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A Review of 2009 Video Game Litigation and Selected Cases

*Kent D. Workman**

Gaming litigation in 2009 included a variety of legal disputes that were predictable in the industry. Numerous lawsuits were filed surrounding the infringement of patents, copyrights, and trademarks. In addition, there were licensing and contract disputes in the gaming industry, many of which centered on the use of intellectual property or the unlicensed use of a person's likeness. This article will provide a brief overview of gaming litigation from 2009, with a synopsis of selected cases.

I. PATENT INFRINGEMENT

Unsurprisingly, many patent infringement cases focused on tangible goods, such as gaming equipment and other patentable technology. The equipment at the center of the disputes ranged from controllers and other external gaming devices to internal hardware and software. In addition, there were infringement allegations for intangible intellectual property. Cases included proceedings brought by manufacturers against other manufacturers who had allegedly infringed upon the plaintiff's patents, as well as lawsuits by entities who purportedly patented the original design of something that was subsequently used by another party.

A. *Worlds.com, Inc. v. NCSoft Corp.*, No. 6:08cv508 (E.D. Tex. filed Dec. 24, 2008).

Worlds.com owns U.S. Patent No. 7,181,690, "System and Method for Enabling Users to Interact in a Virtual Space."¹ Worlds.com alleged that NCSoft, which produces several Massive Multiplayer Online Games ("MMOG"), infringed upon its patent by producing online virtual games.² This case is still pending, with dates set in 2010 for status conferences and the Markman hearing. This case may prove to be seminal, and Worlds.com CEO Thom Kidrin has publicly announced that if this suit is successful, Worlds.com will pursue suits against other industry-leading virtual-world game proprietors.³

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1. Complaint and Demand for Trial by Jury at 2, *Worlds.com, Inc. v. NCSoft Corp.*, No. 6:08cv508 (E.D. Tex. filed Dec. 24, 2008).
2. *Id.*
3. Eric Krangel, *WorldsU.com CEO: We're 'Absolutely' going to Sue Second Life and World of Warcraft*, THE BUSINESS INSIDER: SILICON ALLEY INSIDER, Mar.

B. *Lonestar Inventions, LP v. Advanced Micro Devices, Inc.*, No. 6:2009cv00017 (E.D. Tex. filed Jan. 8, 2009).

Lonestar holds U.S. Patent No. 5,208,725 for “High Capacitance Structure in a Semiconductor,” and Lonestar alleged that a chip manufactured by Advanced Micro Devices (“AMD”) infringed upon this patent.⁴ The chip in question is used in, among other things, the Nintendo Wii game console.⁵ Lonestar complained that AMD continued to make or sell the semiconductor devices despite being given notice of the alleged infringement.⁶ This infringement case was settled in July 2009 when AMD agreed to pay Lonestar an unspecified sum.⁷

C. *Harmonix v. Konami Digital Entm’t*, No. 1:2009cv10206 (D. Mass. filed Feb. 11, 2009).

Harmonix alleged that Konami, producers of the video game *Rock Revolution*, infringed on Harmonix’s U.S. Patent No. 7,459,624 for a “Game Controller Simulating a Musical Instrument.”⁸ Konami’s *Rock Revolution* requires the player to use a guitar-shaped controller made by Harmonix or another manufacturer in order to play the bass and guitar portions of Konami’s game.⁹ Harmonix sought a permanent injunction against Konami, in addition to compensatory damages and treble damages based on Konami’s allegedly willful infringement.¹⁰

11, 2009, <http://www.businessinsider.com/worldscom-ceo-were-absolutely-going-to-sue-second-life-and-world-of-warcraft-2009-3> (last visited May 25, 2010).

4. Complaint and Application for Permanent Injunction at 2, *Lonestar Inventions, LP v. Advanced Micro Devices, Inc.*, No. 6:2009cv00017 (E.D. Tex. filed Jan. 8, 2009).
5. *Id.*
6. *Id.* at 3.
7. *AMD settles Lonestar patent dispute*, DATAMONITOR WIRES, 2009 WLNR 13883439, July 21, 2009.
8. Complaint for Patent Infringement at 2, *Harmonix v. Konami Digital Entm’t*, No. 1:2009cv10206 (D. Mass. filed Feb. 11, 2009).
9. Eric Caoili, *Viacom, Harmonix Suing Konami over Rock Revolution*, GAMASUTRA, Feb. 16, 2009, http://www.gamasutra.com/view/news/22326/Viacom_Harmonix_Suing_Konami_Over_Rock_Revolution.php (last visited May 25, 2010).
10. Complaint for Patent Infringement at 3, *Harmonix v. Konami Digital Entm’t*, No. 1:2009cv10206 (D. Mass. filed Feb. 11, 2009).

D. *Wall Wireless, LLC v. Nintendo Co.*, No. 6:2009cv00064 (E.D. Tex. filed Feb. 13, 2009).

Wall Wireless sued Nintendo, as well as Sony and Nokia, for patent infringement. Wall Wireless owns U.S. Patent No. 6,640,086, “Method and Apparatus for Creating and Distributing Real-Time Interactive Media Content Through Wireless Communication Networks and the Internet.”¹¹ The plaintiff alleged that each defendant had actual notice of the patent as early as October 2008.¹² The plaintiff further alleged that handheld game devices and real-time online games made by defendants infringe upon the patent held by Wall Wireless.¹³ Wall Wireless requested a permanent injunction as well as monetary damages.¹⁴

E. *IQ Biometrix, Inc. v. Perfect World Entm’t*, No. 1:09cv03180 (N.D. Ill. filed May 27, 2009).

IQ Biometrix holds two patents, U.S. Patent Nos. 6,731,302 (‘302) and 7,289,647 (‘647), which both cover methods for creating facial imagery.¹⁵ IQ Biometrix alleged that its patents were infringed upon by defendants Perfect World and Wagware Systems and by defendants’ products.¹⁶ Wagware makes a computer game called *MakeFaces*, and this game allegedly infringed on the ‘647 patent.¹⁷ IQ Biometrix accused Perfect World of violating both the ‘302 and the ‘647 patents with its self-titled *Perfect World* game.¹⁸ The *Perfect World* game, a popular, fantasy-based Massive Multiplayer Online Role-Playing Game (“MMORPG”), allows players to customize the facial features of the avatar they use when playing the game, and the process used to customize the facial features is the core of the patent infringement dis-

11. Original Complaint at 5, *Wall Wireless, LLC v. Nintendo Co.*, No. 6:2009cv00064 (E.D. Tex. filed Feb. 13, 2009).

12. *Id.* at 5. .

