

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**JERRY HARVEY AUDIO HOLDING, LLC,
and JERRY HARVEY AUDIO, LLC,**

Plaintiffs,

Case No. 6:14-cv-02083-Orl-41KRS

v.

**1964 EARS, LLC, and EASTERWOOD &
ASSOCIATES, LLC, d/b/a EARS 2 HEAR,**

Defendants.

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL
INJUNCTIVE RELIEF SOUGHT**

Plaintiffs JERRY HARVEY AUDIO HOLDING, LLC, and JERRY HARVEY AUDIO, LLC, complain, upon knowledge as to selves and upon information and belief as to others, against Defendants 1964 EARS, LLC, and EASTERWOOD & ASSOCIATES, LLC, d/b/a EARS 2 HEAR, as follows:

INTRODUCTION

1. Mr. Jerry Harvey is a sound engineer with decades of experience working with some of the world's leading musicians, including U2, Madonna, Justin Timberlake, Maroon 5, Lady Gaga, Van Halen, Garth Brooks and Mick Jagger. Mr. Harvey is also an inventor, specifically of personal audio listening devices called “canalphones” that fit inside a user's ears (as opposed to headphones that rest on the outside of the user's ears). One of Mr. Harvey's latest inventions, for which he applied for and received a patent, is canalphones with multiple high frequency drivers. Mr. Harvey makes and sells his canalphone inventions through his Orlando, Florida, based business Jerry Harvey Audio.

2. 1964 Ears also makes and sells various canalphones, some of which infringe Mr. Harvey's patent. In fact, in January, after receiving the original Complaint in this matter, 1964 Ears proceeded to introduce at the industry's leading trade show brand new lines of infringing canalphones. Ears 2 Hear is 1964 Ears' Authorized Dealer for the State of Florida and offers Florida residents the entire line of 1964 Ears' products.

3. JH Audio brings this action to stop Defendants from making, using, offering to sell, selling, or importing into the United States infringing canalphones, or from inducing or contributing to infringement, and to recover from Defendants damages to compensate for any and all acts of infringement they commit or have committed.

NATURE OF THE SUIT

4. This is a complaint for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

5. Plaintiff Jerry Harvey Audio Holding, LLC, is a Florida limited liability company with its principal place of business at 2515 East Semoran Blvd., Apopka, FL 32703.

6. Plaintiff Jerry Harvey Audio, LLC, is a Nevada limited liability company that is registered in Florida and has its principal place of business at 2515 East Semoran Blvd., Apopka, FL 32703, the same principal place of business as Jerry Harvey Audio Holding, LLC.

7. Defendant 1964 Ears, LLC ("1964 Ears"), is an Oregon limited liability company with its principal place of business at 7025 N Lombard St., Ste 100, Portland, OR 97203.

8. Defendant Easterwood & Associates, LLC, d/b/a Ears 2 Hear ("Ears 2 Hear"), is a Florida limited liability company with its principal place of business at 9013-E University

Parkway, Pensacola, FL 32514.

JURISDICTION, VENUE AND JOINDER

9. This Court has jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

10. Personal jurisdiction over Defendants is proper in this Court because Defendants do business in this State, have significant contacts with this State, have made, used, offered to sell, sold, or imported infringing products in this State, have purposefully shipped or caused to be shipped infringing products into this State, or have committed acts in this State that are the subject of the counts set forth herein.

11. Personal jurisdiction over Defendant Ears 2 Hear is also proper because it is organized under the laws of this State and has its principal place of business in this State.

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

13. Joinder of Defendants in this matter is proper under 35 U.S.C. § 299 because JH Audio's complaint here arises, in part, out of their participation in the same transaction, occurrence, or series of transactions or occurrences.

FACTUAL ALLEGATIONS

The Parties

14. Plaintiff Jerry Harvey Audio Holding, LLC, holds title to Mr. Harvey's patent in this matter, United States Patent No. 8,897,463. Plaintiff Jerry Harvey Audio, LLC, commercializes Mr. Harvey's patented invention. Mr. Jerry Harvey is the founder, owner, and manager of both Plaintiffs and they are collectively referred to herein as "JH Audio".

