

headquarters and principal place of business at 1820 Shiloh Road, Suite 1201-C, Tyler, Texas 75703. Blue Spike, LLC is the assignee of the Patent-in-Suit, and has ownership of all substantial rights in the '569 Patent, including the rights to grant sublicenses, to exclude others from using it, and to sue and obtain damages and other relief for past and future acts of patent infringement.

3. On information and belief, Beijing Xiaomi Technology Co., Ltd. is a China corporation with its principal place of business at Office Building, the Rainbow City of China Resources, No.68, Qinghe Middle Street, Haidian District, Beijing, China 100085.

JURISDICTION AND VENUE

4. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §101 *et seq.* The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§1331, 1332, 1338(a), and 1367.

5. The Court has personal jurisdiction over Defendant for at least four reasons: (1) Defendant has committed acts of patent infringement and contributed to and induced acts of patent infringement by others in this District and elsewhere in Texas; (2) Defendant regularly does business or solicits business in the District and in Texas; (3) Defendant makes significant sales and engages in other persistent courses of conduct and derives substantial revenue from products and/or services provided to individuals in the District and in Texas; and (4) Defendant has purposefully established substantial, systematic, and continuous contacts with the District and should reasonably expect to be haled into court here. Thus, the Court's exercise of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice. The following facts support a finding of personal jurisdiction.

6. Defendant sells the following products on its website for purchase by U.S. customers: Mi in-Ear Headphones (retail price \$14.99), Mi Headphones (\$79.99), Mi Band (\$14.99), and 500mAh Mi Power Bank (\$9.99). Sales for these products began in May 2015. Between May 1, 2015 and October 10, 2015, Xiaomi made [REDACTED] in sales to Texas customers. This sales figure represents at least [REDACTED] to [REDACTED] devices, depending on the breakdown of sales amongst these products. Defendant sells these products through its direct-to-consumer website, www.mi.com. This website also contains extensive information such as features and specifications about its other devices, including Defendant's mobile phone devices and Mi Pad devices.

7. Several of Defendant's products have been registered through the Federal Communications Commission ("FCC") equipment authorization procedure. This FCC procedure applies to all intentional radiators including cell phones, wireless connections, and Bluetooth connections. It is illegal to import, sell, or lease devices that have not undergone this required equipment authorization procedure. Defendant first registered for an FCC registration number on May 24, 2013. (The FCC registration number for Defendant is 0022723399.) To date, the FCC Equipment Authorization Search shows 38 applications for various Defendant devices and frequency bands. Defendant recently passed FCC certification for its Mi 4 and Redmi 2 Pro mobile phones. In addition, Defendant's mobile phone products use frequencies utilized in the United States. On information and belief, the Accused Devices employ both Code Division Multiple Access ("CDMA") and Global System for Mobiles ("GSM") radio system technologies, which are compatible with all major U.S. mobile carriers. For example, Sprint, Verizon, and U.S. Cellular use CDMA technology, and AT&T and T-Mobile use GSM technology. Of

the four major GSM frequency bands (850/900/1800/1900 MHz), the 850 and 1900 MHz bands are primarily used in the United States. Defendant's Mi 4, Mi Note Plus, and Mi Note Pro can be used on the 850 MHz frequency. Defendant's Mi 4, Mi Note Plus, Mi Note Pro, and Redmi 2 can be used on the 1900 MHz frequency. Defendant's Mi 4c, Mi Note Plus, Mi Note Pro, and Redmi 2 can be used on a Band 41 frequency (2495-2690 MHz), which Defendant's website refers to as "US 2.6 GHz band."

8. Defendant's products are widely available via third-party merchants, including through United States-based Internet marketplace, Newegg.com ("Newegg"). On information and belief, the following retailers sell Defendant's products through the Newegg website: Phoneworld, JM Group, Tiford Co., Phonedata Technology, BD House, Value Basket's Store, and TomTop. TomTop's transaction records of sales through the Newegg website date back until at least September 2, 2013. On information and belief, Defendant sold 34.7 million smartphones in the first half of 2015 alone. On information and belief, Defendant has sold tens of millions of phones during the pendency of the lawsuit. Defendant reportedly sold 18.7 million devices in 2013, 61.12 million devices in 2014, and over 70 million devices in 2015. On information and belief, at least some of those devices are being purchased and used by Texas residents.

9. Newegg provides a marketplace for "Overseas Companies Looking To Bring Their New Products to the North American Market." Newegg offers a "First From Asia" "Global Seller Program." According to Newegg, the Global Seller Program provides "third party logistics for importing, product merchandising, e-commerce, customer service," to shortcut entry into the North American market. On information and belief, requirements for retailer enrollment in this program include fulfillment (processing and

shipping) of orders within 72 hours. Newegg also offers “Shipped by Newegg,” a program where Newegg stocks the retailer’s inventory, and ships devices directly to the customer. According to Newegg, “All First From ASIA products meet US product regulations.” Newegg boasts service of “over 25 million customers.”

10. On information and belief, the Accused Products have an English-language setting; the date format of the Accused Devices is consistent with the default date format in the United States (MM/DD/YYYY); and the charging plug is consistent with the two-prong 110 Volt alternative current Type-A plug used in the United States.

