

Phil Simms

Summary of Investigation/ Bases for Opinion

- ▶ **Read** the '884 patent.
- ▶ **Reviewed** legal pleadings.
- ▶ **Interviewed** Mr. Inventor and Mr. Beckham, Inventor's technical expert.
- ▶ **Reviewed** numerous depositions of people involved in the case.
- ▶ **Reviewed** Gamer's sales and financial and marketing documents.
- ▶ **Analyzed** license agreements produced by Gamers and Cruz.
- ▶ **Performed** independent research regarding Gamers and other companies, and the relevant market for the accused products.
- ▶ **Filed** two expert reports in this case.
- ▶ **Reviewed** Ms. Brady's expert report and deposition.

Reasonable Royalty Comparison

ROYALTY BASE

Sales of Accused
Gamers 3DS Devices



ROYALTY RATE

Based on
Georgia-Pacific Factors
and Analytical Approach



REASONABLE ROYALTY

MR. SIMMS

6.79 MILLION
3DS DEVICES



\$9.78 or
6%



\$66.4
MILLION

MS. BRADY

6.79 MILLION
3DS DEVICES



\$0.30 or
0.18%



\$2.1
MILLION

Source: PTX-262; PTX-326; PTX-383

Reasonable Royalty Comparison

Differences with Ms. Brady

INVENTOR'S EXPERT: MR. SIMMS

- ▶ **Technology is important to Gamers and consumers**
 - “WOW,” “Revolutionary,” “Indispensable,” “Important,” “Compelling”

- ▶ **No design around**
 - Important technology that Gamers hasn't removed

- ▶ Analyze Gamers in the **same way as industry experts**
 - consider hardware **and game profits**

GAMER'S EXPERT: MS. BRADY

- ▶ **No evidence that the accused AR games or 3D camera are important**

- ▶ **Unimportant features could have been removed**

- ▶ **Ignores Gamers' profits from games**

Source: PTX-153; PTX-217; PTX-241; PTX-287

***Hypothetical
Negotiation
Ground Rules***

- ▶ Assume the **'884 patent is valid.**
- ▶ Assume **Gamers is infringing.**
- ▶ Hypothetical negotiation occurs between **June 2010 and March 2011.**
- ▶ Negotiation is **like playing with cards face up.**
- ▶ **Gamers gets a license** for the '884 patent, and **Inventor gets compensated.**

Reasonable Royalty: Georgia-Pacific Factors

Source: *Georgia-Pacific Corp. v. United States Plywood Corp.*

- | | | | |
|---|--|----|---|
| 1 | Royalties for patent; patent owner's established royalty rate | 8 | Established profitability, commercial success and popularity |
| 2 | Comparable rates for other comparable patents | 9 | Utility and advantages of invention |
| 3 | Nature and scope of license | 10 | Nature of the patented invention and benefits to users |
| 4 | Patent owner's willingness to license | 11 | The extent of infringer's use of the invention, and any evidence probative of the value of that use |
| 5 | Competitive relationship of parties | 12 | Customary royalty rates in the business |
| 6 | Effect of selling the invention in promoting sales of other products; value of the invention to the licensor as a generator of sales of its non-patented items | 13 | Profit credited to the invention |
| 7 | Duration of the patent and the term of the license | 14 | Opinion of experts |
| | | 15 | Hypothetical negotiation |

KFE License

IFT (Inventor) licenses KFE permission to use patent applications, including **the '884 patent:**

▶ **Duration:**

Beginning August 2009 for 5 years

▶ **Products Covered:**

Video displays, computer displays and TVs (7–20 inches)

▶ **Royalty Rate:**

5% on first 50,000 products, then 3%

▶ **Royalty Base:**

KFE's sale price of complete products

Source: PTX-189; DTX-E

KFE License

Adjustments to Royalty Rate for Hypothetical Negotiation

KFE LICENSE	HYPOTHETICAL NEGOTIATION
1 KFE sells just hardware— lower profits (11–13%) (PTX-245)	Gamers sells hardware and games—higher profits (38–43%) (PTX-201; PTX-431 to PTX-436)
2 5 year duration	About 13 year duration
3 KFE had not developed a product yet	3DS already developed
4 No agreement the '884 patent was valid and infringed	The '884 patent valid and infringed
5 No 3D cameras in contemplated products	3DS uses 3D cameras so the '884 patent is more valuable to Gamers

KFE License

Ms. Brady's Adjustments to KFE Royalty Rate

MS. BRADY'S ADJUSTMENT

- ▶ **Starts with 3%**
- ▶ **Divides 3% in half to get 1.5%**
- ▶ **Divides 1.5% in half again to get 0.75%**

