

ESTTA Tracking number: **ESTTA679333**

Filing date: **06/22/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221913
Party	Defendant Arduino, LLC
Correspondence Address	MARTIN SCHWIMMER LEASON ELLIS LLP 1 BARKER AVE FL 5 WHITE PLAINS, NY 10601-1523 tmdocket@leasonellis.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Michelle Levin
Filer's e-mail	tmdocket@leasonellis.com, levin@leasonellis.com, schwimmer@leasonellis.com
Signature	/michelle levin/
Date	06/22/2015
Attachments	01331851.PDF(3966083 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Arduino S.r.l.,

Opposer,

v.

Arduino, LLC,

Applicant.

Opposition No. 91221913

Application No. 86392678

Mark: ARDUINO YÚN

MOTION TO CONSOLIDATE AND SUSPEND

Applicant, Arduino, LLC (“Applicant”), by and through its attorneys, Leason Ellis LLP, hereby moves to suspend the above referenced opposition and consolidate it with the two pending proceedings between the parties.

RELEVANT FACTUAL BACKGROUND

Arduino, LLC and Arduino S.r.l. (formally known as Smart Pojects S.r.l.) are involved in three disputes before the TTAB, including Cancellation No. **92060077** (‘077), Opposition No. **91221050** (‘050) and the instant action. The disputes involve several trademarks including the mark ARUDINO, a design mark consisting of an infinity symbol containing a plus and minus sign (the “Infinity Logo”) and the mark ARUDINO YÚN. Arduino S.r.l. (“Opposer”) has filed a consolidated petition for cancellation (‘077) as well as an opposition (‘050) challenging Applicant’s rights in the subject marks on several grounds. The parties are also involved in a civil action in the District of Massachusetts. Applicant has filed a civil action against Opposer asserting trademark infringement, unfair business practices, breach of contract and other claims.

Applicant previously filed a motion to consolidate and suspend Cancellation No. '077 and Opposition No. '050, which is pending before the Board.

MOTION TO CONSOLIDATE

1. Applicant owns U.S. Reg. Nos. 3931675 and 4113794 for the mark ARDUINO and ARDUINO and Design covering goods in Class 9.

2. The instant application covers the mark ARDUINO YÚN covering goods in Class 9.

3. Opposer has previously filed a Petition for Cancellation with respect to Reg. Nos. 3931675 and 4113794 under Cancellation No. 92060077 (the "Cancellation No. '077").

4. In Cancellation No. '077, Opposer claims rights in the mark ARDUINO and alleges that Applicant is not the valid owner of the marks.

5. Section 511 of the TBMP provides that the Board may order consolidated proceedings that involve common questions of law or fact.

6. Applicant submits that the issues between Cancellation No. '077 and the instant action should be joined by virtue of the fact that the marks at issue in Cancellation No. '077 as well as the instant application incorporate the mark ARDUINO.

7. The proceedings in question involve the identical parties and common questions of law and fact. Consolidation of these proceedings would avoid duplications of effort and resources and thereby affect economy in resolving common issues. There should be no prejudice or inconvenience caused by the consolidation.

8. Applicant notes that a motion to consolidate Cancellation No. '077 and Opposition No.'050 is pending before the Board in both proceedings. Applicant submits that all three actions be consolidated as the subject marks all incorporate the mark ARDUINO.

9. Applicant has previously requested consent from Opposer to consolidate the Cancellation Action and Opposition No. '050. In Opposer's response to Applicant's motion to consolidate filed with the Board, Opposer stated that it "does not oppose [Applicant's] request for consolidation."

10. Applicant acknowledges that should the proceedings be consolidated, a new case schedule should be set for all three proceedings.

MOTION TO SUSPEND

11. Federal civil action *Arduino, LLC v. Arduino S.R.L. et al.*, Case No. 15-cv-10181-DJC (D. Mass) (the "Civil Action") is now pending before the Hon. Denise J. Casper in the District of Massachusetts. A copy of the Civil Action First Amended Complaint is attached as Exhibit 1. The Civil Action remains active and pending as of the filing of this motion.

12. 37 CFR §2.117(a) and Section 510.02(a) of the TBMP provides that the Board may suspend a proceeding until the final determination of a civil action.

13. Petitioner hereby moves to suspend both the this Opposition as the Civil Action will have a direct bearing on the instant proceedings, and, as such, suspension of these proceedings is appropriate.

14. Applicant and Opposer are both parties to the Civil Action, the issue of the ownership of the trademarks ARDUINO and ARDUINO YÚN are specifically disputed therein and will therefore be subject to final adjudication by the district court. As such, the resolution of the issues by the district court will inevitably affect the resolution of the issues now pending before the Board.

15. Applicant has previously requested consent from Opposer to consolidate the Cancellation Action and Opposition No. '050. In Opposer's response to Applicant's motion to

suspend filed with the Board, Opposer stated that “[Opposer] is of the opinion that a 9-month suspension would provide the parties with sufficient time to argue...preliminary outcome-determinative defenses.”

Accordingly, based on the foregoing, Respondent respectfully requests that the Board consolidate Proceeding Nos. 92060077 and 91331913 and stay these proceedings pending the final determination of the Civil Action.

Dated: June 22, 2015
White Plains, New York

Respectfully submitted,



Martin Schwimmer
Michelle Levin

LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 821-8011
Fax: (914) 288-0023
Email: Schwimmer@leasonellis.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing MOTION TO CONSOLIDATE AND
SUPSEND was served upon counsel for Arduino S.r.l. on this 22 day of June 2015
by first-class mail, postage prepaid, addressed as follows:

PAOLO A STRINO
Gibbons P.C.
One Pennsylvania Plaza 37th Floor
NEW YORK, NY 10119-3701
UNITED STATES

A handwritten signature in black ink, appearing to read "Michelle Levin", with a long horizontal flourish extending to the right.

Michelle Levin

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

ARDUINO, LLC,

Plaintiff,

-v-

ARDUINO S.R.L. f/k/a SMART PROJECTS
S.R.L.; GHEO SA; CC LOGISTICS, LLC;
MAGYC NOW LTD; DOG HUNTER INC.; DOG
HUNTER LLC; DOG HUNTER AG; TULYP
HOLDING SA; GIANLUCA MARTINO;
FEDERICO MUSTO; and DOES 1-10,

Defendants.

Civil Action No.: 1:15-cv-10181-DJC

FIRST AMENDED COMPLAINT

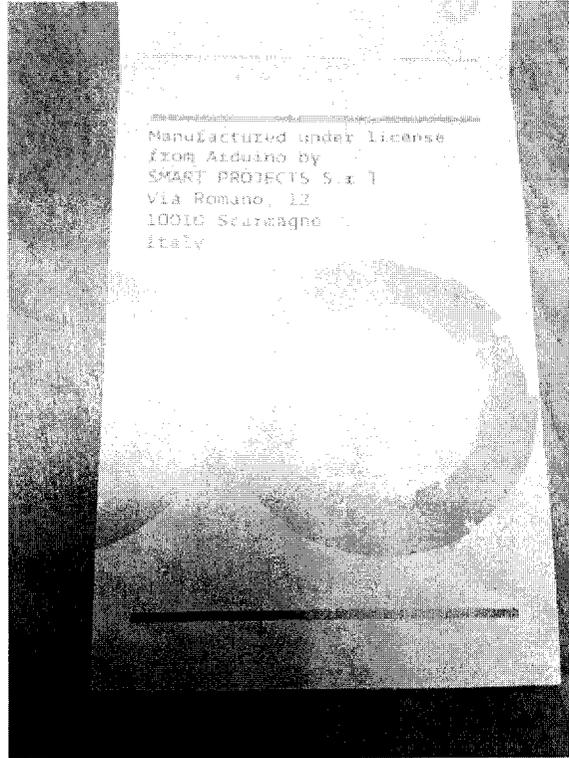
Plaintiff, Arduino, LLC (“Plaintiff” or “Arduino”), by and through its undersigned counsel, as and for its First Amended Complaint against Defendants, Arduino S.r.l. f/k/a Smart Projects S.r.l., Gheo SA, CC Logistics, LLC, Magyc Now Ltd., Dog Hunter Inc., Dog Hunter LLC, Dog Hunter AG, Tulyp Holding SA, Gianluca Martino, Federico Musto, and Does 1-10 (collectively, “Defendants”), hereby alleges as follows:

NATURE OF THE CASE

1. This is an action for trademark infringement under the Lanham Act and Massachusetts common law, unfair competition under the Lanham Act, unfair business practices under Massachusetts law, copyright infringement under the Copyright Act, and breach of contract and breach of fiduciary duty under United States law.

2. Arduino S.r.l. f/k/a Smart Projects S.r.l. (“Smart Projects”) manufactures

ARDUINO branded products under license from Plaintiff and has acknowledged such on its products, in the U.S. and abroad, for years:



3. Smart Projects and its web of companies, identified as defendants in this Complaint, now seek to usurp the ARDUINO trademark and other marks owned by Plaintiff.

4. Arduino seeks a declaratory judgment that it is the true and rightful owner of certain United States trademark registrations and applications and its copyrights.

THE PARTIES

5. Plaintiff Arduino is a limited liability company organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in Cambridge, Massachusetts.

6. Upon information and belief, Defendant Smart Projects is an Italian corporation

with a principal place of business in Scarmagno, Italy.

7. Upon information and belief, Defendant Gheo SA (“Gheo”) is a Swiss corporation with a principal place of business in Chiasso, Switzerland.

8. Upon information and belief, Defendant CC Logistics, LLC (“CC Logistics”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Boston, Massachusetts.

9. Upon information and belief, Defendant Magyc Now Ltd. (“Magyc”) is a Swiss branch of a United Kingdom-based limited company with a principal place of business in Bellinzona, Switzerland.

10. Upon information and belief, Defendant Dog Hunter Inc. is a corporation organized and existing under the laws of the State of North Carolina and also is registered as a Foreign Corporation in the Commonwealth of Massachusetts. Upon information and belief, Dog Hunter Inc.’s principal place of business is in Andover, Massachusetts.

11. Upon information and belief, Defendant Dog Hunter LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Boston, Massachusetts.

12. Upon information and belief, Defendant Dog Hunter AG is a Swiss corporation with a principal place of business in Zug, Switzerland (Dog Hunter AG, Dog Hunter Inc., and Dog Hunter LLC are collectively referred to herein as the “Dog Hunter entities”).

13. Upon information and belief, Defendant Tulyp Holding SA (“Tulyp”) is a Swiss corporation with a principal place of business in Morbio Inferiore, Switzerland.

14. Upon information and belief, Defendant Gianluca Martino is an Italian citizen residing in Switzerland; at one time the direct or indirect owner of Gheo and Smart Projects; and

is the record member of Tulyp. Upon information and belief, Martino directed and controlled many if not all of the actions of Gheo, Smart Projects and Tulyp, during time periods relevant to this action.

