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9 Attorneys for Plaintiff  
10 BLUE SPIKE LLC

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13  
14 BLUE SPIKE LLC,

15 Plaintiff,

16 v.

17 DEEZER S.A.,

18 Defendant.  
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Civil Case No.: 2:18-cv-05396

**ORIGINAL COMPLAINT  
FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

GARTEISER HONEA – TRIAL ATTORNEYS

GARTEISER HONEA – TRIAL ATTORNEYS

1  
2 Plaintiff Blue Spike, LLC (“Blue Spike” or “Plaintiff”) files this complaint  
3 against the above-named Defendant (“Deezer”), alleging 3 counts of infringement of  
4 the following 3 Patents-in-Suit:  
5

6 1. U.S. Patent 7,159,116 B2, titled “Systems, methods and devices for  
7 trusted transactions” (the ’116 Patent).

8 2. U.S. Patent 8,538,011 B2, titled “Systems, methods and devices for  
9 trusted transactions” (the ’011 Patent).

10 3. U.S. Patent 7,813,506 B2, titled “System and methods for permitting  
11 open access to data objects and for securing data within the data objects” (the ’506  
12 Patent).

13 *See Exhibits 2–4.*

#### 14 **NATURE OF THE SUIT**

15 1. This is a claim for patent infringement arising under the patent laws of the  
16 United States, Title 35 of the United States Code.  
17

#### 18 **PARTIES**

19  
20 2. Plaintiff Blue Spike, LLC is a Texas limited liability company and has its  
21 headquarters and principal place of business at 1820 Shiloh Road, Suite 1201-C,  
22 Tyler, Texas 75703. Blue Spike, LLC is the assignee of the exclusive license of the  
23 Patents-in-Suit, and has ownership of all substantial rights in the Patents-in-Suit,  
24 including the rights to grant sublicenses, to exclude others from using it, and to sue  
25 and obtain damages and other relief for past and future acts of patent infringement.  
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1 3. On information and belief, Defendant Deezer S.A. is a company organized under  
2 the laws of France, with its principal place of business at 12 rue d'Athènes 75009  
3 Paris, France. Defendant can be served through its general manager and wholly-  
4 owned subsidiary, Deezer Inc. *See* California Code of Civil Procedure Section  
5 416.10(b); *Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d 1071, 1075–76 (C.D. Cal. 2013).  
6  
7 On information and belief, Deezer Inc. is a corporation established under the laws of  
8 the State of Delaware, with its place of business at 60 Broad Street, Suite 3502, New  
9 York, New York 10004. Deezer Inc. and Deezer S.A. can be served through its  
10 registered agent, Paracorp Incorporated, located at 2140 South DuPont Highway,  
11 Camden, Delaware 19934.  
12  
13  
14

### 15 JURISDICTION AND VENUE

16 4. This lawsuit is a civil action for patent infringement arising under the patent  
17 laws of the United States, 35 U.S.C. § 101 *et seq.* The Court has subject-matter  
18 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.  
19

20 5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and  
21 1400(b) because Defendant has a regular and established place of business in this  
22 District. *See*, 28 U.S.C § 1400(b); *TC Heartland LLC v. Kraft Foods Group Brands LLC*,  
23 137 S. Ct. 1514, 1521 (2017); *In re Cray Inc.*, 871 F.3d 1355, 1360–4 (Fed. Cir. 2017).  
24 Foreign corporations that do not reside in the United States are subject to suit under  
25 28 U.S.C § 1391(c)(3) in any judicial district.  
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1 6. The Court has personal jurisdiction over Defendant for the following:  
2 (1) Defendant has committed acts of patent infringement and contributed to and  
3 induced acts of patent infringement by others in this District; (2) Defendant regularly  
4 does business or solicits business in this District; (3) Defendant engages in other  
5 persistent courses of conduct and derives substantial revenue by its offering of  
6 infringing products and services and providing infringing products and services in  
7 this District; and (4) Defendant has purposefully established substantial, systematic,  
8 and continuous contacts with this District and should reasonably expect to be haled  
9 into court here by its offering of infringing products and services and providing  
10 infringing products and services in this District.  
11

