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10 Attorneys for Plaintiff METABYTE, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

15 METABYTE, INC., a California corporation,

16 Plaintiff,

17 v.

18 NVIDIA CORPORATION, a Delaware
19 corporation, DAVID COOK, an individual,
20 VIATCHESLAV GOSTRENKO, an
individual, ANDREI OSNOVICH, an
21 individual, MICHAEL YAROSLAVTSEV, an
individual, MIKHAIL KRIVEGA, an
22 individual, and DOES 1-5,

23 Defendants.

Case No.:

COMPLAINT FOR:

1. **COPYRIGHT INFRINGEMENT (17 U.S.C. § 106);**
2. **VIOLATION OF FEDERAL COMPUTER FRAUD AND ABUSE ACT (18 U.S.C. §§ 1030(A)(2)(C), (A)(4) & (A)(5));**
3. **BREACH OF CONTRACT;**
4. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
5. **MISAPPROPRIATION OF TRADE SECRETS, CAL. CIV. CODE § 3426, ET SEQ.;**
6. **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;**
7. **UNFAIR BUSINESS PRACTICES, CAL. BUS. & PROF. CODE § 17200 ET SEQ.;**
8. **UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

1 VIATCHESLAV GOSTRENKO ("GOSTRENKO") is a resident of the State of California.

2 8. METABYTE is informed and believes, and thereon alleges, that Defendant
3 ANDREI OSNOVICH ("OSNOVICH") is a resident of the State of California.

4 9. METABYTE is informed and believes, and thereon alleges, that Defendant
5 MICHAEL YAROSLAVTSEV ("YAROSLAVTSEV") is a resident of the State of California.

6 10. METABYTE is informed and believes, and thereon alleges, that Defendant
7 MIKHAIL KRIVEGA ("KRIVEGA") is a resident of the State of California.

8 11. On information and belief, Does 1 through 5 are responsible in some manner for the
9 conduct alleged herein. METABYTE intends to take discovery to ascertain the true identity of
10 Does 1 through 5 and will amend this Complaint as soon as practicable with this information.

11 **BACKGROUND ALLEGATIONS**

12 12. METABYTE is an information technology services company that produces software
13 and services. METABYTE provides a variety of product development, consulting, outsourcing,
14 and staffing services to its clients in the information technology area.

15 13. In early 2009, METABYTE discovered that NVIDIA launched a product called
16 GeForce 3D Vision, now called 3D Vision, which was substantially similar to METABYTE's 3D
17 Stereoscopic Technology. Attached hereto as Exhibit 1 to this Complaint is a rendering of
18 NVIDIA's GeForce 3D Vision product.

19 14. METABYTE's 3D Stereoscopic Technology is software consisting of executable
20 and source code which enable a three-dimensional, visually immersive display by presenting
21 images separately to the left and right eye through specialized eyeglasses that a viewer wears to
22 look at a computer screen. The primary application for METABYTE'S software is personal
23 computer (PC) based video game playing. Products embodying METABYTE's 3D Stereoscopic
24 Technology were developed at METABYTE in its Wicked3D Division from 1998 through 2001 and
25 were marketed and sold under the name eyeSCREAM. Attached hereto as Exhibit 2 are renderings
26 of METABYTE's product. METABYTE invested many millions of dollars in the development of
27 its software and related products.

28 15. Between approximately 1994 and 1997, METABYTE hired COOK, GOSTRENKO,

1 OSNOVICH, YAROSLAVTSEV, KRIVEGA as well as two other individuals named Andrei Rylin
2 and Viktor Matveyev (both now deceased), as software developers to work in METABYTE's
3 office in Fremont, California (collectively, the "Former METABYTE Employees").

4 16. GOSTRENKO, OSNOVICH, YAROSLAVTSEV, KRIVEGA, Andrei Rylin and
5 Victor Matveyev were Russian residents who immigrated to the United States to work at
6 METABYTE. METABYTE provided significant assistance to each of these individuals to
7 facilitate their legal immigration status and to obtain visas to work in the United States.
8 METABYTE also provided various other relocation support and assistance to them, including,
9 among other things, setting up their personal households in California.

10 17. COOK worked as a software developer and Director of Engineering at METABYTE
11 from 1994 to 1999. While at METABYTE, COOK was the development team manager for the
12 programmer group that developed METABYTE's 3D Stereoscopic Technology and Device Driver
13 Technology and he worked on and had access to this METABYTE software. COOK became an
14 NVIDIA employee immediately after leaving METABYTE.

15 18. GOSTRENKO worked at METABYTE from 1997 to 2001. While employed at
16 METABYTE, GOSTRENKO was responsible for the core development of METABYTE's 3D
17 Stereoscopic Technology and he worked on and had access to this METABYTE software.
18 GOSTRENKO became an NVIDIA employee immediately after leaving METABYTE.

19 19. OSNOVICH worked at METABYTE from 1994 to 1999. While employed at
20 METABYTE, OSNOVICH was responsible for core development of METABYTE's 3D Device
21 Driver technology, METABYTE's 3D Stereoscopic Technology and worked on and had access to
22 this METABYTE software. OSNOVICH became an NVIDIA employee immediately after leaving
23 METABYTE.