15. Upon information and belief, Defendant Federico Musto is an individual residing at 8 Battery Street, Apartment 8, Boston, Massachusetts 02109; Chairman of the Board of Smart Projects; the record resident agent and manager of CC Logistics; the record member of Gheo; the record president of the board of directors for Dog Hunter AG; the record president, treasurer, secretary and director for Dog Hunter Inc.; and the record president of Tulyp. Upon information and belief, Musto directs and controls most, if not all, of the acts of the corporate defendants.

16. Upon information and belief, Smart Projects, Gheo, CC Logistics, Magyc, Dog Hunter Inc., Dog Hunter LLC, Dog Hunter AG, and Tulyp are related companies.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over the federal trademark claims alleged in this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331 and 1338(a).

18. This Court has subject matter jurisdiction over the declaratory judgment claims alleged in this action pursuant to 28 U.S.C. § 2201 et seq.

19. This Court has subject matter jurisdiction over the non-federal claims alleged in this action, pursuant to 28 U.S.C. § 1367(a), because such claims are so related to the federal claims alleged in this action that they form part of the same case or controversy.

20. In the alternative, this Court has subject matter jurisdiction over the non-federal claims alleged in this action against Smart Projects, Gheo, Magyc, Dog Hunter AG, and Tulyp, pursuant to 28 U.S.C. § 1332(a), because complete diversity of citizenship exists between Plaintiff and those parties and the amount in controversy exceeds \$75,000, exclusive of interest

and costs.

21. This Court has personal jurisdiction over Defendant Smart Projects, pursuant to Mass. Gen. Laws. Ch. 223A, § 3, because upon information and belief, it has sold, distributed, provided services, and/or is currently selling, distributing and providing services throughout the United States, including in this district. *See, e.g., Smart Projects S.r.l. v. Arduino, LLC*, Cancellation No. 92060077, Dkt. 1 at ¶¶ 2-6, Petition to Cancel (TTAB). This Court further has personal jurisdiction over Defendant Smart Projects because, upon information and belief, it is owned by Defendant Gheo. Defendant Gheo has sued Plaintiff in a state court action in Massachusetts. *See Gheo SA v. David A. Mellis and Arduino, LLC*, No. 14-4014 (Mass. Sup. Ct.), Complaint filed December 22, 2014.

22. This Court has personal jurisdiction over Defendant Gheo, pursuant to Mass. Gen. Laws. Ch. 223A, §§ 2-3, because Gheo alleges that it owns a 20% membership interest in Arduino, a Massachusetts limited liability company, and upon information and belief, acts as the alter-ego of Smart Projects. This Court further has personal jurisdiction over Defendant Gheo because it transacts business within the Commonwealth of Massachusetts, including but not limited to through its website <http://www.gheo-electronics.com/catalog/index.php>, which is commercially active and offers products for sale, and has caused injury to plaintiff in this District. This Court further has personal jurisdiction over Defendant Gheo because it has sued Plaintiff in a state court action in Massachusetts. *See Gheo SA v. David A. Mellis and Arduino, LLC*, No. 14-4014 (Mass. Sup. Ct.), Complaint filed December 22, 2014. Additionally, upon information and belief, Gheo effectively controls Smart Projects, which supplies other Defendants with products for sale within the Commonwealth.

23. This Court has personal jurisdiction over Defendant CC Logistics, pursuant to

Mass. Gen. Laws. Ch. 223A, §§ 2-3, because it maintains its principal place of business in the Commonwealth of Massachusetts, and transacts business within the Commonwealth of Massachusetts, including but not limited to through its website <http://store.cclogistics.us/catalog/>, which is commercially active and offers products for sale, and has caused injury to Plaintiff in this District.

24. This Court has personal jurisdiction over Defendant Magyc, pursuant to Mass. Gen. Laws. Ch. 223A, § 3, because, upon information and belief, it transacts business within the Commonwealth of Massachusetts, including but not limited to contracting with Arduino, distributing products in the United States, including in this judicial district, through CC Logistics and its website <http://www.magyc-now.com/catalog/index.php>, which is commercially active and offers products for sale, and has caused injury to Plaintiff in this District. Furthermore, upon information and belief, Magyc may own or control or is otherwise related to Smart Project and Gheo, and transacts business within the Commonwealth through these Defendants.

25. This Court has personal jurisdiction over Defendant Dog Hunter Inc., pursuant to Mass. Gen. Laws. Ch. 223A, §§ 2-3, because it maintains its principal place of business in the Commonwealth of Massachusetts and transacts business within the Commonwealth of Massachusetts, including but not limited to through its website www.doghunter.org, which is commercially active and offers products for sale, and has caused injury to Plaintiff in this District. The website offers dollar-denominated products for sale.

26. This Court has personal jurisdiction over Defendant Dog Hunter, LLC, pursuant to Mass. Gen. Laws. Ch. 223A, §§ 2-3, because it maintains its principal place of business in the Commonwealth of Massachusetts and transacts business within the Commonwealth of Massachusetts, including but not limited to through its website www.doghunter.org, which is

commercially active and offers products for sale, and has caused injury to Plaintiff in this District. The website offers dollar-denominated products for sale.

27. This Court has personal jurisdiction over Defendant Dog Hunter AG, pursuant to Mass. Gen. Laws. Ch. 223A, § 3, because it transacts business within the Commonwealth of Massachusetts, including but not limited to through its website www.doghunter.org, which is commercially active and offers products for sale, and has caused injury to Plaintiff in this District. The website offers dollar-denominated products for sale.

28. This Court has personal jurisdiction over Defendant Tulyp, pursuant to Mass. Gen. Laws. Ch. 223A, § 3, because it transacts business within the Commonwealth of Massachusetts, including but not limited to contracting with CC Logistics, and has caused injury to Plaintiff in this District. Furthermore, upon information and belief, Defendant Tulyp may own and/or control or otherwise is related to Gheo, Smart Projects and/or Magyc, and may transact business within the Commonwealth through them.

29. This Court has personal jurisdiction over Defendant Gianluca Martino, pursuant to Mass. Gen. Laws. Ch. 223A, §§ 2-3, because he was the direct or indirect owner of Gheo and Smart Projects, he is the record member of Tulyp, he has controlled the actions complained of herein and has caused injury to Plaintiff in this District.

30. This Court has personal jurisdiction over Defendant Federico Musto, pursuant to Mass. Gen. Laws. Ch. 223A, §§ 2-3, because he transacts business within the Commonwealth of Massachusetts, he is domiciled in the Commonwealth of Massachusetts, he is the direct or indirect owner of Gheo, Smart Projects, and Dog Hunter LLC, and he has controlled the actions complained of herein and has caused injury to Plaintiff in this District. Furthermore, he is the record resident agent of CC Logistics, a corporation domiciled in Massachusetts.

31. Venue is proper in this district, pursuant 28 U.S.C. § 1391(b)(2), because the collective wrongful acts of Defendants, as discussed, *infra*, occurred, in substantial part, in this judicial district.

32. In the alternative, venue is proper in this district, pursuant 28 U.S.C. § 1391(b)(3), because, as discussed, *supra*, Defendants are subject to personal jurisdiction in this judicial district.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. The ARDUINO Trademark

33. Massimo Banzi was an associate professor at the Interaction Design Institute Ivrea (“IDII”) which was a graduate design program in Ivrea, in Northern Italy. Banzi would frequent a bar named Bar di Re Arduino, named after Arduino, the King of Italy from 1001 to 1014.

34. Banzi is the creator of the Programma 2003 Development Platform, a precursor of the many ARDUINO-branded products. See <http://sourceforge.net/projects/programma2003/>. Banzi was also the Master’s Thesis advisor of Hernando Barragan whose work would result in the Wiring Development Platform which inspired Arduino.

35. Banzi met David Cuartielles, a professor at Malmö University, when he was engaged by IDII as a visiting researcher to work on extending the Wiring Development Project.

36. In 2005, Banzi invited Tom Igoe, a leading authority in the field of Physical Computing and professor at New York University, to work on a research project at IDII.

37. Banzi also met David Mellis, a student in the Master’s program at IDII between 2004 and 2006, at IDII.

38. Banzi, Cuartielles, Igoe and Mellis will collectively be referred to as the

“Founders.”

39. The Founders, assisted by Nicholas Zambetti, another student at IDII, undertook and developed a project in which they designed a platform and environment for microcontroller boards (“Boards”) to replace the Wiring Development Project. Banzi gave the project its name, the ARDUINO Project.

40. The goal of the ARDUINO Project was to create an easy-to-use electronics prototyping platform that would be available for use by as many people as possible. In accord with these goals, the Boards were released as open-source hardware.

41. On March 23, 2005, Banzi placed an order with System Elettronica S.r.l. in Strambino, Italy, for approximately 300 Boards and requested that the ARDUINO mark be affixed to the Boards.

42. The Boards bearing the ARDUINO mark were distributed mostly at no cost (for promotional purposes) to different people involved in design education and to electronics enthusiasts.

43. In July 2005, Banzi sent a number of ARDUINO-marked Boards to Igoe to be used at New York University for experimentation and teaching. These Boards were assembled and distributed at New York University in August 2005. *See*

<https://www.flickr.com/photos/77726415@N00/archives/date-posted/2005/08/18/>, attached as

Exhibit A.

44. In October of 2005 Cuartielles secured the domain ARDUINO.CC on behalf of the Founders.

B. The Smart Projects Manufacturing Contract

45. In approximately 2004, Banzi met Gianluca Martino, an engineer who owned

manufacturing facilities in Ivrea. At that time, Martino was a part owner and manager of Defendant Smart Projects S.r.l. in Ivrea. Upon information and belief, the name of Smart Projects at that time was Smart Projects SNC.

46. Banzi engaged Martino and Smart Projects as a contract manufacturer for several projects at IDII.

47. In late 2005, Banzi requested that Smart Projects manufacture 200 pre-assembled Boards bearing the ARDUINO mark to be used in teaching at IDII and Malmö University. These Boards were shipped and sold in Italy to IDII and in Sweden to Malmö University. The remaining Boards were sold to individuals who expressed an early interest in the ARDUINO Boards.

48. The ARDUINO Boards were successful and spawned a dedicated community of do-it-yourself (“DIY”) enthusiasts that continues to grow to this day.

C. The Partnership

49. The Founders formed a partnership with Martino. The Founders handled the creation, development, and design of the ARDUINO Boards, including software development, website development, and documentation of the process. Martino’s role in the partnership was to handle the manufacturing of the ARDUINO Boards.

