

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHESTNUT HILL SOUND INC.,)	
)	
Plaintiff,)	C.A. No. 15-261-RGA
)	
v.)	JURY TRIAL DEMANDED
)	
APPLE INC.,)	
)	
Defendant.)	

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff Chestnut Hill Sound Inc. (“Chestnut Hill Sound”) files this First Amended Complaint against Defendant Apple Inc. (“Apple”) for patent infringement under 35 U.S.C. § 271. Plaintiff alleges, based on its own personal knowledge with respect to its own actions and based upon information and belief with respect to all others’ actions, as follows:

THE PARTIES

1. Plaintiff Chestnut Hill Sound is a Delaware corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business in Newton, Massachusetts. Chestnut Hill Sound maintains a website at <http://www.chillsound.com/>.
2. Defendant Apple is a California corporation with its principal place of business at 1 Infinite Loop, Cupertino, California 95014. Apple has designated The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 as its agent for service of process.

JURISDICTION AND VENUE

3. This action includes a claim of patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Apple. Apple conducts business and has committed acts of patent infringement and has induced acts of patent infringement by others in this district and has contributed to patent infringement by others in this district, the State of Delaware, and elsewhere in the United States. Apple also has affirmatively availed itself of the benefits of this district by filing complaints and counterclaims here.
5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because, among other things, Defendant is subject to personal jurisdiction in this district, has regularly conducted business in this judicial district, and certain of the acts complained of herein occurred in this judicial district.

ASSERTED PATENTS

6. On January 3, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,090,309 (the “’309 patent”) entitled “Entertainment System with Unified Content Selection.” A copy of the ’309 patent is attached as Exhibit A.
7. On May 13, 2014, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,725,063 (the “’063 patent”) entitled “Multi-Mode Media Device Using Metadata to Access Media Content.” A copy of the ’063 patent is attached as Exhibit B.
8. Chestnut Hill Sound owns all rights, title, and interest in and to the ’309 and ’063 patents (the “patents-in-suit”) and possesses all rights of recovery.
9. Chestnut Hill Sound incorporates the patents-in-suit herein by reference.

FACTUAL ALLEGATIONS

10. On or about July 29, 2004, Chestnut Hill Sound was originally incorporated in Massachusetts as The Multinational Sound Company, Inc. On or about August 31, 2005, The Multinational Sound Company, Inc. changed its name to Chestnut Hill Sound Inc. On or about January 4, 2007, Chestnut Hill Sound Inc. was migrated from Massachusetts

to Chestnut Hill Sound Inc., a Delaware corporation (“Chestnut Hill Sound”).

Throughout this complaint, “Chestnut Hill Sound” will be used to refer to The Multinational Sound Company, Inc. and Chestnut Hill Sound Inc., regardless of the time period.

11. In October 2004, Chestnut Hill Sound disclosed to Apple its concept that Apple’s iPod could be the center of the digital audio system for the home and office if it could be controlled, *inter alia*, from a true bi-directional remote control.
12. On or about October 28, 2004, representatives of Chestnut Hill Sound met with Apple representatives, including Don Ginsburg, iPod Connector License Mgr, Craig Keithley, iPod Evangelist and David Harrington, Manager Hardware Developer Relations, in Cupertino, CA.
13. During the October 28, 2004 meeting, Chestnut Hill Sound disclosed its business strategy to Apple, including its plans to develop new products that worked with the iPod.
14. Based on the filing of Chestnut Hill Sound’s provisional patent applications that had just taken place a day earlier, certain of Chestnut Hill Sound’s presentation materials at the October 28, 2004 meeting were marked “patent pending.”
15. Apple’s representatives told the representatives of Chestnut Hill Sound at the conclusion of that meeting that they were impressed with Chestnut Hill Sound’s technology plans and that no one else in the industry had approached Apple with a similar plan.
16. In March 2005, Chestnut Hill Sound demonstrated its confidential and proprietary system emulator to Don Ginsburg, Craig Keithley, Rick Jackman, Apple Store US Merchandise Manager, Eric Romberg, Apple Website Merchandise Manager and Greg Zeren, Apple Store Marketing Manager via videoconference.

