

1 KARLA J. KRAFT (SB# 205540)
kkraft@hbwillp.com
2 ASHLEY E. MERLO (SB# 247997)
Email: amerlo@hbwillp.com
3 HODEL BRIGGS WINTER LLP
8105 Irvine Center Drive, Suite 1400
4 Irvine, California 92618
Telephone: (949) 450-8040
5 Facsimile: (949) 450-8033

6 ROBERT R. GILMAN (*Pro hac vice* application
forthcoming)
7 rgilman@hayesmessina.com
HAYES MESSINA GILMAN & HAYES LLC
8 200 State Street, 6th Floor
Boston, Massachusetts 02109
9 Telephone: (617) 345-6904

10 Attorneys for Plaintiff
BLACK HILLS MEDIA LLC

11

12

UNITED STATES DISTRICT COURT

13

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

14

15

BLACK HILLS MEDIA LLC,

CASE NO.

16

Plaintiff,

Assigned for all purposes to

17

vs.

**COMPLAINT FOR PATENT
INFRINGEMENT**

18

YAMAHA CORPORATION OF
19 AMERICA,

JURY TRIAL DEMANDED

20

Defendant.

21

22

23

24

25

26

27

28

1 Plaintiff Black Hills Media, LLC (“Black Hills” or “Plaintiff”), for its
2 Complaint against Yamaha Corporation of America (“Defendant”), states and
3 alleges as follows:
4

5 **THE PARTIES**

6 1. Plaintiff Black Hills Media, LLC, is a Delaware limited liability
7 company having its principal place of business at 1000 N. West St., Suite 1200,
8 Wilmington, Delaware 19801.

9 2. Upon information and belief, Defendant Yamaha Corporation of
10 America is a California corporation with its principal place of business at 6600
11 Orangethorpe Avenue, Buena Park, California 90620.
12

13 **JURISDICTION AND VENUE**

14 3. This is an action for patent infringement under the patent laws of the
15 United States, Title 35, United States Code, specifically §§ 271 and 281-285. This
16 Court has subject matter jurisdiction under Title 28 United States Code §§ 1331 and
17 1338(a).

18 4. Venue is properly within the district under Title 28 United States Code
19 §§ 1391(b) and (c) and 1400(b). On information and belief, Defendant has
20 purposely transacted business involving their accused products in this judicial
21 district, has committed acts of direct and/or indirect infringement in this judicial
22 district and continues to commit acts of infringement in this district.
23

24 **BACKGROUND**

25 5. Black Hills owns all of the rights and interests in United States Patent
26 Nos. 8,045,952 (“the ‘952 Patent”); 8,050,652 (“the ‘652 Patent”); 6,985,694 (“the
27 ‘694 Patent”); 6,108,686 (“the ‘686 Patent”); 8,230,099 (“the ‘099 Patent”);
28

1 8,214,873 (“the ‘873 Patent”); and 8,458,356 (“the ‘356 Patent”) (collectively, the
2 “Patents in Suit”).

3 6. The ‘952 Patent entitled “Method and Device for Obtaining Playlist
4 Content Over a Network” was duly and legally issued by the United States Patent
5 and Trademark Office on October 25, 2011, after full and fair examination. A copy
6 of the ‘952 Patent is attached as Exhibit A.

7 7. The ‘652 Patent entitled “Method and Device for an Internet Radio
8 Capable of Obtaining Playlist Content From a Content Server” was duly and legally
9 issued by the United States Patent and Trademark Office on November 1, 2011,
10 after full and fair examination. A copy of the ‘652 Patent is attached as Exhibit B.

11 8. The ‘694 Patent entitled “Method and System for Providing an Audio
12 Element Cache in a Customized Personal Radio Broadcast” was duly and legally
13 issued by the United States Patent and Trademark Office on January 10, 2006, after
14 full and fair examination. A copy of the ‘694 Patent is attached as Exhibit C.

15 9. The ‘686 Patent entitled “Agent-Based On-Line Information Retrieval
16 and Viewing System” was duly and legally issued by the United States Patent and
17 Trademark Office on August 22, 2000. A copy of the ‘686 Patent is attached as
18 Exhibit D.