50. The Founders and Martino held a series of discussions, beginning in late 2005, as to how to best rationalize the production of ARDUINO Boards and related products. The precise details of these understandings evolved as the market for ARDUINO Boards evolved, but the fundamental structure of the understanding was as follows:

- The Founders and Martino formed a partnership (the “Partnership”);

- The five partners, Banzi, Cuartielles, Igoe, Mellis and Martino, (collectively, the “Partners”) would own equal 20% shares of the Partnership;
- The Partnership would own the ARDUINO trademark;
- The software would be distributed on an open-source basis;
- Smart Projects would manufacture Boards;
- Smart Projects would pay a percentage of what it received for selling Boards, as royalties to the Partners.

51. Examples of the emails articulating the parameters of the Partnership are attached as **Exhibit B**.

52. Examples of emails discussing the percentage of Smart Projects’ sales that are to be paid to the Partnership as royalties are attached as **Exhibits C and D**.

53. The understanding among the Founders and Martino was documented on various occasions. For example, on March 3, 2006, Martino wrote in an email that Smart Projects would “take from the ‘Arduino Enterprise’ (AE) the task to produce and sell Arduino boards” and that he would take his share of the earnings “as a member of the AE.” Thus, Martino recognized from the beginning that the Arduino trademark and property belonged to an entity separate and apart from his company Smart Projects.

54. Through the exchange of written and oral communications Smart Projects entered into an enforceable license agreement with the Partnership (the “License”).

55. Throughout this period, Smart Projects sold Boards to resellers and to distributors, including distributors in the U.S.

56. The License set a royalty rate, and provided that the Founders exercised quality control over the Boards.

57. The License also covered secondary trademarks, discussed further herein at Section F.

58. The Founders and Arduino exercised quality control over the Boards by designing the Boards, defining their specs, developing the software and documentation, and testing and quality-checking manufactured product.

59. Smart Projects paid trademark royalties to the Founders, or to Arduino, either directly, or requested that its distributors pay the royalty to Arduino.

60. For example, in 2008-09, Smart Projects sold Boards to a U.S. company named NKC Electronics. Upon information and belief, NKC Electronics paid Smart Projects for the Boards, but at Smart Projects' request, Arduino invoiced and collected a trademark royalty from NKC.

61. At a later point, Smart Projects, Gheo, and Magyc incorporated the trademark royalty into the price it charged its customers, and paid Arduino the royalties directly.

62. The Partners engaged in discussions via email over a period of years as to how to best legally structure the Partnership, and how to perfect their ownership of the ARDUINO trademark.

63. During this time, Smart Projects continued to sell Boards. Martino advised the Founders as to how the payment of royalties could best be structured from the point of view of tax planning. *See Exhibit E*. In accordance with Martino's advice, the Founders invoiced Smart Projects, and Smart Projects paid such invoices. *See Exhibit F*.

D. The Creation of Arduino, LLC

64. During this time, Banzi provided consultancy and e-commerce services in the United Kingdom, Italy and the United States through, Tinker.it! Ltd. ("Tinker.it!"), which is

based in London.

65. In April of 2008, the Partners caused to be formed, and Mellis had the incorporation papers prepared for, Arduino, LLC, a Massachusetts limited liability company. As illustrated in **Exhibit G**, the operating agreement of Arduino identifies the members as Mellis, Igoe, Cuartielles and Tinker.it!. Each member contributed a nominal sum and “all right, title and interest in and to the name ‘Arduino’.” The three individual members received 20% ownership of the LLC and Tinker.it! received 40%.

66. Banzi and Martino were represented in the LLC by the 40% ownership of Tinker.it! Banzi’s and Martino’s shares of any royalties were paid through Tinker.it! *See Exhibit D.*

67. Initially, the Partners would split any profits from the ARDUINO-branded products by individually invoicing Smart Projects at the end of the year. Following the creation of Arduino, LLC the invoicing took place on a more frequent basis. Smart Projects continued to pay such invoices. *See Exhibit H.*

68. With the creation of Arduino, LLC and the licensing of the name to manufacturers other than Smart Projects, a more formal 10% royalty payment was instituted. Arduino, LLC collected such royalties from Smart Projects and other companies related or unrelated to Smart Projects.

69. During this time in 2008, Tinker.it! held Martino’s 20% ownership of Arduino, LLC in trust for him.

70. Throughout this period, ARDUINO Boards were rapidly becoming a worldwide hit.

71. As the ARDUINO brand and community grew, Banzi was recognized as the man

behind Arduino as a result of numerous personal appearances at “Maker” gatherings, and the dissemination of many well-received videos explaining the Arduino Platform and philosophy.

72. Banzi has been profiled in the United States in Wired Magazine, CNET, NPR and the New York Times. He also was the only non-United States innovator invited to the White House Maker Faire in 2014.

73. Banzi authored a book titled “Getting Started with Arduino,” which is available for sale in the United States. This book is now in its third edition.

74. Banzi has been interviewed numerous times regarding ARDUINO-branded products. In particular, his TedTalk interview has been viewed over 1.25 million times.

75. Throughout 2008, as demand for the ARDUINO brand grew, the Partners, including Martino, discussed how best to organize the rapidly expanding business, and how to secure trademark protection.

E. Defendants’ Usurpation of the ARDUINO Trademark

76. On December 19, 2008, Smart Projects, at the direction of Martino, filed Italian trademark application number TO2008C003952 for ARDUINO in its own name (“the Italian Application”), four months prior to the U.S. filing discussed in the following paragraph. Despite previously participating in conversations with the Founders regarding Arduino, LLC’s ownership of the trademark, Martino did not inform the Founders of the Italian Application. On April 16, 2010, an Italian Trademark Registration No. 0001272511 (“the Italian Registration”) issued based on the Italian Application.

77. On April 7, 2009, Arduino caused to be filed United States Trademark Application Number 77/708,806 for ARDUINO for electronic circuit boards. Mellis informed the other Partners of the filing. Martino received this notification, but still did not disclose the

existence of the Italian Application.

78. Smart Projects relied on its Italian Application as the basis for International Registration No. 1028190 which was extended to various jurisdictions including the EU. Upon information and belief Smart Projects may have filed trademark applications in other jurisdictions as well. Collectively, the Italian Application and Registration, the International Registration and any other applications filed by or registrations issued to Smart Projects or related companies, in which ARDUINO is the dominant element shall be referred to as the “Foreign Trademark Applications.”

79. In fact, Martino never disclosed the existence of the Italian Application to the Founders. It was not until July 3, 2010 that Martino first referenced the Italian Registration in a response to a cost estimate provided by Arduino’s American attorney for filing a Community Trademark application that would cover the countries of the European Union. Mellis asked Martino to explain this filing, and Martino merely confirmed registration of the mark, but even then did not reveal that the filing was in the name of Smart Projects.

80. It was not until July 22, 2010, after Arduino’s American attorney advised Mellis that the Italian Registration was in the name of Smart Projects, that Mellis asked Martino to confirm this fact. Martino finally acknowledged that Smart Projects had filed the Italian trademark application in its own name.

81. Martino represented that Smart Projects had filed and that it held the registration in trust on behalf of Arduino, LLC.

82. The Founders relied on Smart Projects’ representations that the Italian Registration was being held in Smart Projects’ name in trust for Arduino. The Founders’ understanding was that Arduino owned the ARDUINO trademark worldwide and that Smart

Projects was its licensee, since it was paying royalties to Arduino.

83. Because of these representations, the Founders continued to have conversations with Smart Projects toward the end of rationalizing the structure of the ownership, manufacturing and distribution of ARDUINO-branded products, and assumed that the ultimate reorganization would resolve the title ownership issue as well.

84. Simultaneously with the discussion of how best to structure the enterprise, Banzi and the Founders responded to the continuing explosion of demand for ARDUINO-branded products by developing new products, including products branded as ARDUINO UNO, ARDUINO MEGA, and ARDUINO YÚN.

85. Since filing the Italian Application in December 2008, Smart Projects, by making payments to Arduino, had continued to act pursuant to the understanding that it was the licensee of Arduino. Smart Projects knew prior to its December 2008 Italian filing that Arduino planned to obtain United States and international trademark registrations for the mark ARDUINO, and has never protested or contradicted Arduino's claims of ownership in the mark until approximately the fall of 2013.

86. In sum, Plaintiff and Smart Projects have entered into an enforceable license agreement established through a series of oral and written communications. The License has been modified from time to time, but the material terms have remained the same, namely, the Partnership owned the rights in the trademark ARDUINO and manufacturers, including Smart Projects, under the direction of Martino, would pay a royalty to the Partnership (or Arduino, LLC) for use of the trademark. These terms are set forth more fully in the following paragraph.

87. The material terms of the License are as follows: Plaintiff owns the ARDUINO trademarks and all trademarks related to the sale of ARDUINO Boards, including ARDUINO,

the Infinity Logo, ARDUINO YÚN, YÚN, and all other Arduino Marks as defined below. Smart Projects receives from Plaintiff a license to use these marks, and also receives design specs for new products, supervision services of hardware design, software and firmware development services, documentation, tutorials, and code testing services. In exchange, Smart Projects, and other companies controlled directly or indirectly by Martino, remit to Plaintiff 10% of the wholesale price of such Boards as a royalty payment. Furthermore, in view of the pre-existing relationship between Martino and the Founders, Martino's ongoing control of Smart Projects was material, and its rights to manufacture Boards were not assignable or otherwise transferable.

88. Throughout the period, Smart Projects has, upon information and belief, distributed ARDUINO-branded products to Defendants CC Logistics, Magyc, Gheo, the Dog Hunter entities, and John Does (the "Distributors"). Upon information and belief, Defendants CC Logistics and Gheo are directed and controlled by Musto through his positions as manager and president of the board of directors, respectively. The Dog Hunter entities are, upon information and belief, directed and controlled by Musto as well.

89. Upon information and belief, Smart Projects, the other corporate Defendants and John Doe companies, have not provided a full accounting of royalties due to Arduino, as required under the License. As of the date of this Complaint, Smart Projects and other companies controlled directly or indirectly by Martino, have stopped paying royalties.

90. During this time, upon information and belief, Defendant Musto, became an investor and officer in Smart Projects. He exerted influence on Smart Projects, and controlled the other corporate Defendants' actions in withholding royalties.

91. Upon information and belief, Musto has represented that he has obtained control

of Gheo, and through Gheo, Smart Projects, from Martino.

92. Musto has given interviews to the press in which he holds himself out as the CEO and/or leader of Arduino S.r.l. f/k/a Smart Projects. This implies that Smart Projects is authorized to use the name ARDUINO in its trade name, when in fact that is not the case. Musto further implies that his actions are endorsed by or otherwise coordinated with Massimo Banzi, thus deceptively indicating that his actions are endorsed by Arduino LLC.

93. Defendant Musto is the registrant for the <arduino.org> domain and upon information and belief controls and/or influences the content located at the website utilizing that domain located at www.arduino.org.