12 **FACTUAL BACKGROUND**

13  
14  
15  
16 7. Protection of intellectual property is a prime concern for creators and  
17 publishers of digitized copies of copyrightable works, such as musical recordings,  
18 movies, video games, and computer software. Blue Spike founder Scott Moskowitz  
19 pioneered—and continues to invent—technology that makes such protection  
20 possible.  
21

22 8. Blue Spike is a company focused on innovation with research and development.  
23 Blue Spike does not make a service that competes directly with Defendant, but Blue  
24 Spike has licensed its pioneering patents to competitors of Defendant.  
25

26 9. Blue Spike is a practicing entity, just not in the same field as Defendant. For  
27 instance, Blue Spike provides pre-release tracking technology for audio, like new  
28

1 music artists’ singles, that may be sent to various radio stations for promotional  
2 purposes. This type of tracking helps an artist know whether a radio station  
3 improperly posts the song for sale rather than simply playing it as a “demo only.”  
4 Blue Spike also has other service offerings at [bluesspike.com](http://bluesspike.com).  
5

6 10. Moskowitz is a senior member of the Institute of Electrical and Electronics  
7 Engineers (IEEE), a member of the Association for Computing Machinery, and the  
8 International Society for Optics and Photonics (SPIE). As a senior member of the  
9 IEEE, Moskowitz has peer-reviewed numerous conference papers and has submitted  
10 his own publications.  
11

12 11. Moskowitz is an inventor on more than 110 patents, including forensic  
13 watermarking, signal abstracts, data security, software watermarks, service license  
14 keys, deep packet inspection, license code for authorized software and bandwidth  
15 securitization.  
16

17 12. The National Security Agency (NSA) even took interest in his work after he  
18 filed one of his early patent applications. The NSA marked the application “classified”  
19 under a “secrecy order” while it investigated his pioneering innovations and their  
20 impact on national security.  
21

22 13. As an industry trailblazer, Moskowitz has been a public figure and an active  
23 author on technologies related to protecting and identifying software and multimedia  
24 content. A 1995 *New York Times* article—titled “TECHNOLOGY: DIGITAL  
25 COMMERCE; 2 plans for watermarks, which can bind proof of authorship to  
26  
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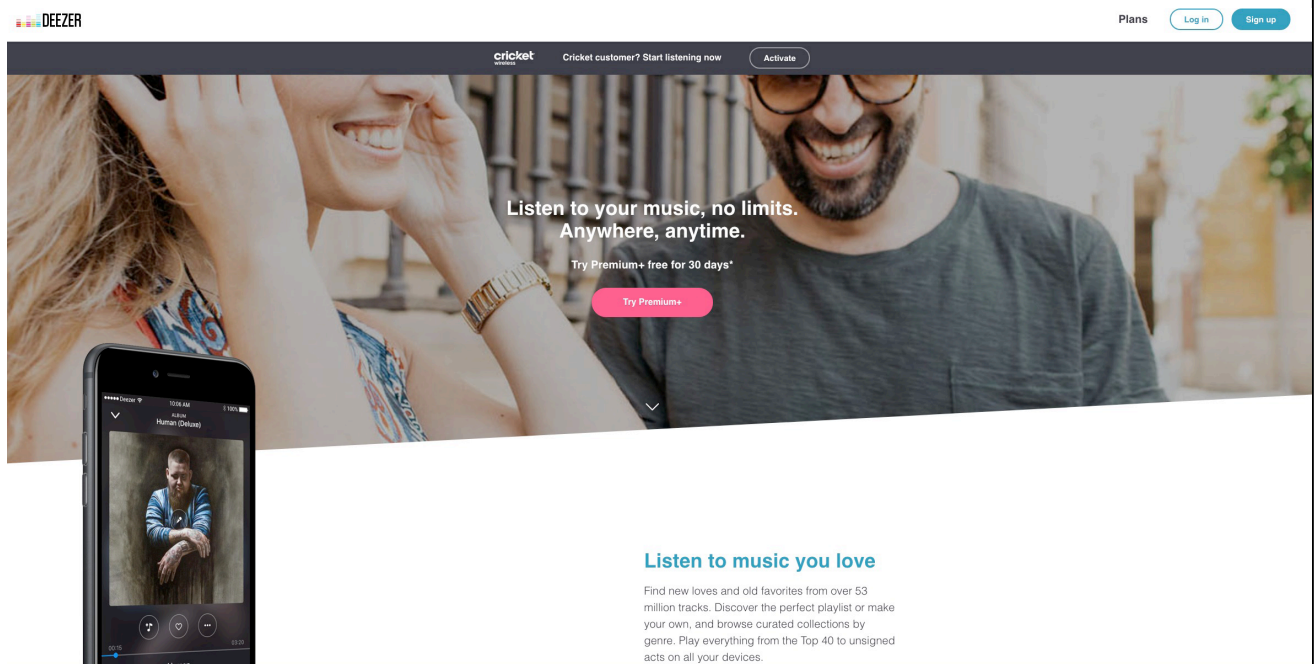
1 electronic works”—recognized Moskowitz’s company as one of two leading software  
2 start-ups in this newly created field. *Forbes* also interviewed Moskowitz as an expert  
3 for “Cops Versus Robbers in Cyberspace,” a September 9, 1996 article about the  
4 emergence of digital watermarking and rights-management technology. He has also  
5 testified before the Library of Congress regarding the Digital Millennium Copyright  
6 Act.  
7

