

ORIGINAL

DISTRICT COURT  
 OF TEXAS  
 EASTERN DISTRICT OF TEXAS  
 FILED  
 APR 14 2008  
 CLERK, U.S. DISTRICT COURT  
 By [Signature]  
 Deputy

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**V.**

**CIVIL ACTION NO.** \_\_\_\_\_

**3 - 0 8 C V 0 6 3 9 - D**

COME NOW PREMISE MEDIA CORPORATION, L.P., C&S PRODUCTION, L.P.,  
*dba* RAMPANT FILMS, and PREMISE MEDIA DISTRIBUTION L.P. (collectively, “Premise  
Media”), Plaintiffs, complaining of XVIVO, L.L.C. (“XVIVO”), Defendant, showing as follows:

1. Defendant, XVIVO, has sent a demand letter claiming Premise Media's documentary film titled "*Expelled: No Intelligence Allowed*" ("*Expelled*" or sometimes, the "Documentary Film") infringes on claimed intellectual property rights of XVIVO in a video entitled the "*Inner Life of a Cell*" (the "*Inner Life* Video"). Premise Media brings this civil action seeking declaratory judgment that there is no infringement of any rights of XVIVO and does not violate the Copyright Act, the Visual Rights Act of 1990 or the Digital Millennium Copyright Act of 1998.

2. *Expelled* is a provocative documentary film that examines the scientific community's academic suppression of those who ask too many questions about the origin of life. Its general release begins on April 18, 2008 and is currently committed to open in 1035 theaters nationwide, making it one of the widest, if not the widest, documentary releases in U.S. film history.

3. XVIVO is a scientific animation company that erroneously claims that a brief segment allegedly in *Expelled* infringes its alleged copyright in a portion of the *Inner Life* Video.

4. In a letter dated April 9, 2008, XVIVO asserts it holds the copyright to all models, processes, and depictions in the *Inner Life* Video, and XVIVO demands that Premise Media remove from the Documentary Film certain segments it incorrectly claims infringe its alleged copyrights prior to the release on April 18, 2008. XVIVO threatens to "vigorously and promptly pursue its legal remedies" if its demands are not met. Ex. 1, attached (Letter of April 9, 2008).

5. Premise Media denies XVIVO's claims and seeks here a declaration under the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, that XVIVO does not own such copyrights and there is no infringement or violation of the Copyright Act, the Visual Rights Act of 1990 or the Digital Millennium Copyright Act of 1998.

## II. PARTIES AND PERSONAL JURISDICTION

6. ***Plaintiffs.*** Premise Media Corporation L.P., C&S Production, L.P., *dba* Rampant Films, and Premise Media Distribution L.P. are all Delaware limited partnerships with principal places of business in Dallas, Texas.

7. ***Defendant.*** XVIVO, LLC is a Connecticut Limited Liability Company with a principal place of business at 2360 Main Street, 2<sup>nd</sup> Floor, Rocky Hill, Connecticut 06067.

8. XVIVO is a scientific animation company that regularly provides services outside its home state of Connecticut. XVIVO has engaged in, and as shown below by way of example only, is actively doing business in Texas and in this judicial district and has the necessary presence here for purposes of personal jurisdiction.

9. More specifically, as shown by its website, <http://xvivo.net> (the "XVIVO Web Site"), under the heading of "Clients," XVIVO touts as one of its representative continuing clients, Alcon, a Texas corporation with its principal place of business in the Northern District of Texas.

10. XVIVO admits further on its web site that it conducts business with Arthrocare Corporation, which has its principal executive offices in Austin, Texas.

11. As further shown by its web site, XVIVO claims that it is engaged in business with other national business entities, which on information and belief also conduct substantial business in Texas, including Abiomed, Amgen, Bayer, Genetech, HBO, Johnson & Johnson, Medtronic, Merck, Nova, Novartis, PBS, Pfizer, and Walt Disney Imagineering.