19 10. The ‘099 Patent entitled “System and Method for Sharing Playlists”
20 was duly and legally issued by the United States Patent and Trademark Office on
21 July 24, 2012. A copy of the ‘099 Patent is attached as Exhibit E.

22 11. The ‘873 Patent entitled “Method, System, and Computer-Readable
23 Medium for Employing a First Device to Direct a Networked Audio Device to
24 Render a Playlist” was duly and legally issued by the United States Patent and
25 Trademark Office on July 3, 2012. A copy of the ‘873 Patent is attached as Exhibit
26 F.

1 16. Upon information and belief, after becoming aware of the ‘952 Patent
2 and its infringement thereof, Defendant has intended, and continues to intend, to
3 induce third party infringement of the ‘952 Patent and has knowledge that the
4 inducing acts would cause infringement or has been willfully blind to the possibility
5 that its inducing acts would cause infringement.

6 17. Black Hills made Defendant aware of the ‘952 Patent through
7 discussions with Defendant’s counsel shortly after May 22, 2012. Additionally,
8 upon information and belief, Defendant has been aware of, and continues to be
9 aware of, the ‘952 Patent since at least September 19, 2012, when Black Hills
10 served on Defendant its First Amended Complaint in action 2:13-cv-06054 alleging
11 Defendant infringes the ‘952 Patent. Furthermore, on January 11, 2013 Defendant
12 filed its Motion to Dismiss, or in the Alternative for a More Definite Statement
13 Under Fed. R. Civ. P. 12(e) in the aforementioned action, evidencing its knowledge
14 of the ‘952 Patent. On January 22, 2013, Defendant further confirmed its
15 knowledge of the ‘952 Patent by filing its Motion to Transfer to United States
16 District Court for the Central District of California, in the aforementioned action.
17 Subsequently, on July 26, 2013, Defendant answered Black Hills’ First Amended
18 Complaint in the aforementioned action. Finally, Defendant was provided a copy
19 of Black Hills’ proposed Second Amended Complaint in the aforementioned action
20 alleging infringement of *inter alia* the ‘952 Patent on July 25, 2013.

21 18. Defendant’s inducement of infringement of the ‘952 Patent includes,
22 but is not limited to, actively encouraging and instructing third parties to use
23 Defendant’s products in ways that infringe the ‘952 Patent. Defendant ships the
24 accused products with pre-loaded streaming services (including Internet music
25 subscription services) and/or provides advertising and detailed instructions (i.e.,
26 teaching) to third parties (e.g., at the Defendant’s website) on how to download
27 streaming services to the firmware of the accused products. Users of Defendant’s
28 products, therefore, will infringe the ‘952 Patent.

1 into the United States, or making, using, selling, or offering for sale in the United
2 States, including the Central District of California, products embodying the
3 patented inventions claimed in the '652 Patent without authority, including but not
4 limited to the products identified in preceding paragraph 13, or by contributing to or
5 inducing infringement of the '652 Patent by a third party.

6 24. Upon information and belief, after becoming aware of the '652 Patent
7 and its infringement thereof, Defendant has intended, and continues to intend, to
8 induce third party infringement of the '652 Patent and has knowledge that the
9 inducing acts would cause infringement or has been willfully blind to the possibility
10 that its inducing acts would cause infringement.

11 25. Black Hills made Defendant aware of the '652 Patent through
12 discussions with Defendant's counsel shortly after May 22, 2012. Additionally,
13 upon information and belief, Defendant has been aware of, and continues to be
14 aware of, the '652 Patent since at least September 19, 2012, when Black Hills
15 served on Defendant its First Amended Complaint in action 2:13-cv-06054 alleging
16 Defendant infringes the '652 Patent. Furthermore, on January 11, 2013 Defendant
17 filed its Motion to Dismiss, or in the Alternative for a More Definite Statement
18 Under Fed. R. Civ. P. 12(e) in the aforementioned action, evidencing its knowledge
19 of the '652 Patent. On January 22, 2013, Defendant further confirmed its
20 knowledge of the '652 Patent by filing its Motion to Transfer to United States
21 District Court for the Central District of California in the aforementioned action.
22 Subsequently, on July 26, 2013, Defendant answered Black Hills' First Amended
23 Complaint in the aforementioned action. Finally, Defendant was provided a copy
24 of Black Hills' proposed Second Amended Complaint in the aforementioned action
25 alleging infringement of *inter alia* the '652 Patent on July 25, 2013.

