

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

SOUNDCLOUD INC.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges for its Complaint for Patent Infringement against Defendant SoundCloud Inc. (“SoundCloud”) on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Avenue, Suite 203, Concord, Massachusetts 01742.

2. On information and belief, Defendant SoundCloud is a Delaware corporation with a place of business in New York, New York.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

4. Subject-matter jurisdiction over Blackbird Technologies' claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over SoundCloud because SoundCloud is subject to general and specific jurisdiction in Delaware. SoundCloud has also established minimum contacts with this forum. SoundCloud has been incorporated in Delaware at all relevant times. SoundCloud regularly conducts business in Delaware, including by marketing, selling, and/or offering for sale subscriptions to its audio distribution platform through its website, www.soundcloud.com, which is accessible throughout the United States, including Delaware. SoundCloud offers a premium service called "SoundCloud Go," which includes an option to download audio tracks such as music for offline listening on a mobile device. The exercise of personal jurisdiction comports with SoundCloud's right to due process because, as described above, SoundCloud has purposefully availed itself of the privilege of conducting activities within Delaware such that it should reasonably anticipate being haled into court here. As alleged herein, acts by SoundCloud in this district have caused injury to Blackbird Technologies.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) at least because SoundCloud transacts business within this district and has committed acts in this district that infringe U.S. Patent No. 7,174,362.

U.S. PATENT NO. 7,174,362

7. U.S. Patent No. 7,174,362 (the "'362 patent" or "patent-in-suit") entitled, "Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted via Computer Network," was duly and legally issued by the U.S. Patent

and Trademark Office on February 6, 2007. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '362 patent, including all right to recover for any and all infringement thereof. The '362 patent is valid and enforceable. A true and correct copy of the '362 patent is attached as Exhibit A.

8. Claim 2 of the '362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available digital data for duplication, which comprises an expandable indexed archive of digital data, and a resource file for an output device; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media.

9. Claim 10 of the '362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available digital data for duplication; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media. The storage capacity remaining in an output device is tracked.

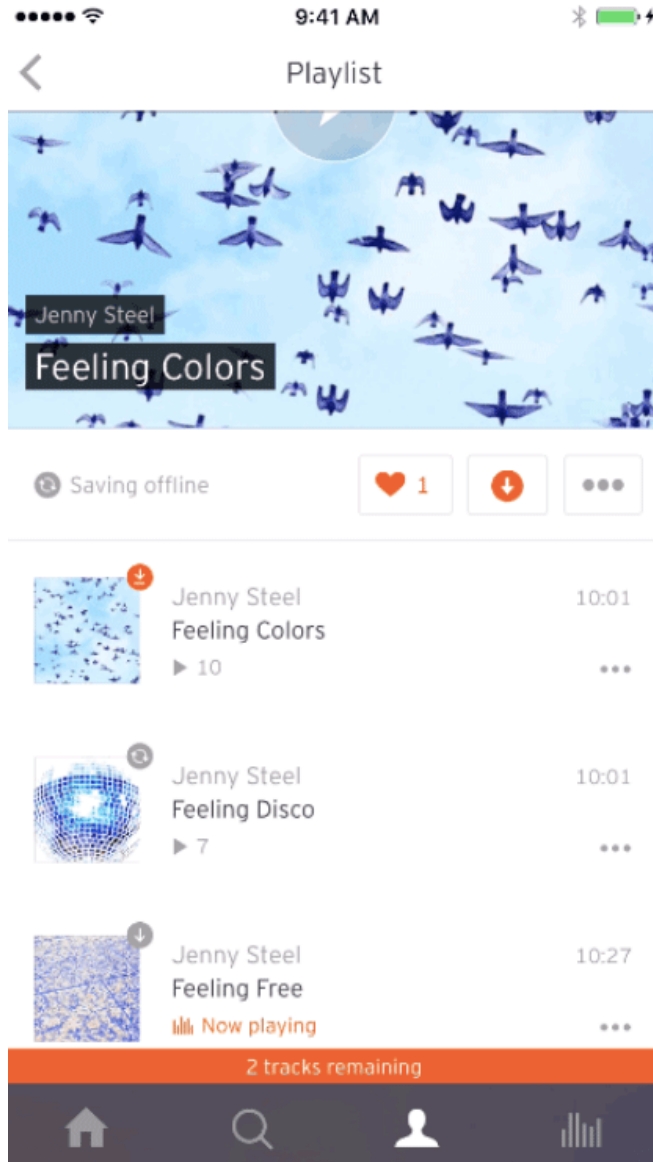
COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,174,362

10. Blackbird Technologies reasserts and incorporates by reference Paragraphs 1 through 9 of this Complaint as if fully set forth herein.

11. SoundCloud Go enables its subscribers to download audio tracks such as music for offline listening on a mobile device. *See, e.g.*, <https://soundcloud.com/go/buy/go> (promoting SoundCloud Go features, including “offline listening” by “download[ing] playlists, albums, and all your liked tracks”); Help Center – Offline Listening, SOUND CLOUD, http://help.soundcloud.com/customer/en/portal/topics/992329-offline-listening/articles?b_id=10251 (“With offline listening, it can be as simple as liking your favorite tracks or playlists and they’re instantly on your mobile device, with or without signal. Take your entire Collection anywhere in a single tap: on the subway, off the grid or 30-thousand feet overhead. Offline listening is available through our SoundCloud Go subscription. Purchase from our website or Android app for a lower price, or from the Apple app store on your iOS device with additional transactional fees attached.”).