DISAGREEMENT

- ▶ **IGNORES 5%** and that KFE would not sell more than 50,000 products
- ▶ **IGNORES** Technical Cooperation Agreement
- ▶ Considers a different, **LESS VALUABLE PATENT**, and
- ▶ **IGNORES** that same royalty is paid regardless of number of patents used

**Georgia-Pacific
Factor 6:**

**Effect of Selling
the 3DS in
Promoting Sales
of Games**

① Gamers makes more from each 3DS game than DS game:

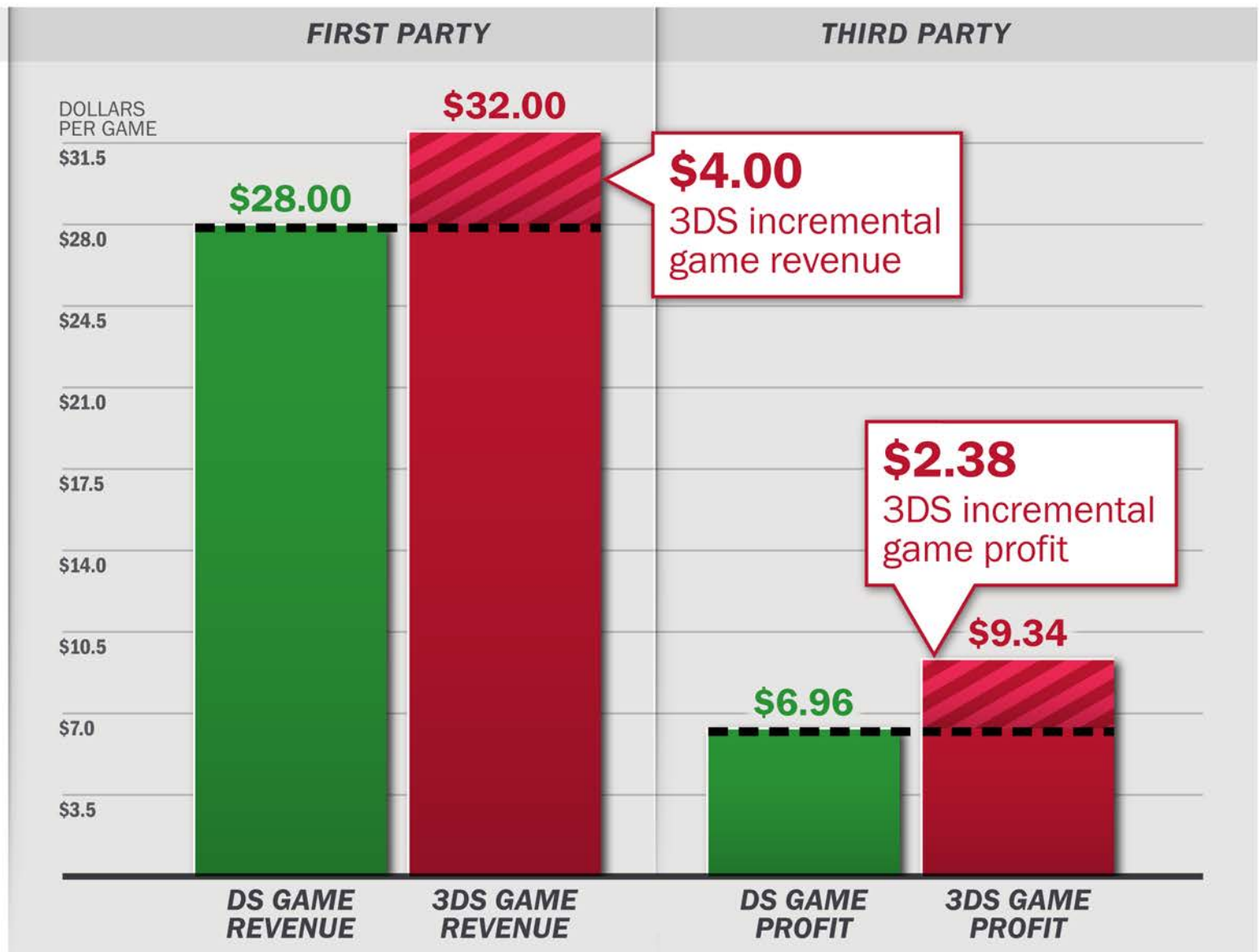
- 3DS games can be played only on the 3DS.
- Gamers **charges more** for the 3DS games and makes a **greater profit** from them.

② Gamers expected to sell a lot of games:

- Expected **tie ratio** was **5 to 7 games** for every 3DS. *PTX-303; PTX-311*
- An **extra \$15.50 to \$21.40** from the 3DS games.