24 20. YAROSLAVTSEV worked at METABYTE from 1994 to 1999. While at
25 METABYTE, YAROSLAVTSEV was a member of the development team for METABYTE's 3D
26 Stereoscopic Technology and Device Driver Technology and he worked on and had access to this
27 METABYTE software. Upon information and belief, YAROSLAVTSEV joined NVIDIA as an
28 employee in approximately 2003.

1 21. KRIVEGA worked at METABYTE from 1997 to 2001. While at METABYTE,
2 KRIVEGA was a member of the development team for METABYTE's 3D Stereoscopic
3 Technology and Device Driver Technology and he worked on and had access to this METABYTE
4 software. KRIVEGA joined NVIDIA as an employee after leaving METABYTE.

5 22. Andrei Rylin worked at METABYTE from 1995 to 2001 and was a member of the
6 development team for METABYTE's 3D Stereoscopic Technology and Device Driver Technology
7 and he worked on and had access to this METABYTE software. Rylin joined NVIDIA
8 immediately after leaving METABYTE or soon thereafter.

9 23. Victor Matveyev worked at METABYTE from 1997 to 2001 and was a member of
10 the development team for METABYTE's 3D Stereoscopic Technology and Device Driver
11 Technology and he worked on and had access to this METABYTE software. Upon information
12 and belief, Matveyev joined NVIDIA as an employee in approximately 2003.

13 24. On information and belief, COOK, GOSTRENKO, OSNOVICH,
14 YAROSLAVTSEV, KRIVEGA, Andrei Rylin and Victor Matveyev were recruited by NVIDIA to
15 work in NVIDIA's 3D Stereoscopic and device driver development group.

16 25. On information and belief, COOK was the leader of NVIDIA's 3D Stereoscopic and
17 device driver development group and each of GOSTRENKO, OSNOVICH, YAROSLAVTSEV,
18 KRIVEGA, Andrei Rylin and Victor Matveyev reported to COOK for at least some portion of the
19 relevant time.

20 26. NVIDIA markets and sells its "GeForce 3D Vision products". These NVIDIA
21 products are substantially similar to METABYTE's Wicked3D eyeSCREAM products. The Former
22 METABYTE Employees, and/or others at NVIDIA worked to develop aspects of NVIDIA's
23 GeForce 3D Vision products for personal computer (PC) based video game playing.

24 27. The software and related code for METABYTE's 3D Stereoscopic Technology are
25 original works owned by METABYTE, are copyrightable subject matter and are the subject of a
26 granted application for federal copyright registration. The title of work for METABYTE's
27 copyright protected software is "METABYTE Wicked3D eyeSCREAM". The Certificate of
28 Registration for this software is incorporated herein by reference and attached to this Complaint as

1 Exhibit 3.

2 28. Since the development of the METABYTE 3D Stereoscopic Technology,
3 METABYTE was and still is the sole owner of all rights, title and interest in and to the copyrights
4 in its 3D Stereoscopic Technology.

5 29. On information and belief, the Former METABYTE Employees copied the source
6 code for METABYTE's 3D Stereoscopic Technology and took METABYTE's property with them
7 when they left METABYTE's employment.

8 30. On information and belief, NVIDIA, and each of the individual defendants, used the
9 knowledge of METABYTE's 3D Stereoscopic Technology gained by the Former METABYTE
10 Employees and took advantage of their readily available access to the METABYTE source code to
11 create both direct copies of, and derivative works based on METABYTE's copyrighted programs.

12 31. While employed at METABYTE, the Former METABYTE Employees were
13 required to, and did sign employee confidentiality agreements in which they expressly
14 acknowledged the confidential, proprietary, and trade secret nature of the technology and software
15 they were exposed to and worked on while employed at METABYTE. Attached hereto collectively
16 as Exhibit 4 are copies of the Employee Invention Assignment and Confidentiality Agreements
17 signed by COOK, OSNOVICH, GOSTRENKO, KRIVEGA, Matveyev and Rylin. The Former
18 METABYTE Employees each acknowledged and agreed that they would maintain the
19 confidentiality of METABYTE's property and keep that trust. They further agreed they would not
20 disclose or use such property for purposes unrelated to their employment with METABYTE. The
21 Former METABYTE Employees also agreed that such obligations would survive the termination of
22 their employment with METABYTE for any reason. The Former METABYTE Employees further
23 agreed that they would return to METABYTE, upon leaving METABYTE's employment, any of
24 METABYTE's confidential information or other property and that they would not take any such
25 property with them upon termination of their employment.

26 32. On information and belief, NVIDIA knew of the confidential and fiduciary
27 relationships between METABYTE and its former employees and deliberately and intentionally
28 took advantage of those relationships in order to facilitate the theft and copying of METABYTE's

1 confidential, proprietary, trade secret, and copyright protected information.

2 33. METABYTE took additional steps to safeguard the confidentiality and secrecy of its
3 3D Stereoscopic Technology, including limiting access on a need to know basis, and keeping its
4 engineering team and computer servers in a restricted area.