12. In addition, on information and belief based on the materials displayed on the XVIVO Web Site, an Internet user in Texas and in this district can interact with XVIVO over the Internet in the following ways, among others:

- a. view XVIVO promotions, offers for services, and solicitations;
- b. hyperlink and download various items of sample work product including but not necessarily limited to the *Inner Life* Video;
- c. provide information to, and otherwise communicate with XVIVO;
- d. ask questions and receive answers about XVIVO's products and services, including ongoing projects;
- e. log into a private client section, which according to XVIVO's own statements on its web site allows confidential communications, allows

clients to participate in “review sessions” from Texas, allows clients to monitor from Texas over the Internet, the progress of “every element” of projects “24/7”;

f. complete a transaction over the Internet.

13. For example, under the heading of “Services” on the XVIVO Web Site, XVIVO offers services in the areas of “Topical research,” “Medical content development,” “Design and scriptwriting,” “Storyboarding,” “Interactive programming,” “Web-based interactive applications,” and “3D animation.”

14. The XVIVO Web Site specifically points out the fact that during the course of producing its animations for its clients, XVIVO “hold[s] several agreed upon review sessions” facilitated by “[a]n online forum located on [XVIVO’s] server.” It also claims that it “provides clients with 24/7 password-protected access to every element in their project, from storyboards to animatics to final render tests” and that “from the moment [XVIVO] create[s] sketches, [its] clients can view [the] programs from the convenience of any computer.”

15. Under “Project Assessment” on the XVIVO Web Site, it solicits business by saying “Let us give life to your next project. Feel free to call us *or fill out this **project assessment** form and we will provide you with an estimate*” (italics added; bold in the original). The form appears as if it can be filled out and submitted over the Internet through the XVIVO website.

16. Under the heading entitled “Press” on its web site, XVIVO advertises and offers such “high points” as “David Bolinsky speaks at the TED 2007” (Mr. Bolinsky is an XVIVO principal) and “NBC30 Interviews XVIVO on Inner Life,” with accompanying film clips interactively accessible by clicking “View Original Article.”

17. Under the heading entitled "Contact," the XVIVO Web Site displays its phone, fax, and e-mail address.

18. These elements on its web page show that XVIVO is offering, advertising, touting, soliciting and even providing its services over that web site, rendering it interactive for purposes of personal jurisdiction.

19. In fact, as relates most specifically to the subject of this litigation in particular, one of the screens accessible under "Press" is a "full length version" of the *Inner Life* Video. If this hyperlink is clicked, a screen appears which states: "A full length version of '*The Inner Life of a Cell*' is now available online for educational use." The bottom of this screen states: "View Original Article," and clicking on that view opens, and on information and belief downloads the video. This *Inner Life* Video, in which XVIVO claims a copyright that is the subject of its infringement allegations then, is available globally, in Texas and this judicial district through the XVIVO Web Site without charge, and "for educational use." Because XVIVO's Web Site is interactive, requiring XVIVO to defend its erroneous claims in Texas does not offend traditional notions of fairness.

20. Moreover, XVIVO has purposefully availed itself of the protections and privileges afforded by the State of Texas and exercising jurisdiction over it here is consistent with traditional notions of fair play and substantial justice.

21. Notably, Defendant maintains neither a regular place of business nor a registered agent for service in Texas. Accordingly, pursuant to TEX. CIV. PRAC. & REM. CODE § 17.044, it is deemed to have appointed the Texas Secretary of State as its agent for service. It may be served with process by serving the Texas Secretary of State with two copies of process along with the accompanying copies of the Petition with the instruction to forward same by certified

mail, return receipt requested, to its Registered Agent, Joshua A Teplitzky, at One Bradley Road, Bldg. 600, Woodbridge, CT 06525, and by serving its Registered Agent, Joshua A Teplitzky, at One Bradley Road, Bldg. 600, Woodbridge, CT 06525.