15. JH Audio designs, develops, manufactures, markets and sells various personal audio listening device products, including specifically in-ear monitors (“IEM”), also referred to as “canalphones.” The individuals at JH Audio, including specifically Mr. Jerry Harvey who started the business and for whom it is named, have over 35 years of combined experience in live audio mixing and more than 20 years of designing and building in-ear monitors for some of the worlds leading musicians, including U2, Madonna, Justin Timberlake, Maroon 5, Aerosmith, Guns N’ Roses, Van Halen, Lady Gaga, Foreigner, Alicia Keys, Rob Thomas, Garth Brooks, Stevie Wonder, Mick Jagger and others. JH Audio sells its products directly to customers and maintains a website at <http://www.jhaudio.com/>.

16. Defendant 1964 Ears describes itself as, “a Portland, Oregon based custom In-ear Monitor manufacturer.” 1964 Ears maintains two websites, one at <http://www.1964ears.com/> and one at <http://www.1964adel.com/>, through which it advertises, offers and sells products to residents of this State and District. 1964 Ears also has a Kickstarter webpage at <https://www.kickstarter.com/projects/1043330169/realloud-technology-that-saves-your-hearing-and-yo/> through which it advertises, offers and sells products to residents of this State and District.

17. Ears 2 Hear is an Authorized Dealer of 1964 Ears' products in this State. Ears 2 Hear works with 1964 Ears to make, use, offer to sell or sell 1964 Ears' products to residents in this State and District. For example, Ears 2 Hear maintains a website at <http://ears2hearusa.com/> through which it advertises 1964 Ears' products to residents of this State and District. Ears 2 Hear is also a Recommended Audiologist of 1964 Ears in this State. 1964 Ears refers residents of this State and District to Ears 2 Hear so that its audiologists can make “deep” impressions

required for 1964 Ears to build canalphones.

JH Audio's Canalphone Patent

18. JH Audio owns United States Patent No. 8,897,463, entitled “Dual High Frequency Driver Canalphone System,” which issued on November 25, 2014 (the “’463 patent”).

Mr. Harvey is the inventor of the ’463 patent, a copy of which is attached hereto as Exhibit A.

19. As described in the ’463 patent:

There are many different types of personal listening devices such as headphones, earbuds, canalphones, and/or the like. Headphones are personal listening devices that are held in close proximity to the ear by some support system. Earbuds are small personal listening devices that are positioned directly in front of the ear canal and are substantially smaller than a person's outer ear. Similarly, canalphones are personal listening devices that are substantially smaller than a person's outer ear, but they differ from earbuds in that they are placed directly in one end of the ear canal. Both earbuds and canalphones are held in position by friction between the ear and the device rather than the support system found in most headphones.

Canalphones are also referred to as in-ear monitors due to how the canalphone is worn by a listener. Some canalphones also serve as earplugs due to the way the canalphone limits noise external to the canalphone from entering the ear canal.

’463 patent, col. 1, lns. 10-26.

20. The ’463 patent has a total of 16 claims, all which are at issue here.

21. Claim 1 of the ’463 patent claims:

A system comprising:

- [a] a canalphone housing;
- [b] a first low frequency driver carried within the canalphone housing;
- [c] a first midrange frequency driver carried within the canalphone housing;
- [d] a second low frequency driver carried within the canalphone housing;
- [e] a second midrange frequency driver carried within the canalphone housing;

- [f] a first high frequency driver carried within the canalphone housing; and
 - [g] [part 1] a second high frequency driver carried within the canalphone housing,
- [part 2] the first high frequency driver and the second high frequency driver each produce similar frequencies,
- [part 3] the first high frequency driver and second high frequency driver are positioned where the oscillation of one interacts with the oscillation of the other to reduce harmonic distortion,
- [part 4] and the first high frequency driver and the second high frequency driver produce distinguishable frequencies to a person using the system comprising 12,000 hertz to 18,000 hertz.