94. The registration and use of the <arduino.org> domain is an infringement of the ARDUINO trademark. The use of ARDUINO as a trading name, and use of the ARDUINO compound logo consisting of the word mark and the Infinity Logo on the website located at www.arduino.org, infringes the ARDUINO mark and the Infinity Logo. Arduino's Other Trademarks

95. Over the years, Plaintiff developed a family of Arduino-branded products, which are sold in the United States and abroad.

96. These products include Arduino's Yún, Uno, NG, Diecimila, Mini, Mega, Duemilanove, DUE + Tre, Leonardo, Esplora, Micro, and Shield products.

97. Because of Banzi's Italian heritage, he selected Italian-sounding names for many of the Arduino products.

98. Cuartielles developed the ARDUINO SHIELD name in 2005.

99. Plaintiff has adopted and used the following trademarks in United States commerce in connection with, at a minimum, Boards: ARDUINO, ARDUINO YÚN, YÚN,

ARDUINO UNO, UNO, ARDUINO NG, NG, ARDUINO DIECIMILA, DIECIMILA, ARDUINO MINI, MINI, ARDUINO MEGA, MEGA, ARDUINO DUEMILANOVE, DUEMILANOVE, ARDUINO DUE + TRE, DUE + TRE, ARDUINO LEONARDO, LEONARDO, ARDUINO ESPLORA, ESPLORA, ARDUINO MICRO, MICRO, ARDUINO SHIELD, and SHIELD. These marks will collectively be referred to as the Arduino Marks.

100. The Arduino Marks were included in the License and Smart Projects affixed these marks to Boards, which were sold in U.S. commerce.

F. Extraterritorial Activities

101. On March 19, 2015 Arduino LLC sent a Termination Letter to Smart Projects, confirming termination of Smart Projects' License, including territories outside of the United States. *See Exhibit I.*

102. Upon information and belief, Smart Projects and its related companies, namely the remaining corporate Defendants, continue to utilize the Arduino Marks in those territories without the authorization of Arduino. These activities include the manufacture and sale of products under the Arduino Marks, as well as unauthorized use of Arduino S.r.l. as a trading name.

103. Smart Projects continues to refuse to assign any non-U.S. registrations in its own name to Arduino.

104. The Defendants' infringing activities, coupled with their refusal to remit royalties injures Arduino.

105. Actions of the Defendants, such as Smart Projects' filing of oppositions to Arduino's European Community trademark applications, interfere with Arduino's rights to perfect its trademark rights internationally.

106. Maintaining Arduino's trademark registrations in its own name and interfering with Arduino's own filing program, represents a breach of Smart Projects' License with Arduino.

G. Arduino Copyrights

107. In June 2010, Arduino contracted with ToDo, an Italian design firm, to create a series of graphic designs and web designs, to function as a corporate and brand identity for Arduino (the "Infinity Designs").

108. ToDo created and published the Infinity Designs in Italy on behalf of Arduino.

109. The Infinity Designs are works eligible for protection under the Berne Convention.

110. Copyrights in the Infinity Designs were assigned to Arduino pursuant to a written agreement.

111. Defendants were implicitly licensed to reproduce the Infinity Designs through the License to Smart Projects, or through sub-licenses from Smart Projects.

112. To the extent that Smart Projects and other Defendants renounce the License, their reproductions of the Infinity designs are unauthorized and infringing.

113. Furthermore, Arduino has created, over time, texts for use on its Arduino.cc website, which texts include product descriptions (the "Arduino.cc Texts"). These texts are protectable under the Berne Convention.

114. The content of Smart Projects' website located at www.arduino.org infringes upon the copyrights assigned to Arduino, in that the website reproduces the Infinity Designs, as well as product descriptions lifted from Plaintiff's Arduino.cc website.

CAUSES OF ACTION

COUNT I

**Declaration of Trademark Ownership
(Against All Defendants)**

115. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

116. Plaintiff is the owner of the Arduino Marks. *See Exhibits J & K.*

117. Any use of the Arduino Marks by Defendants inured and inures to the benefit of Plaintiff.

118. Defendant Smart Projects has alleged in a Cancellation Proceeding before the Trademark Trial and Appeal Board that it has senior common law rights in the following marks registered by Plaintiff: the ARDUINO mark (Reg. No. 3,931,675) and the infinity design mark (Reg. No. 4,113,794) (the "Registered Marks"). *Smart Projects S.r.l. v. Arduino, LLC*, Cancellation No. 92060077, Dkt. 1 (TTAB).

119. Defendant Smart Projects has alleged in a Cancellation Proceeding before the TTAB that Arduino is not the lawful owner of the ARDUINO mark (Reg. No. 3,931,675) and the infinity design mark (Reg. No. 4,113,794). *Smart Projects S.r.l. v. Arduino, LLC*, Cancellation No. 92060077, Dkt. 1 (TTAB).

120. An actual, present and justiciable controversy has arisen between Plaintiff and Defendants concerning the ownership of the Arduino Marks, including the Registered Marks.

121. Plaintiff seeks a declaratory judgment that it is the lawful owner of the Arduino Marks, including the Registered Marks.

COUNT II

**Trademark Infringement Under 15 U.S.C. § 1114,
Section 32 of the Lanham Act
(Against All Defendants)**

122. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

123. Plaintiff owns duly issued and validity subsisting rights in U.S. Trademark Registration Nos. 3,931,675 and 4,113,794. *See Exhibits J & K.*

124. The acts of Defendants alleged herein constitute use in commerce, without the consent of Plaintiff, of a reproduction, counterfeit, copy, or colorable imitation of one or more of Plaintiff's Registered Marks in connection with the sale, offering for sale, distribution, or advertising of goods or services, which use is likely to cause confusion or mistake, or to deceive consumers as to the source of the goods, and therefore Defendants have infringed and are infringing Plaintiff's rights in its Registered Marks, in violation of 15 U.S.C. § 1114(1)(a).

125. The acts of Defendants alleged herein, without the consent of Plaintiff, reproduce, counterfeit, copy, or colorably imitate one or more of Plaintiff's Registered Marks in connection with applying such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services, which use is likely to cause confusion or mistake, or to deceive consumers as to the source of the goods, and therefore Defendants have infringed and are infringing Plaintiff's rights in its Registered Marks, in violation of 15 U.S.C. § 1114(1)(b).

126. The acts of Defendants described herein have been willful, in bad faith and with the intent to, or knowledge that its acts will cause confusion or mistake, or to deceive, making this an exceptional case within the meaning of 15 U.S.C. § 1117(a).

127. As alleged herein, Defendants are using marks identical to those owned by Plaintiff.

128. As a direct and proximate result of Defendants' actions, Plaintiff has suffered substantial damages. Plaintiff is entitled to recover Defendants' profits, all damages sustained by

Plaintiff, treble those profits or damages, and the cost of this action, plus interest, under 15 U.S.C. §§ 1114, 1117, which amounts are yet to be determined.

129. Defendants' acts greatly and irreparably damage and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law and thus are entitled to injunctive relief.

COUNT III
Trademark Infringement and Unfair Competition Under 15 U.S.C. § 1125(a),
Section 43(a) of the Lanham Act
(Against All Defendants)

130. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

131. Plaintiff owns rights in the Arduino Marks.

132. The acts of Defendant alleged herein constitute use in commerce, without consent of Plaintiff, of a word, term, name, symbol, or device, or any combination thereof, or false designation of origin, false or misleading description of fact, or false or misleading representation of fact, in connection with the sale, or offering for sale, of goods or services in violation of 15 U.S.C. § 1125(a).

133. These acts of Defendants are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' products and/or services by Plaintiff.

134. The acts of Defendants described herein have been willful, in bad faith and with the intent to, or knowledge that its acts will cause confusion or mistake, or to deceive.

135. As a direct and proximate result of Defendants' actions, Plaintiff has suffered substantial damages. Plaintiff is entitled to recover Defendants' profits, all damages sustained by Plaintiff, treble those profits or damages, and the cost of this action, plus interest, under 15 U.S.C. § 1117, which amounts are yet to be determined.

136. Defendants' acts greatly and irreparably damage and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law and thus are entitled to injunctive relief.

COUNT IV
Unfair Business Practices Under Mass. Gen. Laws., ch. 93A
(Against All Defendants)

137. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

138. Defendants are engaged in the conduct of trade or commerce within the meaning of Mass. Gen. Laws., ch. 93A.

139. Defendants have engaged, and continue to engage, in acts of unfair and/or deceptive competition in violation of Massachusetts law, which occur primarily and substantially within the Commonwealth of Massachusetts.

140. Defendants' acts have caused Plaintiff to suffer loss of money and/or property.

141. Defendants' acts have caused and will continue to cause damage to Plaintiff.

142. Defendants' acts greatly and irreparably damage and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law and thus are entitled to injunctive relief.

COUNT V
Trademark Infringement Under Massachusetts Common Law
(Against All Defendants)

143. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

144. Defendants have used Plaintiff's Arduino Marks in commerce without consent.

145. Plaintiff's Arduino Marks are distinctive in the minds of the consuming public, and serve to indicate the source of origin of the products and/or as identifying the goods or services sold thereunder.

146. Defendants' acts are likely to cause confusion or mistake, or to deceive as to the affiliation, connection, or association between one or more of the Defendants and Plaintiff Arduino, LLC, or as to the origin, sponsorship or approval of one or more of Defendants' goods, services or commercial activities.

147. Defendants have infringed Plaintiff's senior trademark rights in the Arduino Marks with the intent to deceive the public into mistakenly believing that Defendants' products were manufactured by, approved by, sponsored by, or affiliated with Plaintiff.

148. By reason of Defendants' acts alleged herein, Plaintiff's reputation has been harmed. Consequently, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation and goodwill, for which Plaintiff has no adequate remedy at law. Such conduct on the part of Defendants has caused and will continue to cause irreparable harm to Plaintiff, and thus Plaintiff is entitled to injunctive relief.

COUNT VI
Copyright Infringement Under the Copyright Act
(Against All Defendants)

149. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

150. Plaintiff is the owner of valid copyrights in the Infinity Designs and Arduino.cc Texts, which works are protected under the Berne Convention.

151. Plaintiff's Infinity Designs and Arduino.cc Texts are works that were created in Italy.

152. Plaintiff's Infinity Designs and Arduino.cc Texts were first published in Italy.

153. Upon information and belief, Defendants, having full knowledge of the rights of Plaintiff alleged herein, have infringed the copyrights of Plaintiff by selling, manufacturing, publishing, displaying, vending, distributing, promoting and/or advertising products containing

material identical or substantially similar to the Infinity Designs and Arduino.cc Texts without the permission or consent of Plaintiff.

154. All acts of Defendants, as set forth herein, are without the permission, license or consent of Plaintiff, and are irreparably damaging Plaintiff. Plaintiff has no adequate remedy at law. In addition, Plaintiff has been damaged by the acts of Defendants in a monetary amount as yet unknown, but to be determined according to proof.