8  
9 14. Moskowitz has spoken to the RSA Data Security Conference, the International  
10 Financial Cryptography Association, Digital Distribution of the Music Industry, and  
11 many other organizations about the business opportunities that digital watermarking  
12 creates. Moskowitz also authored *So This Is Convergence?*, the first book of its kind  
13 about secure digital-content management. This book has been downloaded over a  
14 million times online and has sold thousands of copies in Japan, where Shogakukan  
15 published it under the name *Denshi Skashi*, literally “electronic watermark.”  
16  
17 Moskowitz was asked to author the introduction to *Multimedia Security Technologies*  
18 *for Digital Rights Management*, a 2006 book explaining digital-rights management.  
19  
20 Moskowitz authored a paper for the 2002 International Symposium on Information  
21 Technology, titled “What is Acceptable Quality in the Application of Digital  
22 Watermarking: Trade-offs of Security, Robustness and Quality.” He also wrote an  
23 invited 2003 article titled “Bandwidth as Currency” for the *IEEE Journal*, among  
24 other publications.  
25  
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1 15. Moskowitz and Blue Spike continue to invent technologies that protect  
2 intellectual property from unintended use or unauthorized copying.  
3

## 4 THE ACCUSED PRODUCTS AND SERVICES

5 16. Defendant makes, uses, offers for sale and sells in the U.S. products, systems,  
6 and/or services that infringe the Patents-in-Suit, including, but not limited to,  
7 Deezer Music Services (“Accused Products and Services”).  
8

