

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ANCORA TECHNOLOGIES, INC.

Plaintiff,

v.

NINTENDO CO., LTD., and RETRO
STUDIOS, INC.

Defendants.

Civil Action No. 6:21-cv-738

Jury Trial Requested

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Ancora Technologies, Inc. makes the following allegations against Nintendo Co., Ltd., and Retro Studios, Inc. (collectively “Nintendo”):

RELATED CASE

1. This case is related to the actions *Ancora Technologies, Inc. v. Roku, Inc.* (W.D. Tex. Jul. 16, 2021); *Ancora Technologies Inc. v. Google, LLC* (W.D. Tex. Jul. 16, 2021); and *Ancora Technologies Inc. v. Vizio, Inc.* (W.D. Tex. Jul. 16, 2021)—each of which was filed on July 16, 2021, in the United States District Court for the Western District of Texas, Waco Division, asserting infringement of United States Patent No. 6,411,941.

PARTIES

2. Plaintiff Ancora Technologies, Inc. is a corporation organized and existing under the laws of the State of Delaware with a place of business at 23977 S.E. 10th Street, Sammamish, Washington 98075.

3. Defendant Nintendo Co., Ltd. (“NCL”) is a corporation organized and existing under the laws of Japan with a principal place of business at 11-1 Hokotate-cho, Kamitoba, Minami-ku, Kyoto 601-8501, Japan.

4. Defendant Retro Studios, Inc. (“Retro Studios”) is a corporation organized and existing under the laws of the State of Texas with a principal place of business at 12345 N Lamar Blvd #300, Austin, TX 78753. Retro Studios is wholly owned by NCL, and is a game development studio that designs games for Nintendo hardware systems, such as Donkey Kong Country: Tropical Freeze. Retro Studios and has designed or worked on games for at least the Wii, Nintendo 3DS, and Switch systems. See <https://www.retrostudios.com/games/>; *Motion Games, LLC v. Nintendo Co. Ltd.* (“*Motion Games*”), No. 6:12-cv-00878, ECF No. 33-1 (Declaration of Michael Kelbaugh, President and CEO of Retro Studios, Inc. (“Kelbaugh Decl.”)) ¶¶1-2 (E.D. Tex. Mar. 4, 2013).

5. NCL approves games that Retro Studio develops and submits to NCL for approval. See Kelbaugh Decl. ¶¶2-3. Retro Studios does not participate in or assist with any decision making about whether to manufacture a particular game. See *id.* On information and belief, Retro worked closely with NCL in ensuring the successful integration of Retro Studios’ software into the final products sold to customers in the United States, including in the Western District of Texas.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code, such that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court also has personal jurisdiction over NCL and Retro Games. For example, Retro Games maintain a regular and established place of business in the Western District of Texas, including at 12345 N Lamar Blvd #300, Austin, TX 78753.

8. Further, on information and belief, NCL directs and control the actions of Retro Games such that NCL also maintain places of business in Texas, including at 12345 N Lamar Blvd #300, Austin, TX 78753.

9. For example, NCL has exerted its authority to speak for Retro Studios, as when NCL and its wholly owned subsidiary, Nintendo of America, Inc., determined that they would provide a “Nintendo[] witness . . . to testify on Retro’s behalf” for purposes of a third-party subpoena for testimony under Federal Rule of Civil Procedure 46. *See SyncPoint Imaging, LLC v. Nintendo of America, Inc.*, No. 1:15-mc-00768-SS, ECF No. 1 (Non-Party Retro Studios, Inc.’s Opposed Motion to Quash) at 4 (W.D. Tex., Aug. 31, 2015); *see id.* at 2 (“Nintendo will be providing testimony regarding its relationship with Retro and Retro’s lack of connection to the Eastern District of Texas.”).

10. In addition, directly or through intermediaries, NCL and Retro Games have committed acts within the Western District of Texas giving rise to this action and/or have established minimum contacts with the Western District of Texas such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

11. For example, NCL has placed or contributed to placing infringing products like the Nintendo Switch, Wii console, and Nintendo 3DS into the stream of commerce via an established distribution channel knowing or understanding that such products would be sold and used in the United States, including in the Western District of Texas.

12. As another example, Nintendo admitted that NCL has ““designed, manufacture[d], and import[ed]’ the accused products,” including at least the Wii console and Nintendo 3DS, into the United States. *Motion Games, LLC v. Nintendo Co. Ltd.* (“*Motion Games*”), No. 6:12-cv-00878,

ECF No. 33 (Retro Studios, Inc., Mot. to Dismiss for Improper Venue (“*Motion Games* Mot. to Dismiss”) at 12 (E.D. Tex. Mar. 4, 2013).

13. As another example, NCL has testified that NCL is responsible for the “design and development” of the Accused Products, including the Wii console and the Nintendo 3DS, the “software” for such Accused Products, the “manufacture” of such Accused Products, and the “business activities” for such Accused Products “related to finance; the design, development and testing of Nintendo Products . . . ; contracts and agreements; human resources; marketing; advertising; and the results of surveys, studies and evaluations”:

4. NCL’s Integrated Research & Development Division was mainly responsible for the design and development of the Wii console and the Nintendo 3DS system. The Integrated Research & Development Division employs approximately two hundred fifty six (256) people. NCL’s employees are also responsible for the design and testing of the Wii console and Nintendo 3DS system, as well as for the development of all Nintendo hardware systems and all Nintendo software for the Wii console and the Nintendo 3DS system. Those activities were primarily performed at Nintendo’s headquarters in Kyoto, Japan. NCL also coordinates the

manufacture of the Wii console, Wii games, and Wii accessories, as well as the Nintendo 3DS system, Nintendo 3DS games, and Nintendo 3DS accessories.

5. Documents related to the business activities of NCL are located in Kyoto, Japan. These include documents related to finance; the design, development and testing of Nintendo products, including such documents for the Wii console and Nintendo 3DS system, Nintendo controllers and games, and Nintendo accessories; contracts and agreements; human resources; marketing; advertising; and the results of surveys, studies and evaluations.

Motion Games, No. 6:12-cv-00878, ECF No. 34-30 (Declaration of Toshiro Hibino) at 1-2 (E.D. Tex. Mar. 4, 2013).

14. As another example, Nintendo directs and controls the development of software for the Accused Products, *id.*, and—on information and belief—the distribution of system software updates for the Accused Products, including the Nintendo Switch, Wii console, and Nintendo 3DS.

NCL sends or causes to be sent such system software updates knowing that they will be distributed to Accused Products in the Western District of Texas:



https://twitter.com/nintendo_cs/status/1402468144430518276;



https://twitter.com/nintendo_cs/status/1379227688087392257.

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