

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

DIGITAL STREAM IP, LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 2:16cv982-JRG
v.)	
)	JURY TRIAL DEMANDED
BMW OF NORTH AMERICA, LLC,)	
)	
Defendant.)	
_____)	

AMENDED COMPLAINT

For its Complaint, Plaintiff Digital Stream IP, LLC ("Digital Stream"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. Digital Stream is a Texas limited liability company with a place of business located at 1400 Preston Road, Suite 475, Plano, Texas 75093.

2. Defendant BMW of North America, LLC is a Delaware company with, upon information and belief, a place of business located at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07675.

3. Upon information and belief, Defendant has registered with the Texas Secretary of State to conduct business in Texas.

JURISDICTION AND VENUE

4. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*

5. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.

6. Upon information and belief, Defendant conducts substantial business in this

forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.

7. Venue is proper in this district pursuant to §§ 1391(b), (c) and 1400(b).

THE PATENT-IN-SUIT

8. On June 14, 2011, U.S. Patent No. 7,962,090 (the "'090 patent"), entitled "Method and Apparatus for Satellite Digital Audio," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '090 patent is attached hereto as Exhibit A.

9. The '090 patent solves problems of providing digital audio and display of corresponding program information associated with a digital music service. It ensures that a listener will continue to enjoy the advantages of digital audio, while also enabling portable reception of the service within a localized setting.

10. The claims of the '090 patent effect an improvement in digital audio receivers and the digital audio technical field to solve the problems of limited range, signal strength, variety of channels, program information available and overall accessibility and ease of use. The '090 patent overcame these difficulties by, for example, utilizing a wireless digital audio receiver or wireless digital audio player including a user interface to enable a user to select digital audio data from a plurality of digital audio data within carrier waves, a tuner to tune to a frequency associated with the digital audio data, a demodulator to demodulate or extract the digital audio data and the program information from the carrier wave, and a digital to analog converter the digital audio data into an analog signal for playback by the user.

11. On September 11, 2012, U.S. Patent No. 8,265,545 (the "'545 patent"), entitled

"Wireless Environment Method and Apparatus," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '545 patent is attached hereto as Exhibit B.

12. The '545 patent also solves problems of providing digital audio and display of corresponding program information associated with a digital music service. It ensures that a listener will continue to enjoy the advantages of digital audio, while also enabling portable reception of the service within a localized setting.

13. The claims of the '545 patent effect an improvement in digital audio players and the digital audio technical field to solve the problems of limited range, signal strength, variety of channels, program information available and overall accessibility and ease of use. The '545 patent overcame these difficulties by, for example, utilizing a wireless digital audio player including a user interface to enable a user to select digital audio data from a plurality of digital audio programs, a tuner to tune to a radio frequency signal associated with the digital audio program, a demodulator to receive from the tuner and to demodulate the radio frequency signal that carries digital audio data and program information corresponding to the digital audio program, a processor coupled to the user interface for separating the program information from the digital audio data and a digital to analog converter to convert the audio data corresponding to the digital audio program into an analog signal for playback by the user.

14. On June 29, 2004, U.S. Patent No. 6,757,913 (the "'913 patent"), entitled "Wireless Music and Data Transceiver System," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '913 patent is attached hereto as Exhibit C.

15. The '913 patent solves problems of providing digital audio and display of corresponding program information associated with a digital music service. It ensures that a listener will continue to enjoy the advantages of digital audio, while also enabling portable

reception of the service within a localized setting.

16. The claims of the '913 patent effect an improvement in digital audio transceivers, digital audio players, digital music transmitters and the digital audio technical field to solve the problems of limited range, signal strength, variety of channels, program information available and overall accessibility and ease of use. The '913 patent overcame these difficulties by, for example, utilizing a wireless digital audio transceiver or wireless digital audio player including a user interface to enable a user to select digital audio data or a digital audio program from a plurality of digital audio data or programs, a tuner to tune to a frequency associated with a carrier wave containing the digital audio data or a frequency associated with the digital audio program, a demodulator to extract or demodulate the digital audio data and program information, and a digital to analog converter to convert the digital audio data into an analog signal for playback by the user.