'463 patent, col. 5, ln 63 – col. 6, ln. 18.

22. Claim 7 of the '463 patent claims a system with all of the elements of claim 1 with the additional limitation, “wherein the first high frequency driver and second high frequency driver each comprise balanced armatures.” '463 patent, cl. 6, lns. 44-46.

23. Below is Fig. 2 of the '463 patent, which depicts one embodiment of Mr. Harvey's invention.

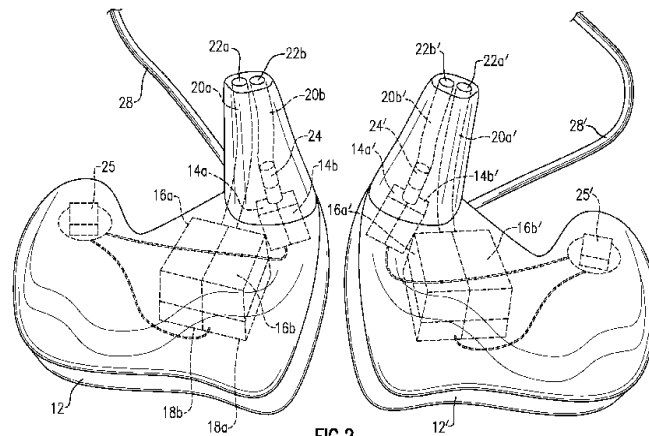


FIG. 2

U.S. Patent Nov. 25, 2014 Sheet 2 of 3 US 8,897,463 B2

Of specific relevance to this action, Fig. 2 shows the presence of various components contained within a housing. The components contained within the housing include the various drivers identified in the elements of claim 1 (i.e. two low frequency, two midrange frequency, and two high frequency drivers).

1964 Ears' Infringing Products

24. 1964 Ears has and continues to make, use, offer to sell, sell, or import various products, including canalphones. 1964 Ears' canalphone products include its A-Series products A12 and A10, its V-Series products V8, V6-Stage, and V6, and its U-Series products U8 and U6.

1964 Ears' Newly Released A-Series A12 And A10 Products

25. Barely a month after receiving the original Complaint in this matter, 1964 Ears participated in the National Association of Music Merchants (“NAMM”) annual show, at which 1964 Ears demonstrated and distributed new canalphone products, including its “A-Series” products, the A12 and A10. 1964 Ears also prominently displays the A-Series products on its websites, calling the products its “New Flagships”. See <http://www.1964ears.com/>. The image below comes from the top of 1964 Ears' homepage where the A12 and A10 products are prominently displayed.



26. 1964 Ears also offers for sale and sells both the A12 and A10 products through its Kickstarter webpage. See <https://www.kickstarter.com/projects/1043330169/realloud-technology-that-saves-your-hearing-and-yo>. The image below from 1964 Ears' Kickstarter webpage shows a representative A-Series product with various components housed within an outer shell.



27. 1964 Ears provides “Specs” for the A-Series on its website that state, (i) the A12 has “Twelve precision balanced armature drivers” that are “4-low, 4-mid, 4-high” with a “Freq. Response: 10Hz – 20 kHz,” and (ii) the A10 has “Ten precision balanced armature drivers” that are “2-low, 4-mid, 4-high” with a “Freq. Response: 10Hz – 20 kHz.” See <http://www.1964adel.com/> (pop-up that displays when clicking on “See Complete Specs” under “1964 | ADEL Custom”).

1964 Ears' V-Series V8, V6-Stage And V6 Products

28. In addition to the A-Series products, 1964 Ears also has or currently makes, uses, offers for sale, or sells canalphones known as the V8, V6-Stage and V6. The images below from 1964 Ears' website show the V8 product. The left image shows the outer shell of the V8, while the right image shows various components housed within the outer shell.



29. In addition to these images, 1964 Ears describes its V8 product on its website as follows:

The V8 is handcrafted with eight balanced armature drivers in each earpiece coupled to a three-way crossover that yields unrivaled sonic purity. Featuring a Triple Bore design, they allow for the IEM's high, mid and low frequency sound components to be channeled through separate passages in the sound port.