5 34. NVIDIA's GeForce 3D Vision products include METABYTE's confidential, trade
6 secret, and copyright protected information encompassing the technology to render different images
7 for the left and the right eye, stereo separation, depth setting, out-of-screen effect, device drivers for
8 personal computers (PC), rendering 2D objects in 3D, laser-sight for aiming, 3D crosshair, how to
9 minimize eye strain and headache.

10 35. Andrei Rylin passed away in 2009. METABYTE's Chief Executive Officer, Manu
11 Mehta, attended his funeral in October, 2009. At this funeral, one of the Former METABYTE
12 Employees, OSNOVICH told Mr. Mehta that in reference to the dispute involving NVIDIA and
13 METABYTE, his belief was that aspects of METABYTE's 3D Stereoscopic Technology were
14 licensed by NVIDIA.

15 36. NVIDIA never had permission to use METABYTE's proprietary confidential,
16 proprietary, trade secret, or copyright protected information for the uses described herein.

17 **FIRST CLAIM FOR RELIEF**
18 Copyright Infringement (17 U.S.C. § 101, et seq.)
19 (Against All Defendants)

20 37. METABYTE repeats and realleges each and every allegation contained in
21 paragraphs 1 through 36 as if fully incorporated here.

22 38. METABYTE owns a valid and enforceable copyright in METABYTE's Wicked3D
23 eyeSCREAM software and computer programs.

24 39. Through the acts alleged above, Defendants had access to the protected
25 METABYTE programs and other information and NVIDIA's products alleged herein are
26 substantially similar to METABYTE's. Defendants also have violated METABYTE's
27 exclusive right to reproduce and make copies of its copyrighted computer program by making
28 direct copies of METABYTE's computer program in violation of 17 U.S.C. § 106 and 501.

40. Defendants have also violated METABYTE's right to control the distribution,

1 creation of derivative works and public display of its copyrighted work by downloading, copying,
2 creating derivative works from and/or distributing NVIDIA products and/or derivative works to
3 NVIDIA's customers, in violation of 17 U.S.C. § 106 and 501.

4 41. Defendants were not authorized by METABYTE to do any of the actions
5 complained of here. METABYTE further alleges that COOK, GOSTRENKO, OSNOVICH,
6 YAROSLAVTSEV, and KRIVEGA have, without authorization, intentionally and willfully made
7 direct copies of the METABYTE's Wicked3D eyeSCREAM computer programs, including source
8 code. NVIDIA, COOK, OSNOVICH, GOSTRENKO, YAROSLAVTSEV and KRIVEGA have
9 also, without authorization, intentionally and willfully created derivative works based on the
10 METABYTE's Wicked3D eyeSCREAM computer program with full knowledge of METABYTE's
11 copyright. Defendants have further used the access to METABYTE's programs and information
12 alleged herein to produce substantially similar products which infringe METABYTE's copyright.

13 42. By means of the actions complained of above, NVIDIA, COOK, GOSTRENKO,
14 OSNOVICH, YAROSLAVTSEV, and KRIVEGA have infringed and continue to infringe on
15 METABYTE's copyright in the computer program METABYTE Wicked3D eyeSCREAM.

16 43. If NVIDIA's use of the derivative works continues, METABYTE will suffer
17 irreparable harm of a continuing nature for which there is no plain, speedy or adequate remedy at
18 law. NVIDIA's acts of copyright infringement will continue unless NVIDIA is enjoined from
19 further committing wrongful acts.

20 44. By reason of these willful infringements of copyrights, METABYTE has sustained
21 injury, loss, and damage to its ownership rights and NVIDIA has unlawfully, unfairly, and
22 wrongfully derived and will continue to derive income from these infringing acts.

23 45. METABYTE has been damaged by Defendants' acts in an amount not yet
24 ascertained but to be proven at time of trial.

25 46. METABYTE is entitled to recover the actual damages it has suffered and/or any
26 profits gained by Defendants that are attributable to their acts of copyright infringement pursuant to
27 17 U.S.C. § 504(b).

28 47. Alternatively, METABYTE is entitled to the maximum statutory damages allowed

1 under 17 U.S.C. § 504(c) based on Defendants' wilful acts of copyright infringement.

2 METABYTE will make its election at the appropriate time before final judgment is rendered.

3 48. Pursuant to 17 U.S.C. § 502, METABYTE is entitled to an injunction against
4 Defendants' continuing reproduction and distribution of METABYTE'S copyrighted materials, as
5 well as an order impounding or destroying any and all infringing materials pursuant to 17 U.S.C. §
6 503.

7 **SECOND CLAIM FOR RELIEF**

8 Violation of Federal Computer Fraud and Abuse Act

9 (18 U.S.C. §§ 1030(a)(2)(C), (a)(4) & (a)(5))

(Against COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, KRIVEGA and DOES 1-5)

10 49. METABYTE repeats and realleges each and every allegation contained in
11 paragraphs 1 through 48 as if fully incorporated here.

12 50. COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA have
13 violated 18 U.S.C. § 1030(a)(2)(C), by intentionally accessing a computer used for interstate
14 commerce or communication, without authorization or by exceeding authorized access to such a
15 computer, and by obtaining information from such a protected computer.