13. *Id.* at 5, 6.

14. *Id.* at 7.

15. IQ Biometrix’s Complaint for Patent Infringement at 4, *IQ Biometrix, Inc. v. Perfect World Entm’t*, No. 1:09cv03180 (N.D. Ill. filed May 27, 2009).

16. *Id.* at 4, 5.

17. *Id.* at 5.

18. *Id.* at 4.

pute.¹⁹ This case was dismissed with prejudice on August 5, 2009, following a joint motion to dismiss.²⁰

F. *PalTalk Holdings, Inc. v. Sony Computer Entm't Am., Inc.*, No. 2:2009cv00274 (E.D. Tex. filed Sept. 14, 2009).

PalTalk brought a patent infringement suit against Sony, Turbine, and Activision Blizzard.²¹ PalTalk owns two patents, U.S. Patent Nos. 5,822,523 ('523) and 6,226,686 ('686); the patents relate to technology used for communication between groups of online gamers.²² The defendant manufacturers use data sharing technology in various MMOG games and gaming networks. PalTalk alleged that by using certain technology in their game consoles, game networks, and in some of the games that have been released, the defendants have infringed upon its patent.²³ Earlier in the year, PalTalk settled a similar suit it brought against Microsoft for an undisclosed sum.²⁴

G. *Bareis Technologies, LLC v. Ubisoft, Inc.*, No. 6:2009cv00514 (E.D. Tex. filed Nov. 10, 2009).

Bareis brought an action alleging patent infringement related to voice recognition technology against Sony, Electronic Arts, and Disney.²⁵ Bareis owns the patent at the center of the dispute, U.S. Patent No. 5,617,407, for "Optical Disk Having Speech Recognition Templates for Information Access," which covers automatic speech recognition technology.²⁶ Bareis accused the defendants of patent infringement in many of the defendant's video games.²⁷ The plaintiff's complaint specifically named several video games that the plaintiff believed infringed on its patent.²⁸ Bareis sought money

19. Patent Arcade, *New Case: IQ Biometrix, Inc. v. Perfect World Entertainment, Inc. et al.*, June 2, 2009, <http://www.patentarcade.com/2009/06/new-case-iq-biometrix-inc-v-perfect.html> (last visited May 25, 2010).

20. Patent Arcade, *Case Dismissed: IQ Biometrix v. Perfect World Entertainment*, Aug. 7, 2009, <http://www.patentarcade.com/2009/08/case-dismissed-iq-biometrix-v-perfect.html> (last visited May 25, 2010).

21. Complaint at 1, *PalTalk Holdings, Inc. v. Sony Computer Entm't Am., Inc.*, No. 2:2009cv00274 (E.D. Tex. filed Sept. 14, 2009).

22. *Id.* at 4–6.

23. *Id.* at 6–10.

24. *See* *PalTalk Holdings, Inc. v. Microsoft Corp.*, No. 2:2006cv00367, 2009 WL 3150208 (E.D. Tex. May 5, 2009).

25. Complaint at 1, 2, *Bareis Technologies, LLC v. Ubisoft, Inc.*, No. 6:2009cv00514 (E.D. Tex. filed Nov. 10, 2009).

26. *Id.* at 3.

27. *Id.*

28. *Id.*

damages but did not specifically request an injunction against the defendants.²⁹

II. COPYRIGHT AND TRADEMARK INFRINGEMENT

Litigation surrounding copyright and trademark infringement is nothing new to the gaming industry. However, there was an interesting trend in 2009 in these cases. Many alleged copyright and mark-infringement lawsuits filed this year occurred in the online realm. Some of the actions were based on violations that occurred online, while other cases were based on marks that were allegedly infringed in a virtual world. The virtual gaming community is watching closely to see how the courts handle infringement actions that are based on claims occurring in the virtual world.

A. *Tetris Holding, LLC v. Biosocia, Inc.*, No. 1:2009cv02310 (S.D.N.Y. filed Mar. 12, 2009).

Tetris Holding owns the intellectual property rights for the well-known video game *Tetris*, which is played by arranging various shaped groups of blocks as they cascade down the screen.³⁰ Defendant, Biosocia, produces a similar online game, called *Blockles*, and Tetris has alleged that *Blockles* infringes upon its intellectual property rights.³¹ Tetris sued for copyright infringement, as well as for trade dress infringement, because the overall appearance of *Blockles* is so similar to *Tetris*.³² Furthermore, Tetris claimed that the infringement was intentional, and that the defendant refused to remove the infringing game from its website after being contacted by Tetris.³³ Tetris filed a very similar suit in December, in the District of New Jersey, against Xio Interactive, Inc. for its *Mino* games, which are electronic puzzle games Xio developed for the iPhone and iPod Touch.³⁴

B. *TimeGate Studios, Inc. v. Paramount Digital Entm't*, No. 4:2009cv01011 (S.D. Tex. filed Apr. 5, 2009).

TimeGate is a video game developer whose largest project thus far is its forthcoming game *Section 8*. TimeGate has filed for multiple trademarks surrounding the *Section 8* project.³⁵ TimeGate and Paramount were initially en-

29. *Id.* at 4, 5.

30. Complaint at 1, 4–10, *Tetris Holding, LLC v. Biosocia, Inc.*, No. 1:2009cv02310 (S.D.N.Y. filed Mar. 12, 2009).

31. *Id.* at 2.

32. *Id.* at 2–3.

33. *Id.* at 17–18.

34. See *Tetris Holding, LLC v. Xio Interactive, Inc.*, No. 3:2009cv06115 (D. N.J. filed Dec. 2, 2009).

35. Original Complaint at 2–5, *TimeGate Studios, Inc. v. Paramount Digital Entm't*, No. 4:2009cv01011 (S.D. Tex. filed Apr. 5, 2009).

gaged in discussions regarding TimeGate's *Section 8* as well as a possible joint venture.³⁶ However, Paramount abruptly ceased communications with TimeGate. Shortly thereafter, Paramount announced its plans to team with a foreign company to develop its own interactive, online game, also titled *Section 8*.³⁷ TimeGate brought this action, claiming that Paramount had infringed on its trademark of *Section 8* game title.³⁸ Although this case is still pending, TimeGate settled a similar lawsuit about one year prior to this one, which also centered on other companies using TimeGate's trademarked game title for a proposed television series.³⁹