See <http://www.1964ears.com/product/1964-V8-Custom-In-Ear-Monitor>. 1964 Ears also lists various “Features” and “Tech Specs” for the V8, including that the V8 has “hard acrylic shells,” “Four Low, Two Mid, Two High Precision Tuned Armatures”, and “Freq. Response: 10Hz – 20 kHz.”

30. For the V6-Stage, 1964 Ears identifies its “Features” and “Tech Specs” as including “hard acrylic shells”, “Two Low, Two Mid, Two High Precision Tuned Armatures”, and “Freq. Response: 15Hz – 20 kHz”. See <http://www.1964ears.com/product/1964-V6-Stage-Custom-In-Ear-Monitor>. Thus, the V6-Stage only differs from the V8 in that the V6-Stage has just two low armature drivers as opposed to the V8's four low armature drivers.

31. The V6 has the same features and specs identified above for the V6-Stage.

1964 Ears' U-Series U8 And U6 Products

32. 1964 Ears also promotes on its <http://www.1964adel.com/> website a U-Series of

products, which are described as “universal” versions of the V-Series “custom” products. The “Specs” listed on 1964 Ears' website for the U-Series products state that (i) the U8 has “Eight precision balanced armature drivers” that are “4-low, 2-mid, 2-high” with a “Freq. Response: 10Hz – 20 kHz,” and (ii) the U6 has “Six precision balanced armature drivers” that are “2-low, 2-mid, 2-high” with a “Freq. Response: 10Hz – 20 kHz.” See <http://www.1964adel.com/> (pop-up that displays when clicking on “See Complete Specs” under “1964 | ADEL Universal”).

33. 1964 Ears also offers for sale and sells both the U8 and A6 products through its Kickstarter webpage.

**FIRST COUNT FOR RELIEF
INFRINGEMENT OF U.S. PATENT NO. 8,897,463 BY 1964 EARS**

34. JH Audio incorporates by reference the preceding paragraphs as if fully set forth herein.

35. 1964 Ears has and continues to make, use, offer for sale, sell, or import products in this State and District and elsewhere in the United States that infringe JH Audio's '463 patent or has and continues to induce or contribute to infringement of JH Audio's '463 patent in this State and District and elsewhere in the United States.

36. At least each of the A12, A10, V8, V6-Stage, V6, U8 and U6 infringe each claim of the '463 patent, but this complaint is not limited to just those identified products. 1964 Ears may have other products, in the past, currently, or in the future, that also infringe the '463 patent. 1964 Ears also induces or contributes to infringement of each claim of the '463 patent.

37. For example, 1964 Ears' A12, A10, V8, V6-Stage, V6, U8 and U6 products literally infringe at least claims 1 and 7 of the '463 patent because each of those products contain each and every element of claims 1 and 7 of the '463 patent either literally or under the Doctrine

of Equivalents.

38. While only a literal infringement analysis of two of the '463 patent's claims is discussed in detail herein, 1964 Ears has and continues to infringe all 16 claims of the '463 patent directly, either literally or under the Doctrine of Equivalents, or indirectly, by inducing or contributing to infringement of all 16 claims of the '463 patent.

1964 Ears' A12 And A10 Products Infringe the '463 Patent

39. The images of 1964 Ears' A12 and A10 products *supra* show they are canalphones with an outer shell that houses various components. Thus, the A12 and A10 have a “canalphone housing”, satisfying element [a] of claim 1 of the '463 patent.

40. The “Specs” for the A12 and A10 on 1964 Ears' website state that (i) the A12 has “Twelve precision balanced armature drivers” that are “4-low, 4-mid, 4-high,” and (ii) the A10 has “Ten precision balanced armature drivers” that are “2-low, 4-mid, 4-high.” Thus, both the A12 and A10 have at least two each of low, midrange and high frequency drivers within the housing, satisfying elements [b], [c], [d], [e], [f] and [g][part 1] of claim 1 of the '463 patent.