26 26. Defendant's inducement of infringement of the '652 Patent includes,
27 but is not limited to, actively encouraging and instructing third parties to use
28 Defendant's products in ways that infringe the '652 Patent. Defendant ships the

1 accused products with pre-loaded streaming services (including Internet music
2 subscription services) and/or provides advertising and detailed instructions (i.e.,
3 teaching) to third parties (e.g., at the Defendant's website) on how to download
4 streaming services to the firmware of the accused products. Users of Defendant's
5 products, therefore, will infringe the '652 Patent.

6 27. Examples of such advertising and detailed instructions can be found in
7 the following links to the Defendant's website and the attached Exhibit H:

- 8 • [http://usa.yamaha.com/products/audio-visual/aventage/rx-](http://usa.yamaha.com/products/audio-visual/aventage/rx-a1000_black__u/)
9 [a1000_black__u/](http://usa.yamaha.com/products/audio-visual/aventage/rx-a1000_black__u/) (select the "Feature" and "Technology" tab)
- 10 • [http://download.yamaha.com/search/product/?language=en&site=usa.y](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
11 [amaha.com&category_id=16622&product_id=1071837](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
- 12 • <http://itunes.apple.com/us/app/av-controller-us/id467496375?mt=8>
- 13 • [http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver](http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver_firmware_updates_provide_pandora_and_napster_music_services/)
14 [_firmware_updates_provide_pandora_and_napster_music_services/](http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver_firmware_updates_provide_pandora_and_napster_music_services/)
15 (wherein Yamaha states regarding Pandora that "[t]his latest update
16 underscores Yamaha's commitment to provide its customers with the
17 latest, most advanced features and capabilities").

18 The links above show the Defendant encouraging and instructing its customers how
19 to add additional functionality to the purchased devices by downloading firmware
20 that makes the user of the device a direct infringer of claims of the '652 Patent.

21 28. Defendant knew that its encouragement and instructions to third
22 parties results in infringement of the '652 Patent. Defendant is thus liable for
23 inducing infringement of the '652 Patent pursuant to 35 U.S.C. § 271(b).

24 29. The infringement by the Defendant of the '652 Patent has injured
25 Black Hills and will cause Black Hills added irreparable injury and damage in the
26 future unless Defendant is enjoined from infringing the '652 Patent.

1 **COUNT III**

2 **INFRINGEMENT OF THE '694 PATENT**

3 30. Plaintiff incorporates each of the preceding paragraphs 1 - 29 as if
4 fully set forth herein.

5 31. Defendant is directly or indirectly infringing at least claim 1 of the
6 '694 Patent literally, or under the doctrine of equivalents, by importing into the
7 United States, or making, using, selling, or offering for sale in the United States,
8 including the Central District of California, products embodying the patented
9 inventions claimed in the '694 Patent without authority, including but not limited to
10 the products identified in preceding paragraph 13, or by contributing to or inducing
11 infringement of the '694 Patent by a third party.

12 32. Upon information and belief, after becoming aware of the '694 Patent
13 and its infringement thereof, Defendant has intended and continues to intend to
14 induce third party infringement of the '694 Patent and has knowledge that the
15 inducing acts would cause infringement or has been willfully blind to the possibility
16 that its inducing acts would cause infringement.