C. *Taser Int'l, Inc. v. Linden Research, Inc.*, No. 2:2009cv00811 (D. Ariz. filed Apr. 17, 2009).

Taser manufactures non-lethal weapons, commonly referred to as "stun guns," and Linden Research is the parent company of *Second Life*, an online virtual world.⁴⁰ Taser brought this trademark infringement suit, alleging that virtual weapons, which are copies of the real Taser weapons, infringe on its trademarks.⁴¹ The allegedly infringing virtual products are bought and used in the virtual world of *Second Life* and are advertised and sold in the *Second Life* virtual marketplace.⁴² In addition to Linden, Taser accused several co-defendants of infringing on its trademarks by engaging in or facilitating the advertisement, sale, and use of the products in *Second Life*.⁴³ The name "Taser" is being used more frequently to refer to the Taser product as well as to the generic product category of "stun guns," much like "Kleenex" is often used to refer to facial tissues. Taser may protect its trademark more aggressively since the Taser name has entered general usage.⁴⁴

D. *Barnes v. Orange County Choppers, Inc.*, No. 7:2009cv04914 (S.D.N.Y. filed May 26, 2009).

Justin Barnes is a graphic designer who creates custom designs for various products including motorcycles, and some of his designs were featured

36. *Id.* at 5–6.

37. *Id.* at 6.

38. *Id.* at 7–8.

39. *See* TimeGate Studios, Inc. v. Am. Broad. Co., No. 4:2008cv00895 (S.D. Tex. filed Mar. 19, 2008).

40. Complaint at 3–7, *Taser Int'l, Inc. v. Linden Research, Inc.*, No. 2:2009cv00811 (D. Ariz. filed Apr. 17, 2009).

41. *Id.* at 3, 5.

42. *Id.* at 4–5.

43. *Id.*

44. Virtual Worlds News, *Shocking: Taser Sues Linden*, (Apr. 20, 2009), <http://www.virtualworldsnews.com/2009/04/shockingly-bad-call-taser-sues-linden-.html> (last visited May 25, 2010).

on the television show *American Chopper*.⁴⁵ The show chronicles the process of building a motorcycle by the Orange County Choppers company ("OCC"), and it airs on the Discovery Channel.⁴⁶ Barnes filed this lawsuit for copyright infringement, alleging that Discovery Channel and OCC licensed his artwork to other companies without his authorization or providing compensation.⁴⁷ One of those licensee companies is Activision Publishing, Inc., which is a codefendant in the case. Barnes alleged that Activision published and sold video games containing his copyrighted work.⁴⁸ Barnes registered his designs with the U.S. Copyright Office, under registration number VAu 975-386, dated February 5, 2009.⁴⁹

E. *Nintendo of America, Inc. v. Chan*, No. 2:2009cv04203 (C.D. Cal. filed June 12, 2009).

Nintendo brought this action for copyright and trademark infringement against the defendant, who operates various websites and does business as Inspire Technologies, Inspiretech Electronics.⁵⁰ Nintendo claimed that the defendant sold "Game Copiers," devices that were designed to defeat or circumvent the security measures that were built into the Nintendo DS, a handheld gaming system.⁵¹ Nintendo alleged that the device sold by defendant allowed consumers to play copied or pirated games on the DS.⁵² The device also allowed for the use of a portable memory device that could store hundreds of pirated games, and the user could then play the pirated games on a Nintendo DS.⁵³ If a copied game was played, Nintendo's trademarked logo still appeared on the screen, which Nintendo alleged may potentially confuse users and lead them to believe that they are playing an authorized version of a game and not an illegitimate copy.⁵⁴ In addition to compensatory damages, Nintendo also requested extensive measures of injunctive relief.⁵⁵ On July 21, 2009, Nintendo was granted a preliminary injunction enjoining the defen-

45. Complaint and Jury Demand at 2-3, *Barnes v. Orange County Choppers, Inc.*, No. 7:2009cv04914 (S.D.N.Y. filed May 26, 2009).

46. *Id.* at 3.

47. *Id.*

48. *Id.* at 4-5.

49. *Id.* at 3.

50. Complaint for Injunctive Relief and Damages at 2-3, *Nintendo of America, Inc. v. Chan*, No. 2:2009cv04203 (C.D. Cal. filed June 12, 2009).

51. *Id.* at 7.

52. *Id.*

53. *Id.* at 8.

54. *Id.*

55. *Id.* at 13-17.

dant from importing, manufacturing, or selling the Game Copiers while the trial is pending.⁵⁶

F. *Eros, LLC v. Linden Research, Inc.*, No. 4:2009cv04269 (N.D. Cal. filed Sept. 9, 2009).

This action was brought against Linden for alleged trademark and copyright infringement, as well as unfair competition and tortious interference, all of which, similar to the *Taser* suit, occurred in the virtual world.⁵⁷ Eros is a Florida LLC that sells adult-oriented virtual products in the *Second Life* virtual world that is operated by Linden.⁵⁸ Eros asserted that its virtual products are protected by real-world copyrights and trademarks.⁵⁹ Eros alleged that Linden directly and indirectly violated the intellectual property rights of Eros as well as other proprietors operating within *Second Life* by using the protected marks of the proprietors to sell infringing products within *Second Life* and by reproducing and displaying copyrighted works within *Second Life*.⁶⁰

G. The Zynga Game Network cases

Zynga's legal department stayed busy in 2009, filing over thirty lawsuits in the Northern District of California last year, concerning trademark or copyright infringement. Zynga is a developer of online social games played on social websites such as Facebook and MySpace.⁶¹ The alleged infringements occurred in different forms; however, many of the claims were very similar, with Zynga asserting that the defendants infringed on its trademark by using the Zynga mark without authorization in order to sell virtual poker chips or other virtual currency used in online gaming.⁶² In addition, Zynga alleged trademark infringement by websites that incorporated the name "Zynga" into the website address.⁶³ In those cases, many of the defendants were listed as "John Does" because the website operators registered the domain names using privacy protection services, so their identities could not be ascertained.⁶⁴ In addition to those claims, Zynga brought a claim of trademark infringement

56. See *Nintendo of America, Inc. v. Chan*, No. 2:2009cv04203, 2009 WL 2190186 (C.D. Cal. July 21, 2009).

57. Complaint at 2-3, *Eros, LLC v. Linden Research, Inc.*, No. 4:2009cv04269 (N.D. Cal. filed Sept. 9, 2009).

58. *Id.* at 3.

59. *Id.* at 2.

60. *Id.*

61. Complaint at 2, *Zynga Game Network, Inc. v. Does 1-50*, No. 3:2009cv02744 (N.D. Cal. filed June 19, 2009).

62. *Id.* at 3-4.

63. *Id.* at 4.