41. The high frequency drivers in the A12 and A10 products must produce similar frequencies in order to be an acceptable canalphone product, else users would hear an unsatisfactory distorted sound. There is also no indication on 1964 Ears' websites or any other reason to believe that the high frequency drivers in the A12 and A10 products produce dissimilar frequencies. Thus, the A12 and A10 products satisfy element [g][part 2] of claim 1 of the '463 patent.

42. To produce a satisfactory sound for users, the high frequency drivers in 1964 Ears' A12 and A10 canalphones must be positioned in such a way that the oscillation of one interacts

with the oscillation of the other to reduce harmonic distortion. Thus, the A12 and A10 products satisfy element [g][part 3] of claim 1 of the '463 patent.

43. The “Specs” for the A12 and A10 on 1964 Ears' website state that they have a “Freq. Response: 10Hz – 20 kHz.” That frequency response range must be divided amongst the low, midrange, and high frequency drivers in the A12 and A10 products, leaving the high frequency drivers to produce distinguishable frequencies in the 12,000 hertz to 18,000 hertz range. Thus, the A12 and A10 products satisfy element [g][part 4] of claim 1 of the '463 patent.

44. Because 1964 Ears' A12 and A10 products contain each element of claim 1 of the '463 patent, they each infringe the '463 patent.

45. 1964 Ears describes the drivers in the A12 and A10 as being “precision balanced armature drivers.” Thus, the high frequency drivers are “balanced armatures,” which satisfies the additional element of claim 7 of the '463 patent. Therefore, the A12 and A10 infringe that claim as well.

46. Because 1964 Ears demonstrated and distributed the A12 and A10 products at the NAMM 2015 show after receipt of the original complaint in this matter, those acts of infringement were willful.

1964 Ears' V8 and V6-Stage Products Infringe the '463 Patent

47. The images of 1964 Ears' V8 product *supra* show that it is a canalphone with an outer shell that houses various components. 1964 Ears also describes its V8 product as having “Features” that include “hard acrylic shells”. Thus, the V8 has a “canalphone housing”, satisfying element [a] of claim 1 of the '463 patent.

48. 1964 Ears describes its V8 product as having “eight balanced armature drivers in

each earpiece,” with “Features” including “Four Low, Two Mid, Two High Precision Tuned Armatures.” The '463 patent expressly describes “armatures” as types of “drivers” covered by its claims. '463 patent, col. 1, lns 39-40 (“The first high frequency *driver* and second high frequency *driver* may each comprise balanced *armatures*.”) (emphasis added). Thus, the V8 has at least two each of low, midrange and high frequency drivers within the housing, satisfying elements [b], [c], [d], [e], [f] and [g][part 1] of claim 1 of the '463 patent.

49. The high frequency drivers in the V8 product must produce similar frequencies in order to be an acceptable canalphone product, else users would hear an unsatisfactory distorted sound. There is also no indication on 1964 Ears' website or any other reason to believe that the high frequency drivers in the V8 product produce dissimilar frequencies. Thus, the V8 product satisfies element [g][part 2] of claim 1 of the '463 patent.

50. To produce a satisfactory sound for users, the high frequency drivers in 1964 Ears' V8 canalphone must be positioned in such a way that the oscillation of one interacts with the oscillation of the other to reduce harmonic distortion. Thus, the V8 product satisfies element [g][part 3] of claim 1 of the '463 patent.

51. 1964 Ears describes its V8 product as having “Tech Specs” that include “Freq. Response: 10Hz – 20 kHz.” That frequency range must be divided amongst the low, midrange, and high drivers in the V8 product, leaving the high frequency drivers to produce distinguishable frequencies in the 12,000 hertz to 18,000 hertz range. Thus, the V8 product satisfies element [g][part 4] of claim 1 of the '463 patent.