### III.

#### **SUBJECT MATTER JURISDICTION, ACTUAL CONTROVERSY, AND VENUE**

22. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and indeed exclusive jurisdiction under 28 U.S.C. § 1338(a) because this is a civil action arising under the laws of the United States, particularly copyright laws. Defendant has alleged that Plaintiffs are infringing its copyright and has violated several federal statutes, including the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, the Visual Artists Rights Act of 1990, and the Digital Millennium Copyright Act of 1998.

23. Alternatively, the Court has jurisdiction under 28 U.S.C. § 1332 (a) (1) because this is a lawsuit between citizens of different states in which the amount of controversy, exclusive of interest and costs, exceed \$75,000.

24. There is an actual controversy under the Declaratory Judgments Act, 28 U.S.C. §§ 2201 *et seq.* because Defendant advises that Defendant “intends to vigorously and promptly pursue its legal remedies for your copyright infringement.” Ex. 1, attached (Letter of April 9, 2008).

25. Venue is proper under 28 U.S.C. § 1400(a) because Defendant, a limited liability company, resides or may be found in this District. Under 28 U.S.C. § 1391(c), a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction. A limited liability company is included as a “corporation” as defined in 28 U.S.C.

§ 1391(c). Because the Court has personal jurisdiction over Defendant, venue is also present in this District and Division. Venue is also proper under 28 U.S.C. § 1391(c).

#### IV. FACTS

26. Premise Media's *Expelled: No Intelligence Allowed* is a provocative documentary film that examines the scientific community's academic suppression of those who dissent from the belief of the adequacy of Darwinian evolution to explain the origin of life.

27. The Documentary Film *Expelled* is narrated by Ben Stein, a well known actor, who is also a lawyer, economist, writer, and former presidential speech writer. Mr. Stein and the *Expelled* producers feel that Neo-Darwinism inappropriately dominates the classroom and academia and are interested in promoting free speech and debate regarding a diversity of views.

28. In promoting the ideas and questions raised in the Documentary Film, Mr. Stein and the *Expelled* producers have also been supporting *Academic Freedom* bills that would ensure the freedom of teachers, professors and scientists to help students understand, analyze, critique, and review in an objective manner the scientific strengths and scientific weaknesses of theories of biological and chemical evolution.

29. Premise Media is in the business of, among other things, making documentary films for distribution and display in theaters across the United States and distributing such films.

30. Premise Media has created, as an original work of authorship, the Documentary Film to publicly comment upon what it believes is a long-standing prejudice in the educational community against non-materialist claims of origins and to encourage debate and free speech.

31. The Documentary Film consists of, among other things, several interviews conducted by Ben Stein with a number of well-known Darwinian evolutionists. In those interviews, those well-known Darwinianists explain their positions regarding evolution.

32. One brief segment in the Documentary Film portrays life at the cellular level to be extremely complex and asks viewers to consider the possibility that such complexity may have design implications in the origin of life.

33. The concepts, principles and discoveries relating to the complexity of life viewed at the cellular level are widely known and available in the public domain and elsewhere.

34. One exposition of such knowledge is the *Inner Life* Video, which presents animated illustrations of the interior of a living cell.

35. The *Inner Life* Video deals with matters of scientific fact, scientific theory or *scenes a faire* that can be depicted in a limited number of ways.

36. XVIVO claims to have authored the animations shown in the *Inner Life* Video, and it and others make the video available to the public without charge over the Internet, among other means.

37. In preparing the Documentary Film, Premise Media commissioned computer animation of some of the natural processes inside a living cell.

38. Some time ago, as part of the pre-release activity relating to the Documentary Film, Premise Media commissioned a DVD highlighting some parts of the Documentary Film as then planned. The DVD was designed as an educational resource highlighting the theme of the Documentary Film and was distributed free of charge in all cases. The resource DVD included a short clip of an animation of the inside of a cell. The short clip showing the cell interior was independently created early in the production process, and was used in the resource DVD. At the

time the short resource DVD was made, the Documentary Film was not complete. The final version of the film does not contain the segment from the DVD on which XVIVO appears to base its claims in its April 9 letter. In fact, the actual animated segment of the Documentary Film's depicting the interior of a cell was independently created and inserted into the actual Documentary Film long before XVIVO raised its claims. Even so, Defendant evidently obtained access to the resource DVD or its contents, as indicated in Exhibit 1, because, on information and belief, at the time it sent that letter, XVIVO could not have seen the Documentary Film (it had not been released). XVIVO seems to be using the resource DVD as the basis of its mistaken claim that the Documentary Film contains scenes that infringe its copyright. Neither the DVD nor the Documentary Film violates any valid copyright or intellectual property of XVIVO.