COUNT VII
Breach of Contract
(Against Gianluca Martino, Smart Projects, and Federico Musto)

155. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

156. Defendant Martino entered into an agreement with the Founders that any trademark applications filed would be on the Partners' behalf. The Partners assigned their interest in this agreement to Arduino, LLC.

157. Defendant Martino caused the Foreign Trademark Applications to be filed in the name of Smart Projects.

158. Defendant Martino did not assign the rights in the Foreign Trademark Applications to the Founders or Arduino, and thus Defendant Martino is in material breach of his contract with the Founders and Arduino.

159. As a direct and proximate result of Defendant Martino's breach, the Founders and Arduino have suffered irreparable harm and damages.

160. Plaintiff is entitled to damages to compensate Plaintiff for Defendants Martino's breach.

161. Defendant's acts greatly and irreparably damage and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at

law and thus are entitled to injunctive relief and other equitable relief, including but not limited to Defendant Martino's assignment of all rights and interests in the Foreign Trademark Applications to Arduino.

COUNT VIII
Breach of Contract
(Against Gianluca Martino, Smart Projects, Gheo SA, and Federico Musto)

162. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

163. Defendants Martino and Smart Projects entered into a license agreement, through a series of communications, with Banzi, the Founders and Arduino for the manufacture and distribution of Arduino-branded products.

164. As part of Defendants Martino and Smart Projects' agreements with Banzi, the Founders and Arduino, Defendants Martino and Smart Projects were to pay royalties on the sales of the ARDUINO-branded products.

165. Defendants Martino and Smart Projects have ceased paying royalties to Banzi, the Founders and Arduino on their sales of the ARDUINO-branded products, in violation of the parties' agreements. Thus, Defendants Martino and Smart Projects are in material breach of their agreements with Banzi, the Founders and Arduino.

166. As a direct and proximate result of Defendants Martino and Smart Projects' breach, Banzi, the Founders and Arduino have suffered irreparable harm and damages.

167. Plaintiff is entitled to damages in the form of past royalties and damages to compensate Plaintiff for Defendants Martino and Smart Projects' breach.

168. Defendants' acts greatly and irreparably damage and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law and thus are entitled to injunctive relief.

COUNT IX
Breach of Fiduciary Duty
Foreign Trademark Applications
(Against Gianluca Martino)

169. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

170. A fiduciary relationship and duty existed at the time of the Foreign Trademark Application filings between Martino and Arduino, and continues to exist today.

171. Martino breached his fiduciary duty to Arduino by filing the Foreign Trademark Applications in the name of Smart Projects.

172. Despite Martino's fiduciary duty, Martino took, for his personal benefit, an opportunity or advantage relating to the Arduino Marks that belonged to Arduino.

173. By failing to notify Arduino of the Foreign Trademark Application filings, and that such filings were in the name of Smart Projects, Martino violated the corporate opportunity doctrine.

174. Martino breached his fiduciary duty to Arduino by stealing an asset of Arduino.

175. Martino's breach has caused harm to Arduino, and Arduino is entitled to damages.

176. Any gains or advantages that Martino has or will acquire from such breach should inure to the benefit of Arduino.

177. Plaintiff is entitled to an Order directing Martino to assign any rights he has personally, or through any of his business ventures, including but not limited to Gheo and Smart Projects, to the Foreign Trademark Registrations and Applications to Arduino.

178. Martino's acts greatly and irreparably damage and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law and thus are entitled to injunctive relief prohibiting Martino from filing or prosecuting any

trademark applications, or asserting any registered trademarks, in an individual capacity or through any of his business ventures, relating to Arduino without Arduino's permission.

COUNT X
Breach of Fiduciary Duty
TTAB Cancellation Proceedings
(Against Gianluca Martino)

179. Plaintiff repeats and re-alleges paragraphs 1-114, as if fully alleged herein.

180. A fiduciary relationship and duty existed between Martino and Arduino at the time of Smart Project's Petition to Cancel Arduino's U.S. Trademark Registration Nos. 3,931,675 and 4,113,794, and continues to exist today.

181. Martino breached his fiduciary duty to Arduino by directing the filing of the Petition to Cancel by Smart Projects.

182. Despite Martino's fiduciary duty, Martino is attempting to steal an asset of Arduino.

183. Martino's breach has caused harm to Arduino.

184. Any gains or advantages that Martino has or will acquire from such breach should inure to the benefit of Arduino.

185. Plaintiff is entitled to an Order directing Martino to withdraw the Smart Projects Petition to Cancel.

186. Martino's acts greatly and irreparably damage and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiffs are without an adequate remedy at law and thus are entitled to injunctive relief prohibiting Martino from filing any Petitions to Cancel or Oppositions relating to the Arduino Marks.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiff prays for judgment against Defendants as follows:

- A. A Declaration that Plaintiff is the true and lawful owner of the Arduino Marks, including the Registered Marks.
- B. An Order permanently enjoining and restraining Defendants, their subsidiaries, divisions, branches, affiliates, predecessors or successors in business, parents and wholly owned or partially owned entities of the party, and any entities acting or purporting to act for or on behalf of the foregoing, including any agents, employees, representatives, officers, directors, servants, partners, and those persons in active concert or participation with them, from engaging in, offering, or providing goods or services in connection with any mark that is identical to, or confusingly similar with, one or more of the Arduino Marks;
- C. An Order requiring assignment of all Foreign Trademark Applications held by any Defendant to Arduino LLC.
- D. An Order, pursuant to 15 U.S.C. § 1117(a):
 - a. requiring an accounting of Defendants' profits from Defendants' unlawful use of the Arduino Marks and awarding all of said profits to Plaintiff;
 - b. awarding any damages sustained by Plaintiff due to Defendants' acts complained of herein;
 - c. awarding costs of the action; and
 - d. awarding treble damages.
- E. A Declaration that this case is "exceptional" within the meaning of 15 U.S.C. §

1117(a) and awarding Plaintiff its reasonable attorneys' fees and costs based thereon.

- F. An Order permanently enjoining and restraining Defendants, their subsidiaries, divisions, branches, affiliates, predecessors or successors in business, parents and wholly owned or partially owned entities of the party, and any entities acting or purporting to act for or on behalf of the foregoing, including any agents, employees, representatives, officers, directors, servants, partners, and those persons in active concert or participation with them from selling, manufacturing, publishing, displaying, vending, distributing, promoting and/or advertising any materials, packaging, and product which infringe Plaintiff's copyrights pursuant to 17 U.S.C. § 502.
- G. An Order requiring Defendants to transfer the <arduino.org> domain to Plaintiff.
- H. An Order requiring Defendants to return any and all materials, packaging, and product containing the Infinity Designs to Plaintiff pursuant to 17 U.S.C. § 503.
- I. An Order awarding Plaintiff such damages it sustained as a consequence of the infringement, and to account for all gains, profits and advantages derived by Defendants from such copyright infringement pursuant to 17 U.S.C. § 504.
- J. That Defendants pay to Plaintiff its costs of this action, and Plaintiff's reasonable attorneys' fees as the court may allow.
- K. An Order awarding Plaintiff pre-judgment interest.
- L. An Order awarding exemplary and/or punitive damages.
- M. An Order awarding actual, consequential, incidental and special damages, plus pre and post-judgment interest thereon, as well as punitive damages and the costs of this action, in an amount to be determined at trial, as a result of Defendants' (i) breach of

contract and (ii) breach of fiduciary duty.

N. An Order awarding Plaintiff any further relief this Court shall deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all claims so triable.

Dated: April 23, 2015

Respectfully submitted,

/John L. Welch/

John L. Welch BBO#522040
LANDO & ANASTASI, LLP
One Main Street, 11th Floor
Cambridge, Massachusetts 02142
Telephone: (617) 395-7000
Email: jwelch@lalaw.com

Martin B. Schwimmer (*pro hac vice*)
Victoria Polidoro (*pro hac vice*)
Lori L. Cooper (*pro hac vice*)
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Telephone: (914) 288-0022
Email: Schwimmer@LeasonEllis.com
Email: Polidoro@LeasonEllis.com
Email: Cooper@LeasonEllis.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 23rd day of April, 2015.

/John L. Welch/

John L. Welch

EXHIBIT A



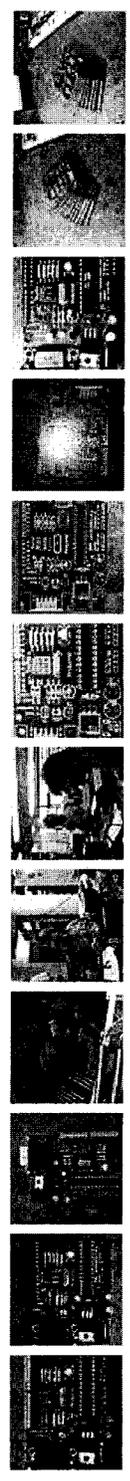
jamieallen

Photostream Albums Favorites

October 2004

7th August 2005

3rd September 2005



flickr

Sign Up

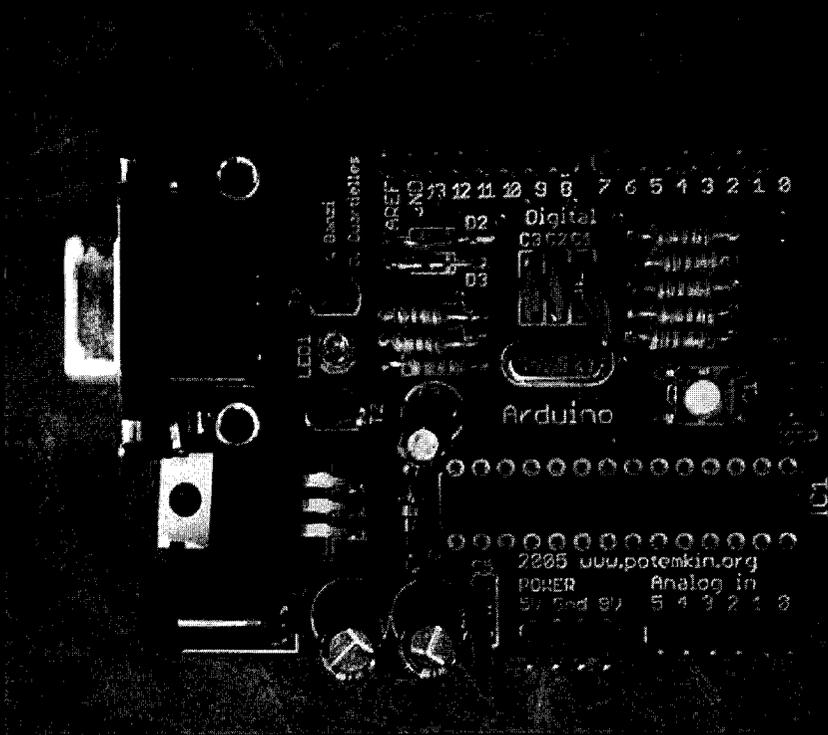
Explore

Create

Upload

Search bar

Sign In



Back to photostream



Jamie Allen

+ Follow

shot of completed board

oh! give me tiger!! yes yes!!