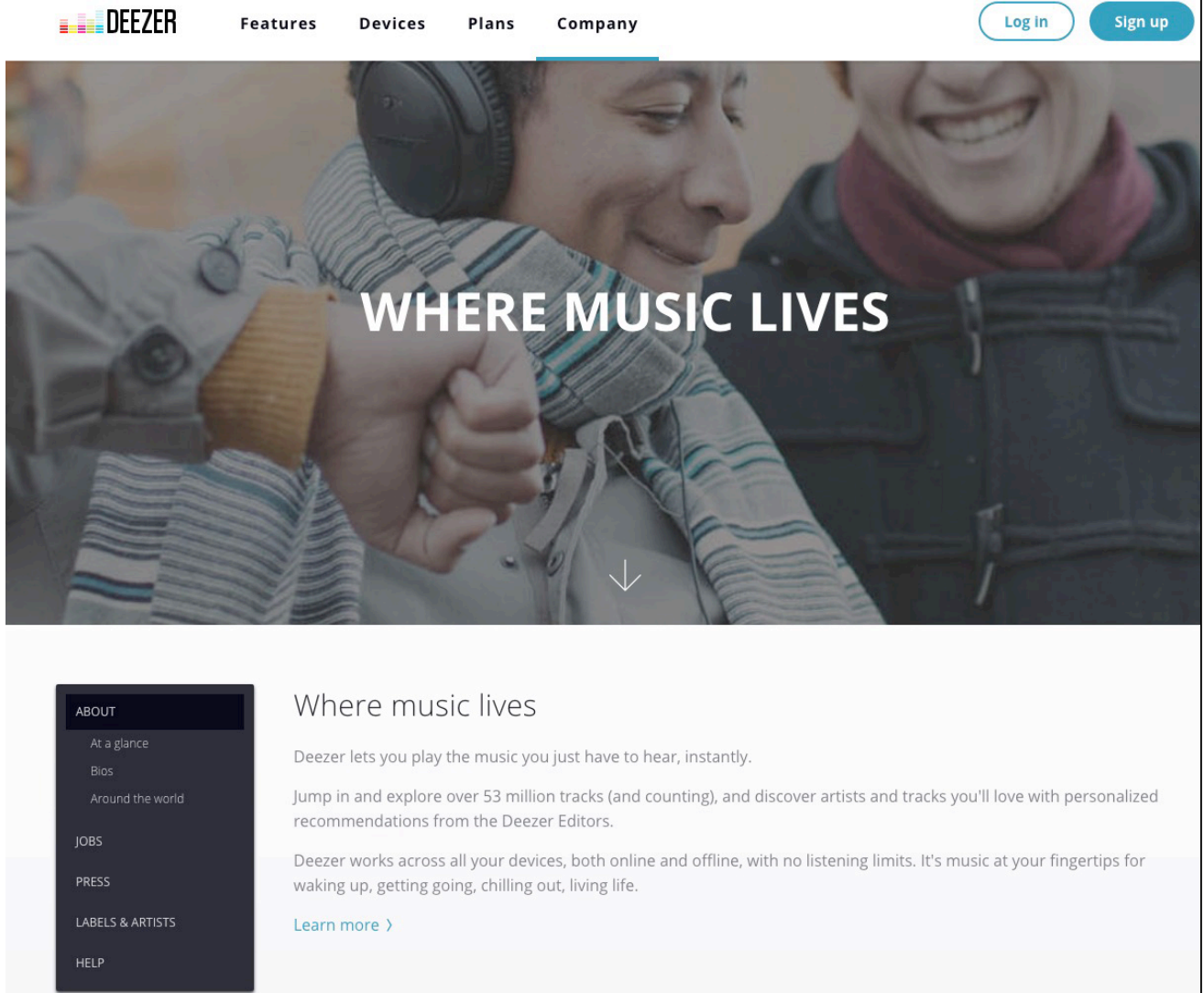


21 **Figure 1** – Screen shot of Defendant offering of Accused Products and Services on  
22 Deezer webpage, as viewed at <https://www.deezer.com/us/> , see Exhibit 1.  
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**Figure 2** – Screen shot of Defendant offering of Accused Products and Services on Defendant webpage, as viewed at <https://www.deezer.com/us/company>, see Exhibit A.

17. Defendant has not sought or obtained a license for any of Blue Spike’s patented technologies. This creates a competitive disadvantage to other Companies, like Apple, Acer, Dell, IBM, Samsung, and Sony to name some large companies, who recognized the value and novelty Blue Spike’s patents provide to society.