64. *Id.*

against another social gaming company, Playdom, claiming that its mark was diluted and infringed upon by Playdom's online advertisements that were promoting Playdom's game but using Zynga's trademark.⁶⁵

Incidentally, Zynga was on the receiving end of lawsuits as well. Zynga was sued for copyright infringement by another video game creator who alleged that Zynga's game *Mafia Wars*, infringed on the copyrights of the plaintiffs' previously released game, *Mob Wars*.⁶⁶ In addition, a lawsuit was filed, and later granted class-action status, by consumers who claimed that Zynga practiced deceptive advertising, unfair competition, and profited from unjust enrichment with regards to the advertisements that appeared on the webpage when users played Zynga's online games.⁶⁷

III. LICENSING AND CONTRACT DISPUTES

There were multiple lawsuits filed that were based on licensing disputes and contract claims. The litigation in the gaming sector tended to focus on the use of people's likenesses as a basis for the characters in various video games. The claims were typically based on using likenesses or intellectual property without proper licensing, or situations where the use, in some form or to some extent, had been previously agreed upon, but there was an alleged breach of the contract.

A. *Take-Two Interactive Software, Inc. v. Apogee Software, Ltd.*, No. 1:09cv05054 (S.D.N.Y. filed May 11, 2009).

This lawsuit is the culmination of a long saga between two video game software developers. In 2000, Take-Two purchased publishing and distribution rights to *Duke Nukem Forever*, which had been under development by Apogee since 1997.⁶⁸ The two developers reached another agreement in 2007, and Take-Two allegedly advanced Apogee \$2.5 million towards development of the game; however, Apogee later asserted that part of that deal extinguished Take-Two's rights to publish *Duke Nukem Forever*.⁶⁹ Earlier in 2009, Take-Two approached Apogee to develop a version of *Duke Nukem Forever* for the Xbox 360, but the two companies were unable to reach an

65. Complaint at 2-4, *Zynga Game Network, Inc. v. Playdom, Inc.*, No. 3:2009cv02748 (N.D. Cal. filed June 19, 2009).

66. Complaint at 2, *Psycho Monkey, LLC. v. Zynga Game Network, Inc.*, No. 4:2009cv00603 (N.D. Cal. filed Feb. 10, 2009).

67. Complaint at 8-9, *Swift v. Zynga Game Network, Inc.*, No. 4:2009cv05443 (N.D. Cal. filed Nov. 17, 2009).

68. Patent Arcade, *New Case: Take-Two Interactive v. Apogee Software*, (Aug. 6, 2009), <http://www.patentarcade.com/2009/08/new-case-take-two-interactive-v-apogee.html> (last visited May 25, 2010).

69. Answer and Counterclaim at 3, *Take-Two Interactive Software, Inc. v. Apogee Software, Ltd.*, No. 1:09cv05054 (S.D.N.Y. filed June 19, 2009).

agreement about funding for the project.⁷⁰ On May 6, 2009, without the consent of Take-Two, Apogee laid off its employees, stopped development of the game, and closed its studio.⁷¹ Take-Two filed this suit for Apogee's alleged breach of contract based on the extended delays and its eventual failure to produce the game.⁷² Take-Two also wanted to recover the advance that it paid Apogee in 2007.⁷³ Apogee responded with a counterclaim, alleging that Take-Two breached its contract, pursuant to the 2007 agreement, to hire a third party to develop another new *Duke Nukem* game.⁷⁴ This case was originally filed in the Supreme Court of New York, but with the defendant's counterclaim, it was removed to the U.S. District Court for the Southern District of New York.

B. *Turbine, Inc. v. Atari, Inc.*, No. 09602639 (Sup. Ct. of N.Y. filed Aug. 24, 2009).

Turbine is a creator of MMOG, and Atari is a publisher of gaming software that has an exclusive license to the *Dungeons & Dragons* intellectual properties.⁷⁵ Under a license from Atari, Turbine developed the MMOG *Dungeons & Dragons Online: Stormreach*.⁷⁶ However, Turbine alleged that after the game was released, Atari did not fulfill its duties pursuant to the agreement because Atari did not market the game or provide public-relations support when the game was released, which forced Turbine to step in and expend its own resources to carry out the publishing and distribution obligations.⁷⁷ Turbine asserted that Atari's breach created millions of dollars in lost revenue, especially in the European market, where Atari had insisted on retaining distribution rights.⁷⁸

70. *Id.* at 8.

71. Patent Arcade, *New Case: Take-Two Interactive v. Apogee Software*, (Aug. 6, 2009), <http://www.patentarcade.com/2009/08/new-case-take-two-interactive-v-apogee.html> (last visited May 25, 2010).

72. *Id.*

73. *Id.*

74. *Id.*

75. Complaint at 6-7, *Turbine, Inc. v. Atari, Inc.*, No. 09602639 (Sup. Ct. of N.Y. filed Aug. 24, 2009).

76. *Id.* at 2.

77. *Id.* at 8-9.

78. *Id.* at 10.

C. *Bethesda Softworks LLC v. Interplay Entm't Corp.*, No. 8:09cv02357 (D. Md. filed Sept. 8, 2009).

Bethesda and Interplay are both video game developers engaged in a licensing dispute.⁷⁹ Bethesda accused Interplay of breach of contract and trademark infringement because Interplay allegedly did not adhere to a trademark license agreement it had with Bethesda.⁸⁰ Bethesda bought the *Fallout* Mark and the intellectual property for the game *Fallout* from Interplay in 2007.⁸¹ Bethesda subsequently licensed Interplay to make a *Fallout*-brand MMORPG, and that agreement required Interplay to start full-time development of the game within two years of the agreement and secure financing of at least \$30 million.⁸² Bethesda was unsatisfied with Interplay's efforts and revoked the licensing rights to the game in April 2009.⁸³ Bethesda also accused Interplay of repackaging older versions of the *Fallout* game and selling those games through third parties without Bethesda's permission—acts that Bethesda claims misled consumers and violated the license agreement.⁸⁴ Interplay answered with counterclaims, alleging that Bethesda breached the contract and did not abide by the trademark license agreement.⁸⁵

D. *No Doubt v. Activision Publ'g, Inc.*, No. 2:09cv08872 (C.D. Cal. filed Dec. 3, 2009).

The band No Doubt brought this action against Activision, alleging breach of contract against the publisher of the *Band Hero* video game.⁸⁶ The lawsuit was originally filed by No Doubt in Los Angeles Superior Court on November 4, 2009, but Activision removed the case to federal court and filed a counterclaim against No Doubt for breach of contract and unjust enrichment.⁸⁷ The dispute concerns the use of the band members' likeness in the

79. Complaint for Declaratory Judgment, Preliminary Injunction and Other Relief at 2, 4, *Bethesda Softworks LLC v. Interplay Entm't Corp.*, No. 8:09cv02357 (D. Md. filed Sept. 8, 2009).