240 views

0 faves

0 comments

Taken on August 17, 2005

Some rights reserved

EXHIBIT B

Arduino future and Tinker.it

Massimo Banzi [REDACTED]
To: team@arduino.cc

Mon, Jan 29, 2007 at 8:03 PM

Dear Friends

I'm writing because 2007 has begun and we are in need to discuss where we want to go with arduino.

On our side me and gianluca, being the ones who deal with the hardware and trying to make a living out of our own consulting work have been thinking about a reorganisation of our activities.

I think Arduino is now becoming a mature product quite stable and well understood... We are launching the bluetooth board and more stuff could come but we haven't had any strategic talking since september at least..

We need to open a discussion on where we want to take arduino to and who is going to contribute what to the project.

I've had the UK accountant on hold for a while waiting for some discussion that hasn't happened... I think arduino has accomplished its initial tasks and need a new plan for the next few years to stay interesting.

I hope we can start now.

Having said this... this is how we plan to reorganise our operations in Italy:

Say welcome to tinker.it!

We have used this brand name since early 2006 for the projects we have done for Salone del mobile 2006 because it was a way to avoid using only my name on the credits for the exhibitions.

Now I have been working for a bit on a couple of concepts that I would like to fully develop into a company

the current definition is : "Tinker.it makes products and platforms to help designers and artists make the best use of digital technologies. We cover the whole space of the design/artistic process by providing early consultancy during the concept phase down to the implementation."

I might need to rework that but the idea is to continue making tools and provide consultancy to designers and companies about technology.

We will

- * consult companies and do projects dealing with technology
- * build products that can be used to build exhibitions , installations and the like.
- * build a prototyping toolkit which is somehow similar to a number of sensor systems out there but with a twist (it's a bit like phidgets but we are making a very easy to use visual programming language based on flash)
- * make the toolkit be the base to providing a constant selection of all the available technologies... a bit like material connexion.. a library of experiences
- * have products for sale online, a bit like sparkfun
- * take on the pcb-europe.net website and its operation, separating the PCB selling from the tools selling.
- * showcase the arduino boards as an example of our engineering and small scale production capability

I've been talking to venture capital people here in italy and I'm trying to make this into a profitable company

If you guys want to be partners you're more than welcome.

i'll send out a more detailed report soon but this is the short and quick version

let me know your thoughts

massimo

Tom Igoe [REDACTED]
To: Massimo Banzi [REDACTED]
Cc: team@arduino.cc

Mon, Jan 29, 2007 at 8:24 PM

Thanks for bringing this up. A few things off the top of my head:

1. Can Arduino follow the linux model? i.e. it's still open source, anyone can make them, but everyone buys from the vendor who offers the reliable build and good service. In our case, that would mean that we license anyone who pays to use the name, but we figure out how to make Smart Projects, or tinker.it into the Red Hat of Arduino.
2. Since we've already published the project under GNU, we can't retract it, right? Also, we'd generate huge bad will if we did. Our main control is in licensing, as I see it. We need a good licensing model. That should fund the Arduino Enterprise.
3. Besides selling the boards, what makes money, and what needs money? Based on those two, we can work out how to distribute money. For example: writing the core software needs money. We should look for ways to fund that besides licensing.
4. Where is everyone physically these days? David C in Malmo, Massimo and Gianluca in Milan, me in New York, David M still in Copenhagen? I ask because I might be in Copenhagen in the end of March/beginning of April. Anyone got time for a meeting, or at least a conference call when we're in a compatible timezone?

t.

[Quoted text hidden]

[Quoted text hidden]

Team mailing list
Team@arduino.cc
http://mail.arduino.cc/mailman/listinfo/team_arduino.cc

David A. Mellis [REDACTED]
To: Tom Igoe [REDACTED]
Cc: Massimo Banzi [REDACTED] team@arduino.cc

Mon, Jan 29, 2007 at 10:07 PM

I'd like us to establish the Arduino company, trademark the name, work out licensing conditions for people looking to distribute Arduino, manufacture it, or produce compatible, Arduino-branded hardware, and start making some deals (esp. with the other folks interested in distributing Arduino). This might be a lot of work, but I think it's

Can you let us know what the accountant needs from us? What are the decisions we need to make (e.g. how to divide shares, who's a director, what kind of projects can be done through the company and how, etc.)? I know we've discussed these things before, but I think it's time to find out exactly what the legal requirements are and sort it out.

That, in turn, should make it much easier to understand how Arduino and tinker.it work together (as I'd like to see them do).

Once we have a structure to work in I think it will be easier to talk about specific ideas for new directions for Arduino.

I'm sorry to be such a stickler about this, but I've put a lot of work into the project in the understanding that I was a partner in it, and so far there is nothing that confirms that understanding. I'm glad to be a part of Arduino and happy to continue working on it, but I think we need to make it clear (legally) where we stand.

P.S. I'm still in Copenhagen and would love to see you when you're here. We certainly have a lot of things to discuss as a group. Let me know.

[Quoted text hidden]

EXHIBIT C

From: Tom Igoe [REDACTED]
Subject: Re: Fwd: Re: [Team] Arduino royalty model
Date: December 13, 2007 at 3:22 PM
To: Gianluca Martino [REDACTED]
Cc: team@arduino.cc

I don't think there's need to define the categories so precisely.
I'd say it's more along the lines David defined earlier. I'm making
up values here, feel free to argue other numbers:

Use of the name Arduino on a piece of hardware: █ % of sales price
Discount for use of the name if you designed the board: █ % of sales
price
If you designed the board and someone else manufactures it, you get:
█ % of sales price
Sales price from a distributor is not to exceed X% of distributor's
cost per unit

I don't think we can charge people for the use of the name in a
workshop unless they want support from us. For example, there are
probably half a dozen organizations and clubs and schools here in NYC
that run Arduino workshops, and would just switch hardware if we
charged them. No other product charges them for the name in a workshop.

Tom

On Dec 13, 2007, at 3:09 PM, Gianluca Martino wrote:

Hi Guys,

I think It is time to define the fees.

Should the categories be these?

Use of name Arduino on a base board	x.xx USD
Use of name Arduino on a wireless board y.yy	USD
Use of name Arduino on a bare PCB	z.zz USD
Use of name Arduino in a Workshop	w.ww USD

Or You would like to define the price/model?

Arduino NG	x.xx USD
Arduino Diecimila	x.xx USD
Arduino BT	x.xx USD
Lilypad Arduino	x.xx USD
Bare Bone Arduino	x.xx USD
Spark Fun Arduino	x.xx USD
Arduino Mini	x.xx USD
Arduino USB Ext	x.xx USD
Arduino BT EXt	x.xx USD
Arduino Power Ext	x.xx USD
Freeduino	x.xx USD
ASDF PCB	x.xx USD
Xbee Shield	x.xx USD
etc etc	

Please define this number soon, I've to redefine the price list to
make an agreement with distributors to avoid to be put in outside.

Ciao

Gianluca

X-IronPort-Anti-Spam-Filtered: true
X-IronPort-Anti-Spam-Result: AgAAADL8XkdKNXIRZ2dsb2JhbACPagoFBgIHIA
X-IronPort-AV: E=Sophos;i="4.24.155.1196636400";
d="scan'208";a="453148256"
Date: Wed, 12 Dec 2007 00:14:51 -0500
From: Paul Badger [REDACTED]
To: Daniel Jolliffe [REDACTED]

To: Brian Riley <[REDACTED]>
Cc: Brian Riley <[REDACTED]>, team@arduino.cc,
Tony Kim <[REDACTED]>
Subject: Re: [Team] Arduino royalty model
X-BeenThere: team@arduino.cc
X-Mailman-Version: 2.1.9.cp2
List-Id: <team_arduino.cc.arduino.cc>
List-Unsubscribe: <http://mail.arduino.cc/mailman/listinfo/
team_arduino.cc>,
<mailto:team-request@arduino.cc?subject=unsubscribe>
List-Archive: <http://mail.arduino.cc/mailman/private/
team_arduino.cc>
List-Post: <mailto:team@arduino.cc>
List-Help: <mailto:team-request@arduino.cc?subject=help>
List-Subscribe: <http://mail.arduino.cc/mailman/listinfo/
team_arduino.cc>,
<mailto:team-request@arduino.cc?subject=subscribe>
Sender: team-bounces@arduino.cc
X-AntiAbuse: This header was added to track abuse, please include
it with any abuse report
X-AntiAbuse: Primary Hostname - rhodope.site5.com
X-AntiAbuse: Original Domain - libero.it
X-AntiAbuse: Originator/Caller UID/GID - [47 12] / [47 12]
X-AntiAbuse: Sender Address Domain - arduino.cc
X-Antivirus: avast! (VPS 071211-0, 11/12/2007), Inbound message
X-Antivirus-Status: Clean

I see the per piece license fee as being more viable. It is going to be something of an honor system but I think that having the whole financial system public would tend to encourage manufacturers to play it straight, and for users to buy from people who are contributing to the system. It will all a bit of an experiment, but so the whole idea of open-source hardware is anyway. I think a little nagging could go a long way here, along with a public and transparent explanation and accounting of the whole system.

Manufacturers should be encouraged to pay the fee at the time they burn the boards, and to amortize the fee into their downstream prices.

Another idea I would like to throw out is the idea of compensating people (maybe in hardware) who contribute in major ways, to the project. This might be done in an way that it turns out to be more of an honor/award type of thing instead of any kind of real motivator - such as the way the X-prize worked.

Paul

I like all these ideas except for the Freeduino conditions.

Freeduino is already released free and without restriction, so we can't apply any to it at this point.
Anyone can make it royalty-free, so if Gianluca wants to make it for example, more power to him!

D

On Dec 11, 2007, at 8:17 PM, Tony Kim wrote:

Some ideas:

1) Use the Arduino licensina model for using the name on official

and supported products, derivatives... without any legal or moral implications to the original Arduino Team (i.e. Arduino by xyz, meaning that xyz manufactured the product and xyz is responsible for it).

2) Use the Freeduino name for products that the team and community produce for helping others, sponsored, either for free or charging a small price for covering the costs, labor, etc.

3) Licensing model per-unit is going to be very difficult to implement, audit, etc. We should create some sort of licensing model that starts at a pre-determined amount for 1st year (payable once, twice or 4 times a year) based on current Arduino product market size, etc... then each year it is recalculated based on some estimation that the whole licensees and the Arduino Team calculate.

It is funny, but it looks like the Arduino name will end up being used (licensed) by the "manufacturers" community and the Freeduino name used by the Arduino Team, which is now a Foundation.

These are just basic ideas that came to my mind, but I consider them valid as a starting point.

