

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PARALLEL NETWORKS, LLC,

Plaintiff,

v.

SPOTIFY USA INC.,

Defendant.

C.A. No. 13-808-RGA

**JURY TRIAL DEMANDED**

**PLAINTIFF’S FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

Plaintiff Parallel Networks, LLC (“Parallel”) files this Complaint for patent infringement against Defendant Spotify USA Inc. (“Spotify” or “Defendant”) and alleges as follows:

**PARTIES**

1. Plaintiff Parallel Networks, LLC is a Delaware limited liability company having its principal place of business at 1105 N. Market St., Suite 300, Wilmington, Delaware 19801.

2. On information and belief, Spotify USA Inc. is a corporation organized under the laws of the State of Delaware, and has a principal place of business at 76 9<sup>th</sup> Avenue #1110, New York, New York 10011, and/or is conducting business through an affiliate located at this address.

**JURISDICTION AND VENUE**

3. This civil action for patent infringement arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over the claims presented herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. On information and belief, Spotify makes, imports, sells, and/or offers for sale the Accused Instrumentalities (as defined below) within the United States, including this District, that infringe one or more claims of United States Patent No. 7,188,145 entitled “METHOD AND SYSTEM FOR DYNAMIC DISTRIBUTED DATA CACHING” (the “’145 Patent”). The ’145 Patent was duly and legally issued by the United States Patent and Trademark Office on March 6, 2007. A true and correct copy of the ’145 Patent is attached hereto as Exhibit 1.

5. On information and belief, Spotify makes, imports, sells, and/or offers for sale the Accused Instrumentalities (as defined below) within the United States, including this District, that infringe one or more claims of United States Patent No. 7,730,262 entitled “METHOD AND SYSTEM FOR DYNAMIC DISTRIBUTED DATA CACHING” (the “’262 Patent”). The ’262 Patent was duly and legally issued by the United States Patent and Trademark Office on June 1, 2010. A true and correct copy of the ’262 Patent is attached hereto as Exhibit 2.

6. The ’145 Patent and ’262 Patent are collectively referred to herein as the “Asserted Patents.”

7. On information and belief, Defendant Spotify is engaged in the business of providing large scale Peer-to-Peer (“P2P”) music-on-demand streaming. On information and belief, Spotify markets and sells its service in the United States, including within this District. On information and belief, Spotify customers, including customers within this district, download the Spotify application through Spotify’s interactive website <https://www.spotify.com/us/download/windows/>.

8. On information and belief, Spotify directly and/or indirectly imports, manufactures, uses, offers for sale, and/or sells the Accused Instrumentalities (as defined below)

within the United States, including this District, that infringe one or more claims of the Asserted Patents.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1400(b) and 1391(c).

### **GENERAL ALLEGATIONS**

10. Parallel is the owner by assignment of all rights, title, and interests in the Asserted Patents, and is entitled to sue for past and future infringement thereof.

11. On information and belief, Spotify is engaged in the business of providing P2P music-on-demand streaming services, and maintaining a system to provide such services, that include the Peer-to-Peer (“P2P”) distribution of digital data, including but not limited to streaming music services such as the Spotify service (the Spotify service and all similar services are referred to herein as the “Accused Services”). On information and belief, Spotify customers access the Accused Services through the use of a Spotify application such as “spotify.exe” (“spotify.exe” and all similar applications are referred to herein as the “Accused Products”) (the Accused Services and the Accused Products are referred to herein as the “Accused Instrumentalities”). On information and belief, Spotify customers install the Accused Products using an installer program such as “SpotifySetup.exe” that is downloaded by a customer from a Spotify website, such as at <https://www.spotify.com/us/download/windows/>, through or by which Spotify distributes the Accused Products.

### **FIRST CLAIM FOR RELIEF** (Infringement of the '145 Patent)

12. Parallel incorporates paragraphs 1 through 11 as though fully set forth herein.

13. Upon information and belief, Defendant Spotify has been and now is directly and/or indirectly infringing one or more claims of the '145 Patent by (1) making, importing, using, offering for sale, and/or selling the patented inventions, (2) by actively inducing others to

use the patented inventions, or (3) by contributing to the use of the patented inventions in the United States.

14. More particularly, without limitation, Spotify is now directly infringing one or more claims of the '145 Patent by making, importing, using (including use for testing purposes), offering for sale, and/or selling the Accused Instrumentalities, all in violation of 35 U.S.C. § 271(a). The Accused Instrumentalities provide a system for dynamic distributed data caching. More particularly, the Accused Instrumentalities cache music data on the computers of Spotify customers. This cached music data is served to other Spotify customers in the peer-to-peer group.