16 51. COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA have
17 violated 18 U.S.C. § 1030(a)(4), by knowingly, and with intent to defraud METABYTE, accessing
18 a protected computer, without authorization or by exceeding authorized access to such a computer,
19 and by means of such conduct furthered the intended fraud and obtained one or more things of
20 value, including at least the METABYTE Wicked3D eyeSCREAM computer program and source
21 code.

22 52. COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA have
23 violated 18 U.S.C. § 1030(a)(5)(A)(i), by knowingly causing the transmission of a program,
24 information, code, or command and as a result intentionally causing damage without authorization
25 to a protected computer owned by METABYTE.

26 53. COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA have
27 violated the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030(a)(5)(A)(ii), (iii) by intentionally
28 accessing a protected computer without authorization, causing damage to METABYTE, recklessly

1 or without due regard for their actions.

2 54. The METABYTE computer system accessed by COOK, GOSTRENKO,
3 OSNOVICH, YAROSLAVTSEV, and KRIVEGA is a "protected computer" as the term is used in
4 18 U.S.C. § 1030(e)(2).

5 55. METABYTE suffered damage and loss as a direct and proximate result of these
6 violations, including, without limitation, harm to METABYTE's data, programs, and computer
7 systems and other losses and damage in an amount to be proven at trial, but in an amount well over
8 \$5000 aggregated over a one-year period.

9 **THIRD CLAIM FOR RELIEF**

Breach of Contract

10 (Against COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, KRIVEGA and DOES 1-5)

11 56. METABYTE repeats and realleges each and every allegation contained in
12 paragraphs 1 through 55 as if fully incorporated here.

13 57. The employee confidentiality agreements signed and entered into by COOK,
14 GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA are valid and enforceable
15 contracts. (Attached hereto as Exhibit 4 are copies of these agreements.)

16 58. COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA were
17 required by these contracts to maintain the confidences of METABYTE, to protect and safeguard
18 METABYTE's confidential, proprietary, and trade secret information, to not disclose or use
19 METABYTE's property other than for METABYTE's purposes, and to return METABYTE's
20 property upon leaving METABYTE's employment.

21 59. COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA
22 breached their contracts with METABYTE by, among other things, copying and taking without
23 permission the METABYTE Wicked3D eyeSCREAM computer program and source code.

24 60. As a result of these breaches, METABYTE has been damaged in an amount to be
25 determined at the time of trial.

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FOURTH CLAIM FOR RELIEF

Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, KRIVEGA and DOES 1-5)

61. METABYTE repeats and realleges each and every allegation contained in paragraphs 1 through 60 as if fully incorporated here.

62. The employee confidentiality agreements entered into by COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA are valid and enforceable contracts which contain an implied covenant of good faith and fair dealing.

63. METABYTE performed all of its obligations under these agreements and all conditions required for the performance by COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA had occurred.

64. By engaging in the conduct described here, COOK, GOSTRENKO, OSNOVICH, YAROSLAVTSEV, and KRIVEGA have violated the covenant of good faith and fair dealing contained in those agreements.

65. As a result of these breaches, METABYTE has been damaged in an amount to be determined at the time of trial.

FIFTH CLAIM FOR RELIEF

Misappropriation of Trade Secrets (Cal. Civ. Code § 3426, et seq.)
(Against All Defendants)

66. METABYTE repeats and realleges each and every allegation contained in paragraphs 1 through 65 as if fully incorporated here.

67. METABYTE's 3D Stereoscopic Technology, including, but not limited to, the METABYTE Wicked3D eyeSCREAM computer program and source code, is METABYTE's property and contain trade secrets within the meaning of California Civil Code Sections 3426, et seq.

68. These METABYTE trade secrets derive actual or potential economic value as a result of their not being generally known to the public or other persons who can obtain economic value from their disclosure or use.

69. METABYTE expends significant efforts to protect the secrecy of its information.

70. Defendants knowingly used improper means to acquire METABYTE's trade secrets.

1 METABYTE's permission and—for the individual Defendants— in violation of their employment
2 and confidentiality agreements.

3 72. As a result of these willful, malicious, and intentional acts, METABYTE has been
4 injured and Defendants are liable for compensatory and exemplary damages, and for unjust
5 enrichment, as well as for attorney's fees in an amount to be determined at the time of trial.

6 73. Unless restrained and enjoined, Defendants will continue to commit such acts.
7 METABYTE has no adequate remedy at law to compensate it for these actual and threatened
8 injuries, entitling METABYTE to equitable remedies, including injunctive relief.

9 **SIXTH CLAIM FOR RELIEF**
10 Intentional Interference with Contractual Relations
(Against NVIDIA)

11 74. METABYTE repeats and realleges each and every allegation contained in
12 paragraphs 1 through 73 as if fully incorporated here.

13 75. The Former METABYTE Employees had employee confidentiality agreements with
14 METABYTE that were binding contracts.

15 76. NVIDIA knew of these contracts.

16 77. NVIDIA intended to disrupt the performance of these contracts.