80. *Id.* at 7-8, 10-11.

81. *Id.* at 6.

82. *Id.* at 8.

83. *Id.* at 9-11.

84. *Id.* at 11-13.

85. Answer and Counterclaims of Defendant/Counter-Plaintiff, *Interplay Entm't Corp.* at 28-31, *Bethesda Softworks LLC v. Interplay Entm't Corp.*, No. 8:09cv02357 (D. Md. filed Oct. 16, 2009).

86. Complaint at 1, *No Doubt v. Activision Publ'g, Inc.*, No. BC425268 (Cal. Super. Ct.—L.A. County filed Nov. 4, 2009).

87. *See id.*; *see also* Notice of Removal at 1, 8, *No Doubt v. Activision Publ'g, Inc.*, No. 2:09cv08872 (C.D. Cal. filed Dec. 3, 2009).

video game.⁸⁸ The two parties entered into a professional services and character license agreement on May 21, 2009, but No Doubt alleged that the video game exceeded the parameters in the agreement.⁸⁹ No Doubt asserted that it agreed to the use of its members' likenesses performing three of the band's songs that can be played in the video game but that the game actually allowed for the likenesses to be used in solo performances and to play cover songs by other bands.⁹⁰ In its counterclaim, Activision alleged that No Doubt did not fulfill the terms of the contract by performing marketing and promotional services and requested damages for No Doubt's alleged breach.⁹¹

E. *TimeGate Studios, Inc. v. Southpeak Interactive Corp.*, No. 4:09cv03958 (S.D. Tex. filed Dec. 10, 2009).

TimeGate, a game developer, brought this suit against Southpeak, a game publisher, for breach of contract relating to the publishing agreement for TimeGate's *Section 8* game.⁹² Gamecock Media Group was supposed to originally publish *Section 8*, but Southpeak acquired Gamecock in 2008 and subsequently assumed publishing responsibilities.⁹³ TimeGate claimed that after publishing the game, Southpeak entered into unauthorized licensing agreements with a third party, withheld royalty payments, failed to provide an accurate and sufficient sales report, and violated its duty to act in good faith and fair dealing.⁹⁴ Southpeak has apparently taken the stance that the publishing agreement was between TimeGate and Gamecock, and therefore, Southpeak is not bound to all of the terms of the original contract.⁹⁵

F. *Hasbro, Inc. v. Infogrames Entm't, S.A.*, No. 1:2009cv00610 (D. R.I. filed Dec. 16, 2009).

Hasbro owns the intellectual property rights for the game *Dungeons & Dragons*, and since 2000, it has licensed those rights to Infogrames, also known as Atari, S.A.⁹⁶ Under that license, Atari had "exclusive rights to make, market, distribute, provide customer support, and sublicense (with

88. Complaint at 1, *No Doubt*, No. BC425268.

89. *Id.* at 3.

90. *Id.* at 3-4.

91. Activision's Answer and Counterclaims; and Demand for Jury Trial at 14, *No Doubt v. Activision Publ'g, Inc.*, No. 2:09cv08872 (C.D. Cal. filed Dec. 3, 2009).

92. Original Complaint at 7-8, *TimeGate Studios, Inc. v. Southpeak Interactive Corp.*, No. 4:09cv03958 (S.D. Tex. filed Dec. 10, 2009).

93. *Id.* at 3.

94. *Id.* at 4-8.

95. *Id.* at 6.

96. Complaint at 3-4, *Hasbro, Inc. v. Infogrames Entm't, S.A.*, No. 1:2009cv00610 (D. R.I. filed Dec. 16, 2009).

Hasbro's approval) digital game rights" based on *Dungeons & Dragons* and other Hasbro properties.⁹⁷ In 2005, however, a new agreement between the parties limited Atari's exclusive license to only *Dungeons & Dragons*.⁹⁸ Hasbro brought this action for breach of license agreement, alleging that Atari unlawfully sublicensed with one of Hasbro's largest competitors when Atari sold European distribution rights to Namco Bandai.⁹⁹ In addition to seeking monetary damages and an injunction against Atari, Hasbro is requesting declaratory relief to terminate the license agreement with Atari.¹⁰⁰

G. The Electronic Arts and NCAA Cases

There were multiple lawsuits filed against Electronic Arts, Inc. ("EA"), some of those including the National Collegiate Athletic Association ("NCAA") and Collegiate Licensing Company ("CLC"), the licensing arm of the NCAA, as codefendants. The suits were primarily based on licensing disputes and alleged violations of the right of publicity regarding characters in certain EA sports games. The cases involving the NCAA were brought by former college athletes. In order to be eligible to compete, current athletes must sign a waiver that allows the NCAA to use the players' likenesses for promotional or other purposes.¹⁰¹ The current licensing rights allow the NCAA to maintain its license of the athletes, even after the athletes no longer play sports within the NCAA; the current line of cases apparently seeks to change the perpetual licensing rights that the NCAA has over collegiate athletes.¹⁰²

1. *Keller v. Electronic Arts, Inc.*, No. 4:2009cv01967 (N.D. Cal. filed May 5, 2009).

Samuel Keller is a former quarterback who played football for Arizona State and the University of Nebraska.¹⁰³ Keller brought this lawsuit, which was granted class-action status, against EA as well as the NCAA and CLC based on the unlicensed use of players' likenesses in *NCAA Football* and *NCAA Basketball*, two games produced by EA.¹⁰⁴ Keller alleges that EA

97. *Id.*

98. *Id.*

99. *Id.* at 6.

100. *Id.* at 28-29.

101. Michael McCann, *NCAA Faces Unspecified Damages, Changes in Latest Anti-trust Case*, SI.COM, (July 21, 2009), available at http://sportsillustrated.cnn.com/2009/writers/michael_mccann/07/21/ncaa/index.html (last visited May 25, 2010).