52. Because 1964 Ears' V8 product contains each element of claim 1 of the '463 patent, it infringes the '463 patent.

53. 1964 Ears describes the drivers in the V8 as being “balanced armature drivers.” Thus, the high frequency drivers are “balanced armatures,” which satisfies the additional element of claim 7 of the '463 patent. Therefore, the V8 infringes that claim as well.

54. 1964 Ears' V6-Stage and V6 products differ from the V8 in that they have two fewer low range drivers, for a total of two as opposed to the V8's four. That difference is irrelevant to the infringement analysis here because the '463 patent claims only require two low range drivers. Thus, the V6-Stage and V6 infringe the '463 patent, including specifically claims 1 and 7 of the '463 patent, for the same reasons the V8 infringes.

1964 Ears' U8 and U6 Products Infringe the '463 Patent

55. 1964 Ears' U-Series products are merely “a universal-fit version of the ... V-line.” See <http://www.1964adel.com/>. The “Specs” listed on 1964 Ears' website for the U-Series products states that (i) the U8 (just like the V8) has “Eight precision balanced armature drivers” that are “4-low, 2-mid, 2-high” with a “Freq. Response: 10Hz – 20 kHz,” and (ii) the U6 (just like the V6-Stage and V6) has “Six precision balanced armature drivers” that are “2-low, 2-mid, 2-high” with a “Freq. Response: 10Hz – 20 kHz.”

56. Since the U8 and U6 products are indistinguishable from the V8 and V6-Stage and V6 products in any way relevant to infringement of the '463 patent, the U8 and U6 products also infringe the '463 patent, including specifically claims 1 and 7 of the '463 patent, for the same reasons the V8, V6-Stage and V6 products infringe.

The '463 Patent Is Valid

57. JH Audio's '463 patent is presumed to be valid. 35 U.S.C. § 282. The patent was just issued in November 2014 and cites thirty-six references that were reviewed by the Patent

Office during the application process. The PTO performed an extensive review of Mr. Harvey's application and cited fifteen references of its own. The patent's recent issuance combined with the high number of cited references further supports the presumption that it is valid.

1964 Ears' Infringement of the '463 Patent Has and Continues to Injure JH Audio

58. 1964 Ears' infringement of the '463 patent will continue unless and until enjoined by the Court.

59. 1964 Ears' infringement of the '463 patent has injured and will continue to injure JH Audio as long as such infringement continues. JH Audio is entitled to recover damages adequate to compensate it for such infringement, including all of its lost profits, and in no event less than a reasonable royalty.

60. No later than upon receipt of the original Complaint in this matter, 1964 Ears' had knowledge of the '463 patent. 1964 Ears' infringement of the '463 patent with such knowledge is willful and deliberate.

61. JH Audio and 1964 Ears compete in the small, niche market for high end canalphones having multiple high frequency drivers. These canalphones sell for anywhere from several hundred dollars to over a thousand dollars. For example, JH Audio's ROXANNE™ and LAYLA™ products embody the '463 patent and have a starting price of \$1,649 and \$2,595, respectively.

62. There is a likelihood of price erosion in this case because 1964 Ears is offering its infringing products at prices substantially lower than JH Audio's prices. For example, while the image *supra* of the A12 suggests an MSRP of \$1999, it is available through 1964 Ears' Kickstarter webpage for only \$1,200. Thus, 1964 Ears is offering its infringing A12 product at a

price that is 27% lower than JH Audio's comparable twelve-driver ROXANNE™ product and 54% lower than JH Audio's comparable twelve-driver LAYLA™ product.

63. As another example, 1964 Ears offers the V6-Stage product through its main website “Store” at a price of only \$699 and its U6 product through its Kickstarter webpage for only \$480, while JH Audio's comparable six-driver product, the JH13, is priced at \$1,099. Thus, 1964 Ears is offering its infringing V6-Stage product at a price that is 36% lower than JH Audio's comparable JH13 product and its infringing U6 product is offered at a price that is 56% lower.

64. The chart below identifies JH Audio's current products that embody the '463 patent, their price, 1964 Ears' infringing competing product, its price, and the difference in price.