17. Digital Stream is the assignee and owner of the right, title and interest in and to the '090, '545 and '913 patents, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,962,090

18. Digital Stream repeats and realleges the allegations of paragraphs 1 through 17 as if fully set forth herein.

19. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of at least claim 1 of the '090 patent by making, using, importing, offering for sale, and/or selling a wireless digital audio receiver for receiving one or more carrier waves containing digital audio data and audio program information, including, but not limited to, the wireless digital audio receiver in certain vehicles, including, but not limited to, M240i Coupe,

M240i xDrive Coupe, M240i Convertible, M240i xDrive Convertible, 340i xDrive Sedan, 340i Sedan, 340i xDrive Gran Turismo, 440i Coupe, 440i xDrive Coupe, 440i Gran Coupe, 440i xDrive Gran Coupe, 440i Convertible, 440i xDrive Convertible, 550i Sedan, 550i xDrive Sedan, 550i Gran Turismo, 640i Coupe, 640i xDrive Coupe, 650i Coupe, 650i xDrive Coupe, 640i Gran Coupe, 640i xDrive Gran Coupe, 650i Gran Coupe, 650i xDrive Gran Coupe, 640i Convertible, 640i xDrive Convertible, 650i Convertible, 650i xDrive Convertible, ALPINA B6 xDrive Gran Coupe, 740i Sedan, 740i xDrive Sedan, 740e xDrive iPerformance, 750i Sedan, 750i xDrive Sedan, X3 xDrive35i, X4 M40i, X5 xDrive50i, X6 xDrive50i, M2 Coupe, M3 Sedan, M4 Coupe, M4 Convertible, M5 Sedan, M6 Coupe, M6 Gran Coupe, M6 Convertible, X5 M, X6 M, i3, i3 with Range Extender and i8.

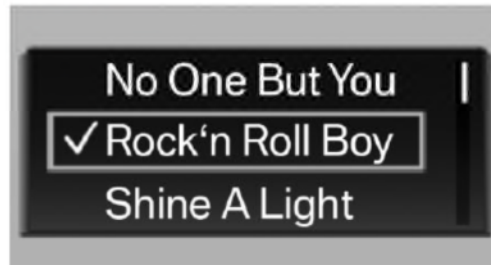
20. More specifically and upon information and belief, Defendant's wireless digital audio receiver receives one or more carrier waves combining digital audio data and audio program information. *See* http://www.bmwusa.com/Standard/Content/Vehicles/2017/M/M3Sedan/Features_and_Specs/default.aspx (last accessed Nov. 14, 2016) ("SiriusXM® Satellite Radio with 1-year subscription"). The wireless digital audio receiver includes a user interface to enable a user to select digital audio data from a plurality of digital audio data within the carrier waves. *See* http://www.bmw.com/com/en/insights/technology/technology_guide/articles/controller.html?content_type=/com/en/insights/technology/technology_guide/articles/control_display.html&source=/com/en/insights/technology/technology_guide/articles/idrive.html&article=controller (last accessed Nov. 14, 2016); *see also* http://www.bmw.com/com/en/insights/technology/technology_guide/articles/control_display.html?content_type=/com/en/insights/technology/technology_guide/articles/idrive.html&source=/c

om/en/insights/technology/technology_guide/articles/controller.html&article=control_display (last accessed Nov. 14, 2016); *see also* https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytltCm&index=156 at 1:10 – 1:21 (last accessed Nov. 14, 2016) (BMW tutorial using the iDrive controller to select a satellite radio channel). It includes a tuner operably coupled to the user interface to tune to a frequency associated with a carrier wave containing the selected digital audio data.



