

IN THE UNITED STATES DISTRICT COURT  
FOR DISTRICT OF DELAWARE

DIGITAL STREAM IP, LLC,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. _____
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
CBS RADIO INC.,	)	
	)	
Defendant.	)	
_____	)	

**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 CBS Radio Inc. a Delaware company with, upon information and belief, a place of business located at 1271 Avenue of the Americas, New York, New York 10020.

**JURISDICTION AND VENUE**

3. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
5. 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.

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

**THE PATENT-IN-SUIT**

7. 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 A.

8. 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.

9. 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.

10. Digital Stream is the assignee and owner of the right, title and interest in and to the '913 patent, including the right to assert all causes of action arising under said patent and the

right to any remedies for infringement of it.

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

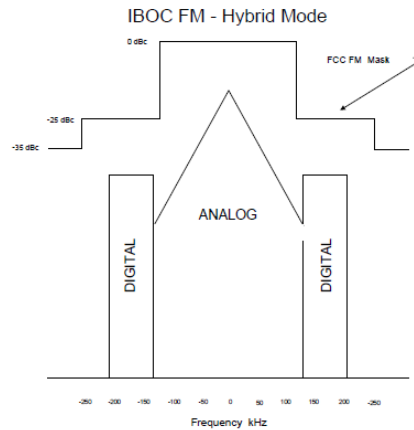
11. Digital Stream repeats and realleges the allegations of paragraphs 1 through 10 as if fully set forth herein.

12. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of at least claim 31 of the '913 patent by making, using, importing, offering for sale, and/or selling a digital audio transmitter, including, but not limited to, the digital audio transmitter for broadcasting CBS Radio stations.

13. More specifically and upon information and belief, Defendant uses a digital music transmitter to enable broadcast of its programming. *See* <http://cbsradio.com/press/cbs-sports-radios-popular-programs-tiki-and-tierney-and-the-da-show-move-to-new-times-as-part-of-multi-year-contract-renewals/> (last accessed Apr. 13, 2017); *see also* [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta\\_det.pl?Facility\\_id=59820](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_det.pl?Facility_id=59820) (last accessed Apr. 13, 2017); <https://www.fcc.gov/media/radio/digital-radio> (last accessed Apr. 13, 2017). Defendant uses a transmitter input to receive a plurality of digital audio data streams for bundling together into a multi-cast transmission to be broadcast simultaneously over a single radio station frequency allocation. *See* <https://hdradio.com/broadcasters/engineering-support/high-quality-consistent-multicast-engineering> (last accessed Apr. 13, 2017); <https://hdradio.com/broadcasters/overview/how-it-works> (last accessed Apr. 13, 2017). Defendant uses a demodulator for demodulating each of the digital audio data streams. *See* National Radio Systems Committee, NRSC-5-C In-band/on-channel Digital Radio Broadcasting Standard September, 2011 ("NRSC-5-C") at pp. 15, 36 (available at <http://nrscstandards.org/SG/NRSC-5-C.pdf> (last accessed Apr. 13, 2017)); National Radio

Systems Committee, NRSC-R207 Broadcasting Surround Sound Audio Over IBOC Digital Radio – Issues and Resources for FM Broadcasters January 10, 2007 at p. 19 (available at <http://www.nrscstandards.org/Reports/NRSC-R207.pdf> (last accessed Apr. 13, 2017)). Defendant uses a carrier signal generator generating a plurality of groups of carrier signals each carrier signal on a distinct frequency, for example, in order to carry digital signals on upper and lower sidebands of the frequency range. *See* NRSC-5-C at pp. 31-32.

The IBOC FM hybrid mode places low-level digital carriers in the upper and lower sidebands of the analog spectrum as shown in Figure 1. These carriers are modulated with redundant information to convey the digital audio and data.



*Figure 1 FM IBOC Hybrid waveform*

Jeff R. Detweiler, Conversion Requirements for AM & FM IBOC Transmission ("Detweiler") at p. 1 (available at [https://hdradio.com/sites/default/files/conversion\\_requirements.pdf](https://hdradio.com/sites/default/files/conversion_requirements.pdf) (last accessed Apr. 13, 2017)). Defendant uses a modulator for modulating each digital audio data stream on a carrier signal from each of the groups of carrier signals to enable capture of any one of the plurality of digital audio streams by tuning to a frequency of a carrier wave containing a desired digital audio stream. *See* NRSC-5-C at pp. 11, 15-16; *see also* Detweiler at p. 1. Defendant uses a combiner for combining each of the carrier signals into a combined signal and outputting the combined signal to an antenna. *See* NSRC-5-C at pp. 23-24.

