

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MAX BLU TECHNOLOGIES, LLC,

Plaintiff,

v.

FRY'S ELECTRONICS, INC.,

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Max Bu Technologies, LLC (hereinafter, "Plaintiff" or "Max Blu"), by and through its undersigned counsel, files this Original Complaint for Patent Infringement against Defendant Fry's Electronics, Inc. (hereinafter, "Defendant" or "Fry's") as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of the following patents (collectively, the “Patents-in-Suit”), which were duly and legally issued by the United States Patent and Trademark Office (hereinafter, the “USPTO”), copies of which are attached hereto as **Exhibits A through D**, respectively:

	Patent No.	Title
A.	7,352,685	REVERSE OPTICAL MASTERING FOR DATA STORAGE DISK REPLICAS
B.	7,801,016	REVERSE OPTICAL MASTERING FOR DATA STORAGE DISK REPLICAS
C.	8,593,931	REPLICA DISK FOR DATA STORAGE
D.	RE44633	REVERSE OPTICAL MASTERING FOR DATA STORAGE DISK REPLICAS

2. Plaintiff is the owner of the Patents-in-Suit and possesses all right, title and interest in the Patents-in-Suit, including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages.

3. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

4. Max Blu is a limited liability company organized and existing under the laws of the State of Texas and maintains its principal place of business at 104 East Houston Street, Suite 150, Marshall, Texas, 75670 (Harrison County).

5. Based upon public information, Fry's is a corporation duly organized and existing under the laws of the state of California since March 18, 1985 and has its principal place of business located at 600 E. Brokaw Road, San Jose, California, 95112 (Santa Clara County).

6. Based upon public information, Fry's is registered to do business in the state of Georgia since its registration on February 17, 2005.

7. Defendant may be served through its registered agent, J. C. Roper, whose address is Drew Eckl & Farnham, LLP, 303 Peachtree Street NE, Suite 3500, Atlanta, Georgia, 30308.

8. Defendant may also be served through its registered agent, Kathryn Jean Kolder, whose address is 600 E. Brokaw Road, San Jose, California, 95112.

9. Based upon public information, Defendant ships, distributes, makes, uses, offers for sale, sells, and/or advertises its Blu-ray™ recordable media, including, but not limited to, recordable and re-writable discs in Blu-ray™ format under various brand names.

10. Based upon public information, Fry's sells its products in the state of Georgia, including Blu-ray™ recordable media, from at least its stores located at 3296 N.W. Commerce Ave., Duluth Georgia, 30096, and 3065 Webb Rd., Milton, Georgia, 30004.

JURISDICTION AND VENUE

11. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

12. The Court has personal jurisdiction over Fry's because: it has minimum contacts within the State of Georgia and in the Northern District of Georgia; it has purposefully availed itself of the privileges of conducting business in the State of Georgia and in the Northern District of Georgia; it has sought protection and benefit from the laws of the State of Georgia; it regularly conducts business within the State of Georgia and within the Northern District of Georgia, and Plaintiff's causes of action arise directly from its business contacts and other activities in the State of Georgia and in the Northern District of Georgia.

13. More specifically, Fry's, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its

products and affiliated services in the United States, the State of Georgia, and the Northern District of Georgia. Based upon public information, Fry's has committed patent infringement in the State of Georgia and in the Northern District of Georgia. Fry's solicits customers in the State of Georgia and in the Northern District of Georgia. Fry's has many paying customers who are residents of the State of Georgia and the Northern District of Georgia and who use its products in the State of Georgia and in the Northern District of Georgia.

14. Venue is proper pursuant to 28 U.S.C. §1400(b) because Fry's has a regular and established place of business in this district and, upon information and belief, has committed acts of infringement in this district.

15. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because Fry's operates at least two of its stores in Northern District of Georgia.

BACKGROUND INFORMATION

16. Each of the Patents-in-Suit traces its priority date back to Application No. 09/055,825 (hereinafter, "the '825 Application"), which was filed with the USPTO on April 6, 1998, and was the parent to Application No. 09/730,246 (hereinafter, "the '246 Application"), which was filed with the USPTO on December 5, 2000 and issued as United States Patent No. 6,890,704. Application No. 09/850,252 (hereinafter, "the '252 Application") was a continuation-in-part

application of the '246 Application, which was filed with the USPTO on May 7, 2001 and issued as United States Patent No. 6,728,196 on April 27, 2004.

17. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office after full and fair examinations.

18. Plaintiff is the owner of the Patents-in-Suit, and possesses all right, title and interest in the Patents-in-Suit including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages.