See https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytltCm&index=156 (last accessed Nov. 14, 2016). The wireless digital audio receiver includes a demodulator coupled to the tuner to extract the selected digital audio data and the audio program information from the carrier wave. *See* Attachment A, FM-6 Satellite Technical Description, Robert D. Briskman (Apr. 9, 2010) at pp. 7-8, 11, available at http://licensing.fcc.gov/myibfs/download.do?attachment_key=810002 (last accessed Nov. 14, 2016); *see also* THE BMW M3 SEDAN. OWNER'S MANUAL. at p. 86 (available at http://cache.bmwusa.com/PDF_e93cd551-3023-412f-8be8-fa2f3df16a25.arox?v=083898a3-0ef9-4963-856c-6eba86acb9a4 (last accessed Nov. 14, 2016) (

Display



). It also includes a digital to analog converter to convert the selected digital audio data into an analog signal for playback by the user. *See* http://www.bmwusa.com/Standard/Content/Vehicles/2017/M/M3Sedan/Features_and_Specs/default.aspx (last accessed Nov, 14, 2016) ("SiriusXM® Satellite Radio with 1-year subscription"; "Harman Kardon® Surround Sound Audio System with vehicle-specific equalizing and powerful 600-watt amplifier; the 16-speaker system includes 6 tweeters, 4 midrange speakers located in the door panels and 2 midrange speakers located under the rear shelf space, 2 bass speakers located under the front seats, 1 midrange center channel speaker and 1 tweeter located in the instrument cluster"); https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytltCm&index=156 (last accessed Nov. 14, 2016).

21. Digital Stream's initial complaint was filed on August 31, 2016.

22. Defendant was served the initial complaint on September 12, 2016.

23. Thus, Defendant has been on notice of the '090 patent since, at the latest, the date it was served the complaint.

24. Upon information and belief, Defendant has not altered its infringing conduct after receiving the initial complaint.

25. Upon information and belief, Defendant's continued infringement despite its knowledge of the '090 patent and the accusations of infringement has been objectively reckless and willful.

26. In particular, Defendant's customers' ability to listen to satellite radio in vehicles equipped with satellite radio receivers is facilitated by the use of wireless digital audio receivers patented under the '090 patent. Thus, Defendant's customers are able to select a satellite radio channel from a plurality of satellite radio channels and listen to that selected channel through the use of technology covered by the '090 patent.

27. On information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its website and sales personnel, the use of its receivers that infringe the '090 patent when used as intended by Defendant's customers. Defendant's customers use such receivers. Defendant further instructs its customers how to use such receivers in a manner that infringes the '090 patent (e.g., through manuals and on-line technical documentation and instructions). For example, Defendant created an online tutorial for its customers explaining how to use the satellite receiver to listen to satellite radio. *See* https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytltCm&index=156 at 0:55 – 1:21 (last accessed Nov. 14, 2016).

28. In particular, Defendant instructs its customers through at least manuals and on-line support instructions and documentation over the Internet how to use wireless digital audio receiver to choose and listen to a satellite radio channel chosen from multiple satellite radio channels.

29. Defendant still further makes such wireless digital audio receivers available to its customers, thus enabling and encouraging its customers to use such receivers to infringe the '090 patent.

30. On information and belief, even though Defendant has been aware of the '090 patent and that its customers infringe the '090 patent since no later than September 12, 2016 and Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such wireless digital audio receivers to avoid infringing the '090 patent nor informed its customers how to avoid infringing the '090 patent. To date, Defendant has not identified a single action that it has taken to avoid infringement (e.g., by designing around or notifying its customers how to avoid infringement) by itself or its customers since it became aware of the '090 patent.

31. On information and belief, Defendant itself is unaware of any legal or factual basis that its actions solely, or in combination with the actions of its customers, do not constitute direct or indirect infringement of the '090 patent. To date, Defendant has not produced any opinion of counsel, request for opinion of counsel, evaluation, analysis, or investigation relating to the validity, scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '090 patent.