17 78. NVIDIA's conduct prevented performance of the employee confidentiality
18 agreements by virtue of the Former METABYTE Employees using METABYTE's confidential,
19 proprietary, trade secret, and other protected information to further NVIDIA's acts alleged herein.

20 79. METABYTE was harmed by these acts.

21 80. NVIDIA's conduct was a substantial factor in causing METABYTE's harm.

22 81. As a result of these actions, METABYTE has been harmed in an amount to be
23 determined at the time of trial.

24 **SEVENTH CLAIM FOR RELIEF**
25 (State Unfair Competition Cal. Bus. & Prof. Code § 17200)
(Against NVIDIA)

26 82. METABYTE repeats and realleges each and every allegation contained in
27 paragraphs 1 through 81 as if fully incorporated here.

28 83. NVIDIA'S business practices as alleged above constitute unfair competition and

1 unlawful and unfair business practices and business acts in violation of Section 17200 et seq. of the
2 California Business & Professions Code.

3 84. Pursuant to California Business and Professions Code § 17203, METABYTE is
4 entitled to enjoin these practices. Without injunctive relief, METABYTE has no means by which to
5 control NVIDIA's unlawful copying and distribution of METABYTE's copyrighted works.
6 METABYTE is therefore entitled to injunctive relief prohibiting NVIDIA from continuing such
7 acts of unfair competition pursuant to California Business and Professions Code § 17203.

8 **EIGHTH CLAIM FOR RELIEF**
9 (Common Law Unfair Competition)
(Against NVIDIA)

10 85. METABYTE repeats and realleges each and every allegation contained in
11 paragraphs 1 through 84 as if fully incorporated here.

12 86. NVIDIA's business practices as alleged above constitute unfair competition and
13 unfair business practices under state common law.

14 87. As a direct and proximate result of NVIDIA's infringing conduct, METABYTE has
15 suffered and will continue to suffer lost sales and profits in an amount not yet fully ascertained in
16 an amount to be proven at trial. In addition, METABYTE has suffered and continues to suffer
17 injury to its business reputation and goodwill for which no adequate remedy exists at law and for
18 which METABYTE is entitled to injunctive relief.

19 **PRAYER FOR RELIEF**

20 1. For judgment that the Defendants have infringed METABYTE's copyright in the
21 METABYTE Wicked3D eyeSCREAM computer program and software, have misappropriated
22 METABYTE's trade secrets, have violated the Computer Fraud and Abuse Act, and that the
23 individual Defendants have breached their employee confidentiality agreements and violated the
24 covenants of good faith and fair dealing implied in those agreements;

25 2. For preliminary and permanent injunctive relief preventing all Defendants from
26 using the copies and derivative works created from copyrighted METABYTE computer program
27 and software and/or preventing further improper use or disclosure of METABYTE's trade secrets;

28 3. For immediate impoundment of any infringing materials, pursuant to 17 U.S.C. §

1 503;

2 4. For actual damages sustained by METABYTE and profits obtained by NVIDIA
3 attributable to the infringement, pursuant to 17 U.S.C. § 504(b);

4 5. For damages sustained by METABYTE as a result of breaches of the employee
5 confidentiality agreements;

6 6. For actual damages sustained by METABYTE and profits obtained by NVIDIA on
7 account of its misappropriation of trade secrets;

8 7. For unjust enrichment obtained by NVIDIA on account of its misappropriation of
9 trade secrets;

10 8. For a reasonable royalty from NVIDIA on account of its misappropriation of trade
11 secrets;

12 9. For costs and attorneys' fees, pursuant to 17 U.S.C. § 505; and

13 10. For such other and additional relief as the Court may deem just and proper.

14 DATED: January 4, 2012

GONSALVES & KOZACHENKO

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By: 
Selena P. Ontiveros

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Attorneys for Metabyte, Inc.

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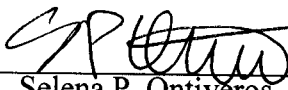
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JURY TRIAL DEMAND

METABYTE respectfully requests a jury trial for the adjudication of all claims for which a jury trial is available under the Seventh Amendment of the United States Constitution.

DATED: January 4, 2012

GONSALVES & KOZACHENKO

By: 
Selena P. Ontiveros

Attorneys for Metabyte, Inc.

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EXHIBIT 1



EXHIBIT 2

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Acting Register of Copyrights, United States of America

Registration Number
TX 7-341-264

Effective date of registration:

November 16, 2010

Title

Title of Work: Metabyte Wicked3D eyeSCREAM

Completion/Publication

Year of Completion: 1997

Date of 1st Publication: March 16, 1998

Nation of 1st Publication: United States

Author

▪ **Author:** Metabyte, Inc.

Author Created: computer program

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Metabyte, Inc.

39350 Civic Center Drive, Suite 200, Fremont, CA, 94538, United States

Certification

Name: Ashok Tankha

Date: November 16, 2010

Applicant's Tracking Number: Metabyte_C01

EXHIBIT 3

METABYTE, INC.

EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT

In consideration of, and as a condition of my employment with Metabyte, Inc., a California corporation (the "*Company*"), I hereby represent to, and agree with the Company as follows:

1. **Purpose of Agreement.** I understand that the Company is engaged in a continuous program of research, development, production and marketing in connection with its business and that it is critical for the Company to preserve and protect its Proprietary Information (as defined below), its rights in Inventions and in all related intellectual property rights. Accordingly, I am entering into this Agreement as a condition of my employment with the Company, whether or not I am expected to create inventions of value for the Company.

2. **Disclosure of Inventions.** I will promptly disclose in confidence to the Company all inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works and trade secrets ("*Inventions*") that I make or conceive or first reduce to practice or create, either alone or jointly with others, during the period of my employment, whether or not in the course of my employment, and whether or not such Inventions are patentable, copyrightable or protectible as trade secrets.

3. **Work for Hire: Assignment of Inventions.** I acknowledge and agree that any copyrightable works prepared by me within the scope of my employment are "works for hire" under the Copyright Act and that the Company will be considered the author and owner of such copyrightable works. I agree that all Inventions that (a) are developed using equipment, supplies, facilities or trade secrets of the Company, (b) result from work performed by me for the Company, or (c) relate to the Company's business or current or anticipated research and development, will be the sole and exclusive property of the Company and are hereby irrevocably assigned by me to the Company.

4. **Labor Code 2870 Notice.** I have been notified and understand that the provisions of paragraphs 3 and 5 of this Agreement do not apply to any Invention that qualifies fully under the provisions of Section 2870 of the California Labor Code, which states as follows:

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6. **Assistance.** I agree to assist the Company in every proper way to obtain for the Company and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for the Company's Inventions in any and all countries. I will execute any documents that the Company may reasonably request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections. My obligations under this paragraph will continue beyond the termination of my employment with the Company, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance. I appoint the Secretary of the Company as my attorney-in-fact to execute documents on my behalf for this purpose.

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6/1, 1994.

Metabyte, Inc.

Employee:

By: Manu Mehta

[Signature]
Signature

Name: MANU MEHTA

ANDREI OSNOVICH
Name (Please print)

Title: President

METABYTE, INC.

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Metabyte, Inc.

Employee:

By: Manu Mehta

Andrei Rylin

Signature

Name: MANU MEHTA

ANDREI RYLIN

Name (Please print)

Title: President

12/21/95

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JUNE 27, 1994.

Metabyte, Inc.

Employee:

By: Manu Mehta

David R. Cook

Signature

Name: MANU MEHTA

DAVID R. COOK

Name (Please print)

Title: PRESIDENT

EXHIBIT B

EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT

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13. **Name & Likeness Rights, Etc.** I hereby authorize the Company to use, reuse, and to grant others the right to use and reuse, my name, photograph, likeness (including caricature), voice, and biographical information, and any reproduction or simulation thereof, in any media now known or hereafter developed (including but not limited to film, video and digital or other electronic media), both during and after my employment, for whatever purposes the Company deems necessary.

14. **Injunctive Relief.** I understand that in the event of a breach or threatened breach of this Agreement by me the Company may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

15. **Governing Law; Severability.** This Agreement will be governed and interpreted in accordance with the internal laws of the State of California, without regard to or application of choice of law rules or principles. In the event that any provision of this Agreement is found by a court, arbitrator or other tribunal to be illegal, invalid or unenforceable, then such provision shall not be voided, but shall be enforced to the maximum extent permissible under applicable law, and the remainder of this Agreement shall remain in full force and effect.

16. **No Duty to Employ.** I understand that this Agreement does not constitute a contract of employment or obligate the Company to employ me for any stated period of time. This Agreement shall be effective as of the first day of my employment by the Company, namely: 6-2, 1997

Metabyte, Inc.

Employee:

By: Beverly McLeod

[Signature]
Signature

Name: Beverly McLeod

KRIVEGA
Name (Please print)

Title: Controller

EXHIBIT B

EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT

In consideration of, and as a condition of my employment with Metabyte, Inc., a California corporation (the "*Company*"), I hereby represent to, and agree with the Company as follows:

1. **Purpose of Agreement.** I understand that the Company is engaged in a continuous program of research, development, production and marketing in connection with its business and that it is critical for the Company to preserve and protect its Proprietary Information (as defined below), its rights in Inventions and in all related intellectual property rights. Accordingly, I am entering into this Agreement as a condition of my employment with the Company, whether or not I am expected to create inventions of value for the Company.
2. **Disclosure of Inventions.** I will promptly disclose in confidence to the Company all inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works and trade secrets ("*Inventions*") that I make or conceive or first reduce to practice or create, either alone or jointly with others, during the period of my employment, whether or not in the course of my employment, and whether or not such Inventions are patentable, copyrightable or protectible as trade secrets.
3. **Work for Hire; Assignment of Inventions.** I acknowledge and agree that any copyrightable works prepared by me within the scope of my employment are "works for hire" under the Copyright Act and that the Company will be considered the author and owner of such copyrightable works. I agree that all Inventions that (a) are developed using equipment, supplies, facilities or trade secrets of the Company, (b) result from work performed by me for the Company, or (c) relate to the Company's business or current or anticipated research and development, will be the sole and exclusive property of the Company and are hereby irrevocably assigned by me to the Company.
4. **Labor Code 2870 Notice.** I have been notified and understand that the provisions of paragraphs 3 and 5 of this Agreement do not apply to any Invention that qualifies fully under the provisions of Section 2870 of the California Labor Code, which states as follows:

ANY PROVISION IN AN EMPLOYMENT AGREEMENT WHICH PROVIDES THAT AN EMPLOYEE SHALL ASSIGN, OR OFFER TO ASSIGN, ANY OF HIS OR HER RIGHTS IN AN INVENTION TO HIS OR HER EMPLOYER SHALL NOT APPLY TO AN INVENTION THAT THE EMPLOYEE DEVELOPED ENTIRELY ON HIS OR HER OWN TIME WITHOUT USING THE EMPLOYER'S EQUIPMENT, SUPPLIES, FACILITIES, OR TRADE SECRET INFORMATION EXCEPT FOR THOSE INVENTIONS THAT EITHER: (1) RELATE AT THE TIME OF CONCEPTION OR REDUCTION TO PRACTICE OF THE INVENTION TO THE EMPLOYER'S BUSINESS, OR ACTUALLY OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OF THE EMPLOYER, OR (2) RESULT FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE EMPLOYER. TO THE EXTENT A PROVISION IN AN EMPLOYMENT AGREEMENT PURPORTS TO REQUIRE AN EMPLOYEE TO ASSIGN AN INVENTION OTHERWISE EXCLUDED FROM BEING REQUIRED TO BE ASSIGNED UNDER CALIFORNIA LABOR CODE SECTION 2870(a), THE PROVISION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS UNENFORCEABLE.

5. **Assignment of Other Rights.** In addition to the foregoing assignment of Inventions to the Company, I hereby irrevocably transfer and assign to the Company: (a) all worldwide patents, patent applications, copyrights, mask works, trade secrets and other intellectual property rights in any Invention; and (b) any and all "Moral Rights" (as defined below) that I may have in or with respect to any Invention. I also hereby forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Invention, even after termination of my work on behalf of the Company. "***Moral Rights***" mean any rights to claim authorship of an Invention to object to or prevent the modification of any Invention, or to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right".

6. **Assistance.** I agree to assist the Company in every proper way to obtain for the Company and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for the Company's Inventions in any and all countries. I will execute any documents that the Company may reasonably request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections. My obligations under this paragraph will continue beyond the termination of my employment with the Company, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance. I appoint the Secretary of the Company as my attorney-in-fact to execute documents on my behalf for this purpose.

7. **Proprietary Information.** I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to me by the Company that relates to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company or any other party with whom the Company agrees to hold information of such party in confidence ("***Proprietary Information***"). Such Proprietary Information includes but is not limited to Inventions, marketing plans, product plans, business strategies, financial information, forecasts, personnel information and customer lists.

8. **Confidentiality.** At all times, both during my employment and after its termination, I will keep and hold all such Proprietary Information in strict confidence and trust, and I will not use or disclose any of such Proprietary Information without the prior written consent of the Company, except as may be necessary to perform my duties as an employee of the Company for the benefit of the Company. Upon termination of my employment with the Company, I will promptly deliver to the Company all documents and materials of any nature pertaining to my work with the Company and I will not take with me any documents or materials or copies thereof containing any Proprietary Information.

9. **No Breach of Prior Agreement.** I represent that my performance of all the terms of this Agreement and my duties as an employee of the Company will not breach any invention assignment, proprietary information or similar agreement with any former employer or other party. I represent that I will not bring with me to the Company or use in the performance of my duties for the Company any documents or materials of a former employer that are not generally available to the public or have not been legally transferred to the Company.

10. **Duty Not to Compete.** I understand that my employment with the Company requires my undivided attention and effort. As a result, during my employment, I will not, without the Company's express written consent, engage in any employment or business other than for the Company, or invest in or assist in any manner any business which directly or indirectly competes with the business or future business plans of the Company.

11. **Notification.** I hereby authorize the Company to notify my actual or future employers of the terms of this Agreement and my responsibilities hereunder.

12. **Non-Solicitation.** During, and for a period of one (1) year after termination of, my employment with the Company, I will (a) not directly or indirectly solicit or take away suppliers, customers, employees, consultants or clients of the Company for my own benefit or for the benefit of any other party, and (b) notify Company in the event I become an employee of any client of the Company.

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14. **Injunctive Relief.** I understand that in the event of a breach or threatened breach of this Agreement by me the Company may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

15. **Governing Law; Severability.** This Agreement will be governed and interpreted in accordance with the internal laws of the State of California, without regard to or application of choice of law rules or principles. In the event that any provision of this Agreement is found by a court, arbitrator or other tribunal to be illegal, invalid or unenforceable, then such provision shall not be voided, but shall be enforced to the maximum extent permissible under applicable law, and the remainder of this Agreement shall remain in full force and effect.

16. **No Duty to Employ.** I understand that this Agreement does not constitute a contract of employment or obligate the Company to employ me for any stated period of time. This Agreement shall be effective as of the first day of my employment by the Company, namely: 10-NOV, 1997.

Metabyte, Inc.

