

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TUNE HUNTER INC.,

Plaintiff,

vs.

SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC; SOUNDHOUND, INC.,
HTC AMERICA, INC. and
HTC CORPORATION

Defendants.

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Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Tune Hunter Inc. (“Tune Hunter”) brings this action against Defendants Samsung Telecommunications America, LLC (“Samsung”), SoundHound, Inc. (“SoundHound”), and HTC America, Inc. and HTC Corporation (collectively “HTC”), and alleges:

THE PARTIES

1. Tune Hunter is a corporation organized and existing under the laws of Texas. It is the owner of the entire right, title, and interest in the patent at issue in this case.

2. On information and belief, Samsung is a limited liability company organized and existing under the laws of Delaware, having a principal place of business within this judicial district at 1301 East Lookout Drive, Richardson, Texas 75082, has designated its registered agent for purposes of service of process in Texas as Corporation Service Company d/b/a CSC - Lawyers Incorporating Service Company, 211 E 7th Street, Suite 620, Austin, Texas 78701-3218, and is doing business in this judicial district and elsewhere in the United States.

3. On information and belief, SoundHound is a corporation organized and existing under the laws of Delaware, having a principal place of business at 3979 Freedom Circle, Santa

Clara, California 95954, has designated its registered agent for purposes of service of process as Amir Arabi, 3979 Freedom Circle, Suite 400, Santa Clara, California 95054, and is doing business in this judicial district and elsewhere in the United States.

4. On information and belief, HTC America, Inc. is a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 13920 SE Eastgate Way, Suite 400, Bellevue, Washington 98005, has designated its registered agent for purposes of service of process in Texas as National Registered Agents, Inc., 350 N. Saint Paul St., Suite 2900, Dallas, Texas 75201, and is doing business in this judicial district and elsewhere in the United States.

5. On information and belief, HTC Corporation is a corporation organized and existing under the laws of the Taiwan, with its principal place of business located at 88 Section 3, Zhongxing Road, Xindian District, New Taipei City 231, Taiwan, R.O.C., and is doing business in this judicial district and elsewhere in the United States. Service of process can be made on HTC Corporation by way of the Hague Service Convention.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

7. Subject-matter jurisdiction over Tune Hunter's claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

8. On information and belief, each Defendant has solicited business in the State of Texas, transacted business within the State of Texas and/or attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein.

9. Each Defendant is subject to personal jurisdiction in Texas and this judicial district, and is doing business in this judicial district.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b).

PATENT INFRINGEMENT

11. On September 6, 2005, U.S. Patent No. 6,941,275 (“the ‘275 patent”), entitled “Music Identification System,” a copy of which is attached hereto as Exhibit A, was duly and legally issued to the inventor, Remi Swierczek. Tune Hunter is the owner by assignment of all right, title and interest in and to the ‘275 patent, including the right to sue for and recover all past, present and future damages for infringement of the ‘275 patent.

12. The ‘275 patent is presumed valid.

13. Upon information and belief, the Defendants, either alone or in conjunction with others, such as consumers of their products, software and systems, have in the past and continue to infringe and/or induce infringement of the ‘275 patent, in this judicial district and/or elsewhere in the United States, by making, using, selling, offering to sell and/or importing, and/or causing others to make, use, sell, offer to sell and/or import, and/or supplying or causing to be supplied in or from the United States, and/or importing into the United States, systems, software, and/or products that can be used to identify music using the music identification system and application known as “SoundHound,” and purchase identified music, that embody and/or in use are covered by, in whole or in part, one or more of the claims of the ‘275 patent.

14. Consumers use Defendants’ systems, software and/or products including SoundHound music recognition and are instructed, encouraged, aided and/or caused to undertake actions and methods that infringe one or more claims of the ‘275 patent.

15. By way of example, consumers purchase Samsung cellular phones, such as the Galaxy Note 3, Galaxy S4, and Galaxy Mega, for example, preloaded with the “Samsung Apps” application, which in use can access the Samsung Apps store.