32. As such, on information and belief, despite the information Defendant obtained from the original complaint in this action, Defendant continues to specifically intend for and encourage its customers to use its wireless digital audio receivers in a manner that infringe the claims of the '090 patent. In addition, since at least the filing of the original complaint in this action, Defendant has deliberately avoided taking any actions (e.g.,

designing around or providing notice to its customers) to avoid confirming that its actions continue to specifically encourage its customers to use its receivers in a manner that infringe the claims of the '090 patent.

33. Defendant's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such wireless digital audio receivers constitute an objectively high likelihood of infringement of the '090 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the filing of the original complaint, Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '090 patent and that the '090 patent is valid. Despite Defendant's knowledge of that risk, on information and belief, Defendant has not made any changes to the relevant operation of its accused products and has not provided its customers with instructions on how to avoid infringement the '090 patent. Instead, Defendant has continued to, and still is continuing to, among other things, make, use, offer for sale, and/or sell products patented under the '090 patent. As such, Defendant willfully, wantonly and deliberately infringed and is infringing the '090 patent in disregard of Digital Stream's rights under the '090 patent.

34. Digital Stream is entitled to recover from Defendant the damages sustained by Digital Stream as a result of Defendant's infringement of the '090 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,265,545

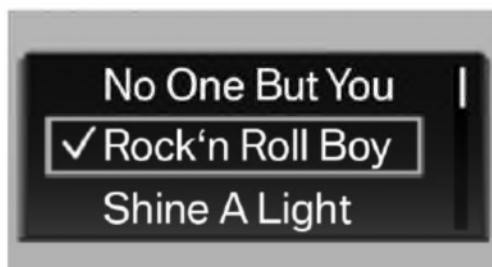
35. Digital Stream repeats and realleges the allegations of paragraphs 1 through 34 as if fully set forth herein.

36. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of at least claim 1 of the '545 patent by making, using, importing, offering for sale, and/or selling a wireless digital audio player for operation by a user, including, but not limited to, the wireless digital audio player in certain vehicles, including, but not limited to, M240i Coupe, M240i xDrive Coupe, M240i Convertible, M240i xDrive Convertible, 340i xDrive Sedan, 340i Sedan, 340i xDrive Gran Turismo, 440i Coupe, 440i xDrive Coupe, 440i Gran Coupe, 440i xDrive Gran Coupe, 440i Convertible, 440i xDrive Convertible, 550i Sedan, 550i xDrive Sedan, 550i Gran Turismo, 640i Coupe, 640i xDrive Coupe, 650i Coupe, 650i xDrive Coupe, 640i Gran Coupe, 640i xDrive Gran Coupe, 650i Gran Coupe, 650i xDrive Gran Coupe, 640i Convertible, 640i xDrive Convertible, 650i Convertible, 650i xDrive Convertible, ALPINA B6 xDrive Gran Coupe, 740i Sedan, 740i xDrive Sedan, 740e xDrive iPerformance, 750i Sedan, 750i xDrive Sedan, X3 xDrive35i, X4 M40i, X5 xDrive50i, X6 xDrive50i, M2 Coupe, M3 Sedan, M4 Coupe, M4 Convertible, M5 Sedan, M6 Coupe, M6 Gran Coupe, M6 Convertible, X5 M, X6 M, i3, i3 with Range Extender and i8.

37. More specifically and upon information and belief, Defendant's wireless digital audio player is a wireless digital audio player for operation by a user. *See* http://www.bmwusa.com/Standard/Content/Vehicles/2017/M/M3Sedan/Features_and_Specs/default.aspx (last accessed Nov. 14, 2016) ("SiriusXM® Satellite Radio with 1-year subscription"). It includes a user interface for the user to select a digital audio program from the plurality of digital audio programs. *See* http://www.bmw.com/com/en/insights/technology/technology_guide/articles/controller.html?content_type=/com/en/insights/technology/technology_guide/articles/control_display.html&source=/com/en/insights/technology/technology_guide/articles/idrive.html&article=controller (last