17. On or about August 19, 2005, Chestnut Hill Sound performed an in-person demonstration in Cupertino, CA to Don Ginsburg and the Apple Retail Store team of Chestnut Hill Sound's first integrated hardware and software product prototype that was marked on its external rear panel with a Patent Pending notice. At Mr. Ginsburg's request, Chestnut Hill Sound representatives allowed Mr. Ginsburg to take temporary custody of the prototype in order to show Chestnut Hill Sound's prototype to representatives of Apple's senior management.
18. On or about October 7, 2005, CHS presented its product strategy to Apple. The presentation specifically discussed CHS's "patent pending" remote control technology. *See* Exhibit C at 16 ("Patent Pending" notice); *id.* at 6 ("Easy-to-use, intuitive remote that completely controls a wide variety of digital music sources").
19. At the Macworld tradeshow in January 2007, the same event at which Apple introduced the iPhone to the public, Chestnut Hill Sound launched its first product, named GeorgeTM, an integrated iPod audio system. GeorgeTM was named one of Macworld Magazine's Best of Show Award winners and was subsequently recognized as a Product of the Year by PC World and Macworld magazines. On January 17, 2007, Chestnut Hill Sound's first pending utility patent application (filed in 2005, based on the 2004 and 2005 priorities of its provisional patent applications) was published by the United States Patent and Trademark Office.
20. Chestnut Hill Sound's first retail partner for distribution of GeorgeTM was with Apple's retail stores and Apple.com. Initially, the retail distribution relationship included only Apple's flagship stores, but was expanded to approximately eighty stores and continued through late 2008.

21. Chestnut Hill Sound secured widespread distribution of George™ in the summer of 2008, with Best Buy, Sharper Image, Tweeter, and other retailers. Chestnut Hill Sound also secured online distribution through Amazon.com.
22. From October 2004 through late 2008, Chestnut Hill Sound raised over \$5 million of debt and equity investment.
23. In October 2008, Chestnut Hill Sound was forced to cease development and manufacturing of George™.
24. In late 2008, Chestnut Hill Sound discussed with Apple the benefits of Chestnut Hill Sound's patent pending technologies. Shortly thereafter, Apple submitted to the United States Patent and Trademark Office certain of Chestnut Hill Sound's patent applications as prior art to some of its own pending patent applications.
25. At no point during its meetings and discussions with Apple did Chestnut Hill Sound grant Apple a license to Chestnut Hill Sound's intellectual property, including trade secrets and its then pending patent applications. Chestnut Hill Sound never signed or agreed to any covenant not to enforce Chestnut Hill Sound's intellectual property against Apple. *See Exhibit D.*
26. Chestnut Hill Sound's patents and patent applications were cited as prior art during the prosecution of numerous patents owned by Apple, including for example, U.S. Patent Nos. 8,315,555; 8,986,029; 7,567,777; 7,702,279; 8,041,300; 8,280,465; 8,369,785; 8,478,913; and 8,762,605.
27. The patents-in-suit generally cover a method of using a media device as a remote control in two modes. The first mode is a method to select and play content on the media device itself. The second mode is a method to use the media device to control a remote media

source, either by selecting and playing content on the device being controlled, or by using the media device to request content from a remote source on the Internet and send that content to an output device that is not the media device.

28. Apple has committed and continues to commit acts of infringement under 35 U.S.C. § 271 (i) with any version of numerous Apple hardware products (including, for example, iPhone, iPhone 3G, iPhone 3GS, iPhone 4, iPhone 4S, iPhone 5, iPhone 5C, iPhone 5S, iPhone 6, iPhone 6 Plus, iPad, iPad 2, iPad 3rd Generation, iPad 4th Generation, iPad mini, iPad mini 2, iPad mini 3, iPad Air, iPad Air 2, iPod Touch 1st generation, iPod Touch 2nd generation, iPod Touch 3rd generation, iPod Touch 4th generation, and iPod Touch 5th generation, and any later models); (ii) with any version of Apple Watch, Apple Watch Sport, and Apple Watch Edition, paired with an iPhone 5, iPhone 5C, iPhone 5S, iPhone 6, or iPhone 6 Plus running iOS 8.0 or later; (iii) with any version of Apple's iTunes media server when used in combination with Apple's hardware products (e.g., the products listed in (i)) or Apple Watches (e.g., the products listed in (ii)); (iv) with Apple's Remote app for iTunes; (v) with Apple's Music app on Apple Watches; and (vi) with any version of Apple's iRadio server when used in combination with Apple's hardware products (e.g., the products listed in (i)) or Apple Watches (e.g., the products listed in (ii)) (the "Accused Instrumentalities"). In committing these acts of infringement, Apple acted despite an objectively high likelihood that its actions constituted infringement of at least one valid and enforceable patent, and Apple knew or should have known that its actions constituted an unjustifiably high risk of infringement of at least one valid and enforceable patent.