15. In addition and/or in the alternative, Spotify has been and/or now is indirectly infringing one or more claims of the Asserted Patents by (1) inducing customers to use the Accused Instrumentalities to directly infringe one or more claims of the Asserted Patents in violation of 35 U.S.C. § 271(b), and/or by (2) contributing to customers' direct infringement of one or more claims of the Asserted Patents by their use of the Accused Instrumentalities in violation of 35 U.S.C. § 271(c). On information and belief, Spotify has intended, and continues to intend, to induce patent infringement by its customers and has had knowledge that the inducing acts would cause infringement or has been willfully blind to the possibility that its inducing acts would cause infringement. The Accused Instrumentalities perform the distributed data caching described and claimed in the Asserted Patents, and Spotify has engaged in indirect infringement by its post-complaint conduct of providing its customers with the infringing Accused Products in order to enable those customers to use the Accused Services.

16. By way of example, and not as a limitation, Spotify induces and/or contributes to such infringement with the knowledge that customers will use the Accused Instrumentalities and

with the knowledge and the specific intent to encourage and facilitate the infringing uses by at least making its website available to customers and providing links and/or other directions on its website and/or the internet for customers to download and use the Accused Products to access the Accused Services. On information and belief, Spotify is aware that the Accused Instrumentalities provide a system for dynamic distributed data caching and, therefore, that Spotify's customers will infringe the '145 Patent by using the Accused Instrumentalities. Spotify engages in such activities knowingly and, at least from the time of receipt of the present Complaint, has done so with the knowledge that such activities induce customers to directly infringe the Asserted Patents. In addition, or, in the alternative, Spotify engages in such activities knowingly and, at least from the time of receipt of the present Complaint, has sold or distributed the Accused Instrumentalities knowing that such Accused Instrumentalities are especially made or adapted for use by its customers in an infringing use of one or more claims of the Asserted Patents. On information and belief, the Accused Instrumentalities decide whether to stream from Spotify servers or from the peer-to-peer network depending on the amount of data in a Spotify customer's play-out buffer. If a customer's play-out buffer level is low, the Accused Instrumentalities request data from the Spotify server. If the Spotify customer's buffers are sufficiently full, however, and there are available peers to stream from, the Accused Instrumentalities only stream from the peer-to-peer network. Thus, by using the Accused Instrumentalities, Spotify customers directly infringe the claims methods of the Asserted Patents. Because the use of streaming from the peer-to-peer network is an essential part of the functionality of the Spotify application, the Accused Instrumentalities do not have any substantial uses that do not infringe the '145 Patent.

17. Parallel has been damaged by the infringing activities of Spotify, and will be irreparably harmed unless those infringing activities are preliminarily and permanently enjoined by this Court. Parallel does not have an adequate remedy at law.

18. By the filing of this action, Spotify has been given actual notice of the existence of the '145 Patent. Despite such notice, Spotify continues in acts of infringement without regard to the '145 Patent, and will likely continue to do so unless otherwise enjoined by this Court. Parallel is not seeking damages against Spotify for indirect infringement for the period prior to the filing of this Complaint.

**SECOND CLAIM FOR RELIEF**  
(Infringement of the '262 Patent)

19. Parallel incorporates paragraphs 1 through 11 as though fully set forth herein.

20. Upon information and belief, Defendant Spotify has been and now is directly and/or indirectly infringing one or more claims of the '262 Patent by (1) making, importing, using, offering for sale, and/or selling the patented inventions, (2) by actively inducing others to use the patented inventions, or (3) by contributing to the use of the patented inventions in the United States.

21. More particularly, without limitation, Spotify is now directly infringing one or more claims of the '262 Patent by making, importing, using, offering for sale, and/or selling the Accused Instrumentalities, all in violation of 35 U.S.C. § 271(a). The Spotify service provides a system for dynamic distributed data caching. More particularly, the Spotify service caches music data on the computers of Spotify customers. This cached music data is served to other Spotify customers in the peer-to-peer group.

22. In addition and/or in the alternative, Spotify has been and/or now is indirectly infringing one or more claims of the Asserted Patents by (1) inducing customers to use the

Accused Instrumentalities to directly infringe one or more claims of the Asserted Patents in violation of 35 U.S.C. § 271(b), and/or by (2) contributing to customers' direct infringement of one or more claims of the Asserted Patents by their use of the Accused Instrumentalities in violation of 35 U.S.C. § 271(c). On information and belief, Spotify has intended, and continues to intend, to induce patent infringement by its customers and has had knowledge that the inducing acts would cause infringement or has been willfully blind to the possibility that its inducing acts would cause infringement. The Accused Instrumentalities perform the distributed data caching described and claimed in the Asserted Patents, and Spotify has engaged in indirect infringement by its post-complaint conduct of providing its customers with the infringing Accused Products in order to enable those customers to use the Accused Services.