39. On April 9, 2008, without any prior notice to Premise Media, a statement was posted on the internet accusing Premise Media of copyright infringement. In a letter also dated April 9, 2008 (Ex. 1) XVIVO made similar statements that included a demand, the effect of which is clearly to attempt to discourage the public viewing of the Documentary Film.

40. In that letter, XVIVO claims it "holds the copyright" and asserts intellectual property rights to the *Inner Life* Video, as well as "all the models, processes, and depictions" therein, even though the video lacks any copyright notification identifying XVIVO as the copyright owner.

41. XVIVO further incorrectly claims in its letter that the Documentary Film "includes a segment depicting biological cellular activity that was copied by computer-generated means from '*The Inner Life of a Cell*,'" which it claims constitutes an "actionable infringement of XVIVO's intellectual property rights, as protected by federal statutes...."

42. XVIVO warns that it “intends to vigorously and promptly pursue its legal remedies for your copyright infringement,” unless Premise Media:

- a. immediately removes the infringing segment from all copies of the Documentary Film prior to its scheduled commercial release on or before April 18, 2008;
- b. returns all copies of the *Inner Life* Video; and
- c. notifies XVIVO of its compliance no later than April 18, 2008.

43. Neither the educational resource DVD video, nor the Documentary Film infringe any intellectual property or copyright rights XVIVO may have in the *Inner Life* Video or in any “models, processes, and depictions” in that video.

44. The specific segment from the educational resource DVD is not even in the final version of the Documentary Film to remove. As noted above, the segment that is used in the Documentary Film was independently created for the Film and was inserted into the film after production of the DVD. Both the DVD and the Documentary Film segments are independent creations commissioned by Premise Media.

45. Because XVIVO has made a clear and unequivocal allegation of infringement, an unveiled threat to take legal action based thereon, and a demand that the material be removed from the Documentary Film within roughly a week of the scheduled nationwide opening of the Documentary Film, there is a real, present, and actual case and controversy over which this Court has jurisdiction. Plaintiffs ask this Court to make a declaration that there is no, and has been no, copyright infringement by Premise Media and there is no other violation of any intellectual property rights of XVIVO, if it has any.

V.

**CAUSE OF ACTION—CLAIM FOR DECLARATORY RELIEF**

46. Plaintiffs incorporate ¶¶ 1-45 above herein by this reference.

47. Plaintiffs seek a declaration that XVIVO does not have a copyright or other intellectual property interest in the *Inner Life* Video or any models, processes, or depictions in the *Inner Life* Video.

48. Plaintiffs seek a declaration from this Court that the Documentary Film and the educational resource DVD do not infringe any copyright of XVIVO (if it has any), or any other intellectual property right of XVIVO (if it has any).

49. The allegedly copyrighted work, the *Inner Life* Video, attempts to model the interior of a living cell, matters of scientific fact or theory or *scenes a faire*, which can be expressed in a limited number of ways, and thus, ideas or scientific processes, which are not protectable.

50. Moreover, because the means of expressing the ideas in the *Inner Life* Video are limited, any expressions in the *Inner Life* Video have merged with the ideas. To show any infringement XVIVO would have to show that the segment in the film and DVD are “virtually identical” to, or constitute bodily appropriation of the video. They can show neither.

51. In addition, the way in which the final version of the Documentary Film (and the educational resource DVD) actually express the underlying scientific fact, or its idea, is notably different from that in the *Inner Life* Video. They were independently created.