18. Each count of patent infringement contained herein is accompanied by a representative claim. See, *Atlas IP LLC v. P. Gas and Electric Co.*, 15-CV-05469-EDL,



1 2016 WL 1719545, at \*5 (N.D. Cal. Mar. 9, 2016) (“*Iqbal* and *Twombly* only require  
2 Plaintiff to state a plausible claim for relief, which can be satisfied by adequately  
3 pleading infringement of one claim.”).

4  
5 **COUNT 1:**

6 **INFRINGEMENT OF U.S. PATENT U.S. Patent 7,159,116 B2**

7 19. Blue Spike incorporates by reference the paragraphs above and below.

8 20. The ’116 Patent is presumed valid, enforceable, and was duly and legally issued  
9 by the United States Patent and Trademark Office.

10 21. These claims are directed to a non-abstract improvement in computer  
11 functionality, rather than a method of organizing human activity or an idea of itself.  
12  
13 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,  
14 2018).

15 22. The specification of the ’116 Patent explains both the problem in the prior art  
16 and the benefit of the computer-implemented invention. This difference is not “well  
17 known” or “conventional.” A human cannot perform these tasks.

18 23. Without a license or permission from Blue Spike, Defendant has infringed and  
19 continues to infringe on one or more claims of the ’116 Patent—directly,  
20 contributorily, or by inducement—by importing, making, using, offering for sale, or  
21 selling products and devices that embody the patented invention, including, without  
22 limitation, one or more of the Accused Products and Services, in violation of  
23 U.S.C. § 271.  
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**Direct Infringement.**

GARTEISER HONEA – TRIAL ATTORNEYS

1 24. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products  
2 and Services which practice all the elements of the '116 Patent. For instance, the  
3 Accused Products and Services infringe claim 14 of the '116 Patent which recites:  
4

5  
6 A device for conducting a trusted transaction between at  
7 least two parties who have agreed to transact, comprising:  
8 means for uniquely identifying information selected from  
9 the group consisting of a unique identification of one of the  
10 parties, a unique identification of the transaction, a unique  
11 identification of value added information to be transacted, a  
12 unique identification of a value adding component;  
13 a steganographic cipher for generating said unique  
14 identification information, wherein the steganographic  
15 cipher is governed by at least the following elements: a  
16 predetermined key, a predetermined message, and a  
17 predetermined carrier signal; and  
18 a means for verifying an agreement to transact between the  
19 parties.  
20

21 25. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products  
22 and Services which institute trusted transactions between at least two parties who  
23 have agreed to transact.  
24

25 **Indirect Infringement.**

26 26. Defendant has been and now is indirectly infringing by way of inducing  
27 infringement by others and/or contributing to the infringement by others of the '116  
28 Patent in this State, 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, infringing services for use in systems that fall within the  
scope of one or more claims of the '116 Patent. Such products include, without

1 limitation, one or more of the Accused Products and Services. By making, using,  
2 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is  
3 thus liable to Blue Spike for infringement of the '116 Patent under 35 U.S.C. § 271.  
4

5 27. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).  
6 Defendant performed actions that induced infringing acts that Defendant knew or  
7 should have known would induce actual infringements. *See Manville Sales Corp. v.*  
8 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*  
9 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding  
10 of inducement requires a threshold finding of direct infringement—either a finding of  
11 specific instances of direct infringement or a finding that the accused products  
12 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*  
13 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).  
14  
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17 28. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent  
18 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.  
19 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*  
20 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is  
21 necessary, direct evidence is not required; rather, circumstantial evidence may  
22 suffice.”).  
23  
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25 29. Defendant took active steps to induce infringement, such as advertising an  
26 infringing use, which supports a finding of an intention for the accused product to be  
27 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,  
28

1 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the  
2 contributory infringement doctrine “was devised to identify instances in which it may  
3 be presumed from distribution of an article in commerce that the distributor intended  
4 the article to be used to infringe another’s patent, and so may justly be held liable for  
5 that infringement”).

6  
7  
8 30. It is not necessary for Plaintiff to indicate specific customers directly infringing  
9 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*  
10 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.  
11 Cir. 2012).