<u>JH Audio Product</u>	<u>Number of Drivers</u>	<u>JH Audio Price</u>	<u>1964 Ears Product</u>	<u>1964 Ears Price</u>	<u>Difference in Price</u>
LAYLA™	12	\$2,595	A12	\$1,200	-54%
ROXANNE™	12	\$1,649	A12	\$1,200	-27%
ANGIE™	8	\$1,295	V8, U8	\$899, \$540	-31%, -58%
JH16™	8	\$1,149	V8, U8	\$899, \$540	-22%, -53%
JH13™	6	\$1,099	V6-Stage, U6	\$699, \$480	-36%, -56%

As shown in the chart, 1964 Ears is offering competing infringing products at prices 22% to 58% lower than JH Audio's patented products. This severely lower pricing will cause JH Audio irreparable harm because at least some potential JH Audio customers may instead purchase 1964 Ears' substantially lower priced infringing products. Mr. Harvey is already aware of customers who considered buying 1964 Ears' products rather than JH Audio's products because of the lower price.

65. 1964 Ears' offering of lower priced infringing competing products may force JH Audio to lower its prices. JH Audio has already had to consider reducing its prices in light of

1964 Ears' offering of infringing products at substantial discounts. This likelihood of price erosion and potential loss of market share are substantial harms.

66. In addition, purchasers of high end canalphones are sometimes famous musicians and having them as clients creates goodwill and a favorable reputation for the canalphone supplier. JH Audio has achieved much of its goodwill and reputation as a result of the base of famous musician customers to whom it has sold products over the years. JH Audio identifies many of its famous musician customers on its website, through press releases, and via social media. The prestige of these customers helps JH Audio establish and maintain its reputation for offering high quality innovative products.

67. Each customer also creates business opportunities for future sales as they often become repeat customers and refer other customers as well. Thus, the loss of any sale of a high end canalphone threatens to cause JH Audio irreparable harm by reducing its customer base, damaging its good will and reputation, and eliminating potential future business opportunities.

68. JH Audio is also currently in the growth stage for its patented multiple high frequency driver canalphones, which are relatively new products for the company and the main focus of their current marketing and sales efforts. It is important to JH Audio to capitalize on Mr. Harvey's invention in order to increase its customer base and cement a reputation for being an innovative canalphone developer. 1964 Ears' offering of infringing canalphones at substantially lower prices here threatens JH Audio's ability to build its brand, expand its customer base, and establish a reputation for leadership in the market.

69. While each lost sale to JH Audio as a result of 1964 Ears' infringement will not cause \$50,000 in lost profits, it would not take many lost sales to reach a comparable amount. JH

Audio often sells canalphones to famous musicians who place a bulk order for many canalphones and one lost order of that type can cause lost profits of \$10,000 to \$20,000. A loss of even a small number of sales could force JH Audio to lay off employees.

70. JH Audio has lost sales to 1964 Ears' infringing products. For example, 1964 Ears' Kickstarter webpage shows that it has sold (i) 206 of the A12 product at a price of \$1,200, (ii) 41 of the A10 product at a price of \$1,000, (iii) 178 of the U8 product at a price of \$540, and (iv) 99 of the U6 product at a price of \$480. This is a total of 524 infringing canalphones sold for a total of \$431,840. Each of those sales was a potential lost sale to JH Audio, and if 1964 Ears is permitted to continue selling these infringing products, it will cause JH Audio to suffer even more potential lost sales. Faced with the prospect of losing sales to 1964 Ears' lower priced infringing products, JH Audio has already been forced to consider lowering its prices.

71. In this case, in addition to the Federal Circuit's recognized public interest of protecting JH Audio's valid patent rights, there is another critical public interest at stake. JH Audio's ability to keep and grow its Orlando-based workforce is dependent upon not suffering lost sales and price erosion as a result of 1964 Ears' infringement. In contrast to these important public interests, there is no public interest reason to allow 1964 Ears to sell products that infringe JH Audio's '463 patent. The technology at issue here is not critical to human health or public safety, for example.