**FM TRANSMITTERS**

Three methods exist for producing the IBOC hybrid FM signal. Initial station conversions will likely utilize what is known as “high-level combining” or “separate amplification” shown in Figure 7. With this method, the existing station transmitter will have its output combined with the output of a separate digital transmitter compatible with IBOC technology. The resulting hybrid signal will then be fed to the existing station antenna.

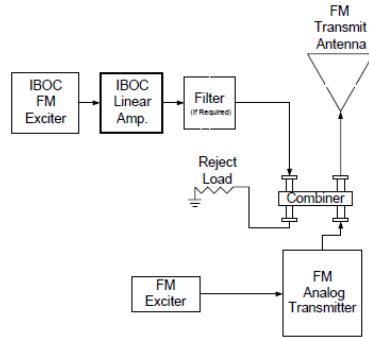
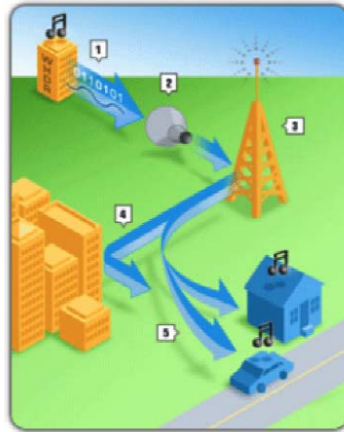


Figure 7 FM IBOC high-level, separate amplification

Detweiler at p. 5.

# HOW IT WORKS

1. Stations bundle analog and digital audio signals (with textual data, such as artist and song information, weather and traffic, and more).
2. The digital signal layer is compressed using iBiquity's HDC compression technology.
3. The combined analog and digital signals are transmitted.
4. The most common form of interference, multipath distortion, occurs when part of a signal bounces off an object and arrives at the receiver at a different time than the main signal. HD Radio receivers are designed to sort through the reflected signals and reduce static, hiss, pops and fades.
5. The signal will be compatible with HD Radio receivers and analog radios



<https://hdradio.com/broadcasters/overview/how-it-works> (last accessed Apr. 13, 2017).

14. On April 14, 2017, Digital Stream's filed a complaint against Defendant in the Eastern District of Texas, accusing Defendant of infringing the '913 patent. *See* Case No. 2:17-cv-313 (E.D. Tex.), D.I. 1.

15. Plaintiff and Defendant agreed to dismiss the Eastern District of Texas action

without prejudice so that it could be refiled in the District of Delaware.

16. Defendant has been on notice of the '913 patent since, at the latest, April 24, 2017, the date it was served the Eastern District of Texas complaint.

17. Defendant continues to use a digital music transmitter to enable broadcast of its radio stations' programming after the date it was put on notice of the '913 patent.

18. 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.

19. In particular, Defendant's radio stations' ability to broadcast digital programming is facilitated by the use of technology patented under the '913 patent.

20. 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 technology that infringes the '913 patent when used as intended by Defendant's radio stations. Defendant further instructs its radio stations how to use such products in a manner that infringe the '913 patent (e.g., through technical documentation, instructions, and technical support).

21. Defendant still further makes such products accessible to its radio stations, thus enabling and encouraging its radio stations to use such products to infringe the '913 patent.

22. On information and belief, even though Defendant has been aware of the '913 patent and that its radio stations infringe the '913 patent since, at the latest, April 24, 2017, Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such products to avoid infringing the '479 patent nor informed its radio stations 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 or end-users how to avoid infringement) by itself or its radio stations since it became aware of the '913 patent.

23. 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 radio stations, do not constitute direct or indirect infringement of the '913 patent. To date, Defendant has not produced any opinion of counsel or request for opinion of counsel relating to the validity, scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '913 patent.

24. As such, on information and belief, despite the information Defendant obtained from the complaint filed in the Eastern District of Texas, Defendant continues to specifically intend for and encourage its radio stations to use its products in a manner that infringe the claims of the '913 patent. In addition, since at least April 24, 2017, Defendant has avoided taking any actions (e.g., designing around, or, upon information and belief, providing notice to its radio stations) to avoid confirming that its actions continue to specifically encourage its radio stations to use its products in a manner that infringe the claims of the '913 patent.

25. Defendant's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such products 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 April 24, 2017, Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '479 patent and that the '479 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 products and has not provided its radio stations with instructions on how to avoid infringing 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.

26. 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 '913 patent;
- B. A judgment that Defendant has induced infringement of the '913 patent;
- C. An award of damages to be paid by Defendant adequate to compensate Digital Stream for Defendant's past infringement of the '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 '479 patent subsequent to the date of its notice of the '913 patent; and

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

Dated: June 29, 2017

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

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