### 12 **Induced Infringement.**

13  
14 31. Defendant induces infringement of its customers, who use the infringing  
15 functionality, and its partners and resellers, who offer for sale and sell the Accused  
16 Products and Services.

17  
18 32. Defendant induces end users of the Accused Products and Services to infringe.  
19 Defendant induces its customers to infringe at the very least by providing  
20 information on how to access the Internet via its router system.

21  
22 33. Defendant also provides customers other incentives to use the infringing  
23 services, such as premium services. *See Exhibit B; see Power Integrations v.*  
24 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts  
25 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)  
26 directed to a class of direct infringers (e.g., customers, end users) without requiring  
27  
28

1 hard proof that any individual third-party direct infringer was actually persuaded to  
2 infringe by that material.”).

3  
4 34. Defendant had knowledge of the '116 Patent at least as early as the service of  
5 this complaint, and has known since then that the Accused Products and Services  
6 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its  
7 customers and partners to infringe. It does so through its instructions accompanying  
8 the Accused Products and Services, its technical support, demonstrations and  
9 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '116  
10 Patent by actively inducing infringement.  
11

12  
13 35. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts  
14 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,  
15 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*  
16 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege  
17 knowledge or intent “generally, just as the rule states—that is, simply by saying that  
18 [it] existed.” *Id.* at 1547.  
19

### 20 21 **Contributory Infringement.**

22  
23 36. Defendant is also a contributory infringer. In addition to proving an act of  
24 direct infringement, plaintiff contends that defendant knew that the combination for  
25 which its components were especially made was both patented and infringing.

26  
27 37. The contributory infringement doctrine was devised to identify instances in  
28 which it may be presumed from distribution of an article in commerce that the

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1 distributor intended the article to be used to infringe another’s patent, and so may  
2 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*  
3 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).

4  
5 38. Defendant contributed to the infringement by providing the Accused Products  
6 and Services to its customers, partners and resellers.

7  
8 39. The accused functionality in the Accused Products and Services has no  
9 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d  
10 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a  
11 contributory infringement claim applies to an infringing feature or component). An  
12 “infringing feature” of a product does not escape liability simply because the product  
13 as a whole has other non-infringing uses. *See id.* at 1321.

14  
15  
16 **Plaintiff Suffered Damages.**

17 40. Defendant’s acts of infringement of the ’116 Patent have caused damage to Blue  
18 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as  
19 a result of Defendant’s wrongful acts in an amount described in the prayer below.  
20 Defendant’s infringement of Blue Spike’s exclusive rights under the ’116 Patent will  
21 continue to damage Blue Spike, causing it irreparable harm, for which there is no  
22 adequate remedy at law, warranting an injunction from the Court.  
23

24  
25 41. On information and belief, the infringement of the ’116 Patent by Defendant has  
26 been willful and continues to be willful. Defendant had knowledge of the ’116 Patent,  
27 including but not limited to at least one or more of the following events:  
28

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- 1 a. The filing of Blue Spike’s complaint against Defendant.
- 2 b. In the course of its due diligence and freedom to operate analyses.
- 3 c. News coverage of Blue Spike’s enforcement of this patent against other
- 4 infringers.
- 5

6 42. On information and belief, Defendant has had at least had constructive notice of  
7 the ’116 Patent by operation of law. Plaintiff believes the evidence provided shows  
8 Defendant’s willful infringement is egregious. Even so, Plaintiff is not required to  
9 prove egregiousness in its pleadings. “Even after Halo, broader allegations of  
10 willfulness, without a specific showing of egregiousness, are sufficient to withstand a  
11 motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL  
12 326406, at \*3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion to dismiss and  
13 noting “Defendants’ argument seems to conflate the standards for pleading willful  
14 infringement with the standards for proving willful infringement.”).