102. *Id.*

103. Class Action Complaint at 1, *Keller v. Elec. Arts, Inc.*, No. 4:2009cv01967 (N.D. Cal. filed May 5, 2009).

104. *Id.*

used his and other players' likenesses to increase its sales and profits.¹⁰⁵ While the players are not specifically named in the games, almost every player in the games exactly matches the real-life athlete counterpart by way of jersey numbers, statistics, hometown, and physical description.¹⁰⁶ Keller further claimed that CLC and the NCAA, which expressly forbids the commercial use or licensing of any players' "names, picture, or likeness," worked in conjunction with EA to exploit the players' likenesses without justly compensating the players.¹⁰⁷

2. *O'Bannon, Jr. v. Nat'l Collegiate Athletic Ass'n*, No. 3:2009cv03329 (N.D. Cal. filed July 21, 2009).

This lawsuit was originally brought by Ed O'Bannon, a former UCLA basketball player, and the suit was later given class-action status.¹⁰⁸ O'Bannon claimed that the NCAA and CLC deprived former players of compensation for the use of their likenesses in various consumer products, including video games.¹⁰⁹ The class of this suit is strictly limited to former players, and Electronic Arts, Inc. (EA) is named as a non-defendant co-conspirator based on its licensing agreements with NCAA for the use of the likenesses of the members of the plaintiff class.¹¹⁰ While the video game publishers are not named as defendants, this case may have a significant impact on the gaming industry due to the licensing issues that it raises in sports-based video games licensed by the NCAA and CLC.¹¹¹

3. *Thompson v. Electronic Arts, Inc.*, No.1:2009cv01842 (D. Ohio filed Aug. 6, 2009).

John "Big Dawg" Thompson is an avid fan of the Cleveland Browns, indicated by his induction into the Pro Football Hall of Fame's Hall of Fans.¹¹² Thompson is such an icon at the Browns' stadium that a likeness of Thompson was allegedly included in the game *Madden NFL 09* published by EA.¹¹³ Thompson consistently sits in the same section of the stadium, and wears an outfit, consisting of a mask and a jersey with the number ninety-eight; the character in the video game is located in the same section and has

105. *Id.*

106. *Id.* at 4.

107. *Id.* at 10.

108. Class Action Complaint at 10, *O'Bannon, Jr. v. Nat'l Collegiate Athletic Ass'n*, No. 3:2009cv03329 (N.D. Cal. filed July 21, 2009).

109. *Id.* at 4.

110. *Id.* at 14.

111. *See* McCann, *supra* note 101.

112. Complaint at 2-3, *Thompson v. Elec. Arts, Inc.*, No.1:2009cv01842 (D. Ohio filed Aug. 6, 2009).

113. *Id.* at 5.

very similar apparel, including the mask and a jersey, albeit with the number ninety-two instead of ninety-eight.¹¹⁴ Thompson requested \$25,000 in damages and that EA be enjoined from using his character without authorization.¹¹⁵ This suit was originally filed in July 2009, in the Cuyahoga County Court of Common Pleas (Ohio), but it was removed to the federal district court on August 6, 2009.

4. *Fighters, Inc. v. Electronic Arts, Inc.*, No. 2:2009cv06389 (C.D. Cal. filed Sept. 2, 2009).

Fighters, Inc. is a licensing company that represents professional boxers in group licensing agreements.¹¹⁶ Fighters, Inc. asserts that EA used the likeness of three boxers in its game *Fight Night Round 4*, so EA knowingly and willfully violated the rights of Fighters, Inc. under the licensing agreement between the athletes and Fighters, Inc.¹¹⁷ Fighters, Inc. also accused EA of tortious interference by inducing boxers to breach their contracts with Fighters, Inc. by separately licensing their images to EA.¹¹⁸ Plaintiff further claims that EA, by its actions, violated the boxers' right of publicity.¹¹⁹ Fighters asked for damages of at least \$25 million plus attorney's fees.¹²⁰

5. *Bishop v. Electronic Arts, Inc.*, No. 4:09cv04128 (N.D. Cal. filed Sept. 4, 2009).

In a lawsuit similar to *Keller*, that was also subsequently granted class-action status, former University of North Carolina basketball player Bryon Bishop sued EA along with the NCAA and CLC for using players' likenesses without their consent to increase sales and profits.¹²¹ In the suit, Bishop asserted that EA used the players' likenesses by replicating pertinent personal information, statistics, physical descriptions, and on-screen appearance.¹²² Bishop also alleged that the NCAA and CLC breached their contractual duties of good faith and fair dealing by allowing EA to use the likenesses of the college athletes.¹²³ The plaintiff requested, *inter alia*, damages, disgorge-

114. *Id.* at 3, 5-6.

115. *Id.* at 8.

116. Complaint at 3, *Fighters, Inc. v. Elec. Arts, Inc.*, No. 2:2009cv06389 (C.D. Cal. filed Sept. 2, 2009).

117. *Id.* at 5-6.

118. *Id.* at 8-9.

119. *Id.* at 10.

120. *Id.* at 11, 12.

121. Class Action Complaint at 1-2, *Bishop v. Elec. Arts, Inc.*, No. 4:09cv04128 (N.D. Cal. filed Sept. 4, 2009).

122. *Id.* at 6-8.

123. *Id.* at 16-17.

ment of profits earned by the defendants, enjoinder of the defendants from the future use of class members' likenesses, and that any contractual provisions limiting the rights of class members are declared null, void, and/or unenforceable.¹²⁴

6. *Dillinger, LLC v. Electronic Arts, Inc.*, No. 1:09cv01236 (S.D. Ind. filed Oct. 1, 2009).

This dispute turns on the use of the name "Dillinger" in EA's *Godfather* games.¹²⁵ Dillinger, which claims to own the rights and trademarks related to the names and nicknames of the outlaw John Dillinger, brought this action for infringement on its trademark and violation of its right of publicity.¹²⁶ EA incorporates several weapon upgrades in its *Godfather* games, including different "Dillinger" models of guns.¹²⁷ Dillinger asserted that EA did not have consent or authorization to use the Dillinger personality or trademarks.¹²⁸ In an effort to acquire formal permission to use the name, EA made the first legal move by filing a suit in the Northern District of California seeking declaratory relief after Dillinger allegedly threatened to take legal action unless EA agreed to pay a substantial sum for using the name.¹²⁹

7. *Hart v. Electronic Arts, Inc.*, No. 3:09cv05990 (D.N.J. filed Nov. 24, 2009).

In another suit similar to *Keller* and *Bishop*, two former college athletes sued EA, the NCAA, and CLC for using their likenesses in a video game.¹³⁰ Ryan Hart, a former quarterback for Rutgers University, and Troy Taylor, a former quarterback for the University of California, Berkeley, originally brought this suit in New Jersey Superior Court, but it was removed to federal district court.¹³¹ The plaintiffs claimed that they did not authorize their likenesses to be used for the video game.¹³² Based on such unauthorized use, the plaintiffs alleged that the defendants violated their right of publicity and that

124. *Id.* at 18.