17 33. Black Hills made Defendant aware of the '694 Patent through
18 discussions with Defendant's counsel shortly after May 22, 2012. Additionally,
19 upon information and belief, Defendant has been aware of, and continues to be
20 aware of, the '694 Patent since at least September 19, 2012, when Black Hills
21 served on Defendant its First Amended Complaint in action 2:13-cv-06054 alleging
22 Defendant infringes the '694 Patent. Furthermore, on January 11, 2013 Defendant
23 filed its Motion to Dismiss, or in the Alternative for a More Definite Statement
24 Under Fed. R. Civ. P. 12(e) in the aforementioned action, evidencing its knowledge
25 of the '694 Patent. On January 22, 2013, Defendant further confirmed its
26 knowledge of the '694 Patent by filing its Motion to Transfer to United States
27 District Court for the Central District of California in the aforementioned action.
28 Subsequently, on July 26, 2013, Defendant answered Black Hills' First Amended

1 Complaint in the aforementioned action. Finally, Defendant was provided a copy
2 of Black Hills' proposed Second Amended Complaint in the aforementioned action
3 alleging infringement of *inter alia* the '694 Patent on July 25, 2013.

4 34. Defendant's inducement of infringement of the '694 Patent includes,
5 but is not limited to, actively encouraging and instructing third parties to use
6 Defendant's products in ways that infringe the '694 Patent. Defendant ships the
7 accused products with pre-loaded streaming services (including Internet music
8 subscription services) and/or provides advertising and detailed instructions (i.e.,
9 teaching) to third parties (e.g., at the Defendant's website) on how to download
10 streaming services to the firmware of the accused products. Users of Defendant's
11 products, therefore, will infringe the '694 Patent.

12 35. Examples of such advertising and detailed instructions can be found in
13 the following links to the Defendant's website and the attached Exhibit H:

- 14 • [http://usa.yamaha.com/products/audio-visual/avantage/rx-
15 a1000_black_u/](http://usa.yamaha.com/products/audio-visual/avantage/rx-a1000_black_u/) (select the "Feature" and "Technology" tabs)
- 16 • [http://download.yamaha.com/search/product/?language=en&site=usa.y
17 amaha.com&category_id=16622&product_id=1071837](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
- 18 • <http://itunes.apple.com/us/app/av-controller-us/id467496375?mt=8>
- 19 • [http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver
20 _firmware_updates_provide_pandora_and_napster_music_services/
21 \(wherein Yamaha states regarding Pandora that "\[t\]his latest update
22 underscores Yamaha's commitment to provide its customers with the
23 latest, most advanced features and capabilities"\).](http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver_firmware_updates_provide_pandora_and_napster_music_services/)

24 The links above show the Defendant encouraging and instructing its customers how
25 to add additional functionality to the purchased devices by downloading firmware
26 that makes the user of the device a direct infringer of claims of the '694 Patent.

1 Definite Statement Under Fed. R. Civ. P. 12(e) in the aforementioned action,
2 evidencing its knowledge of the '686 Patent. On January 22, 2013, Defendant
3 further confirmed its knowledge of the '686 Patent by filing its Motion to Transfer
4 to United States District Court for the Central District of California in the
5 aforementioned action. Subsequently, on July 26, 2013, Defendant answered Black
6 Hills' First Amended Complaint in the aforementioned action. Finally, Defendant
7 was provided a copy of Black Hills' proposed Second Amended Complaint in the
8 aforementioned action alleging infringement of *inter alia* the '686 Patent on July
9 25, 2013.

10 42. Defendant's inducement of infringement of the '686 Patent includes,
11 but is not limited to, actively encouraging and instructing third parties to use
12 Defendant's products in ways that infringe the '686 Patent. Defendant ships the
13 accused products with pre-loaded streaming services (including Internet music
14 subscription services) and/or provides advertising and detailed instructions (i.e.,
15 teaching) to third parties (e.g., at the Defendant's website) on how to download
16 streaming services to the firmware of the accused products. Users of Defendant's
17 products, therefore, will infringe the '686 Patent.