accessed Nov. 14, 2016); *see also* http://www.bmw.com/com/en/insights/technology/technology_guide/articles/control_display.html?content_type=/com/en/insights/technology/technology_guide/articles/idrive.html&source=/com/en/insights/technology/technology_guide/articles/controller.html&article=control_display (last accessed Nov. 14, 2016); *see also* https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytltCm&index=156 at 1:10 – 1:21 (last accessed Nov. 14, 2016) (BMW tutorial using the iDrive controller to select a satellite radio channel). It includes a demodulator to receive from the tuner a radio frequency signal and to demodulate the radio frequency signal, wherein the radio frequency signal carries digital audio data and program information corresponding to the selected digital audio program. *See* Attachment A, FM-6 Satellite Technical Description, Robert D. Briskman (Apr. 9, 2010) at pp. 7-8, 11, available at http://licensing.fcc.gov/myibfs/download.do?attachment_key=810002 (last accessed Nov. 14, 2016). Upon information and belief, Defendant's wireless digital audio player includes a processor coupled to the user interface for separating the program information from the digital audio data. *Id.* at p. 11; *see also* THE BMW M3 SEDAN. OWNER'S MANUAL. at p. 86 (available at http://cache.bmwusa.com/PDF_e93cd551-3023-412f-8be8-fa2f3df16a25.arox?v=083898a3-0ef9-4963-856c-6eba86acb9a4 (last accessed Nov. 14, 2016) (

Display



). It also includes a digital to analog converter to convert the audio data corresponding to the selected digital audio program into an analog signal for playback by the user. *See*

http://www.bmwusa.com/Standard/Content/Vehicles/2017/M/M3Sedan/Features_and_Specs/default.aspx (last accessed Nov, 14, 2016) ("SiriusXM® Satellite Radio with 1-year subscription"; "Harman Kardon® Surround Sound Audio System with vehicle-specific equalizing and powerful 600-watt amplifier; the 16-speaker system includes 6 tweeters, 4 midrange speakers located in the door panels and 2 midrange speakers located under the rear shelf space, 2 bass speakers located under the front seats, 1 midrange center channel speaker and 1 tweeter located in the instrument cluster"); https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytlCm&index=156 (last accessed Nov. 14, 2016).

38. Digital Stream's initial complaint was filed on August 31, 2016.

39. Defendant was served the initial complaint on September 12, 2016.

40. Thus, Defendant has been on notice of the '545 patent since, at the latest, the date it was served the complaint.

41. Upon information and belief, Defendant has not altered its infringing conduct after receiving the initial complaint.

42. Upon information and belief, Defendant's continued infringement despite its knowledge of the '545 patent and the accusations of infringement has been objectively reckless and willful.

43. In particular, Defendant's customers' ability to listen to satellite radio in vehicles equipped with satellite radio receivers is facilitated by the use of wireless digital audio players patented under the '545 patent. Thus, Defendant's customers are able to select a satellite radio channel from a plurality of satellite radio channels and listen to that selected channel through the use of technology covered by the '545 patent.

44. On information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its website and sales personnel, the use of its receivers that infringe the '545 patent when used as intended by Defendant's customers. Defendant's customers use such receivers. Defendant further instructs its customers how to use such receivers in a manner that infringes the '545 patent (e.g., through manuals and on-line technical documentation and instructions). For example, Defendant created an online tutorial for its customers explaining how to use the satellite receiver to listen to a satellite radio channel. *See* https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytlCm&index=156 at 0:55 – 1:21 (last accessed Nov. 14, 2016).

45. In particular, Defendant instructs its customers through at least manuals and on-line support instructions and documentation over the Internet how to use wireless digital audio receiver to choose and listen to a satellite radio channel chosen from multiple satellite radio channels.

46. Defendant still further makes such wireless digital audio receivers available to its customers, thus enabling and encouraging its customers to use such receivers to infringe the '545 patent.

