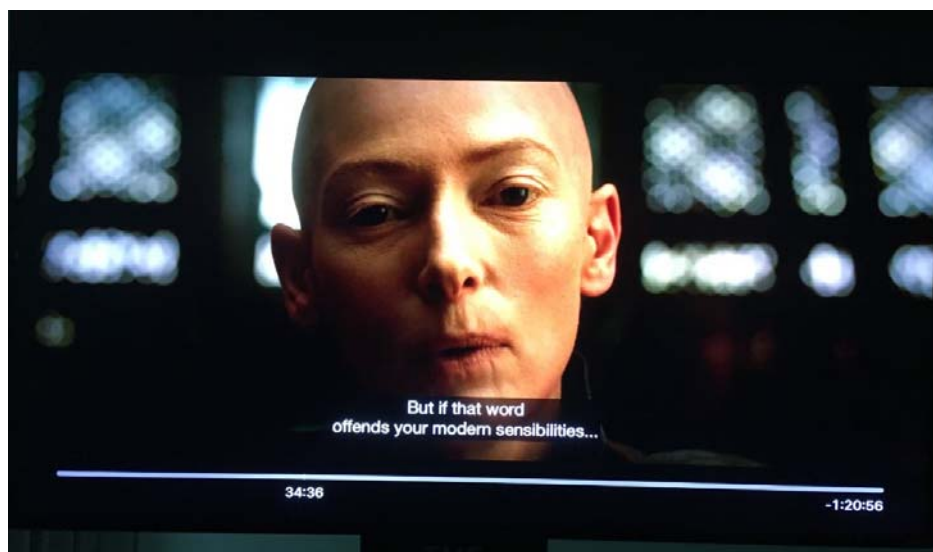


Figure 5 –Apple TV skip video to a replay position and enables subtitles

43. As depicted in Figure 6, below, Apple TV discontinues the playing of subtitles responsive to the request position.

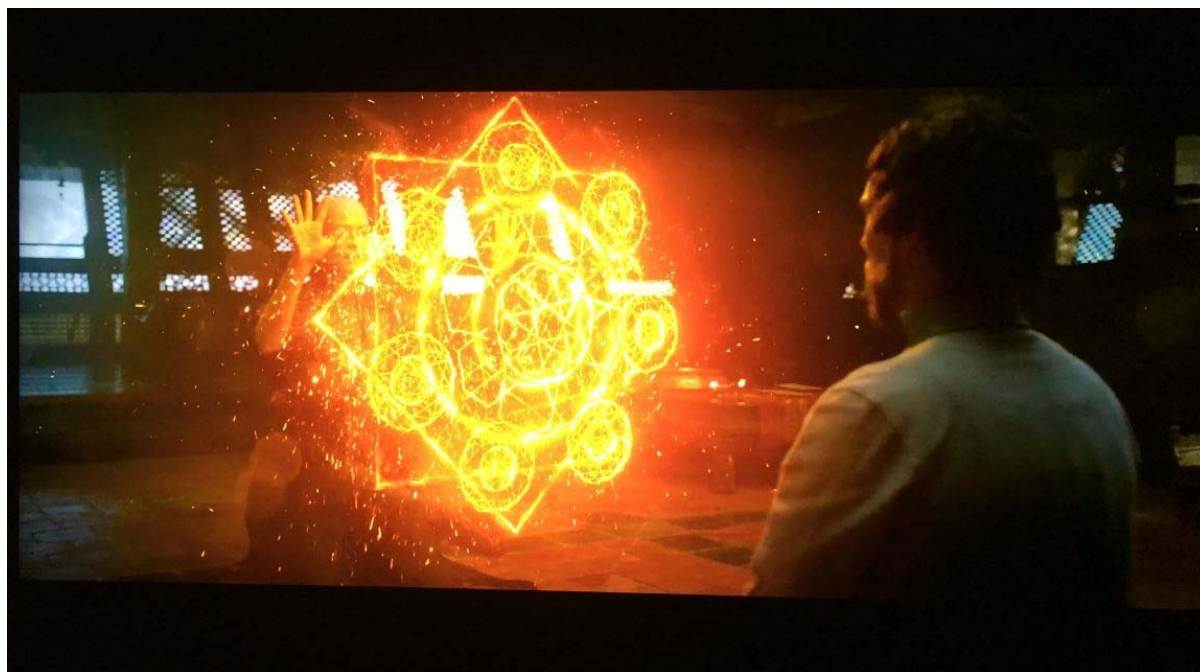


Figure 6 –Apple TV discontinues playing subtitles

Direct Infringement of Method Claims Under 35 U.S.C. § 271(a)

44. The Apple TV’s “What?” function infringes, literally or under the doctrine of equivalents, claims 1, 2, 7, 8, 11, 12, 26, and 27 of the ’128 Patent, in violation of 35 U.S.C. § 271(a).

45. The Apple TV’s “What?” function embodies the methods recited in claims 1, 2, 7, 8, 11, 12, 26, and 27 of the ’128 Patent.

46. Claim 1 of the ’128 Patent covers:

A method of replaying a portion of a video comprising the steps of:

receiving, during a playing of a video, a replay request to replay a portion of a video;

storing a request position of the playing of the video responsive to the replay request;

skipping, responsive to the replay request, the video to a replay position that is responsive a preestablished replay preference;

enabling a playing of subtitles;
playing the video and the subtitles from the replay
position; and
discontinuing the playing of subtitles responsive to
the request position.

(Ex. 1 at 76:20-33.)

47. Moreover, the specification of the '128 Patent discloses that "skipping":

"...ought to be understood in the broadest sense, and as comprising rewinding and skipping backwards capabilities and functions, e.g., time and/or segment information based, the selection of which, and operation, being responsive to a system's and/or a viewer's defined preference."

(Ex. 1 at 48:39-43.)

48. Further, the specification of the '128 Patent discloses that:

"If a viewer's preestablished replay preference, such as, a viewer's specific previously defined amount, e.g. 30 seconds has been established 1211, the Multimedia Player sets the rewinding or skipping backwards ("skipping back" or "skipping") of the playing of the video by the viewer preestablished amount 1212 . Otherwise, the Multimedia Player sets the skipping of the playing of the video to a system preestablished replay preference 1213, e.g., a default amount such as 35 seconds. Herein, whether a viewer's replay preference or a system's replay preference, preestablished means that the amount replayed is not dependent on a viewer's action at the time of the replay request. Preestablished does not necessarily mean that the replay preference is not responsive to the particular segment played." (Ex. 1 48:9-22.)

49. As depicted in the figures above, the Apple TV performs each step recited in claim 1 of the '128 Patent.

50. The Apple TV receives from a user, during a playing of a video, a replay request to replay a portion of a video. After receiving this request, the Apple TV necessarily stores a request position responsive to the replay request; skips the video to a replay position that is responsive a preestablished replay preference (*i.e.*, 15 seconds); enables the playing of subtitles,

and discontinues the playing of subtitles responsive to the request position.

51. Claim 2 of the '128 Patent covers “[t]he method of claim 1, wherein the replay request is a voice command.” (Ex. 1 at 76:34-35.)

52. The specification of the '128 Patent discloses that:

“A viewer may activate the replay function in a Multimedia Player (100 FIG. 1) by, for example, pressing the WHAT? key (289 FIG. 2) on a remote control (200 FIG. 2), a WHAT? function key in a personal computer keyboard, a mouse click on a WHAT? button on a monitor display (311 FIG. 3), or a voice command comprising the verbalization, speaking, or pronouncement of, for example, the word ‘What’.”

(Ex. 1 at 47:46-53.)

