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12 CDDB, Inc. dba Gracenote
13
                UNITED STATES DISTRICT COURT
14
            NORTHERN DISTRICT OF CALIFORNIA
15
                    SAN JOSE DIVISION
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17
18 CDDB, INC. dba GRACENOTE,   No. C-01 20428 JW
19   Plaintiff,
20   vs.   **STIPULATION AND [PROPOSED]**
                                         ORDER RE DISMISSAL OF ROXIO,
21 ADAPTEC, INC., and ROXIO, INC.,   **INC. AND GRACENOTE**
22   Defendants.
23
24
25 AND RELATED COUNTERCLAIMS.
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27
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WHEREAS, plaintiff CDDB, Inc. d/b/a Gracenote ("Gracenote") filed this action against defendants Adaptec, Inc. ("Adaptec") and Roxio, Inc. ("Roxio") alleging claims of patent infringement, violations of the Digital Millennium Copyright Act, federal service mark infringement, federal unfair competition, common law service mark infringement, breach of contract, declaratory judgment, and correction of inventorship of patent;

WHEREAS, Adaptec and Roxio answered the Complaint, and Roxio alleged counterclaims against Gracenote for declaratory judgment of patent invalidity and unenforceability, declaratory judgment of patent noninfringement, cancellation of service-mark registration, declaratory judgment of service-mark infringement, invalidity and unenforceability, declaratory judgment as to agreement, violations of the Sherman Act, violations of the Lanham Act, tortious interference with existing business relationships, breach of contract and of implied covenant of good faith and fair dealing, and unfair competition;

WHEREAS, the parties have entered into a Settlement Agreement requiring the filing of this Stipulation and [Proposed] Order re Dismissal of Roxio, Inc. and Gracenote;

NOW THEREFORE, pursuant to Local Rule 7-11, Roxio and Gracenote, through their respective counsel of record and without admitting to any liability under the claims in this case, hereby stipulates as follows:

1   1.   Gracenotes's CDDB® Server Software refers to all server software and

2   protocols authored, released or supplied by Gracenote and its transferors or successors

3   in interest, including, without limitation, CDDB LLC;

4

5   2.   Gracenotes's CDDB® Server Software is covered by the claims of Gracenote's

6   U.S. Patent No. 6,061,680;

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8   3.   Gracenote's CDDB® Database refers to all databases containing information

9   about audio compact discs, known as CDs, authored, released or supplied by

10   Gracenote and its transferors or successors in interest, including, without limitation,

11   CDDB LLC.

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13   4.   Gracenote's CDDB® Database includes protectable copyrighted subject matter;

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15   5.   Commencing on the 15th day following the execution of this Stipulation, Roxio

16   will not use any product or service that uses or is based upon Gracenote's CDDB®

17   Server Software, or derivative works or colorable variations or versions thereof,

18   excepting that Roxio may continue to make, use or license its current version of its

19   Toast and WinOnCD software products until March 1, 2002;

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21   6.   All claims against Gracenote are dismissed with prejudice, except that Roxio's

22   claims for declaratory relief of patent invalidity and unenforceability are dismissed

23   without prejudice;

24

25   7.   Roxio shall bear its own costs, expenses, and attorneys' fees;

1   8.   All claims against Roxio are dismissed with prejudice; and

2

3   9.   Gracenote shall bear its own costs, expenses, and attorneys' fees.

4

5 Dated: December 31, 2001.   SHAW PITTMAN LLP
                                    LAWRENCE J. GOTTS

6   MARK KOEHN

7   HARVEY SISKIND JACOBS LLP

8   D. PETER HARVEY
                                      IAN K. BOYD

9

10   By: __s/ Lawrence J. Gotts_____
                                          Lawrence J. Gotts

11   Attorneys for Plaintiff
                                    CDDB, Inc. dba Gracenote

12

13

14 Dated: December 31, 2001.   O'MELVENY & MEYERS LLP
                                      DAVID P. ENZMINGER

15   WILLIAM J. O'BRIEN
                                      RYAN YAGURA

16

17   By:___s/ David P. Enzminger_____

18   David P. Enzminger
                                    Attorneys for Defendant

19   Roxio, Inc.

20

21   **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

22

23 Date: _____   _____

24   Judge James Ware
                                United States District Court

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STIPULATION AND [PROPOSED] ORDER RE DISMISSAL OF ROXIO, INC. AND GRACENOTE
LA2:598931.1   C-01 20428 JW

DECLARATION OF CONSENT

I, David P. Enzminger, hereby attest:

    1.   Concurrence in the filing of the following document has been obtained from each of the other signatories, which shall serve in lieu of their signatures on the document:

    STIPULATION AND [PROPOSED] ORDER RE DISMISSAL OF ROXIO, INC. AND GRACENOTE

    2.   I shall maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party until one year after final resolution of the action pursuant to General Order 45 of the United States District Court for the Northern District of California.

    I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

    Executed in Los Angeles, California on December 31, 2001.

<div align="right">

        s/ David P. Enzminger
David P. Enzminger

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