125. Complaint for Damages and Injunctive Relief at 1, *Dillinger, LLC v. Elec. Arts, Inc.*, No. 1:09cv01236 (S.D. Ind. filed Oct. 1, 2009).

126. *Id.* at 3-4.

127. *Id.* at 4-7.

128. *Id.* at 8.

129. Complaint for Declaratory Relief at 1, 4, *Elec. Arts, Inc. v. Dillinger, LLC*, No. 3:09cv03965 (N.D. Cal. filed Aug. 29, 2009).

130. Complaint at 2, *Hart v. Elec. Arts, Inc.*, No. 3:09CV05990 (D.N.J. filed Nov. 24, 2009).

131. *Id.* at 2-3.

132. *Id.* at 3.

the defendants were unjustly enriched because they commercially profited from the use of their likenesses.¹³³

IV. VENUE ISSUES

Many cases in 2009 were filed in the jurisdiction where one of the parties maintained its principle place of business. This explains the proliferation of cases filed in certain jurisdictions, such as the Northern District of California, the jurisdiction containing Silicon Valley, where many high-tech companies in the gaming industry are located. There were also cases that were strategically filed in certain jurisdictions that are perceived to be more favorable for certain types of cases. The Eastern District of Texas has a reputation for being a plaintiff-friendly venue, especially in patent disputes.¹³⁴ James Gatto, an intellectual property attorney, in discussing NCsoft's position in the *Worlds.com* case, explained Texas' reputation: "Being a foreign defendant in Texas is not a pleasant thing . . . The juries are, many would say, biased towards American plaintiffs and have a propensity to offer high damages. Some defendants might view them as an unfriendly jury and it might make the defendant more likely to settle."¹³⁵

However, late in 2008, two appellate decisions were issued that may affect how the courts treat motions to transfer venue, especially for cases that are filed in the "magnet jurisdictions"—jurisdictions that attract plaintiffs for various reasons.¹³⁶ The two cases were *In re Volkswagen of America Inc.*,¹³⁷ a Fifth Circuit case, and *In re TS Tech USA Corp.*,¹³⁸ a Federal Circuit case. The new standard applied by the courts in these decisions states that a case should be transferred if the defendant can show "good cause" and if the proposed forum is "clearly more convenient."¹³⁹ The decisions reached this year were closely watched to see what impact those cases may have had on motions to transfer venue, and the interested parties will likely continue to moni-

133. *Id.* at 2-3.

134. Eric Krangel, *How to Win a Patent Case: Sue Foreigners in Xenophobic, Troll-Friendly East Texas*, THE BUSINESS INSIDER: SILICON VALLEY INSIDER, (Dec. 30, 2008), <http://www.businessinsider.com/2008/12/how-to-win-a-patent-case-sue-foreigners-in-xenophobic-troll-friendly-east-texas> (last visited May 25, 2010).

135. Virtual Worlds News, *Worlds.com v. NCsoft Update*, (Dec. 29, 2008), <http://www.virtualworldsnews.com/2008/12/worldscom-v-ncsoft-update.html> (last visited May 25, 2010).

136. See David Bassett & Tristan Snell, *The End of 'Magnet' Jurisdictions?* NEW YORK LAW JOURNAL, (Feb. 17, 2009), <http://www.law.com/jsp/nylj/PubArticleFriendlyNY.jsp?hubtype=&id=1202428198608> (last visited May 25, 2010).

137. *In re Volkswagen of America Inc.*, 545 F.3d 304 (5th Cir. 2008).

138. *In re TS Tech USA Corp.*, 551 F.3d 1315 (Fed. Cir. 2008).

139. Bassett & Snell, *supra* note 136.

tor the rulings of the district courts to see if motions to transfer are granted more liberally than they have been in the past.

A. *Worlds.com, Inc. v. NCSoft Corp.*, No. 6:08cv508 (E.D. Tex. filed Dec. 24, 2008).

Worlds.com is incorporated in Massachusetts, and NCSoft is a South Korean game publisher with a place of business in Austin, Texas.¹⁴⁰ This case was originally filed in the Eastern District of Texas, but on April 14, 2009, the judge signed an order transferring venue to the Northern District of California.¹⁴¹ Worlds.com did not oppose NCSoft's motion to transfer venue, so it is not clear if the prior rulings from *Volkswagen* and *TS Tech* actually influenced the court's decision to grant the motion.

B. *In re Nintendo Co.*, 589 F.3d 1194 (Fed. Cir. 2009).

Motiva brought this action and claimed that Nintendo's Wii remote control infringed upon its U.S. Patent No. 7,292,151, relating to a system that measures human movement.¹⁴² Motiva originally filed this lawsuit in the Eastern District of Texas, and the judge in the case denied Nintendo's motion to transfer venue.¹⁴³ Nintendo petitioned for a writ of mandamus, and in this case, the Federal Circuit was affirmatively influenced by the rulings from late 2008.¹⁴⁴ In its order granting Nintendo's petition, the court cites *Volkswagen* and its progeny, including *TS Tech* as well as two subsequent decisions, *In re Genetech, Inc.*¹⁴⁵ and *In re Hoffman-La Roche, Inc.*¹⁴⁶ The court relied on that line of cases to support its holding that the district court clearly abused its discretion and granted Nintendo's request for transfer of venue to the Western District of Washington.¹⁴⁷

140. Complaint and Demand for Trial by Jury at 1, *Worlds.com, Inc. v. NCSoft Corp.*, No. 6:08cv508 (E.D. Tex. filed Dec. 24, 2008).

141. Order Transferring Case, *Worlds.com, Inc. v. NCSoft Corp.*, No. 6:08cv508 (E.D. Tex. filed Dec. 24, 2008).

142. *In re Nintendo Co.*, 589 F.3d 1194, 1196 (Fed. Cir. 2009).

143. *Id.* at 1197.

144. *Id.* at 1200.

145. *In re Genetech, Inc.*, 566 F.3d 1338 (Fed. Cir. 2009).

146. *In re Hoffman-La Roche, Inc.*, 587 F.3d 1333 (Fed. Cir. 2009).

147. *Nintendo*, 589 F.3d at 1200.