15  
16  
17  
18 43. A jury is capable, and indeed required, to examine facts that plausibly support a  
19 finding of willful infringement. Here, the facts provide “a sufficient predicate” to  
20 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,  
21 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,  
22 including whether the infringer knew of the other’s patent protection and  
23 investigated, the infringers behavior, defendant’s size and financial condition,  
24 closeness of the case, duration of misconduct, and remedial action taken by defendant  
25  
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28



1 once it was notified of infringement, as factors that are “a sufficient predicate” of fact  
2 to support a jury’s finding of willfulness).

3  
4 44. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts  
5 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,  
6 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*  
7 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege  
8 knowledge or intent “generally, just as the rule states—that is, simply by saying that  
9 [it] existed.” *Id.* at 1547.

10  
11 **COUNT 2:**

12 **INFRINGEMENT OF U.S. PATENT US Patent 8,538,011 B2**

13  
14 45. Blue Spike incorporates by reference the paragraphs above and below.

15 46. The ’011 Patent is presumed valid, enforceable, and was duly and legally issued  
16 by the United States Patent and Trademark Office.

17  
18 47. These claims are directed to a non-abstract improvement in computer  
19 functionality, rather than a method of organizing human activity or an idea of itself.  
20 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,  
21 2018).

22  
23 48. The specification of the ’011 Patent explains both the problem in the prior art  
24 and the benefit of the computer-implemented invention. This difference is not “well  
25 known” or “conventional.” A human cannot perform these tasks.

26  
27 49. Without a license or permission from Blue Spike, Defendant has infringed and  
28 continues to infringe on one or more claims of the ’011 Patent—directly,

1 contributorily, or by inducement—by importing, making, using, offering for sale, or  
2 selling products and devices that embody the patented invention, including, without  
3 limitation, one or more of the Accused Products and Services, in violation of 35  
4 U.S.C. § 271.

6 **Direct Infringement.**

7  
8 50. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products  
9 and Services which practice all the elements of the '011 Patent. For instance, the  
10 Accused Products and Services infringe claim 35 of the '011 Patent which recites:

11  
12 A device for conducting trusted transactions between at  
13 least two parties, comprising:  
14 a steganographic cipher;  
15 a controller for receiving input data or outputting output  
16 data; and  
17 at least one input/output connection,  
18 wherein the device has a device identification code stored in  
19 the device;  
20 an analog to digital converter; and  
21 a steganographically ciphered software application;  
22 wherein said steganographically ciphered software  
23 application has been subject to a steganographic cipher for  
24 serialization;  
25 wherein said steganographic cipher receives said output  
26 data, steganographically ciphering said output data using a  
27 key, to define steganographically ciphered output data, and  
28 transmits said steganographically ciphered output data to  
said at least one input/output connection;  
wherein the device is configured to steganographically  
cipher both value-added information and at least one value-  
added component associated with the value-added  
information.

1 51. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products  
2 and Services which institute trusted transactions between at least two parties who  
3 have agreed to transact.  
4

5 **Indirect Infringement.**

6 52. Defendant has been and now is indirectly infringing by way of inducing  
7 infringement by others and/or contributing to the infringement by others of the '011  
8 Patent in this State, in this judicial district, and elsewhere in the United States, by,  
9 among other things, making, using, importing, offering for sale, and/or selling,  
10 without license or authority, infringing services for use in systems that fall within the  
11 scope of one or more claims of the '011 Patent. Such products include, without  
12 limitation, one or more of the Accused Products and Services. By making, using,  
13 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is  
14 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.  
15  
16  
17

18 53. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).  
19 Defendant performed actions that induced infringing acts that Defendant knew or  
20 should have known would induce actual infringements. *See Manville Sales Corp. v.*  
21 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*  
22 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding  
23 of inducement requires a threshold finding of direct infringement—either a finding of  
24 specific instances of direct infringement or a finding that the accused products  
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1 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*  
2 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

3  
4 54. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent  
5 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.  
6 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*  
7 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is  
8 necessary, direct evidence is not required; rather, circumstantial evidence may  
9 suffice.”).