COUNT ONE: PATENT INFRINGEMENT

29. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.
30. As described below, Apple has infringed and continues to infringe the patents-in-suit.
31. Apple's Accused Instrumentalities meet the claims of the patents-in-suit.
32. Apple makes, uses, offers to sell, sells and imports Apple's Accused Instrumentalities within the United States or into the United States without authority from Plaintiff.
33. Apple therefore infringes the patents-in-suit under 35 U.S.C. § 271(a).
34. Apple has actual knowledge of the patents-in-suit. For example, Chestnut Hill Sound informed Apple of its pending patent applications during meetings with Apple prior to and subsequent to entering the Made for iPod license program in 2004. Chestnut Hill Sound also discussed the sale of or license to its intellectual property with Apple in 2008.
35. Apple indirectly infringes the patents-in-suit by inducing infringement by others, such as end-user customers, by, for example, encouraging and instructing end-user customers to install and use the Apple Remote app in the United States, and by preinstalling the Remote app on Apple Watches. As another example, Apple induces infringement by preinstalling the Remote and Music apps on the Watch and encouraging and instructing customers to use the Remote and Music apps on the Apple Watch in the United States.
36. Apple took the above actions intending to cause infringing acts by others.
37. Apple was aware of the patents-in-suit and knew that the others' actions, if taken, would constitute infringement of those patents. Alternatively, Apple subjectively believed there was a high probability that others would infringe the patents-in-suit but took deliberate steps to avoid confirming that it was actively inducing infringement by others. Apple therefore infringes the patents-in-suit under 35 U.S.C. § 271(b).

38. Apple indirectly infringes the patents-in-suit by contributing to infringement by others, such as end-user customers by offering to sell and selling within the United States components that constitute a material part of the inventions claimed in the patents-in-suit, and components of products that are used to practice one or more processes/methods covered by the claims of the patents-in-suit and that constitute a material part of the inventions claimed in the patents-in-suit. Such components are, for example, the Apple Remote app, the components of an Apple computer that allow that device to be controlled by the Apple Remote app, and the download package that contains the Apple Remote App. Apple's end-user customers directly infringe Plaintiff's patents by, for example, installing and using the Apple Remote app in the United States and by making a device that meets the elements of the patents-in-suit with the download package. As another example, Apple's end-users directly infringe Plaintiff's patents by using the preinstalled Remote and Music apps on the Apple Watch.
39. In offering to sell and selling the components specified above, Apple has known these components to be especially made or especially adapted for use in an infringement of the patents-in-suit and that these components are not a staple article or commodity of commerce suitable for substantial non-infringing use. Alternatively, Apple subjectively believed there was a high probability that these components to be especially made or especially adapted for use in an infringement of the patents-in-suit and that these components are not a staple article or commodity of commerce suitable for substantial non-infringing use but took deliberate steps to avoid confirming the same. Apple therefore infringes the patents-in-suit under 35 U.S.C. § 271(c).

40. Apple's acts of infringement have caused damage to Chestnut Hill Sound. Chestnut Hill Sound is entitled to recover from Apple the damages sustained by Chestnut Hill Sound as a result of Apple's wrongful acts in an amount adequate to compensate Chestnut Hill Sound for Apple's infringement subject to proof at trial. In addition, the infringing acts and practices of Apple have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Chestnut Hill Sound for which there is no adequate remedy at law, and for which Chestnut Hill Sound is entitled to injunctive relief under 35 U.S.C. § 283.
41. Apple has committed and continues to commit acts of infringement under 35 U.S.C. § 271 with the Accused Instrumentalities. In committing these acts of infringement, Apple acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, and Apple actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent.
42. Apple's infringement of the patents-in-suit has been and continues to be willful.
43. To the extent that Apple releases any new version of the Accused Instrumentalities, such instrumentalities will meet the claims of the patents-in-suit and infringe 35 U.S.C. § 271(a)-(c) in ways analogous to Apple's current infringement described above.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

Plaintiff hereby seeks the following relief from this Court:

1. A judgment that Apple has directly infringed the patents-in-suit, contributorily infringed the patents-in-suit, and induced the infringement of the patents-in-suit;

2. A preliminary and permanent injunction preventing Apple and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and inducing the infringement of the patents-in-suit;
3. A judgment that Apple's infringement of the patents-in-suit has been willful;
4. A judgment and order requiring Apple to pay Plaintiff damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement through entry of the final judgment, with an accounting, as needed, and enhanced damages for willful infringement as provided by 35 U.S.C § 284;
5. A ruling that this case be found to be exceptional under 35 U.S.C. § 285, and a judgment awarding to Plaintiff its attorneys' fees incurred in prosecuting this action;
6. A judgment and order requiring Apple to pay Plaintiff the costs of this action (including all disbursements);
7. A judgment and order requiring Apple to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;
8. In the event a permanent injunction preventing future acts of infringement is not granted, an order requiring Apple to pay to Plaintiff an ongoing royalty for its continued infringement with periodic accountings; and
9. Such other and further relief as the Court may deem just and proper.

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