Best Regards

Tony

----- Original Message -----

From: Daniel Jolliffe [redacted]
To: Tom Igoe <[redacted]>
Cc: Paul Badger <[redacted]> David A. Mellis
[redacted] team@arduino.cc; Kim Tony
[redacted]

Sent: Tuesday, December 11, 2007 10:36:41 PM
Subject: Re: [Team] Arduino royalty model

for
What if Tony, Paul and I drew up some sort of licensing proposal the team to look at, would that be helpful to the process? It would probably help us to clarify what we want from the process, what we're willing to pay, what we'd expect etc, and it would serve as a discussion document for the formal team to consider the possibilities.

D

On Dec 11, 2007, at 7:24 PM, Tom Igoe wrote:

Agreed with everything David says. So far, all sounds good.

t.

On Dec 11, 2007, at 7:01 PM, paul badger wrote:

David,

This all seems promising.

Paul

Team mailing list
Team@arduino.cc
http://mail.arduino.cc/mailman/listinfo/team_arduino.cc

http://mail.arduino.cc/mailman/listinfo/team_arduino.cc
Team mailing list
Team@arduino.cc
http://mail.arduino.cc/mailman/listinfo/team_arduino.cc

Team mailing list
Team@arduino.cc
http://mail.arduino.cc/mailman/listinfo/team_arduino.cc

EXHIBIT D

From: **Gianluca Martino** [REDACTED]
Subject: [Team] start of communications
Date: November 9, 2008 at 7:04 AM
To: team4@arduino.cc



Ciao Ragazzi (guys)!

In these days I'm having some free speeches with some of You and I would like to extend them to everybody. This is a start, You know I cannot be the master the conversation...

First: Why no one is helping Tom with the 328? ;-) (north west Italian humor)

Stop joking, ok.

HW side:

- You know I'm planning the 2009-beginning 2010 Arduino Duemilanove production, I will produce [REDACTED] boards, this huge order helped me to have the 328 at the same price of the 168, so the end customers will not be charged. At the end we had 2 main improvements (auto power select and 328) for free
- The USD is stronger than 6 months ago, but I made a little discount to distributors so they will not perceive this too much
- Roadmap: We have some boards in the drawer (Arduino Mega - Eth shield with or w/o SD card) and some idea to explore (Arduino Embedded, Xbee nodes)

Royalty model:

- Smart Projects is the main manufacturer and It is playing also a role (via Tinker.it) in the Arduino LLC on the develop and decision making. Smart Projects is paying a 10% royalty on the sold units asking back for the develop expenses. Some other manufacturers should object to this, but they are paying a lower royalty. On the other hand, I need to have the 'first choice' and to know where we are going in order to be on the market both for me and both for the distributor chain. I obviously would not to change this situation, but If You think in a different way, You know I'm 1 on 5, so don't worry about proposing something different.
- Royalty transfer: You know I asked Sparkfun, Ladyada, Tinker.it, and some others, to pay my royalty on the parts bought from me in order to avoid a big cash flow from Italy to USA. I think this model is working, let me know if any problem (more or less is 1 year this was set up)

Arduino LLC:

- Money (You know I'm Italian, this was the first in the list but I added some other points before ;-)): How we will manage the money? We have to decide this before the end of the Year I think (to avoid end of the Year taxation). I would avoid to put numbers and points. Just start. I think something (xx%) should be donated to some no profit humanitarian organizations (I choose Save The Children for Smart Projects), something should be stored for company needing and accountancy (yy%), something for technological help to schools/organizations (free material and so on, zz%), something should be allocated to each one of us for develop-support-management-job ww/month?) and the missing part should be divided from each one of us.

I forgot something for sure, please add your points and once we will have a list, let's start discuss It, better if during a week in Mexico ;-)

Ciao

Gianluca

Team mailing list
Team@arduino.cc
http://arduino.cc/mailman/listinfo/team_arduino.cc

From: **Alexandra Deschamps-Sonsino** [REDACTED] 
Subject: Arduino royalties
Date: March 30, 2009 at 10:24 AM
To: David Mellis [REDACTED]
Cc: Massimo Banzi [REDACTED] Gianluca Martino [REDACTED]



Hi David,

I was told to send you our banking information for the Arduino royalties for Massimo and Gianluca.

Tinker.it Limited
HSBC
25 Islington High Street
N1 9LJ London UK
Swift BIC code: [REDACTED]
IBAN: [REDACTED]

Please let me know if you need an official invoice,

A

Alexandra Deschamps-Sonsino
Tinker.it!
CEO & Co-Founder

[REDACTED]
+44 (0) 7768 462 125

<http://www.tinker.it>
<http://www.tinker.it/now>



EXHIBIT E

From: Gianluca Martino [REDACTED]
Subject: Re: [Team] July report
Date: August 15, 2009 at 2:37 AM
To: David A. Mellis [REDACTED] Tom Igoe [REDACTED]
Cc: team@arduino.cc

Hi guys,

today is THE holiday! Italians went crazy on 15th August ("ferragosto").

BTW, some replies in the middles, and a couple of notes.

- 1) I'm not for not paying taxes, I'd like only to avoid to waste money
- 2) a question: if at the end of the year Arduino LLC will close with eg [REDACTED] USD of profit,
2A) will it be taxed?
2B) what we will use that money for?
2C) will we split a part of that? If yes, let's work on this to avoid the double taxation on this part

But please let's wait we all come back from holiday, let us check again with our business accountants and let's discuss this on the 2nd planned skype meeting (the first is at the end of August, business accountants are closed)

At 02:40 15/08/2009, David A. Mellis wrote:

Hi,

There's no inherent reason that the current setup needs to involve double taxation. The difficulties arise because of the apparent complications in the Italian tax system.

real

Massimo and Gianluca, can you provide an explanation of what you can and can't do under the Italian tax system? For example, can you be a partner in a foreign partnership?

yes, but better if not earning money

Can you be a stockholder of a foreign corporation?

yes, but if earning money as profit, they will be double taxed.

eg: Arduino LLC have a 100 profit, that means 70 after taxes. our quota is 14 each. receiving 14 I will pay 4 of Italian taxes and the net is 10. Making an invoice of 20 to Arduino directly, we will pay 6 of Italian taxes and the net is 14.

Can you pay royalties to a foreign partnership or corporation?

yes if they are 2% or less (a strange regulation) if they are higher than that you have to demonstrate the royalties you pay are for a technological advantage the other entity is giving you (technology, know-how, patents), that's why I asked for different indication on the invoices

Can you be pay invoices to a foreign person, company, or partnership?

yes

This will help us understand what's possible and what's not. I'd like to think we can find a solution that allows the Arduino company to function while avoiding causing you any problems with the tax authorities.

Here's one idea. Arduino, LLC continues to invoice Gianluca for the royalties each month. Each month, we subtract an estimate of Gianluca's share of the royalties. This enables Gianluca to get (back) his share of the Arduino royalties without it appearing as

| income from a foreign company.

quite confusing. For me is better to pay them in full and then make an invoice to have the quota assigned to me back

| On the other hand, the Arduino, LLC
can still report the proper total amount of royalties that it should
receive that month. Since this is a foreign partner's share of

⋮ See More

| On the other hand, the Arduino, LLC
can still report the proper total amount of royalties that it should
receive that month. Since this is a foreign partner's share of

| Team mailing list
Team@arduino.cc
http://arduino.cc/mailman/listinfo/team_arduino.cc

EXHIBIT F

From: Gianluca Martino [REDACTED]
Subject: [Team] invoicing
Date: December 12, 2007 at 6:02 AM
To: team@arduino.cc

Hi Guys,

the invoicing could start. Please correct my typing errors. I need they are time displaced, if my proposal dates are not suitable for you, make an agreement between you and cross the dates

Please invoice following this plan:

David C:

[REDACTED] Euro "consultancy for vending machines - external peripherals bus: reverse engineering and sw library development" date 10th-12-2007

David M:

[REDACTED] Euro "consultancy for vending machines - chip card: reverse engineering and coding algorithm library development" date 14th-12-2007

Tom Igoe:

[REDACTED] Euro "consultancy for vending machines - chip card: Application SW development" date 19th-12-2007

Massimo B:

[REDACTED] Euro: let's agree in different mails to sum also Artemide ecc

Gianluca M: I'll keep this money for my company to cover some extra expenses I'm having.

Invoice to:

Smart Projects snc
Via Siccardi, 12
10034 Chivasso Italy
VA [REDACTED]

Team mailing list
Team@arduino.cc
http://mail.arduino.cc/mailman/listinfo/team_arduino.cc

From: Gianluca Martino [REDACTED]
Subject: [Team] invoices
Date: October 3, 2007 at 10:58 AM
To: team@arduino.cc

Hi guys,

in order to avoid a unique huge bank transfer, I suggest to make a first division of some money.

We have on the Arduino Account about [REDACTED] Euro, I propose to make a [REDACTED] Euro transfer to each one of us.

Let's make an invoice for a consulting about Arduino support/development, It cannot be too much generic. Specify in the invoice the bank account including swift code otherwise it is not possible to make the transfer.

Smart Projects snc
Via Siccardi, 12
10034 Chivasso (TO) Italy
VAT [REDACTED]

As soon as I'm a little less busy, We have to discuss about 2 things:
1- Smart Projects Incoming: cause of volume of invoicing, money management and money risk, Smart Projects need to make a little higher margin (1 euro/board) to maintain the Arduino production a not in balance activity.
2- Next production lot dimension, at the end of October it will be necessary to plan components/PCB arriving.

Ciao

Gianluca

Team mailing list
Team@arduino.cc
http://mail.arduino.cc/mailman/listinfo/team_arduino.cc

EXHIBIT G

ARDUINO, LLC
OPERATING AGREEMENT

This Operating Agreement (this "Agreement") relating to Arduino, LLC (the "Company") is entered into, as of April 3, 2008, by and among Tinker.it Limited, David A. Mellis, Tom Igoe and David Cuartielles.

The parties have agreed to organize and operate the Company as a limited liability company under the Massachusetts Limited Liability Company Act, M.G.L. c. 156C as amended from time to time (the "Act"), in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties, intending legally to be bound, agree as follows:

Article 1
DEFINITIONS

The following capitalized terms shall have the meaning specified in this Article 1. Other terms are defined throughout this Agreement and have the meanings respectively ascribed to them.

"Certificate of Organization" means the Certificate of Organization of the Company to be filed with the Secretary of State of the Commonwealth of Massachusetts in accordance with the Act.

"Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"Interest" means a Member's share of the profits and losses of, and the right to receive distributions from, and voting rights in, the Company.

"Member" means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company in accordance with the terms of this Agreement.

"Percentage" means the percentage set forth after the Member's name on Exhibit A to this Agreement, as amended from time to time.