53. The Apple TV performs each claim limitation recited in independent claim 1 of the '128 Patent, as well as dependent claim 2 of the '128 Patent.

54. The Apple TV’s remote control includes a microphone and related functions to enable the Apple TV to receive a user’s voice command.

55. Claim 7 of the '128 Patent covers:

A method of replaying a portion of a video comprising the steps of:

receiving during a playing of the video a replay request, from a user actuation of a single replay request control element, to replay a portion of the video;

replaying, in response to the user actuation of a single replay request control element, the video from a replay position in the video preceding an initial position in the video at which the replay request was received; and

enabling a playing of subtitles for a portion of the video subsequent to the replay position.

(Ex. 1 at 76:49-59.)

56. The Apple TV performs each limitation recited in claim 7 of the '128 Patent. The analysis is similar to that set forth above with respect to claim 1. The user actuation of a single

replay request control element relates to the actuation of the Apple TV's remote control voice command function.

57. Claim 8 of the '128 Patent covers “[t]he method of claim 7 wherein the replay position precedes the initial position by a predetermined period of playback time.” (Ex. 1 at 76:60-62.)

58. The Apple TV performs each limitation recited in claim 7 of the '128 patent, as well as claim 8 of the '128 Patent. In the Apple TV, the predetermined period of playback time is 15 seconds.

59. Claim 11 of the '128 patent covers “[t]he method of claim 7 wherein the portion of the video in which subtitles are played corresponds to the portion of the video between the replay position and the initial position.” (Ex. 1 at 77:1-4.)

60. The Apple TV performs each limitation recited in claim 7 of the '128 patent, as well as claim 11 of the '128 Patent. The Apple TV displays the subtitles during the portion of the video between the replay position and the initial position in the video at which the replay request was received.

61. Claim 12 of the '128 patent covers “[t]he method of claim 7 wherein the portion of the video in which subtitles are played corresponds to a predetermined period of playback time from the replay position.” (Ex. 1 at 77:5-7.)

62. The Apple TV performs each limitation recited in claim 7 of the '128 patent, as well as claim 12 of the '128 Patent. In the Apple TV, the portion of the video in which subtitles are played corresponds to a predetermined period of playback time of 15 seconds from the replay position.

63. Claim 26 of the '128 Patent covers:

A method of replaying a portion of a video comprising the steps of:

receiving, during a playing of the video, a replay request to replay a portion of the video;

skipping, responsive to the replay request, the video to a replay position that is responsive to a preestablished replay preference;

enabling, responsive to the replay request, a playing of subtitles;

playing the video and the subtitles responsive to the replay position; and

discontinuing, responsive to the replay request, the playing of subtitles.

(Ex. 1 at 78:7-20.)

64. The Apple TV performs each claim limitation recited in claim 26 of the '128 patent. In the the Apple TV embodiment, the preestablished replay preference is 15 seconds.

65. Claim 27 of the '128 Patent covers “[t]he method of claim 26, wherein the replay request is a voice command.” (Ex. 1 at 78:21-22.)

66. The Apple TV performs each limitation recited in claim 26 of the '128 patent, as well as claim 27 of the '128 patent. The Apple TV's remote control includes a microphone and related functions to enable the Apple TV to receive a user's voice command.

67. Accordingly, the Apple TVs are capable of performing each of the steps recited in claims 1, 2, 7, 8, 11, 12, 26, and 27 of the '128 Patent. Thus, Apple infringes, literally or under the doctrine of equivalents, claims 1, 2, 7, 8, 11, 12, 26, and 27 of the '128 Patent in violation of 35 U.S.C. § 271(a).

68. On information and belief, Apple's aforementioned acts of infringement of the '128 Patent have been willful.

69. CustomPlay will suffer and is suffering irreparable harm from Apple's

infringement of the '128 Patent because CustomPlay's potential user base is being eroded by Apple's continuing infringement and because CustomPlay's ability to enter into business relationships with other digital entertainment business partners is undermined.