52. Even if the resource DVD or Documentary Film had relied on the *Inner Life* Video in part (which it did not), any such use would be protected by the doctrine of fair use.

53. The separate interior cell life segment in the DVD or Documentary Film constitute a *de minimis* portion of the total production and the segment allegedly used in the DVD or Documentary Film is a *de minimis* portion of the *Inner Life* Video, and thus cannot be infringing.

54. In addition, the fact that XVIVO makes available the *Inner Life* Video on its website with the “lead in” that “A full length version of ‘*The Inner Life of a Cell*’ is now available online *for educational use*” (emphasis added) creates an implied nonexclusive license for Premise Media to precisely do what XVIVO now complains Premise Media is doing, *arguendo*, i.e., make “educational use” of that video, via a Documentary Film.

55. Premise Media’s speech, including the film and related material, is also constitutionally protected by the First Amendment of the United States Constitution, and Article I, § 8 of the Texas Constitution.

56. Consequently, Premise Media is entitled to a declaratory judgment that neither the Documentary Film, nor the resource DVD infringe any copyright or other claimed intellectual property rights XVIVO may have, if any, in the *Inner Life* Video or otherwise.

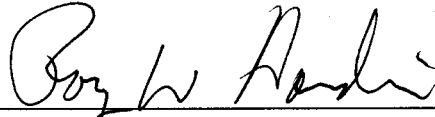
## VI. PRAAYER FOR RELIEF

**WHEREFORE**, Plaintiffs, Premise Media Corporation, L.P., C&S Production, L.P., *dba* Rampant Films, and Premise Media Distribution L.P. request that the Court will enter a Declaratory Judgment under 28 U.S.C. § 2201 against Defendant, XVIVO, L.L.C., declaring that: (a) XVIVO does not own any copyright or intellectual property interest in the *Inner Life* Video, (b) the documentary *Expelled: No Intelligence Allowed* and its resource DVD do not infringe any of XVIVO’s copyrights (if any) in the video “*The Inner Life of a Cell*” and (c) contrary to Defendant’s allegations, Plaintiffs have not violated the Copyright Act, the Visual Artists Rights Act of 1990 or the Digital Millennium Copyright Act of 1998. Plaintiffs also request the Court order such ancillary relief as may be appropriate under 28 U.S.C. § 2202,

award Plaintiffs their costs and attorneys fees, and grant such other or further relief to which Plaintiffs may be entitled in law or in equity.

Dated: April 14, 2008.

Respectfully submitted,



Roy W. Hardin  
State Bar Number 08968300 ✓  
April R. Terry  
State Bar Number 00794248 ✓  
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ATTORNEYS FOR PLAINTIFFS  
PREMISE MEDIA CORPORATION , L.P., C&S  
PRODUCTION, L.P. *dba* RAMPANT FILMS,  
AND PREMISE MEDIA DISTRIBUTION L.P.

Exh 1

# EXHIBIT 1

2360 MAIN STREET 2<sup>ND</sup> FLOOR ROCKY HILL, CT 06067 V:860.721.9848 F:860.721.9850

April 9, 2008

Logan Craft  
 Chairman  
 Premise Media Corporation  
 Suite K  
 1850 Old Pecos Trail  
 Santa Fe, New Mexico 87505

Re: Copyright infringement in "Expelled: No Intelligence Allowed"

Dear Mr. Craft:

This letter will constitute notice to you, as Chairman of Premise Media Corporation, of the copyright infringement by your corporation, and its subsidiary, Rampant Films, of material produced by XVIVO LLC, in which XVIVO holds a copyright.

It has come to our attention that Premise Media and Rampant Films has produced a film entitled "Expelled: No Intelligence Allowed," which is scheduled for commercial release and distribution on April 18, 2008. To our knowledge, this film includes a segment depicting biological cellular activity that was copied by computer-generated means from a video entitled "The Inner Life of a Cell." XVIVO holds the copyright to all the models, processes, and depictions in this video, and has not authorized Premise Media or Rampant Films to make any use of this material.