23. By way of example, and not as a limitation, Spotify induces and/or contributes to such infringement with the knowledge that customers will use the Accused Instrumentalities and with the knowledge and the specific intent to encourage and facilitate the infringing uses by at least making its website available to customers and providing links and/or other directions on its website and/or the internet for customers to download and use the Accused Products to access the Accused Services. On information and belief, Spotify is aware that the Accused Instrumentalities provide a system for dynamic distributed data caching and, therefore, that Spotify's customers will infringe the '262 Patent by using the Accused Instrumentalities. Spotify engages in such activities knowingly and, at least from the time of receipt of the present Complaint, has done so with the knowledge that such activities induce customers to directly infringe the Asserted Patents. In addition, or, in the alternative, Spotify engages in such activities knowingly and, at least from the time of receipt of the present Complaint, has sold or distributed the Accused Instrumentalities knowing that such Accused Instrumentalities are

especially made or adapted for use by its customers in an infringing use of one or more claims of the Asserted Patents. On information and belief, the Accused Instrumentalities decide whether to stream from Spotify servers or from the peer-to-peer network depending on the amount of data in a Spotify customer's play-out buffer. If a customer's play-out buffer level is low, the Accused Instrumentalities request data from the Spotify server. If the Spotify customer's buffers are sufficiently full, however, and there are available peers to stream from, the Accused Instrumentalities only stream from the peer-to-peer network. Thus, by using the Accused Instrumentalities, Spotify customers directly infringe the claims methods of the Asserted Patents. Because the use of streaming from the peer-to-peer network is an essential part of the functionality of the Spotify application, the Accused Instrumentalities do not have any substantial uses that do not infringe the '262 Patent.

24. Parallel has been damaged by the infringing activities of Spotify, and will be irreparably harmed unless those infringing activities are preliminarily and permanently enjoined by this Court. Parallel does not have an adequate remedy at law.

25. By the filing of this action, Spotify has been given actual notice of the existence of the '262 Patent. Despite such notice, Spotify continues in acts of infringement without regard to the '262 Patent, and will likely continue to do so unless otherwise enjoined by this Court. Parallel is not seeking damages against Spotify for indirect infringement for the period prior to the filing of this Complaint.

#### **REQUEST FOR RELIEF**

WHEREFORE, Parallel requests the following relief:

(a) A judgment in favor of Parallel that Spotify has directly infringed, and/or has indirectly infringed by way of inducement and/or contributory infringement, one or more claims of the Asserted Patents;



(b) A judgment that Parallel has been irreparably harmed by the infringing activities of Spotify and is likely to continue to be irreparably harmed by Defendant's continued infringement;

(c) Preliminary and permanent injunctions prohibiting Spotify and its officers, agents, servants, employees and those persons in active concert or participation with any of them, as well as all successors or assignees of the interests or assets related to the Accused Instrumentalities, from further infringement, direct and indirect, of the Asserted Patents;

(d) A judgment and order requiring Spotify to pay Parallel damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages may include lost profits but in no event shall be less than a reasonable royalty for the use made of the inventions of the Asserted Patents, including pre- and post-judgment interest and costs, including expenses and disbursements; and

(e) Any and all such further necessary or proper relief as this Court may deem just.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Parallel hereby demands a trial by jury of all issues so triable.

OF COUNSEL

**BUETHER JOE & CARPENTER, LLC**

Brian A. Carpenter  
Eric W. Buether  
Christopher M. Joe  
Michael D. Ricketts  
1700 Pacific Avenue  
Suite 4750  
Dallas, Texas 75201  
(214) 446-1273  
*Eric.Buether@BJCIPlaw.com*  
*Brian.Carpenter@BJCIPlaw.com*  
*Chris.Joe@BJCIPlaw.com*  
*Mickey.Ricketts@BJCIPlaw.com*

Dated: July 11, 2013

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

*/s/ Monté T. Squire*

Adam W. Poff (No. 3990)  
Monté T. Squire (No. 4764)  
Gregory J. Brodzik (No. 5722)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
(302) 571-6600  
*apoff@ycst.com*  
*msquire@ycst.com*  
*gbrodzik@ycst.com*

*Attorneys for Plaintiff Parallel Networks, LLC*

**CERTIFICATE OF SERVICE**

I, Monté T. Squire, hereby certify that on July 11, 2013, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Richard L. Horwitz, Esquire  
David E. Moore, Esquire  
Bindu A. Palapura, Esquire  
Potter Anderson & Corroon, LLP  
1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
*rhorwitz@potteranderson.com*  
*dmoore@potteranderson.com*  
*bpalapura@potteranderson.com*

*Attorneys for Defendant*

I further certify that on July 11, 2013, I caused a true and correct copy of the foregoing document to be served by e-mail on the above-listed counsel of record and on the following:

Stefani E. Shanberg, Esquire  
Jennifer J. Schmidt, Esquire  
Michael J. Guo, Esquire  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
One Market Plaza  
Spear Tower, Suite 3300  
San Francisco, CA 94105  
*sshanberg@wsgr.com*  
*jschmidt@wsgr.com*  
*mguo@wsgr.com*

*Attorneys for Defendant*

Dated: July 11, 2013

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

/s/ Monté T. Squire

Adam W. Poff (No. 3990)  
Monté T. Squire (No. 4764)  
Gregory J. Brodzik (No. 5722)  
Rodney Square  
1000 N. King Street  
Wilmington, Delaware 19801  
msquire@ycst.com

*Attorneys for Plaintiff*