"Person" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

"Regulation" means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

Article 2
ORGANIZATION

2.1. *Organization.* The parties hereby organize a limited liability company pursuant to the Act and the provisions of this Agreement and, for that purpose, have caused a Certificate of Organization to be executed and filed with the Secretary of State of the Commonwealth of Massachusetts on April 3, 2008.

2.2. *Name of the Company.* The name of the Company shall be "Arduino, LLC." The Company may do business under that name and under any other name or names upon which the Members agree. If the Company does business under a name other than that set forth in its Certificate of Organization, the Company shall file a trade name or doing business certificate or any other documents as required by applicable law.

2.3. *Purpose.* The Company is organized to promote the use of open-source hardware and software in commerce and art and to engage in any lawful activity for which a limited liability company may be formed under the laws of Massachusetts.

2.4. *Powers.* The Company shall have all of the powers necessary or convenient to the conduct, promotion or attainment of the business, trade, profession, purposes or activities of the Company, including, without limitation, all of the powers of an individual, partnership, corporation or other entity under Massachusetts law. The Company shall have the power to issue additional Interests.

2.5. *Term.* The term of the Company began upon the filing of the Certificate of Organization with the Secretary of State of the Commonwealth of Massachusetts and shall continue until its existence is sooner terminated pursuant to Article 7 of this Agreement.

2.6. *Office.* The office of the Company in the Commonwealth of Massachusetts shall be located at 36 College Avenue, No. 1, Somerville, MA 02144, or at any other place within the Commonwealth of Massachusetts upon which the Members agree.

2.7. *Resident Agent.* The name and address of the Company's resident agent in the Commonwealth of Massachusetts shall be David A. Mellis, 36 College Avenue, No. 1, Somerville, MA 02144.

2.8. *Members.* The name, present mailing address and Percentage of each Member are set forth on Exhibit A hereto.

Article 3
CAPITAL

3.1. *Initial Contributions.* Upon the execution of this Agreement, the Members shall

Exhibit A

List of Members, Capital and Percentages

Name & Address	Initial Capital Contribution	Percentages
David A. Mellis 36 College Avenue, No. 1, Somerville, MA 02144	\$10 and all right, title and interest in and to the name "Arduino"	20%
David Cuartielles Brogatan 9B 21144 Malmo, Sweden	\$10 and all right, title and interest in and to the name "Arduino"	20%
Tom Igoe 218 Prospect Pl. #3C New York, NY 10003	\$10 and all right, title and interest in and to the name "Arduino"	20%
Tinker.it Limited VAT no. GB 918 9458 72 Company no. 6358026 203b Graham Road E8 1PE, London, UK	\$10 and all right, title and interest in and to the name "Arduino"	40%

EXHIBIT H

From: **Gianluca Martino** [REDACTED]
Subject: Re: invoice January
Date: March 11, 2010 at 2:03 AM
To: David A. Mellis [REDACTED]

Hi David!

Could you please speed up the invoicing process?

I would like to pay one of them immediately so we would avoid to have a big debit to cover...

Thank you

Gianluca

At 16:28 05/03/2010, you wrote:

From: **David A. Mellis** [REDACTED] 
Subject: Re: invoice January
Date: March 11, 2010 at 3:15 PM
To: Gianluca Martino [REDACTED]

Here's the other one.

On Mon, Mar 1, 2010 at 12:34 PM, Gianluca Martino [REDACTED] wrote:

Arduino, LLC
c/o David A. Mellis
28 Marney St., #2
Cambridge, MA 02141
USA
[REDACTED]

Invoice: 0027

Date: 11 March 2010

Bill To:

Smart Projects snc
Via Siccardi, 12
10034 Chivasso Italy
VAT: [REDACTED]

Service

Investigation of slow web server performance
Compression of forum CSS
Migration to dedicated server
Upgrading blog to Wordpress 2.9
Improving Apache error messages

Total [REDACTED] euro

EXHIBIT I

LEASON ELLIS

One Barker Avenue
Fifth Floor
White Plains, New York 10601
t. 914.821.8011
f. 914.288.0023

March 19, 2015

Martin Schwimmer
Partner
Schwimmer@LeasonEllis.com

VIA CERTIFIED MAIL

Arduino S.r.l.
Via Romano, 12
10010 Scarmagno
ITALY

RE: Confirmation of Termination of License between Arduino LLC and Arduino S.r.l. f/k/a Smart Projects S.r.l.

Dear Sir/Madam:

As you are aware, representatives of Arduino LLC (the "LLC") and representatives of Arduino S.r.l. (the "SRL") and the SRL's related companies, including but not limited to Gheo SA, CC Logistics LLC, Magyc Now Ltd., Dog Hunter LLC, and Tulyp Holdings SA (the "Related Parties") identified in *Arduino LLC v. Arduino S.r.l., et. al.*, Civ. No. 1:15-cv-10181-DJC (S.D.N.Y.) (the "Federal Lawsuit"), have been involved in discussions to bring about resolution of the disputes set out in the complaint in the Federal Lawsuit (the "Complaint"). However, those discussions have been terminated.

As articulated in the Complaint, the SRL had been the master licensee of the ARDUINO trademark and ancillary trademarks (collectively the "Arduino Trademarks") owned by the LLC. In the communications with the SRL, and in the Complaint, the LLC has identified various acts of the SRL and/or the Related Parties that it views as breaches of the license between the LLC and the SRL (the "License"). These acts include:

1. Filing for and obtaining registrations of the Arduino Trademarks in the SRL's own name (the "Registrations");
2. Refusing to assign said Registrations to the LLC;
3. Petitioning to cancel the LLC's U.S. trademark registrations;
4. Failing to provide a verifiable accounting of sales made pursuant to the License by the SRL and/or the Related Parties; and
5. Failing to remit all royalties due the LLC pursuant to the License.

All these items had been previously brought to the attention of the SRL, yet it did not cure its breaches. The Complaint filed by the LLC in the U.S. Federal Lawsuit against the SRL, and the LLC's cancellation action against the Italian registration in the SRL's name, placed the SRL on notice that the license had been terminated.

LEASON ELLIS

Letter to Arduino S.r.l.
March 19, 2015
Page 2

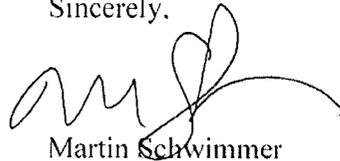
It has now come to the LLC's attention that control of the SRL had apparently been transferred to Federico Musto, or to entities controlled by Federico Musto. As control of the master licensee is obviously material to the License with the LLC, this is now viewed as an additional breach of the license.

The LLC has previously been of the view that despite the termination of the License, a negotiated settlement was still possible, and certainly preferable to any action that could lead to a disruption of the flow of product to the ARDUINO community. However, in view of certain statements made by Mr. Musto in interviews and on the new <arduino.org> website, as well as the withdrawal of Mr. Musto from the settlement negotiations, it appears that the SRL and Related Parties are more concerned with usurping the ARDUINO brand, than serving the customer base.

It was the LLC's reluctant view that it had to sever the long (and valued) relationship with the SRL. The SRL materially breached its License with the LLC, for the reasons expressed herein. So that there is no misunderstanding, the filing of the U.S. Federal Lawsuit terminated the SRL's License worldwide. As an accommodation, the SRL will be given sixty days from the date of this letter to exhaust existing inventory (outside of Italy). After that time, any use of the Arduino Trademarks, as well as any copyrighted works owned by the LLC, will be deemed to be an infringement of LLC's rights, in any jurisdiction (this is in addition to those acts that have been already deemed an infringement in the U.S. and Italy). A schedule attached hereto sets forth the Arduino Trademarks referenced herein. The LLC will take or pursue any and all actions available to it without prior notice to the SRL or the Related Parties, to obtain injunctive relief to stop said infringement.

This is without prejudice to all other rights and remedies of Arduino LLC, all of which are expressly reserved.

Sincerely,



Martin Schwimmer

Enclosure

cc: Gheo SA c/o Michael P. Boudett, Esq. (via email)
Paolo Strino, Esq. (via email)
Avv. Fabrizio Tarocco (via email)
Dr. Stefano Codoni (via email)
Avv. Pietro Longhini (via email)
John L. Welch, Esq. (via email)
Arduino LLC (via email)

Arduino Trademarks Schedule

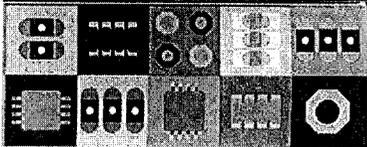
ARDUINO	ARDUINO DUE + TRE
ARDUINO YÚN	DUE + TRE
YÚN	ARDUINO ESPLORA
ARDUINO UNO	ESPLORA
UNO	ARDUINO MICRO
ARDUINO NG	MICRO
NG	ARDUINO SHIELD
ARDUINO DIECIMILA	SHIELD
DIECIMILA	MATERIA
ARDUINO MINI	MODULINO
ARDUINO MEGA	ARDUINO ATHEART
MEGA	ARDUINO ROBOT
ARDUINO DUEMILANOVE	ARDUINO ZERO
DUEMILANOVE	ZERO
PROTO	ARDUNIO PROTO
ARDUINO FIO	FIO
	
	
	
	

EXHIBIT J

United States of America

United States Patent and Trademark Office



Reg. No. 4,113,794

Registered Mar. 20, 2012

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

ARDUINO, LLC (MASSACHUSETTS LIMITED LIABILITY COMPANY)
28 MARNEY STREET, #2
CAMBRIDGE, MA 02141

FOR: COMPUTER HARDWARE; COMPUTER PROGRAMS FOR DEVELOPING, DEBUGGING AND TESTING SOFTWARE FOR MICROCONTROLLER PROGRAMMING; COMPUTER HARDWARE SUBASSEMBLIES FOR ASSEMBLING CUSTOM ELECTRICAL AND ELECTRONIC DEVICES; MICROCONTROLLERS AND MICROCONTROLLER MODULES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-26-2010; IN COMMERCE 9-26-2010.

THE MARK CONSISTS OF THE WORD "ARDUINO" IN STYLIZED LETTERING ABOVE WHICH IS THE INFINITY SYMBOL WITH A MINUS SYMBOL WITHIN THE LEFT CIRCLE AND A PLUS SYMBOL WITHIN THE RIGHT CIRCLE.

SER. NO. 85-144,567, FILED 10-4-2010.

ANDREW LEASER, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

EXHIBIT K

United States of America

United States Patent and Trademark Office

ARDUINO

Reg. No. 3,931,675

Registered Mar. 15, 2011

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

ARDUINO, LLC (MASSACHUSETTS LIMITED LIABILITY COMPANY)
28 MARNEY STREET, #2
CAMBRIDGE, MA 02141

FOR: ELECTRONIC CIRCUIT BOARDS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE: 9-21-2005; IN COMMERCE: 10-15-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-708,806, FILED 4-7-2009.

HEATHER THOMPSON, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office