16. The Samsung Apps store includes information related to the SoundHound App. Samsung provides on its Samsung Apps store instructions on the purpose, installation and use of the SoundHound App. Using a Samsung cellular phone with the SoundHound App that has been obtained through the Samsung Apps store, the consumer is able to identify music and thereafter, purchase music that was identified. For example, consumers using a Samsung cellular phone with the SoundHound App that has been obtained through the Samsung Apps store are instructed to “Tap Here” to use the SoundHound App to identify a musical segment. For example, once a Samsung cellular phone with the SoundHound App that has been obtained through the Samsung Apps store has recorded a segment of music, the Samsung phone utilizing the SoundHound App transmits the segment for identification. For example, once a segment is identified, the Samsung cellular phone with the SoundHound App that has been obtained through the Samsung Apps store receives information related to the musical segment, such as the name of the identified song.

17. By way of further example, the Samsung Apps store includes two SoundHound Apps – a “free” version and a version for sale for \$5.95. The Samsung Apps store advises and encourages consumers that the SoundHound has “Blazing fast music recognition,” “singing and humming recognition,” “Buy links” and “much more.” The information provided by Samsung also advises that the SoundHound App is “used to record audio for both music and voice search.”

18. By way of example, consumers purchase HTC cellular phones, such as the HTC One and One Max, which are sold preloaded with the SoundHound App. Consumers of the HTC One and One Max are instructed on the purpose and use of the “SoundHound App.” Using the HTC

cellular phones with the SoundHound App, consumers are able to identify music using the system and purchase identified music.

19. For example, consumers using the HTC One and One Max with the SoundHound App are instructed to “Tap Here” to use the SoundHound App to identify a musical segment.

20. For example, once a HTC cellular phone preloaded with the SoundHound App has recorded a segment of music, the HTC cellular phone utilizing the SoundHound App transmits the segment for identification.

21. For example, once a segment is identified, the HTC cellular phone preloaded with the SoundHound App receives information related to the musical segment, such as the name of the identified song.

22. Defendants have been and/or are now indirectly infringing one or more claims of the ‘275 patent in violation of 35 U.S.C. 271(b) by inducing consumers of the system to infringe one or more claims of the ‘275 patent through their use of the system, such as through use of the SoundHound App.

23. For example, Defendants induce infringement of the ‘275 patent by making available and/or providing consumers with the products, software and systems that cause, encourage, instruct and/or advise consumers on the use of SoundHound music identification. Defendants engage in such inducement knowingly and, at least from the time of receipt of the present Complaint, have done so with knowledge that such activity encourages consumers of the system to infringe the ‘275 patent.

24. On information and belief, Defendants further induce direct infringement of the ‘275 patent by specifically advertising and/or promoting the music identification features of the system,

specifically intending such consumers will operate these devices in such a manner, and knowing of such actions, which constitute infringement of one or more claims of the '275 patent.

25. SoundHound also contributes to the infringement of the '275 patent by providing SoundHound App software that can be used to identify music using the SoundHound music identification system, and purchase identified music, that is a component of and/or constitutes a material part of the invention claimed in the '275 patent, knowing that the SoundHound App is especially made to be used in a manner that infringes one or more claims of the '275 patent and is not a staple article of commodity or commerce suitable for substantial noninfringing use.

26. Defendants are each liable for infringement of the '275 patent pursuant to 35 U.S.C. § 271.

27. Upon information and belief, at least one of the Defendants was previously notified of and/or had knowledge of the '275 patent. Despite such notification and/or knowledge, such Defendant continued its infringement of the '275 patent. On information and belief, that Defendant's infringement of the '275 patent have therefore been with notice and knowledge of the patent and has been willful and deliberate.

28. Each Defendant's acts of infringement have caused damage to Tune Hunter, and Tune Hunter is entitled to recover from each Defendant the damages sustained by Tune Hunter as a result of each Defendant's wrongful acts in an amount subject to proof at trial.