12. SoundCloud stores an expandable indexed archive of audio tracks, which are available to SoundCloud Go subscribers. *See, e.g.*, Help Center – Uploading, SOUND CLOUD, http://uploadandmanage.help.soundcloud.com/customer/en/portal/topics/832051-uploading/articles?b_id=9645 (“It doesn't matter if you're a Free, Pro or Pro Unlimited user – anyone can upload their tracks to SoundCloud for the world to hear.”).

13. SoundCloud takes download requests from SoundCloud Go upon selection of a download icon/command. For example:



(Help Center – How to save for offline listening, SoundCloud,

http://help.soundcloud.com/customer/portal/articles/2344062-how-to-save-for-offline-listening?b_id=10251 (“You have the option to pick and choose the playlists you have either

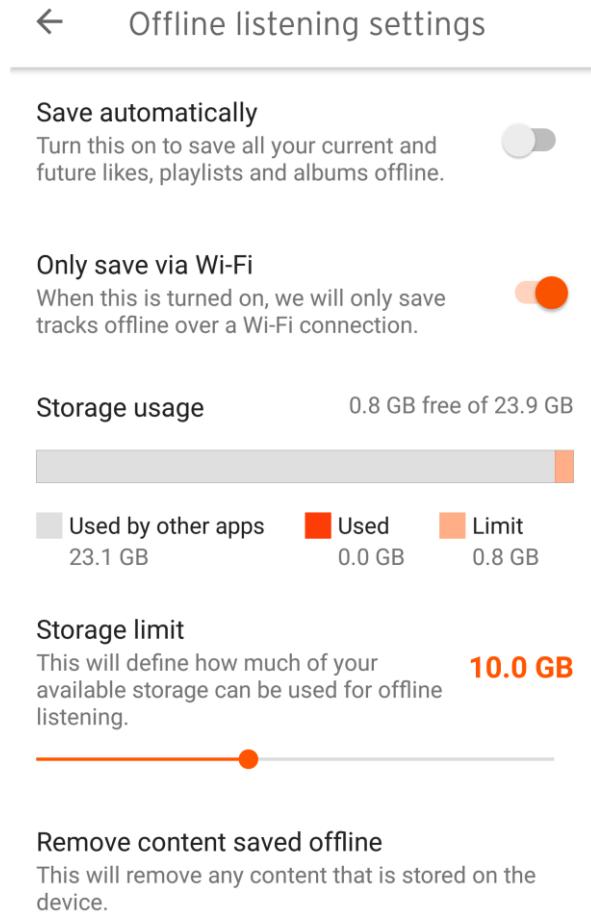
created, or liked to listen to offline on your mobile device. To make individual playlists available for offline listening, open the playlist and click the save offline button next to the Likes button. You’ll see how many tracks are left to save for offline listening in the orange progress bar on the bottom of your screen on iOS, or in the pull-down menu on Android. Once you have

saved a playlist for offline listening, anytime you listen to that playlist you are not using data from your mobile phone plan. If you add more tracks to that playlist in the future, those tracks will also be saved for offline listening.”).

14. After SoundCloud processes a SoundCloud Go subscriber’s download request, the requested audio tracks are stored on that SoundCloud Go subscriber’s mobile device so that it can be listened to offline. *See, e.g., supra* ¶ 13.

15. SoundCloud creates a task log based on incoming download requests as evidenced by, for example, SoundCloud Go’s download status indicator in an orange progress bar. *See, e.g., supra* ¶ 13. *See also* SoundCloud Privacy Policy (“There is certain information that we collect automatically as the result of your use of the Platform, or through the use of web analytics services as described in our Cookies Policy. This information includes but is not limited to: ... the specific actions that you take on the Platform, including ... offline listening or downloading tracks”), available at <https://soundcloud.com/pages/privacy>.

16. SoundCloud maintains information associated with the SoundCloud Go subscriber’s mobile device, including for example any download limitations:



(screenshot from “Offline listening settings” on SoundCloud mobile app (includes a variable storage limit for offline listening).) *See also* SoundCloud Privacy Policy (“There is certain information that we collect automatically as the result of your use of the Platform, or through the use of web analytics services as described in our Cookies Policy. This information includes but is not limited to: ... the nature of the device from which you are accessing the Platform, for example, whether you are accessing the Platform from a personal computer or from a mobile device and its device-ID ...”), available at <https://soundcloud.com/pages/privacy>.

17. SoundCloud tracks the storage capacity remaining in the SoundCloud Go subscriber’s mobile device. *See, e.g., supra* ¶ 16 (screenshot from “Offline listening settings” on SoundCloud mobile app (includes a variable storage limit for offline listening)).

18. Therefore, SoundCloud, pursuant to 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, one of more claims of the '362 patent, including at least claims 2 and 10.

Damages

19. Blackbird Technologies has sustained damages as a direct and proximate result of Defendant's infringement of the '362 patent.

20. As a consequence of Defendant's past infringement of the '362 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

21. As a consequence of Defendant's continued and future infringement of the '362 patent, Blackbird Technologies is entitled to royalties for its infringement of the '362 patent on a going-forward basis.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed at least claims 2 and 10 of the '362 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284;

C. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '362 patent on a going-forward basis;

D. Adjudging that this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages, including costs and attorneys' fees, to Blackbird Technologies;

E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

F. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: February 1, 2017

STAMOULIS & WEINBLATT LLC

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