

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES CORPORATION,)	
)	
)	C.A. No. _____
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
ZYNGA INC., and CHARTBOOST, INC.,)	
)	
Defendants.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff International Business Machines Corporation (“IBM”), for its Complaint for Patent Infringement against Zynga, Inc. (“Zynga”) and Chartboost, Inc. (“Chartboost”) (collectively, “Defendants”), demands a trial by jury on all issues so triable and alleges as follows:

INTRODUCTION

1. IBM is in the innovation business. Every year, IBM spends billions of dollars on research and development to invent, market, and sell new technology. These investments over the decades have led to innovations touching every industry and changing the way the world connects, including foundational advancements in computer hardware and software, big data analytics, artificial intelligence, and natural language processing. Even in the new frontier of quantum information science, once thought to be a purely academic exercise, IBM has capitalized on its early investments and innovations to become the leader in commercializing this revolutionary technology. IBM’s Q Network service—a community of Fortune 500 companies, academic institutions, research organizations, and startups working with IBM to advance quantum computing—now has over 100 members. IBM believes that the application of intelligence, reason and science can improve business, society and the human condition.

2. IBM obtains patents on the technology its inventors develop. IBM's commitment to research and innovation has resulted in numerous inventions that have led to the thousands of patents awarded to IBM by the United States Patent and Trademark Office each year. In fact, for each of the last 29 years, IBM scientists and researchers have been awarded more U.S. patents than those of any other company. Those patents are critical to IBM's business, its values, and its licensing philosophy.

3. For example, for over twenty years, IBM has been a strong proponent of open-source technologies—technologies that are freely available to use, modify, and redistribute. IBM was a founding member of Open Invention Network, the largest patent non-aggression community in history, which supports freedom of action in Linux, a key element of open-source software. IBM was able to leverage its patent portfolio to enable the broad industry adoption of open-source technologies by pledging to provide open access to key innovations covered by hundreds of IBM software patents for those working on open-source software. And early in 2020, IBM joined the License on Transfer Network (“LOT Network”), a non-profit community of companies that supports open innovation and responsible stewardship of technology. LOT Network affirms the traditional use of patents—safeguarding the innovations of companies who research, develop, and sell new technologies—while protecting its members against patent assertion entities who purchase or acquire patents from others.

4. As another example, IBM has pledged to let anyone working on solutions to the coronavirus pandemic use its patents for free. IBM's vast patent portfolio can now support researchers everywhere who are developing technologies to help prevent, diagnose, treat, or contain COVID-19. The collection includes thousands of IBM artificial intelligence patents, some related to Watson technology, as well as dozens, if not hundreds, related to biological viruses.

5. IBM also believes in the protection of its proprietary technologies, which result from IBM's extensive investments in research and development and the hard work of IBM's inventors. When other companies seek to build new businesses on the foundation set by IBM's patented technology, IBM believes that those companies should agree to a license and pay a fair royalty. When a company is using IBM's patents without authorization, IBM first seeks to negotiate an agreement whereby IBM and the other company cross license their respective patent portfolios, enabling each to receive a license to the other's patent portfolio. That way, each company can avoid litigation, be fairly compensated for the use of all of their patents, and maintain the freedom to operate in their respective markets.

6. The modern technology industry has recognized IBM's pioneering innovations in areas including big data analytics, digital marketplaces, and web-based business. Indeed, IBM's patent portfolio includes many foundational technologies in those areas, such as personalized digital advertising and managing servers and applications. In fact, in the 1980s, IBM partnered with other companies to launch Prodigy, one of the pioneers in online networking and advertising. As a result, dozens of modern technology companies, including Amazon, Apple, Google, and Facebook, have agreed to cross licenses with IBM. Defendants have not.

7. Zynga was founded in 2007. Like many companies before it, Zynga recognized the value in bringing interactive, social experiences onto the web and the internet. Specifically, Zynga successfully launched several mass-market "social games," such as *Words with Friends* and *Farmville*. Unlike physical games sold in brick-and-mortar stores, Zynga offers these products as "free-to-play," where a user can simply download applications or open a web browser to start playing. These games make it easy for users to connect to their existing social media accounts for online play. Zynga generates revenue by selling in-game virtual items to its users, by selling

advertisements, and by operating a mobile advertising and monetization platform with its subsidiary, Chartboost. Zynga is now one of the world's largest providers of social games, with millions of daily users and mobile downloads totaling over four billion. By offering products at this massive scale, Zynga has enjoyed billions of dollars in revenue in recent years.

8. Those in the industry have described Zynga as a “big data company disguised as [a] gaming company.” Though Zynga is nominally a gaming company, its success relies on sophisticated data capture, processing, and analytics technology, which enables Zynga's delivery of games and advertisements to millions of users. In its annual report, Zynga tells its investors:

At the core of Zynga's live services platform is our **first-party data network**, which captures key insights about how our players are interacting with our games. We use this data to deliver highly engaging interactive experiences for our players, optimize our user acquisition, monetize our games, and provide advertising services.

Zynga's products and its business model rely on prior innovations in big data, analytics, and online advertising made by IBM and others.

9. Zynga is not alone when it comes to big data, analytics, and online advertising. The wider technology industry has recognized that the data and analytic techniques necessary for providing online services to millions, including gaming, require years of investments in research, development, and innovations. It is not surprising that others would use such techniques rather than develop them themselves, because it is difficult and expensive to develop such techniques without the kind of expertise that IBM provides in this space. Like other modern technology companies, Zynga recognized IBM's expertise in the field and decided to incorporate IBM's prior innovations in big data, analytics, and online advertising instead of spending the time and money to develop its own techniques.

10. As Zynga's business has developed, it has continued to incorporate additional innovations pioneered by IBM. But unlike dozens of Zynga's peers in the industry, Zynga does not have a license to use IBM's patents.

11. Since 2014, IBM has tried to negotiate with Zynga about Zynga's unlicensed use of IBM's patents. Unfortunately, to this day, Zynga has chosen to willfully infringe IBM's patents and even expanded its infringing activity.

12. Over the years, IBM has discovered that Zynga infringes additional IBM patents. IBM has informed Zynga of its expanding liability for willful patent infringement, including by its subsidiary Chartboost, but has been continually met with delay and excuses. For example, IBM specifically identified for Zynga how its products, including the *CSR Racing 2*, *Words with Friends 2*, *Farmville 2: Country Escape*, and *Game of Thrones Slots Casino* games, practice multiple IBM patents. Rather than negotiate an acceptable business resolution with IBM, Zynga engaged in delay tactics, alternating between refusing to meet for weeks at a time and responding only partially to IBM's letters detailing Zynga's infringement.

13. Chartboost, Zynga's subsidiary, also uses IBM's patents without a license. In 2021, IBM twice contacted Chartboost to inform them of its infringement of IBM's patents through its advertising campaign platform. IBM told Chartboost that it was ready to discuss the detailed evidence of Chartboost's infringement and a possible resolution of these issues. After a months-long delay with no reply, Chartboost responded in August 2021 to say that now that Zynga acquired Chartboost, Zynga would handle all discussions with IBM regarding Chartboost and its infringing activities. But Zynga never resolved Chartboost's continued unlicensed use of IBM's patents.

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