We have obtained promotional material for the "Expelled" film, presented on a DVD, which clearly shows in the "cell segment" the virtually identical depiction of material from the "Inner Life" video. Among the infringed scenes, we particularly refer to the segment of the "Expelled" film purporting to show the "walking" models of kinesic activities in cellular mechanisms. The segments depicting these models in your film are clearly based upon, and copied from, material in the "Inner Life" video.

We have been advised by counsel that this segment in your film constitutes an actionable infringement of XVIVO's intellectual property rights, as protected by federal statutes, including Section 106 of the Copyright Act, the Visual Artists Rights Act of 1990, and the Digital Millennium Copyright Act of 1998. Each of these statutes provides for judicial enforcement of their provisions, with substantial civil penalties for their infringement.

We have also obtained legal advice that your copying, in virtually identical form, of material in the "inner Life" video clearly meets the legal test of "substantial similarity" between the copied work and our original work.

This letter will also serve as notice to you that XVIVO intends to vigorously and promptly pursue its legal remedies for your copyright infringement, unless and until Premise Media, Rampant Films, and their officers, employees, and agents comply with the following demands:

- 1) That Premise Media, Rampant Films, and its officers, employees, and agents remove the infringing segment from all copies of the "Expelled" film prior to its scheduled commercial release on or before April 18, 2008;
- 2) That all copies of the "Inner Life" video in your possession or under your control be returned to XVIVO;
- 3) That Premise Media notify XVIVO, on or before April 18, 2008, of its compliance with the above demands.

We have been advised, by a telephone conversation with Mellie Bracewell of Premise Media on April 8, 2008, that an e-mail transmission of this letter to her will be promptly forwarded to you. A hard copy of this letter, on XVIVO stationary, will also be sent to you today by express delivery.

We are sure that you will want to avoid legal action in this matter, and urge you to promptly notify us of your compliance with the above demands. You may do so by return e-mail, directed to david @ xvivo.net or mike @ xvivo.net, followed by a hard-copied letter indicating your compliance with the above demands.

Sincerely,

David Bolinsky  
 Partner and Medical Director  
 XVIVO LLC

Michael Astrachan  
 Partner and Creative Director  
 XVIVO LLC

Cc: Peter Irons, Esq.  
 Attorney at Law  
 2551 North Valley Road  
 Greenville CA 95947

KNOWLEDGE THROUGH VISION™

WWW.XVIVO.NET

ORIGINAL CIVIL COVER SHEET 3-08CV0639-D

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet: (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

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| <b>I (a) PLAINTIFFS</b><br>PREMISE MEDIA CORPORATION, L.P., C&S<br>PRODUCTION L.P. dba RAMPANT FILMS, and PREMISE<br>MEDIA DISTRIBUTION L.P.<br><br><b>(b)</b> County of Residence of First Listed Plaintiff: <u>DALLAS</u><br>(EXCEPT IN U.S. PLAINTIFF CASES)<br><br><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)<br>April R. Terry, Roy W. Hardin, Locke Lord Bissell & Liddell LLP<br>2200 Ross Avenue, Suite 2200, Dallas, Texas 75201<br>(214) 740-8000 | <b>DEFENDANTS</b><br>XVIVO, L.L.C.<br><br>County of Residence of First Listed Defendant: <u>HARRIS COUNTY</u><br>(ON U.S. PLAINTIFF CASES ONLY)<br>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED<br>ATTORNEYS (If Known) <u>CLERK, U.S. DISTRICT COURT</u><br><u>NORTHERN DISTRICT OF TEXAS</u> |
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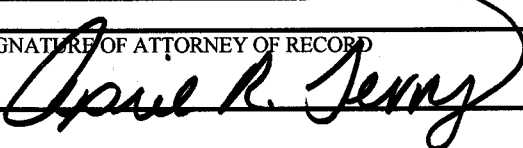
| <b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)<br><br><input type="checkbox"/> 1 U.S. Government Plaintiff<br><input type="checkbox"/> 2 U.S. Government Defendant<br><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)<br><input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One For Plaintiff and One Box for Defendant)<br><br><table style="width:100%"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> |                                       | PTF                                                           | DEF                        |                            | PTF | DEF | Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
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| Citizen of Another State                                                                                                                                                                                                                                                                                                                                             | <input type="checkbox"/> 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |     |     |                       |                                       |                            |                                                           |                            |                            |                          |                            |                                       |                                                               |                            |                            |                                         |                            |                            |                |                            |                            |
| Citizen or Subject of a Foreign Country                                                                                                                                                                                                                                                                                                                              | <input type="checkbox"/> 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <input type="checkbox"/> 3            | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |     |     |                       |                                       |                            |                                                           |                            |                            |                          |                            |                                       |                                                               |                            |                            |                                         |                            |                            |                |                            |                            |