Georgia-Pacific Factor 6: Effect of Selling the 3DS in Promoting Sales of Games

Gamers
makes more
on 3DS games
than DS games.



Source: PTX-288

**Georgia-Pacific
Factors 8 and 11:**

**The 3DS
Is Successful**

▶ **Total 3DS
U.S. Sales:**
THROUGH DEC. 2012

6.79
MILLION

▶ **Total 3DS
First Party Games:**
THROUGH DEC. 2012

11.0
MILLION

▶ **Total 3DS
Third Party Games:**
THROUGH JAN. 2012

7.0
MILLION

Source: PTX-262; PTX-326; PTX-383; PTX-288; PTX-289; PTX-53

**Georgia-Pacific
Factors 9 and 10:**

**Outside the
Courtroom,
Gamers says
the Technology
Is Important**


- ▶ 3D Cameras are **“Important”** and **“Compelling”**
- ▶ AR Games are **“WOW” factor** and **“Revolutionary”**
- ▶ 3D Cameras are **“Indispensable”** and provide a **“Different Kind of Enjoyment”**
- ▶ 3D Depth Slider **“Answers the Issue”**
- ▶ 3D Depth Slider makes 3D **“Great”**
- ▶ 3D Video **Upgrade** added
- ▶ 3DS box **confirms importance**
- ▶ **“Excited”** about Mr. Inventor’s prototype

Source: PTX-153; PTX-217;
PTX-241; PTX-285; PTX-287;
PTX-265

Gamers 3DS Packaging

A New Dimension in Entertainment

3D CAMERA











A NEW DIMENSION
IN ENTERTAINMENT!

The Gamers 3DS system combines next-generation portable gaming with eye-popping 3D visuals—without the need for special glasses. Take 3D photos using the built-in cameras, and give them your own personal twist with interactive effects. Connect to friends, other players, and hotspots with the wireless

Take 3D photos using the built-in cameras,

The 3DS system plays all

-  Gamers 3DS Camera
Apprend photo Nintendo 3DS
Caméra Nintendo 3DS
-  Sound
Studio son Nintendo 3DS
Nintendo 3DS Sound
-  Mii Maker
Éditeur Mii
Éditeur de Mii
-  Plaza
Place Mii StreetPass
Place Mii de StreetPass
-  eShop
-  Games
-  Raiders
-  Navigateur Internet
Navigateur de Internet

EN LE MONDE DU DIVERTISSEMENT!

elle génération de jeu portable des effets 3D qui en mettent plein la vue, et ce, sans lunettes spéciales. Prenez
v. Ajoutez-y votre touche personnelle grâce aux effets interactifs proposés. Connectez-vous avec vos amis, avec
via les modes de communication sans fil StreetPass et SpotPass pour déverrouiller du contenu exclusif pour les
ents! Des jeux, des photos et bien plus encore! Le 3DS est le système de divertissement par excellence!

DS. Les cartes de jeux du DS n'apparaissent pas en 3D.

ENTRETENIMIENTO!


generación de juego portátil con increíbles gráficos 3D sin la necesidad de
las cámaras incluidas y dales tu toque personal con efectos interactivos.
pres o a puntos de acceso a internet inalámbricos gracias a los modos de
Pass. Así podrás desbloquear contenido exclusivo y descargar aún más
3DS es la consola 3D que no te puedes perder.

DS. Los juegos de DS no aparecen en 3D.

EVERYONE **ENFANTS et ADULTES**

E Mild Cartoon Violence
Légère violence animée
Mild Fantasy Violence
Légère violence fictive

ESRB CONTENT RATING
CLASSIFIÉ PAR L'ESRB www.esrb.org


Gamers 3DS
Camera

PTX-265

Gamers 3DS Packaging

A New Dimension in Entertainment

AR GAMES



The 3DS system plays all DS games. DS games will not appear in 3D.

A NEW DIMENSION IN ENTERTAINMENT!

The Gamers 3DS system combines next-generation portable gaming with eye-popping 3D visuals—without the need for special glasses. Take 3D photos using the built-in cameras, and give them your own personal twist with interactive effects. Connect to friends, other players, and wireless hotspots with the wireless StreetPass and SpotPass communication modes to unlock exclusive content for games and download other entertainment. From games to photos and beyond, Gamers 3DS is the ultimate 3D entertainment system.



UNE NOUVELLE DIMENSION DANS LE MONDE DU DIVERTISSEMENT

La console 3DS apporte à la nouvelle génération de jeu portable des photos 3D avec l'appareil photo intégré. Ajoutez-y votre touche personnelle d'autres joueurs et à des points d'accès Wi-Fi via les modes de communication StreetPass et pour télécharger d'autres divertissements! Des jeux, des photos et bien plus. La console 3DS accepte toutes les cartes de jeu de la console DS. Les cartes de jeu de DS n'apparaîtront pas en 3D.