18 43. Examples of such advertising and detailed instructions can be found in
19 the following links to the Defendant's website and the attached Exhibit H:

- 20 • [http://usa.yamaha.com/products/audio-visual/avantage/rx-
21 a1000_black_u/](http://usa.yamaha.com/products/audio-visual/avantage/rx-a1000_black_u/) (select the "Feature" and "Technology" tabs)
- 22 • [http://download.yamaha.com/search/product/?language=en&site=usa.y
23 amaha.com&category_id=16622&product_id=1071837](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
- 24 • <http://itunes.apple.com/us/app/av-controller-us/id467496375?mt=8>
- 25 • [http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver
26 _firmware_updates_provide_pandora_and_napster_music_services/
27 \(wherein Yamaha states regarding Pandora that "\[t\]his latest update
28](http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver_firmware_updates_provide_pandora_and_napster_music_services/)

1 49. Upon information and belief, Defendant has been aware of, and
2 continues to be aware of, the '099 Patent since at least September 19, 2012, when
3 Black Hills served its First Amended Complaint in action 2:13-cv-06054 alleging
4 Defendant infringes the '099 Patent. In addition, on January 11, 2013 Defendant
5 filed its Motion to Dismiss, or in the Alternative for a More Definite Statement
6 Under Fed. R. Civ. P. 12(e) in the aforementioned action, evidencing its knowledge
7 of the '099 Patent. On January 22, 2013, Defendant further confirmed its
8 knowledge of the '099 Patent by filing its Motion to Transfer to United States
9 District Court for the Central District of California in the aforementioned action.
10 Subsequently, on July 26, 2013, Defendant answered Black Hills' First Amended
11 Complaint in the aforementioned action. Finally, Defendant was provided a copy
12 of Black Hills' proposed Second Amended Complaint in the aforementioned action
13 alleging infringement of *inter alia* the '099 Patent on July 25, 2013.

14 50. Defendant's inducement of infringement of the '099 Patent includes,
15 but is not limited to, actively encouraging and instructing third parties to use
16 Defendant's products in ways that infringe the '099 Patent. Defendant ships the
17 accused products with pre-loaded streaming services (including Internet music
18 subscription services) and/or provides advertising and detailed instructions (i.e.,
19 teaching) to third parties (e.g., at the Defendant's website) on how to download
20 streaming services to the firmware of the accused products. Users of Defendant's
21 products, therefore, will infringe the '099 Patent.

22 51. Examples of such advertising and detailed instructions can be found in
23 the following links to the Defendant's website and the attached Exhibit H:

- 24 • [http://usa.yamaha.com/products/audio-visual/avantage/rx-](http://usa.yamaha.com/products/audio-visual/avantage/rx-a1000_black__u/)
25 [a1000_black__u/](http://usa.yamaha.com/products/audio-visual/avantage/rx-a1000_black__u/) (select the "Feature" and "Technology" tabs)
- 26 • [http://download.yamaha.com/search/product/?language=en&site=usa.y](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
27 [amaha.com&category_id=16622&product_id=1071837](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
- 28 • <http://itunes.apple.com/us/app/av-controller-us/id467496375?mt=8>

1 induce third party infringement of the '873 Patent and has knowledge that the
2 inducing acts would cause infringement or has been willfully blind to the possibility
3 that its inducing acts would cause infringement.

4 57. Upon information and belief, Defendant has been aware of, and
5 continues to be aware of, the '873 Patent since at least September 19, 2012, when
6 Black Hills served on Defendant its First Amended Complaint in action 2:13-cv-
7 06054 alleging Defendant infringes the '873 Patent. In addition, on January 11,
8 2013 Defendant filed its Motion to Dismiss, or in the Alternative for a More
9 Definite Statement Under Fed. R. Civ. P. 12(e) in the aforementioned action,
10 evidencing its knowledge of the '873 Patent. On January 22, 2013, Defendant
11 further confirmed its knowledge of the '873 Patent by filing its Motion to Transfer
12 to United States District Court for the Central District of California in the
13 aforementioned action. Subsequently, on July 26, 2013, Defendant answered Black
14 Hills' First Amended Complaint in the aforementioned action. Finally, Defendant
15 was provided a copy of Black Hills' proposed Second Amended Complaint in the
16 aforementioned action alleging infringement of *inter alia* the '873 Patent on July
17 25, 2013.