70. CustomPlay has no adequate remedy at law to compensate it for the loss of business reputation, customers, and market position flowing from Apple's infringing activities. Accordingly, CustomPlay seeks an injunction against Apple's continuing infringement of the '128 Patent. Unless enjoined, Apple will continue its infringing conduct.

Direct Infringement of Apparatus Claims under § 271(a)

71. As depicted in Figure 7, shown below, the Apple TV system comprises two principal hardware elements: the Apple TV unit itself and the voice-enabled remote control.

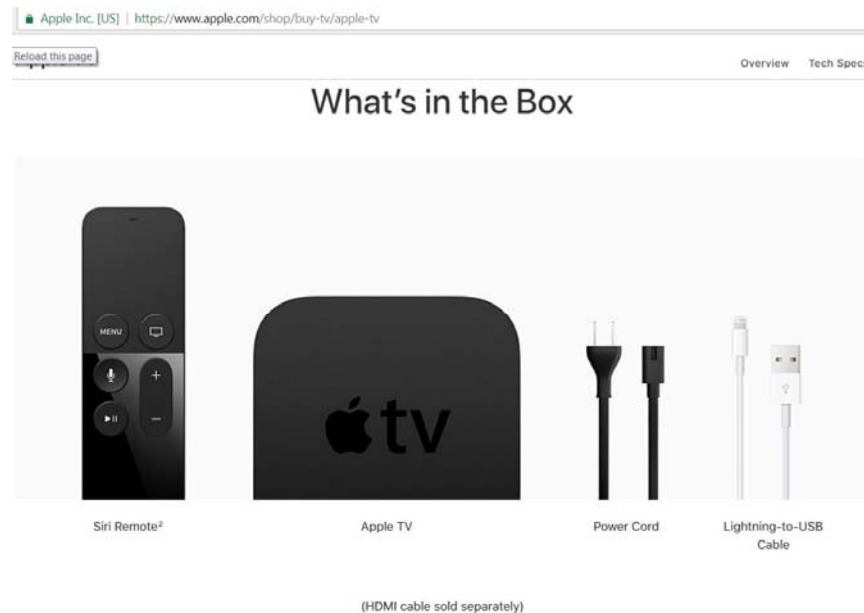


Figure 7 –Apple TV with Siri Remote

72. Claim 13 of the '128 Patent covers:

A system for playing a video comprising:
 a replay device for playing the video;
 a single replay request control element;

the replay device replaying the video from a replay position preceding an initial position at which a replay request was received from a user actuation of the single replay request control element; and

the replay device playing subtitles during a portion of the video subsequent to the replay position.

(Ex. 1 at 77:8-16.)

73. The Apple TV comprises an unit capable of receiving a replay request, replaying the video, and playing the subtitles during a portion of the video subsequent to the replay position. The Apple TV also comprises a voice-enabled remote control that provides a single replay request control element. This remote control includes a microphone and related functions to enable the Apple TV to receive a user's voice command. Thus, the Apple TV practices each limitation present in claim 13 of the '128 patent.

74. Claim 14 of the '128 patent covers "[t]he system defined by claim 13 wherein the replay position precedes the initial position by a predetermined period of playback time." (Ex. 1 at 78:21-22.)

75. The Apple TV practices each limitation present in claim 13 of the '128 patent, as well as claim 14 of the '128 patent. In the Apple TV, the predetermined period of playback time is 15 seconds.

76. Claim 17 of the '128 patent covers "[t]he system defined by claim 13 wherein the portion of the video in which subtitles are played corresponds to the portion of the video between the replay position and the initial position." (Ex. 1 at 77:26-29.)

77. The Apple TV practices each limitation present in claim 13 of the '128 patent, as well as claim 17 of the '128 Patent. The Apple TV displays the subtitles during the portion of the video between the replay position and the initial position in the video at which the replay request was received.