11. Venue is proper in this judicial district under 28 U.S.C. §§1391(b)–(c) and 1400(b) because Defendant does business in the State of Texas, Defendant has committed acts of infringement in Texas and in the District, a substantial part of the events or omissions giving rise to Blue Spike’s claims happened in the District, and Defendant is subject to personal jurisdiction in the District.

THE ACCUSED PRODUCTS AND SERVICES

12. Defendant designs, develops, employs, and/or manufactures Address Space Layout Randomization (“ASLR”) software, systems, and/or technology. Defendant makes, uses, offers for sale and/or imports into the U.S. products, systems, and/or services including, but not limited to, its Hongmi, MI-1s, MI-2, MI-2a, MI-2s, and MI-3 phones (collectively, “Accused Products”), which infringe one or more claims of the Patent-in-Suit.

13. Defendant has not sought or obtained a license for any of Blue Spike’s patented technologies.

14. Yet Defendant's Accused Products are using methods, devices, and systems taught by Blue Spike's Patent-in-Suit.

**COUNT 1:
INFRINGEMENT OF U.S. PATENT NO. 5,745,569**

15. Blue Spike incorporates by reference the allegations in paragraphs 1 through 9 of this Complaint.

16. The '569 Patent is valid, is enforceable, and was duly and legally issued on April 28, 1998.

17. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '569 Patent—directly, contributorily, or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products, in violation of 35 U.S.C. § 271.

18. Defendant has been and now is indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '569 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products for use in systems that fall within the scope of one or more claims of the '569 Patent. Such products include, without limitation, one or more of the Accused Products. Such products have no substantial non-infringing uses and are for use in systems that infringe the '569 Patent. By making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike and is thus liable to Blue Spike for infringement of the '569 Patent under 35 U.S.C. § 271. Those whom Defendant induces to infringe and/or to whose infringement Defendant contributes are (1) third-

party sellers who import, offer for sale, and/or sell the Accused Products, and (2) the end users of the Accused Products. Defendant had knowledge of the '569 Patent at least as early as the service of this complaint and is thus liable for infringement of one or more claims of the '569 Patent by actively inducing infringement and/or is liable as contributory infringer of one or more claims of the '569 Patent under 35 U.S.C. § 271.

19. Defendant's acts of infringement of the '569 Patent have caused damage to Blue Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271. Defendant's infringement of Blue Spike's exclusive rights under the '569 Patent will continue to damage Blue Spike, causing it irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the Court.

20. On information and belief, the infringement of the Patent-in-Suit by Defendant has been willful and continues to be willful. Defendant had knowledge of the Patent-in-Suit, including but not limited to at least one or more of the following:

- a. The '569 patent has been forward-cited as prior art in connection with the examination of at least 300 subsequently-issued U.S. patents, including Microsoft in its patent titled "License-based cryptographic technique, particularly suited for use in a digital rights management system, for controlling access and use of bore resistant software objects in a client computer," Digimarc in its patent titled "Anti-piracy system for wireless telephony," AT&T in multiple patents including one of its U.S. Patent titled "Protected IP telephony calls using encryption," NEC in its U.S. Patent titled "Method and system for protecting digital data from unauthorized copying," Matsushita Electric Industrial in its U.S. Patent titled

“Active data hiding for secure electronic media distribution”), and multiple other well-known companies and government agencies including The U.S. Army, Intertrust Technologies, Texas Instruments, Dell Products, Intel, ShieldIP, Borland Software Company, Avaya Inc., ShoreTel Inc., and Syndata Technologies.

b. Through the filing and service of this Complaint.

21. On information and belief, Defendant has at least had constructive notice of the '569 Patent by operation of law.

REQUEST FOR RELIEF

Blue Spike incorporates each of the allegations in paragraphs 1 through 21 above and respectfully asks the Court to:

- (a) enter a judgment that Defendant has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of each of the Patent-in-Suit;
- (b) enter a judgment awarding Blue Spike all damages adequate to compensate it for Defendant's infringement of, direct or contributory, or inducement to infringe, the Patent-in-Suit, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of one or more of the Patent-in-Suit;
- (d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with it, and its subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the Patent-in-Suit;

- (e) enter a judgment requiring Defendant to pay the costs of this action, including all disbursements, and attorney's fees as provided by 35 U.S.C. § 285, together with prejudgment interest; and
- (f) award Blue Spike all other relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Blue Spike demands a jury trial on all issues that may be determined by a jury.

Respectfully submitted,

/s/ Randall T. Garteiser

Randall T. Garteiser

Texas Bar No. 24038912

rgarteiser@ghiplaw.com

Christopher A. Honea

Texas Bar No. 24059967

chonea@ghiplaw.com

GARTEISER HONEA, P.C.

119 W. Ferguson Street

Tyler, Texas 75702

Telephone: (888) 908-4400

Facsimile: (888) 908-4400

Kirk J. Anderson

California Bar No. 289043

Molly A. Jones

California Bar No. 301419

GARTEISER HONEA, P.C.

44 North San Pedro Road

San Rafael, California 94903

Telephone: (415) 785-3762

Facsimile: (415) 785-3805

Counsel for Blue Spike, LLC