| IV. NATURE OF SUIT (Place an "X" in One Box Only)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CONTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | TORTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | FORFEITURE/PENALTY                                                                                                                                                                                                                                                                                                                                                                                              | BANKRUPTCY                                                                                                                                                                                                                                                            | OTHER STATUTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contracts<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 362 Personal Injury--Med Malpractice<br><input type="checkbox"/> 365 Personal Injury--Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 U.S.C. 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R R & Truck<br><input type="checkbox"/> 650 Airline Regs<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input checked="" type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reappointment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Consumer Challenge 12 USC 3410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | CIVIL RIGHTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | PRISONER PETITIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | LABOR                                                                                                                                                                                                                                                                                                                                                                                                           | SOCIAL SECURITY                                                                                                                                                                                                                                                       | FEDERAL TAX SUITS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 A II Other Real Property                                                                                                                                                                                                                                                                                                                                                                           | <input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 440 Other Civil Rights                                                                                                                                                     | <input type="checkbox"/> 510 Mot ions to Vacate Sentence<br><b>Habeas Corpus</b><br><input type="checkbox"/> 530 Gene ral<br><input type="checkbox"/> 535 Death Pe nalty<br><input type="checkbox"/> 540 Manda mus & Other<br><input type="checkbox"/> 550 Ci vil Rights<br><input type="checkbox"/> 555 Prison Condition                                                                                                                                                                       | <b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 463 Habeas Corpus Alien Detainee<br><input type="checkbox"/> 465 Other Immigration Actions                                                                                                                                                                                                            | <input type="checkbox"/> 861 HIA (1395 ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))                            | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS--Third Party 26 U.S.C. 7609                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

| V. ORIGIN (Place an "X" in One Box Only)                  |                                                     |                                                          |                                                   |                                                                        |                                                     |                                                                              |  |
|-----------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------|------------------------------------------------------------------------------|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |  |

|                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>VI. CAUSE OF ACTION</b><br>Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):<br>Copyright Act, Visual Artists Right Act and Digital Millennium Copyright Act<br>Brief description of cause: Seeking Declaratory Judgment of non-infringement | <b>VII. REQUESTED IN COMPLAINT:</b> <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <b>DEMAND \$:</b> _____<br>CHECK YES only if demanded in complaint<br><b>JURY DEMAND:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                           |             |                     |
|-----------------------------------------------------------|-------------|---------------------|
| <b>VIII. RELATED CASE(S)</b><br>IF ANY (See instructions) | JUDGE _____ | DOCKET NUMBER _____ |
|-----------------------------------------------------------|-------------|---------------------|

|                     |                                                                                                                         |
|---------------------|-------------------------------------------------------------------------------------------------------------------------|
| DATE <u>4-14-08</u> | SIGNATURE OF ATTORNEY OF RECORD<br> |
| FOR OFFICE USE ONLY |                                                                                                                         |
| Receipt # _____     | Amount _____                                                                                                            |
| APPLYING IFP _____  | JUDGE _____                                                                                                             |
| MAG. JUDGE _____    |                                                                                                                         |