29. As a consequence of the infringement complained of herein, Tune Hunter is entitled to relief against Samsung and SoundHound jointly, severally, and/or in the alternative because the infringement arises out of the same transactions, occurrences, or series of occurrences or transactions related to Samsung and SoundHound's making, using, importing into the United States, offering for

sale, selling and/or making available the devices, systems and software at issue, and inducing the infringement of consumers using the devices, systems and software at issue.

30. As a consequence of the infringement complained of herein, Tune Hunter is entitled to relief against HTC and SoundHound jointly, severally, and/or in the alternative because the infringement arises out of the same transactions, occurrences, or series of occurrences or transactions related to HTC and SoundHound's making, using, importing into the United States, offering for sale, selling and/or making available the devices, systems and software at issue, and inducing the infringement of consumers using the devices, systems and software at issue.

31. All Defendants are properly joined in this action as Tune Hunter's right to relief is asserted against the Defendants with respect to and arising out of the same series of transactions or occurrences relating to providing, use, offer for sale and/or selling of the SoundHound App, and questions of fact common to all Defendants will arise in this action.

32. The SoundHound application is used to identify music.

33. Samsung cellular phones with the SoundHound application can be used to identify music.

34. HTC cellular phones with the SoundHound application can be used to identify music.

35. The SoundHound system that compares the musical segment received from a consumer's device, such as a Samsung or HTC cellular phone, performs such comparison in the same or substantially the same manner regardless whether the consumer is using a HTC One, Samsung Galaxy Note 3 or any other cellular phone provided by such Defendant that has the SoundHound App loaded on the phone.

36. There are questions of fact common to all Defendants as a result of consumers' use of SoundHound music recognition system.

37. As a consequence of the infringement complained of herein, Tune Hunter has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless each Defendant is enjoined by this Court from committing further acts of infringement.

PRAYER FOR RELIEF

WHEREFORE, Tune Hunter prays for entry of judgment that:

- A.** Each Defendant has infringed, and/or induced infringement of the ‘275 patent;
- B.** SoundHound has contributed to the infringement of the ‘275 patent;
- C.** One or more of the Defendants’ infringement, contributory infringement, and/or induced infringement of the ‘275 patent have been willful and deliberate;
- D.** Each Defendant account for and pay to Tune Hunter all damages caused by its infringement of the ‘275 patent in accordance with 35 U.S.C. § 284;
- E.** The Court increase the amount of damages as a result of one or more of Defendants’ infringement, contributory infringement, and/or induced infringement of the ‘275 patent to three times the amount found or assessed by the Court because of the willful and deliberate nature of the infringement, all in accordance with 35 U.S.C. § 284;
- F.** Tune Hunter be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining each Defendant, its officers, agents, servants, employees and those persons in active concert or participation with them from further acts of patent infringement;
- G.** Tune Hunter be granted pre-judgment and post-judgment interest on the damages caused to it by reason of each Defendant’s patent infringement complained of herein;
- H.** The Court declare this an exceptional case and that Tune Hunter be granted its reasonable attorneys’ fees in accordance with 35 U.S.C. § 285;

- I. Costs be awarded to Tune Hunter; and,
- J. Tune Hunter be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Tune Hunter demands trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: January 30, 2014

By: /s/ Elizabeth L. DeRieux

John T. Polasek

State Bar No. 16088590

tpolasek@pqelaw.com

C. Dale Quisenberry

State Bar No. 24005040

dquisenberry@pqelaw.com

Jeffrey S. David

State Bar No. 24053171

jddavid@pqelaw.com

POLASEK, QUISENBERRY & ERRINGTON, L.L.P.

6750 West Loop South, Suite 920

Bellaire, Texas 77401

Telephone: (832) 778-6000

Facsimile: (832) 778-6010

S. Calvin Capshaw

State Bar No. 03783900

ccapshaw@capshawlaw.com

Elizabeth L. DeRieux

State Bar No. 05770585

ederieux@capshawlaw.com

Capshaw DeRieux, LLP

114 E. Commerce Ave.

Gladewater, TX 75647

Telephone: (903) 236-9800

Facsimile: (903) 236-8787

ATTORNEYS FOR PLAINTIFF