47. On information and belief, even though Defendant has been aware of the '090 patent and that its customers infringe the '090 patent since no later than September 12, 2016 and Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such wireless digital audio players to avoid infringing the '545 patent nor informed its customers how to avoid infringing the '545 patent. To date, Defendant has not identified a single action that it has taken to avoid infringement (e.g., by

designing around or notifying its customers how to avoid infringement) by itself or its customers since it became aware of the '545 patent.

48. On information and belief, Defendant itself is unaware of any legal or factual basis that its actions solely, or in combination with the actions of its customers, do not constitute direct or indirect infringement of the '545 patent. To date, Defendant has not produced any opinion of counsel, request for opinion of counsel, evaluation, analysis, or investigation relating to the validity, scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '545 patent.

49. As such, on information and belief, despite the information Defendant obtained from the original complaint in this action, Defendant continues to specifically intend for and encourage its customers to use its wireless digital audio receivers in a manner that infringe the claims of the '545 patent. In addition, since at least the filing of the original complaint in this action, Defendant has deliberately avoided taking any actions (e.g., designing around or providing notice to its customers) to avoid confirming that its actions continue to specifically encourage its customers to use its receivers in a manner that infringe the claims of the '545 patent.

50. Defendant's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such wireless digital audio receivers constitute an objectively high likelihood of infringement of the '545 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the filing of the original complaint, Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '545 patent and that the '545 patent is valid. Despite Defendant's knowledge of that risk, on information and belief, Defendant has not made any

changes to the relevant operation of its accused products and has not provided its customers with instructions on how to avoid infringement the '545 patent. Instead, Defendant has continued to, and still is continuing to, among other things, make, use, offer for sale, and/or sell products patented under the '545 patent. As such, Defendant willfully, wantonly and deliberately infringed and is infringing the '545 patent in disregard of Digital Stream's rights under the '545 patent.

51. Digital Stream is entitled to recover from Defendant the damages sustained by Digital Stream as a result of Defendant's infringement of the '545 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 6,757,913

52. Digital Stream repeats and realleges the allegations of paragraphs 1 through 51 as if fully set forth herein.

53. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of at least claim 20 of the '913 patent by making, using, importing, offering for sale, and/or selling a wireless digital audio player for operation in a local environment, including, but not limited to, the wireless digital audio player in certain vehicles, including, but not limited to, M240i Coupe, M240i xDrive Coupe, M240i Convertible, M240i xDrive Convertible, 340i xDrive Sedan, 340i Sedan, 340i xDrive Gran Turismo, 440i Coupe, 440i xDrive Coupe, 440i Gran Coupe, 440i xDrive Gran Coupe, 440i Convertible, 440i xDrive Convertible, 550i Sedan, 550i xDrive Sedan, 550i Gran Turismo, 640i Coupe, 640i xDrive Coupe, 650i Coupe, 650i xDrive Coupe, 640i Gran Coupe, 640i xDrive Gran Coupe, 650i Gran Coupe, 650i xDrive Gran Coupe, 640i Convertible, 640i xDrive Convertible, 650i Convertible, 650i xDrive Convertible, ALPINA

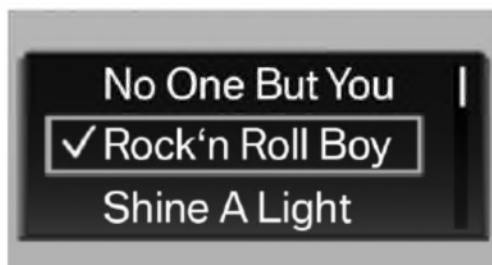
B6 xDrive Gran Coupe, 740i Sedan, 740i xDrive Sedan, 740e xDrive iPerformance, 750i Sedan, 750i xDrive Sedan, X3 xDrive35i, X4 M40i, X5 xDrive50i, X6 xDrive50i, M2 Coupe, M3 Sedan, M4 Coupe, M4 Convertible, M5 Sedan, M6 Coupe, M6 Gran Coupe, M6 Convertible, X5 M, X6 M, i3, i3 with Range Extender and i8.