78. Claim 18 of the '128 Patent covers “[t]he system defined by claim 13 wherein the portion of the video in which subtitles are played corresponds to a predetermined period of playback time from the replay position.” (Ex. 1 at 77:30-33.)

79. The Apple TV performs each step recited in claim 13 of the '128 patent, as well as claim 18 of the '128 Patent. In the Apple TV, the portion of the video in which subtitles are played corresponds to a predetermined period of playback time of 15 seconds from the replay position.

80. Claim 32 of the '128 Patent covers:

A system capable of replaying a portion of a video comprising:

a user interface means for receiving, during a playing of the video, a replay request to replay a portion of the video;

a random accessing means for skipping, responsive to the replay request, the video to a replay position that is responsive to a preestablished replay preference;

a processing means for enabling, responsive to the replay request, a playing of subtitles; playing the video and the subtitles responsive to the replay position; and discontinuing, responsive to the replay request, the playing of subtitles.

(Ex. 1 at 78:33-46.)

81. The Apple TV comprises the claimed user interface means (namely, the Apple TV's voice-enabled remote control) for receiving, during a playing of the video, a replay request to replay a portion of the video. The Apple TV's remote control includes a microphone and related functions to enable the Apple TV to receive a user's voice command.

82. The Apple TV also comprises the claimed random accessing means and processing means (namely, the Apple TV unit) for skipping, responsive to the replay request, the video to a replay position that is responsive to a preestablished replay preference; and for playing the subtitles during a portion of the video subsequent to the replay position.

83. Accordingly, the Apple TV practices each limitation present in claim 32 of the

'128 patent.

84. Claim 33 of the '128 Patent covers “[t]he system of claim 32, wherein the user interface means comprises a remote control device.” (Ex. 1 at 78:47-48.)

85. The Apple TV practices each limitation present in claim 32 of the '128 Patent, as well as claim 33 of the '128 Patent. The Apple TV comprises a remote control device (*i.e.*, the voice-enabled remote control).

86. In view of the foregoing, the Apple TV practices each of the limitation of claims 13, 14, 17, 18, 32, and 33 of the '128 patent. Accordingly, Apple infringes, literally or under the doctrine of equivalents, claims 13, 14, 17, 18, 32, and 33 of the '128 Patent in violation of 35 U.S.C. § 271(a).

87. On information and belief, Apple's aforementioned acts of infringement of the '128 Patent have been willful.

88. CustomPlay will suffer and is suffering irreparable harm from Apple's infringement of the '128 Patent because CustomPlay's potential user base is eroded by Apple's continuing infringement.

89. CustomPlay has no adequate remedy at law to compensate it for the loss of business reputation, customers, and market position flowing from Apple's infringing activities. CustomPlay seeks an injunction against Apple's continuing infringement of the '128 Patent. Unless enjoined, Apple will continue its infringing conduct.

WHEREFORE, CustomPlay prays:

a. That the Court find Apple liable for infringement of the CustomPlay '128 Patent, either literally or under the doctrine of equivalents;

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b. That Apple, and all of its agents, servants, employees, successors, assigns, and all persons acting in concert or in active participation with Apple, be preliminarily and permanently enjoined and restrained from infringing the CustomPlay '128 Patent;

c. That the Court award CustomPlay damages due to Apple's infringement of the CustomPlay '128 Patent, and enter judgment three (3) times such amount pursuant to 35 U.S.C. § 284;

d. That the Court find this case exceptional within the meaning of 35 U.S.C. § 285 and award CustomPlay its reasonable attorneys' fees and expenses;

e. That the Court award CustomPlay its taxable costs and disbursements;

f. That the Court award CustomPlay pre-judgment and post-judgment interest; and

g. For such other and further relief as the Court deems just and proper.

JURY DEMAND

CustomPlay demands trial by jury on all issues so triable.

Dated: July 27, 2017

Respectfully submitted,

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