18 58. Defendant's inducement of infringement of the '873 Patent includes,
19 but is not limited to, actively encouraging and instructing third parties to use
20 Defendant's products in ways that infringe the '873 Patent. Defendant ships the
21 accused products with pre-loaded streaming services (including Internet music
22 subscription services) and/or provides advertising and detailed instructions (i.e.,
23 teaching) to third parties (e.g., at the Defendant's website) on how to download
24 streaming services to the firmware of the accused products. Users of Defendant's
25 products, therefore, will infringe the '873 Patent.

26 59. Examples of such instructions can be found in the following links to
27 the Defendant's website and the attached Exhibit H:
28

- 1 • [http://usa.yamaha.com/products/audio-visual/avantage/rx-](http://usa.yamaha.com/products/audio-visual/avantage/rx-a1000_black__u/)
- 2 [a1000_black__u/](http://usa.yamaha.com/products/audio-visual/avantage/rx-a1000_black__u/) (select the “Feature” and “Technology” tabs)
- 3 • [http://download.yamaha.com/search/product/?language=en&site=usa.y](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
- 4 [amaha.com&category_id=16622&product_id=1071837](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
- 5 • <http://itunes.apple.com/us/app/av-controller-us/id467496375?mt=8>
- 6 • [http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver](http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver_firmware_updates_provide_pandora_and_napster_music_services/)
- 7 [_firmware_updates_provide_pandora_and_napster_music_services/](http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver_firmware_updates_provide_pandora_and_napster_music_services/)
- 8 (wherein Yamaha states regarding Pandora that “[t]his latest update
- 9 underscores Yamaha’s commitment to provide its customers with the
- 10 latest, most advanced features and capabilities”).

11 The links above show the Defendant encouraging and instructing its customers how
12 to add additional functionality to the purchased devices by downloading firmware
13 that makes the user of the device a direct infringer of claims of the ‘873 Patent.

14 60. Defendant knew that its encouragement and instructions to third
15 parties results in infringement of the ‘873 Patent. Defendant is thus liable for
16 inducing infringement of the ‘873 Patent pursuant to 35 U.S.C. § 271(b).

17 61. The infringement by the Defendant of the ‘873 Patent has injured
18 Black Hills and will cause Black Hills added irreparable injury and damage in the
19 future unless Defendant is enjoined from infringing the ‘873 Patent.

20
21 **COUNT VII**
22 **INFRINGEMENT OF THE ‘356 PATENT**

23 62. Plaintiff incorporates each of the preceding paragraphs 1 - 61 as if
24 fully set forth herein.

25 63. Defendant is directly or indirectly infringing at least claim 1 of the
26 ‘356 Patent literally, or under the doctrine of equivalents, by importing into the
27 United States, and/or making, using, selling, or offering for sale in the United
28 States, including the Central District of California, products embodying the

1 patented inventions claimed in the '356 Patent without authority, including but not
2 limited to the products identified in preceding paragraph 13 or by contributing to or
3 inducing infringement of the '356 Patent by a third party.

4 64. Upon information and belief, after becoming aware of the '356 Patent
5 and its infringement thereof, Defendant has intended, and continues to intend, to
6 induce third party infringement of the '356 Patent and has knowledge that the
7 inducing acts would cause infringement or has been willfully blind to the possibility
8 that its inducing acts would cause infringement.