V. OTHER NOTABLE CASES

A. *Guardian Media Technologies, Ltd. v. Coby Elec. Corp.*, No. cv08-08439, 2009 WL 1615981 (C.D. Cal. June 8, 2009).

This lawsuit was filed on December 23, 2008, against a total of thirty-eight defendants, including Nintendo of America, Inc.¹⁴⁸ Guardian owned two patents, U.S. Patent Nos. 4,930,158 ('158) for "Selective Video Playing System" and 4,930,160 ('160) for "Automatic Censorship of Video Programs."¹⁴⁹ Guardian alleged that the various defendants infringed on its patents for parental control technology.¹⁵⁰ Guardian noted that its patents were expired, but it claimed that the defendants violated the patents prior to the expiration.¹⁵¹ Guardian accused Nintendo of infringing only on the '158 patent.¹⁵² Nintendo moved for summary judgment of non-infringement, which was granted on June 8, 2009.¹⁵³

B. *Datel Holdings, Ltd. v. Microsoft Corp.*, No. 3: 09cv05535 (N.D. Cal. filed Nov. 20, 2009).

Datel, a company based in the United Kingdom, brought an antitrust lawsuit against Microsoft based on Microsoft's update of its Xbox 360.¹⁵⁴ Datel manufactures aftermarket products for the Xbox 360, including a two gigabyte memory card that sells for approximately \$39.99.¹⁵⁵ The only other supplier of memory cards for the Xbox 360 is Microsoft, whose 512 kilobyte sells for approximately the same price.¹⁵⁶ Datel alleged that Microsoft altered its video game systems with a mandatory software update so the systems would not accept nor function with any aftermarket memory cards, including Datel's.¹⁵⁷ Microsoft first claimed that the non-functionality of the systems with Datel products was an unintentional side effect of the update, but Microsoft later admitted in an interview with a third party that the post-

148. See Complaint at 1-8, *Guardian Media Technologies, Ltd. v. Coby Elec. Corp.*, No. cv08-08439 (C.D. Cal. filed Dec. 22, 2008).

149. *Id.* at 9.

150. *Id.* at 9-10.

151. *Id.* at 10.

152. *Id.*

153. See *Guardian Media Technologies, Ltd. v. Coby Elec. Corp.*, No. cv08-08439, 2009 WL 1615981 (C.D. Cal. June 8, 2009).

154. Complaint at 1-2, *Datel Holdings, Ltd. v. Microsoft Corp.*, No. 3: 09cv05535 (N.D. Cal. filed Nov. 20, 2009).

155. *Id.* at 1.

156. *Id.*

157. *Id.*

update incompatibility was done intentionally.¹⁵⁸ Datel requested damages and attorneys' fees as well as an injunction preventing Microsoft from "disabling or erecting technological barriers to Datel accessories" or other aftermarket products.¹⁵⁹

C. *Puzo v. Paramount Pictures Corp.*, No. BC392889 (L.A. County Super. Ct. filed June 18, 2008).

Anthony Puzo brought this suit as executor of the estate of Mario Puzo, who authored the novels and screenplays for *The Godfather* trilogy.¹⁶⁰ There was an agreement reached in 1992 between Puzo and Paramount that granted Puzo a share of royalties derived from any audio-visual products based on the movie.¹⁶¹ The basis of this lawsuit was Paramount's licensing the use of the voices and likenesses from *The Godfather* movies in various mediums, including video games, without compensating the Puzo estate.¹⁶² The original suit requested one million dollars in damages, and although the suit was filed in 2008, the parties reached an out of court settlement in early February 2009.¹⁶³

D. *Activision Publ'g, Inc. v. Gibson Guitar Corp.*, No. 2:2008cv01653 (C.D. Cal. Apr.17, 2009).

Activision publishes the popular video game *Guitar Hero*, where players use a guitar-shaped controller to simulate a musical performance, and Gibson Guitars manufactures real guitars.¹⁶⁴ Activision brought this suit seeking declaratory relief after Gibson sent Activision a letter that accused the video game company of patent infringement.¹⁶⁵ The patent in question, belonging to Gibson, was U.S. Patent No. 5,990,405, titled "System and Method for Generating and Controlling a Simulated Musical Concert Experience."¹⁶⁶ The suit was originally filed in March 2008, and the parties subse-

158. *Id.* at 5.

159. *Id.* at 19.

160. Complaint for Breach of Contract at 1-2, *Puzo v. Paramount Pictures Corp.*, No. BC392889 (L.A. County Super. Ct. filed June 18, 2008).

161. *Id.* at 2.

162. *Id.* at 3-4.

163. David Jenkins, *Mario Puzo Estate Wins The Godfather Lawsuit*, GAMASUTRA, (Feb. 9, 2009), http://www.gamasutra.com/view/news/22219/Mario_Puzo_Estate_Wins_The_Godfather_Lawsuit.php (last visited May 25, 2010).

164. Complaint for Declaratory Relief at 3, *Activision Publ'g, Inc. v. Gibson Guitar Corp.*, No. 2:2008cv01653 (C.D. Cal. Apr. 17, 2009).

165. *Id.*

166. *Id.* at 3.

quently settled out of court; the case was dismissed with prejudice on April 17, 2009.¹⁶⁷

E. *Parrish v. Nat'l Football League Players, Inc.*, No. 3:2007cv00943 (N.D. Cal. filed Feb. 14, 2007).

A group of retired professional football players brought this lawsuit, which was given class-action status, against the NFL Players Association for breach of fiduciary duty and violation of group licensing agreements.¹⁶⁸ The dispute arose in part out of various licensing ventures that used the players' likenesses, including licensing agreements for video games published by Electronic Arts.¹⁶⁹ In November 2008, a jury ruled in favor of the plaintiff class, and the judge signed the final order upholding the decision in January 2009.¹⁷⁰ Although the substantive part of this case was decided prior to 2009, the outcome may be influential in the cases that were filed in 2009 involving licensing disputes and video game publishers.

V. CONCLUSION

Many cases noted above involve disputes that are common for the gaming industry. However, several cases arising in 2009 are being closely watched. How courts handle the phases of litigation, as well as the final outcome of the cases, may shape the future of litigation in the gaming industry.

167. Order Re: Dismissal, *Activision Publ'g, Inc.*, No. 2:2008cv01653.

168. Class Action Complaint for Breach of Fiduciary Duty, Unjust Enrichment and an Accounting at 2, *Parrish v. Nat'l Football League Players, Inc.*, No. 3:2007cv00943 (N.D. Cal. filed Feb. 14, 2007).

169. *Id.*

170. See Judgment, *Parrish v. Nat'l Football League Players, Inc.*, No. 3:2007cv00943 (N.D. Cal. filed Feb. 14, 2007), see also Order Re Finality, *Parrish*, No. 3:2007cv00943.