19. Defendant sells, advertises, offers for sale, uses, or otherwise provides Blu-ray™ recordable media (collectively, the “Accused Products”) to its customers, either directly or through third-party vendors, under at least the Galaxy, Optimum, and XtremPro brands. *See* **Exhibit E** (Galaxy Model No. GXBR-25GB-5006), **Exhibit F** (XtremPro Model No. 11053), **Exhibit G** (XtremPro Model No. 11049), and **Exhibit H** (XtremPro Model No. 11129).

20. A representative analysis of the physical characteristics of the Accused Products is attached as **Exhibit I** (analysis of a Blu-ray™ recordable disc).

21. According to public information, Defendant owns, operates, advertises, and/or controls the website www.frys.com where Defendant advertises, sells, offers

to sell, provides and/or educates customers about its Products, including those depicted in Exhibits E through H.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,352,685

22. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

23. United States Patent No. 7,352,685 (hereinafter, the “’685 Patent”) was duly and legally issued by the USPTO on April 1, 2008 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Imation Corporation. *See Ex. A.*

24. The ’685 Patent was issued after full and fair examination of application number 10/790,970 which was filed with the USPTO on March 2, 2004 as a continuation of application number 09/850,252 (which itself issued as United States Patent No. 6,728,196). *See Ex. A.*

25. A Certificate of Correction was issued for the ’685 Patent on February 16, 2010. *See Ex. A.*

26. Defendant has infringed and continues to infringe the ’685 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. More specifically, Defendant has infringed and continues to infringe one or more claims of the ’685 Patent, including at least Claims 1, 2-4, 7, 9,

19 and 20-35 (the “’685 Patent Claims”) because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant’s Accused Products infringe the ’685 Patent Claims by providing to its customers Blu-ray™ recordable media with the physical characteristics as claimed in the ’685 Patent Claims. *See* Ex. I. Defendant’s Accused Products are available for sale on its website and in its stores. *See* Exhibits E through H.

27. Defendant has intentionally induced and continues to induce infringement of the ’685 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant’s customers to use the Accused Products in an infringing manner. Despite knowledge of the ’685 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the ’685 Patent claims.¹ The provision of and sale of the Accused Products provides Defendant with a source of revenue and business focus. Defendant has specifically intended its customers to use the Accused Products in such a way that infringes the ’685 Patent by, at a

¹ *See In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1345 (Fed. Cir. 2012); *see also Swipe Innovations, LLC v. NCR Corp.*, No. 1:13-CV-2219-TWT, 2013 U.S. Dist. LEXIS 164060, *11-*12 (N.D. Ga. Nov. 18, 2013 (allowing claim for induced infringement for damages accruing post-filing).

minimum, providing and supporting the Accused Products under its trademarked brand and referring to and marking the products as Blu-ray™ compliant through use of such logos and terminology, thereby inducing its customers to purchase Blu-ray™ recordable media that infringe one or more claims of the '685 Patent. Defendant knew that its actions, including but not limited to, making the Accused Products available for sale on its website and in its stores, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using, the Accused Products. *See Exhibits E through H.*

28. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

29. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

30. Defendant's infringement of Plaintiff's rights under the '685 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 7,801,016

31. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

32. United States Patent No. 7,801,016 (hereinafter, the “’016 Patent”) was duly and legally issued by the USPTO on September 21, 2010 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Imation Corporation. *See Ex. B.*

33. The ’016 Patent was issued after full and fair examination of application number 12/584,454 which was filed with the USPTO on September 4, 2009 as a continuation of application number 10/790,965 (which itself issued as United States Patent No. 7,600,992). *See Ex. B.*

34. Defendant has infringed and continues to infringe the ’016 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. More specifically, Defendant has infringed and continues to infringe one or more claims of the ’016 Patent, including at least Claims 1 and 3 (the “’016 Patent Claims”) because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant’s Accused Products infringe the ’016 Patent Claims by providing to its customers Blu-ray™ recordable media with the physical characteristics as claimed in the ’016

Patent Claims. *See* Ex. I. Defendant's Accused Products are available for sale on its website and in its stores. *See* Exhibits E through H.

35. Defendant has intentionally induced and continues to induce infringement of the '016 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products in an infringing manner. Despite knowledge of the '016 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '016 Patent claims.² The provision of and sale of the Accused Products provides Defendant with a source of revenue and business focus. Defendant has specifically intended its customers to use the Accused Products in such a way that infringes the '016 Patent by, at a minimum, providing and supporting the Accused Products under its trademarked brand and referring to and marking the products as Blu-ray™ compliant through use of such logos and terminology, thereby inducing its customers to purchase Blu-ray™ recordable media that infringe one or more claims of the '016 Patent. Defendant knew that its actions, including but not limited to, making the Accused Products

² *See* Footnote 1 above

available for sale on its website and in its stores, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using, the Accused Products. *See* Exhibits E through H.

36. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

37. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

38. Defendant's infringement of Plaintiff's rights under the '016 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,593,931

39. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

40. United States Patent No. 8,593,931 (hereinafter, the "'931 Patent") was duly and legally issued by the USPTO on November 26, 2013 to its inventors, Jathan

D. Edwards and Donald J. Kerfeld, and was initially assigned to Legger Col. A.B. LLC. *See* Ex. C.

41. The '931 Patent was issued after full and fair examination of application number 13/730,733 which was filed with the USPTO on December 28, 2012 as a continuation of application number 13/089,994 (which itself issued as United States Patent No. 8,363,534). *See* Ex. C.

42. Defendant has infringed and continues to infringe the '931 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. More specifically, Defendant has infringed and continues to infringe one or more claims of the '931 Patent, including at least Claims 1, 2-4, 6, 7, 9, 10, 11, 13 and 14 (the "'931 Patent Claims") because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant's Accused Products infringe the '931 Patent Claims by providing to its customers Blu-ray™ recordable media with the physical characteristics as claimed in the '931 Patent Claims. *See* Ex. I. Defendant's Accused Products are available for sale on its website and in its stores. *See* Exhibits E through H.

43. Defendant has intentionally induced and continues to induce infringement of the '931 Patent Claims in this district and elsewhere in the United

States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products in an infringing manner. Despite knowledge of the '931 Patent as early as the date of service of the Original Complaint in this action, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '931 Patent claims.³ The provision of and sale of the Accused Products provides Defendant with a source of revenue and business focus. Defendant has specifically intended its customers to use the Accused Products in such a way that infringes the '931 Patent by, at a minimum, providing and supporting the Accused Products under its trademarked brand and referring to and marking the products as Blu-ray™ compliant through use of such logos and terminology, thereby inducing its customers to purchase Blu-ray™ recordable media that infringe one or more claims of the '931 Patent. Defendant knew that its actions, including but not limited to, making the Accused Products available for sale on its website and in its stores, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using, the Accused Products. *See Exhibits E through H.*

³ *See* Footnote 1 above

44. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

45. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

46. Defendant's infringement of Plaintiff's rights under the '931 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT IV
INFRINGEMENT OF U.S. PATENT NO. RE44633

47. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

48. United States Reissued Patent No. RE44633 (hereinafter, the "'633 Patent") was duly and legally issued by the USPTO on December 10, 2013 to its inventors, Jathan D. Edwards and Donald J. Kerfeld, and was initially assigned to Legger Col. A.B. LLC. *See* Ex. D. The '633 Patent was filed with the USPTO on September 23, 2011 as application number 13/243,939. *Id.*

49. The reexamination that resulted in the issuance of the '633 Patent was based on United States Patent No. 7,952,986 (the "'986 Patent"), which issued on

May 31, 2011 from Application No. 12/852,139 and was filed with the USPTO on August 6, 2010, as a continuation of application number 12/584,454 (which itself issued as United States Patent No. 7,801,016). *See* Ex. D.

50. Defendant has infringed and continues to infringe the '633 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products. More specifically, Defendant has infringed and continues to infringe one or more claims of the '633 Patent, including at least Claims 1, 2-4, 14-16, 18 and 19 (the "'633 Patent Claims") because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises the Accused Products. Specifically, Defendant's Accused Products infringe the '633 Patent Claims by providing to its customers Blu-ray™ recordable media with the physical characteristics as claimed in the '633 Patent Claims. *See* Ex. I. Defendant's Accused Products are available for sale on its website and in its stores. *See* Exhibits E through H.

51. Defendant has intentionally induced and continues to induce infringement of the '633 Patent Claims in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products in an infringing manner. Despite knowledge of the '633 Patent as early as the date of service of the Original Complaint in this action, Defendant

continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '633 Patent claims.⁴ The provision of and sale of the Accused Products provides Defendant with a source of revenue and business focus. Defendant has specifically intended its customers to use the Accused Products in such a way that infringes the '633 Patent by, at a minimum, providing and supporting the Accused Products under its trademarked brand and referring to and marking the products as Blu-ray™ compliant through use of such logos and terminology, thereby inducing its customers to purchase Blu-ray™ recordable media that infringe one or more claims of the '633 Patent. Defendant knew that its actions, including but not limited to, making the Accused Products available for sale on its website and in its stores, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using, the Accused Products. *See Exhibits E through H.*

52. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

53. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at

⁴ *See* Footnote 1 above

trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

54. Defendant's infringement of Plaintiff's rights under the '633 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

55. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

56. Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;
- B. An adjudication that Defendant has induced infringement of one or more claims of the Patents-in-Suit based upon post-filing date knowledge of the Patents-in-Suit;
- C. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified

under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further acts of infringement with respect to any one or more of the claims of the Patents-in-Suit;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,
- F. Any further relief that this Court deems just and proper.

Dated: February 12, 2019

Respectfully submitted,

/s/ James F. McDonough, III

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