¡UNA NUEVA DIMENSIÓN DE ENTRETENIMIENTO!

La consola 3DS combina la última generación de juego portátil con imágenes especiales. Toma fotos en 3D usando las cámaras incluidas y dales tu toque Conéctate con tus amigos, con otros jugadores o a puntos de acceso a internet comunicación inalámbrica StreetPass y SpotPass. Así podrás desbloquear contenidos programas. Con juegos, fotos y mucho más. 3DS es la consola 3D que La consola 3DS es compatible con todos los juegos de DS. Los juegos de DS no aparecerán en 3D.



Games

especiales. Prenez avec vos amis, avec exclusif pour les ent par excellence!

INFANTS et ADULTES
Cartoon Violence
Aire violence animée
Fantasy Violence
Aire violence fictive
TING
SMB
www.esrb.org

**Georgia-Pacific
Factor 13:**

**Inventor's
Reasonable Royalty
Accounts for
Gamers'
Contributions**

Source: PTX-201; PTX-431 to
PTX-436; PTX-206; PTX-304;
PTX-312

GAMERS' SHARE

Manufacturing

Marketing

R&D

Brand

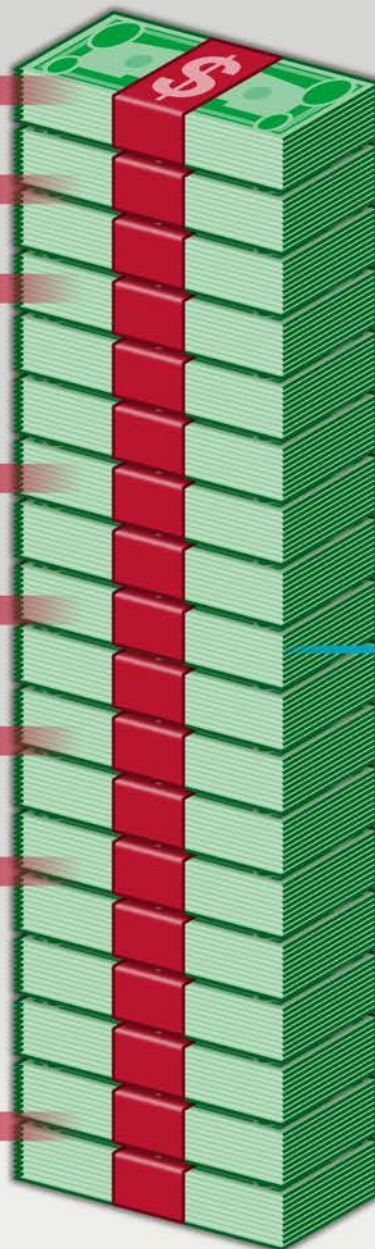
**Consumer
Base**

Franchises

**DS
Technology**

**Other 3DS
Features**

GAMERS' GROSS REVENUE



INVENTOR'S SHARE

**'884 Patent
Technology**

**Georgia-Pacific
Factor 15:
Hypothetical
Negotiation**

The amount that Inventor (as the patent holder) and Gamers (as the infringer) would have agreed upon (at the time the infringement began) if both had been reasonably and voluntarily trying to reach an agreement; that is, the amount which Gamers (as a prudent licensee) – who desired, as a business proposition, to obtain a license to manufacture and sell the 3DS embodying the '884 patented invention – would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by Inventor (as a prudent patentee) who was willing to grant a license.

Hypothetical Negotiation Bargaining Positions

Inventor Has the Better Hand

INVENTOR

- ▶ Technology is **fundamental**
- ▶ Technology was **important** to Gamers and consumers
- ▶ 3D camera was **“indispensable,” “important”** and **“compelling”**
- ▶ AR Games provided **“WOW” feature, “Revolutionary”**
- ▶ 3D depth slider **“Answers the Issue”**
- ▶ Gamers makes **substantial profits** on games
- ▶ Gamers had **25% fully loaded long term operating profit**, so plenty to share

GAMERS

- ▶ '884 patent is **valid and infringed**
- ▶ Coming back to Inventor for a **second time**
- ▶ **No acceptable design around**
- ▶ Inventor is in **business of licensing** patent

Inventor's Compensation – Reasonable Royalty

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Reasonable Royalty Comparison

Important
Considerations from
Inventor's Expert
Mr. Simms

▶ **Technology is important to Gamers and consumers**

- “WOW,” “Revolutionary,” “Indispensable,” “Important,” “Compelling”

▶ **No design around**

- “Important technology that Gamers hasn’t removed

▶ **Analyze Gamers in the same way as industry experts — consider hardware and game profits**