54. More specifically and upon information and belief, Defendant's wireless digital audio player is a wireless digital audio player for operation in a local environment. *See* http://www.bmwusa.com/Standard/Content/Vehicles/2017/M/M3Sedan/Features_and_Specs/default.aspx (last accessed Nov. 14, 2016) ("SiriusXM® Satellite Radio with 1-year subscription"). It includes a user interface to provide selection of a digital audio program from a plurality of digital audio programs. *See* http://www.bmw.com/com/en/insights/technology/technology_guide/articles/controller.html?content_type=/com/en/insights/technology/technology_guide/articles/control_display.html&source=/com/en/insights/technology/technology_guide/articles/idrive.html&article=controller (last accessed Nov. 14, 2016); *see also* http://www.bmw.com/com/en/insights/technology/technology_guide/articles/control_display.html?content_type=/com/en/insights/technology/technology_guide/articles/idrive.html&source=/com/en/insights/technology/technology_guide/articles/controller.html&article=control_display (last accessed Nov. 14, 2016); *see also* https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytlCm&index=156 at 1:10 – 1:21 (last accessed Nov. 14, 2016) (BMW tutorial using the iDrive controller to select a satellite radio channel). Defendant's wireless digital audio player includes a tuner to tune to a radio frequency signal associated with the selected digital audio program.



See https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytlCm&index=156 (last accessed Nov. 14, 2016). It includes a demodulator to receive from the tuner a radio frequency signal and to demodulate the radio frequency signal, wherein the radio frequency signal carries digital audio data and program information corresponding to the selected digital audio program. See Attachment A, FM-6 Satellite Technical Description, Robert D. Briskman (Apr. 9, 2010) at pp. 7-8, 11, available at http://licensing.fcc.gov/myibfs/download.do?attachment_key=810002 (last accessed Nov. 14, 2016). Upon information and belief, Defendant's wireless digital audio player includes a processor coupled to the user interface to demultiplex the digital audio data in response to the selected digital audio program to separate program information from audio data. *Id.* at p. 11 see also THE BMW M3 SEDAN. OWNER'S MANUAL. at p. 86 (available at http://cache.bmwusa.com/PDF_e93cd551-3023-412f-8be8-fa2f3df16a25.arox?v=083898a3-0ef9-4963-856c-6eba86acb9a4 (last accessed Nov. 14, 2016) (

Display



). It also includes a digital to analog converter to convert the audio data corresponding to the selected digital audio program into an analog signal to an output for play-back to a user. *See* http://www.bmwusa.com/Standard/Content/Vehicles/2017/M/M3Sedan/Features_and_Specs/default.aspx (last accessed Nov, 14, 2016) ("SiriusXM® Satellite Radio with 1-year subscription"; "Harman Kardon® Surround Sound Audio System with vehicle-specific equalizing and powerful 600-watt amplifier; the 16-speaker system includes 6 tweeters, 4 midrange speakers located in the door panels and 2 midrange speakers located under the rear shelf space, 2 bass speakers located under the front seats, 1 midrange center channel speaker and 1 tweeter located in the instrument cluster"); https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytltCm&index=156 (last accessed Nov. 14, 2016).

55. Digital Stream's initial complaint was filed on August 31, 2016.

56. Defendant was served the initial complaint on September 12, 2016.

57. Thus, Defendant has been on notice of the '913 patent since, at the latest, the date it was served the complaint.

58. Upon information and belief, Defendant has not altered its infringing conduct after receiving the initial complaint.

59. Upon information and belief, Defendant's continued infringement despite its knowledge of the '913 patent and the accusations of infringement has been objectively reckless and willful.

60. In particular, Defendant's customers' ability to listen to satellite radio in vehicles equipped with satellite radio receivers is facilitated by the use of wireless digital audio players patented under the '913 patent. Thus, Defendant's customers are able to select a

satellite radio channel from a plurality of satellite radio channels and listen to that selected channel through the use of technology covered by the '913 patent.