Employee:

By: Beverly McLead

[Signature]
Signature

Name: Beverly McLead

VIATCHESLAV GOSTRENKO
Name (Please print)

Title: Controller

METABYTE, INC.

EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT

In consideration of, and as a condition of my employment with Metabyte, Inc., a California corporation (the "*Company*"), I hereby represent to, and agree with the Company as follows:

1. **Purpose of Agreement.** I understand that the Company is engaged in a continuous program of research, development production and marketing in connection with its business and that it is critical for the Company to preserve and protect its Proprietary Information (as defined below), its rights in Inventions and in all related intellectual property rights. Accordingly, I am entering into this Agreement as a condition of my employment with the Company, whether or not I am expected to create inventions of value for the Company.

2. **Disclosure of Inventions.** I will promptly disclose in confidence to the Company all inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works and trade secrets ("Inventions") that I make or conceive or first reduce to practice or create, either alone or jointly with others, during the period of my employment, whether or not in the course of my employment, and whether or not such Inventions are patentable, copyrightable or protectible as trade secrets.

3. **Work for Hire: Assignment of Inventions.** I acknowledge and agree that any copyrightable works prepared by me within the scope of my employment are "works for hire" under the Copyright Act and that the Company will be considered the author and owner of such copyrightable works. I agree that all Inventions that (a) are developed using equipment, supplies, facilities or trade secrets of the Company, (b) result from work performed by me for the Company, or (c) relate to the Company's business or current or anticipated research and development, will be the sole and exclusive property of the Company and are hereby irrevocably assigned by me to the Company.

4. **Labor Code 2870 Notice.** I have been notified and understand that the provisions of paragraphs 3 and 5 of this Agreement do not apply to any Invention that qualifies fully under the provisions of Section 2870 of the California Labor Code, which states as follows:

ANY PROVISION IN AN EMPLOYMENT AGREEMENT WHICH PROVIDES THAT AN EMPLOYEE SHALL ASSIGN, OR OFFER TO ASSIGN, ANY OF HIS OR HER RIGHTS IN AN INVENTION TO HIS OR HER EMPLOYER SHALL NOT APPLY TO AN INVENTION THAT THE EMPLOYEE DEVELOPED ENTIRELY ON HIS OR HER OWN TIME WITHOUT USING THE EMPLOYER'S EQUIPMENT, SUPPLIES, FACILITIES, OR TRADE SECRET INFORMATION EXCEPT FOR THOSE INVENTIONS THAT EITHER: (1) RELATE AT THE TIME OF CONCEPTION OR REDUCTION TO PRACTICE OF THE INVENTION TO THE EMPLOYER'S BUSINESS, OR ACTUALLY OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OF THE EMPLOYER, OR (2) RESULT FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE EMPLOYER. TO THE EXTENT A PROVISION IN AN EMPLOYMENT AGREEMENT PURPORTS TO REQUIRE AN EMPLOYEE TO ASSIGN AN INVENTION OTHERWISE EXCLUDED FROM BEING REQUIRED TO BE ASSIGNED UNDER CALIFORNIA LABOR CODE SECTION 2870(a), THE PROVISION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS UNENFORCEABLE.

5. **Assignment of Other Rights.** In addition to the foregoing assignment of Inventions to the Company, I hereby irrevocably transfer and assign to the Company: (a) all worldwide patents, patent applications, copyrights, mask works, trade secrets and other intellectual property rights in any Invention; and (b) any and all "Moral Rights" (as defined below) that I may have in or with respect to any Invention. I also hereby forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Invention, even after termination of my work on behalf of the Company. "Moral Rights" mean any rights to claim authorship of an Invention to object to or prevent the modification of any Invention, or to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right".

6. **Assistance.** I agree to assist the Company in every proper way to obtain for the Company and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for the Company's Inventions in any and all countries. I will execute any documents that the Company may reasonably request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections. My obligations under this paragraph will continue beyond the termination of my employment with the Company, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance. I appoint the Secretary of the Company as my attorney-in-fact to execute documents on my behalf for this purpose.

7. **Proprietary Information.** I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to me by the Company that relates to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company or any other party with whom the Company agrees to hold information of such party in confidence ("proprietary Information"). Such Proprietary Information includes but is not limited to Inventions, marketing plans, product plans, business strategies, financial information, forecasts, personnel information and customer lists.

8. **Confidentiality.** At all times, both during my employment and after its termination, I will keep and hold all such Proprietary Information in strict confidence and trust, and I will not use or disclose any of such Proprietary Information without the prior written consent of the Company, except as may be necessary to perform my duties as an employee of the Company for the benefit of the Company. Upon termination of my employment with the Company, I will promptly deliver to the Company all documents and materials of any nature pertaining to my work with the Company and I will not take with me any documents or materials or copies thereof containing any Proprietary Information.

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16. **No Duty to Employ.** I understand that this Agreement does not constitute a contract of employment or obligate the Company to employ me for any stated period of time. This Agreement shall be effective as of the first day of my employment with the Company, namely: 9/11/1997.

Metabyte, Inc.

By: Beverly McLead

Name: Beverly McLead

Title: Controller

Employee:

Viktor Matveyev
Signature

VIKTOR MATVEYEV
Name (Please print)