72. While the above discussion addresses only claims 1 and 7 of the '463 patent and only the A12, A10, V8, V6-Stage, V6, U8 and U6, JH Audio's complaint against 1964 Ears is not limited to just those claims of the '463 patent and just those products. Those identified products infringe every claim of the '463 patent and 1964 Ears may have other products that also infringe

the '463 patent. This complaint is not limited to only the specific claims of the '463 patent or the specific products of 1964 Ears specifically discussed herein.

**SECOND COUNT FOR RELIEF
INFRINGEMENT OF U.S. PATENT NO. 8,897,463 BY EARS 2 HEAR**

73. JH Audio incorporates by reference the preceding paragraphs as if fully set forth herein.

74. Ears 2 Hear has and continues to make, use, offer for sale, sell, or import products in this State and District and elsewhere in the United States that infringe JH Audio's '463 patent or has and continues to induce or contribute to infringement of JH Audio's '463 patent in this State and District and elsewhere in the United States.

75. As one example, Ears 2 Hear is an Authorized Dealer of 1964 Ears' products and, as such, works with 1964 Ears to make, use, offer to sell or sell 1964 Ears' products that infringe the '463 patent, including the A12, A10, V8, V6-Stage, V6, U8 and U6 products. Ears 2 Hear thus infringes the '463 patent directly.

76. As another example, Ears 2 Hear is a Recommended Audiologist of 1964 Ears and, as such, makes “deep” impressions that are required for 1964 Ears to build canalphones for customers. Ears 2 Hear thus induces or contributes to the making, using, offering to sell, or selling of 1964 Ears' products that infringe the '463 patent, including the A12, A10, V8, V6-Stage, and V6 products. Ears 2 Hear thus infringes the '463 patent indirectly.

77. 1964 Ears and Ears 2 Hear are jointly and severally liable for Ears 2 Hear's acts of infringement.

78. Some of Defendants' acts of infringement are with respect to or arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the making,

using, importing into the United States, offering for sale, or selling of the same accused product or process.

79. Questions of fact common to all Defendants exist and will arise in this action

80. Ears 2 Hear's infringement of the '463 patent will continue unless and until enjoined by the Court.

81. Ears 2 Hear's infringement of the '463 patent has injured and will continue to injure JH Audio as long as such infringement continues. JH Audio is entitled to recover damages adequate to compensate it for such infringement, including all of its lost profits, and in no event less than a reasonable royalty.

82. No later than upon receipt of this Amended Complaint, Ears 2 Hear has had knowledge of the '463 patent. Ears 2 Hear's infringement of the '463 patent with such knowledge is willful and deliberate.

83. While the above discussion mentions the A12, A10, V8, V6-Stage, V6, U8 and U6 products, JH Audio's complaint against Ears 2 Hear is not limited to just those products. This complaint is also not limited to only the specific claims of the '463 patent or the specific acts of infringement of Ears 2 Hear discussed herein.

RELIEF SOUGHT

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants and against each of their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with any of them, granting the following relief:

A. The entry of judgment in favor of Plaintiffs and against Defendants for

infringement of the '463 patent;

B. A permanent injunction prohibiting further infringement of the '463 patent by Defendants and their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with any of them;

C. An award of damages against Defendants adequate to compensate Plaintiffs for the infringement that has occurred, including all of Plaintiffs' lost profits, and in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, and interest and costs;

D. A finding that this case is exceptional and an award to Plaintiffs of their reasonable attorneys' fees and costs as provided by 35 U.S.C. § 285; and

E. Such other relief to which Plaintiffs are entitled under the law and any other and further relief that the Court or a jury may deem just and proper.

JURY DEMAND

JH Audio demands trial by jury.

Dated: March 4, 2015

Respectfully submitted,

s/Daniel B. Ravicher

Daniel B. Ravicher

Florida Bar No. 102809

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Counsel for Plaintiffs Jerry Harvey Audio Holding, LLC, and Jerry Harvey Audio, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 4, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/Daniel B. Ravicher

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