61. On information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its website and sales personnel, the use of its receivers that infringe the '913 patent when used as intended by Defendant's customers. Defendant's customers use such receivers. Defendant further instructs its customers how to use such receivers in a manner that infringes the '913 patent (e.g., through manuals and on-line technical documentation and instructions). For example, Defendant created an online tutorial for its customers explaining how to use the satellite receiver to listen to a satellite radio channel. *See* https://www.youtube.com/watch?v=9-PR8_D6Fiw&list=PLzgoLd4TRmNo4lSt09TkKB_BLaLytltCm&index=156 at 0:55 – 1:21 (last accessed Nov. 14, 2016).

62. In particular, Defendant instructs its customers through at least manuals and on-line support instructions and documentation over the Internet how to use wireless digital audio receiver to choose and listen to a satellite radio channel chosen from multiple satellite radio channels.

63. Defendant still further makes such wireless digital audio receivers available to its customers, thus enabling and encouraging its customers to use such receivers to infringe the '913 patent.

64. On information and belief, even though Defendant has been aware of the '913 patent and that its customers infringe the '913 patent since no later than September 12, 2016 and Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such wireless digital audio players to avoid infringing the '913

patent nor informed its customers how to avoid infringing the '913 patent. To date, Defendant has not identified a single action that it has taken to avoid infringement (e.g., by designing around or notifying its customers how to avoid infringement) by itself or its customers since it became aware of the '913 patent.

65. On information and belief, Defendant itself is unaware of any legal or factual basis that its actions solely, or in combination with the actions of its customers, do not constitute direct or indirect infringement of the '913 patent. To date, Defendant has not produced any opinion of counsel, request for opinion of counsel, evaluation, analysis, or investigation relating to the validity, scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '913 patent.

66. As such, on information and belief, despite the information Defendant obtained from the original complaint in this action, Defendant continues to specifically intend for and encourage its customers to use its wireless digital audio receivers in a manner that infringe the claims of the '913 patent. In addition, since at least the filing of the original complaint in this action, Defendant has deliberately avoided taking any actions (e.g., designing around or providing notice to its customers) to avoid confirming that its actions continue to specifically encourage its customers to use its receivers in a manner that infringe the claims of the '913 patent.

67. Defendant's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such wireless digital audio receivers constitute an objectively high likelihood of infringement of the '913 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the filing of the original complaint,

Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '913 patent and that the '913 patent is valid. Despite Defendant's knowledge of that risk, on information and belief, Defendant has not made any changes to the relevant operation of its accused products and has not provided its customers with instructions on how to avoid infringement the '913 patent. Instead, Defendant has continued to, and still is continuing to, among other things, make, use, offer for sale, and/or sell products patented under the '913 patent. As such, Defendant willfully, wantonly and deliberately infringed and is infringing the '913 patent in disregard of Digital Stream's rights under the '913 patent.

68. Digital Stream is entitled to recover from Defendant the damages sustained by Digital Stream as a result of Defendant's infringement of the '913 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284

JURY DEMAND

Digital Stream hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Digital Stream requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '090, '545 and '913 patents;
- B. A judgment that Defendant has induced infringement of the '090, '545 and '913 patents;
- C. An award of damages to be paid by Defendant adequate to compensate Digital Stream for Defendant's past infringement of the '090, '545 and '913 patents and any continuing or

future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Digital Stream's reasonable attorneys' fees;

E. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of the '090, '545 and '913 patents subsequent to the date of its notice of the '090, '545 and '913 patents; and

F. An award to Digital Stream of such further relief at law or in equity as the Court deems just and proper.

Dated: November 15, 2016

/s/ Richard C. Weinblatt
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service and are being served with a copy of this document via electronic filing on November 15, 2016.

/s/ L. Charles van Cleef

L. Charles van Cleef