9 65. Upon information and belief, Defendant has been aware of, and
10 continues to be aware of, the '356 Patent since at least July 25, 2013, when Black
11 Hills provided Defendant with a draft of this Second Amended Complaint in action
12 2:13-cv-06054. Additionally, the '356 Patent is related to the '873 Patent.
13 Defendant was sued for patent infringement of the '873 Patent on September 12,
14 2012, and served with such Complaint on September 19, 2012 in the
15 aforementioned action. Thus, upon information and belief, Defendant would have
16 been aware of the '356 Patent after it issued on June 4, 2013. Alternatively, upon
17 information and belief, Defendant has been aware of the '356 Patent since at least
18 August 1, 2013, when Black Hills filed its Motion for Leave to File Second
19 Amended Complaint in the aforementioned action, which included as Exhibit 1, a
20 copy of Black Hills' proposed Second Amended Complaint alleging infringement
21 of the '356 Patent. In addition, Defendant was notified by this Court's Electronic
22 Court Filing system on September 24, 2013 when Judge S. James Otero denied
23 without prejudice Black Hills' Motion for Leave to Amend its Complaint in the
24 aforementioned action, further evidencing Defendants knowledge of the '356
25 Patent.

26 66. Defendant's inducement of infringement of the '356 Patent includes,
27 but is not limited to, actively encouraging and instructing third parties to use
28 Defendant's products in ways that infringe the '356 Patent. Defendant ships the

1 accused products with pre-loaded streaming services (including Internet music
2 subscription services) and/or provides advertising and detailed instructions (i.e.,
3 teaching) to third parties (e.g., at the Defendant's website) on how to download
4 streaming services to the firmware of the accused products. Users of Defendant's
5 products, therefore, will infringe the '356 Patent.

6 67. Examples of such instructions can be found in the following links to
7 the Defendant's website and the attached Exhibit H

- 8 a. [http://usa.yamaha.com/products/audio-visual/avantage/rx-
9 a1000_black_u/](http://usa.yamaha.com/products/audio-visual/avantage/rx-a1000_black_u/) (select the "Feature" and "Technology" tabs)
- 10 b. [http://download.yamaha.com/search/product/?language=en&site=usa.y
11 amaha.com&category_id=16622&product_id=1071837](http://download.yamaha.com/search/product/?language=en&site=usa.yamaha.com&category_id=16622&product_id=1071837)
- 12 c. <http://itunes.apple.com/us/app/av-controller-us/id467496375?mt=8>
- 13 d. [http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver
14 _firmware_updates_provide_pandora_and_napster_music_services/
15 \(wherein Yamaha states regarding Pandora that "\[t\]his latest update
16 underscores Yamaha's commitment to provide its customers with the
17 latest, most advanced features and capabilities"\).](http://usa.yamaha.com/news_events/audio_visual/yamaha_av_receiver_firmware_updates_provide_pandora_and_napster_music_services/)

18 The links above show the Defendant encouraging and instructing its customers how
19 to add additional functionality to the purchased devices by downloading firmware
20 that makes the user of the device a direct infringer of claims of the '356 Patent.

21 68. Defendant knew or should have known that its encouragement and
22 instructions to third parties results in infringement of the '356 Patent. Defendant is
23 thus liable for inducing infringement of the '356 Patent pursuant to 35 U.S.C. §
24 271(b).

25 69. The infringement by the Defendant of the '356 Patent has injured
26 Black Hills and will cause Black Hills added irreparable injury and damage in the
27 future unless Defendant is enjoined from infringing the '356 Patent.
28

DEMANDS FOR RELIEF

WHEREFORE, Black Hills respectfully requests that judgment be entered in its favor and against Defendant as follows:

a. That Defendant has directly and/or indirectly infringed the '952, '652, '694, '686, '099, '873, and '356 Patents;

b. That Defendant and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them, directly or indirectly, be temporarily and permanently enjoined from infringement of the '952, '652, '694, '686, '099, '873 and '356 Patents;

c. That Defendant be ordered to account for and pay to Black Hills the damages to which Black Hills is entitled as a consequence of the infringement of the '952, '652, '694, '686, '099, '873 and '356 Patents, together with pre-judgment interest and costs;

d. That a post-judgment equitable accounting of damages be ordered for the period of infringement of the '952, '652, '694, '686, '099, '873 and '356 Patents;

e. That all other damages permitted by Title 35 United States Code § 284 be awarded;

f. That Black Hills be awarded its costs and attorneys' fees; and

g. That Black Hills be awarded such other and further relief as the Court may deem just and equitable.

///

///

///