10  
11 55. Defendant took active steps to induce infringement, such as advertising an  
12 infringing use, which supports a finding of an intention for the accused product to be  
13 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,  
14 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the  
15 contributory infringement doctrine “was devised to identify instances in which it may  
16 be presumed from distribution of an article in commerce that the distributor intended  
17 the article to be used to infringe another’s patent, and so may justly be held liable for  
18 that infringement”).

19  
20 56. It is not necessary for Plaintiff to indicate specific customers directly infringing  
21 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*  
22 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.  
23 Cir. 2012).

1 **Induced Infringement.**

2 57. Defendant induces infringement of its customers, who use the infringing  
3 functionality, and its partners and resellers, who offer for sale and sell the Accused  
4 Products and Services.  
5

6 58. Defendant induces end users of the Accused Products and Services to infringe.  
7 Defendant induces its customers to infringe at the very least by providing  
8 information on how to access the Internet via its router system.  
9

10 59. Defendant also provides customers other incentives to use the infringing  
11 services, such as premium services. *See Exhibit A; see Power Integrations v. Fairchild*  
12 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts  
13 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)  
14 directed to a class of direct infringers (e.g., customers, end users) without requiring  
15 hard proof that any individual third-party direct infringer was actually persuaded to  
16 infringe by that material.”).  
17  
18

19 60. Defendant had knowledge of the '011 Patent at least as early as the service of  
20 this complaint, and has known since then that the Accused Products and Services  
21 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its  
22 customers and partners to infringe. It does so through its instructions accompanying  
23 the Accused Products and Services, its technical support, demonstrations and  
24 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '011  
25 Patent by actively inducing infringement.  
26  
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1 61. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts  
2 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,  
3 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*  
4 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege  
5 knowledge or intent “generally, just as the rule states—that is, simply by saying that  
6 [it] existed.” *Id.* at 1547.  
7

### 9 **Contributory Infringement.**

10 62. Defendant is also a contributory infringer. In addition to proving an act of  
11 direct infringement, plaintiff contends that defendant knew that the combination for  
12 which its components were especially made was both patented and infringing.  
13

14 63. The contributory infringement doctrine was devised to identify instances in  
15 which it may be presumed from distribution of an article in commerce that the  
16 distributor intended the article to be used to infringe another’s patent, and so may  
17 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*  
18 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).  
19

20  
21 64. Defendant contributed to the infringement by providing the Accused Products  
22 and Services to its customers, partners and resellers.  
23

24 65. The accused functionality in the Accused Products and Services has no  
25 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d  
26 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a  
27 contributory infringement claim applies to an infringing feature or component). An  
28

1 “infringing feature” of a product does not escape liability simply because the product  
2 as a whole has other non-infringing uses. *See id.* at 1321.

3 **Plaintiff Suffered Damages.**

4  
5 66. Defendant’s acts of infringement of the ’011 Patent have caused damage to Blue  
6 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as  
7 a result of Defendant’s wrongful acts in an amount described in the prayer below.  
8 Defendant’s infringement of Blue Spike’s exclusive rights under the ’011 Patent will  
9 continue to damage Blue Spike, causing it irreparable harm, for which there is no  
10 adequate remedy at law, warranting an injunction from the Court.  
11

12  
13 67. On information and belief, the infringement of the ’011 Patent by Defendant has  
14 been willful and continues to be willful. Defendant had knowledge of the ’011 Patent,  
15 including but not limited to at least one or more of the following events:  
16

- 17 a. The filing of Blue Spike’s complaint against Defendant.
- 18 b. In the course of its due diligence and freedom to operate analyses.
- 19 c. News coverage of Blue Spike’s enforcement of this patent against other  
20 infringers.  
21

22  
23 68. On information and belief, Defendant has had at least had constructive notice of  
24 the ’011 Patent by operation of law. Plaintiff believes the evidence provided shows  
25 Defendant’s willful infringement is egregious. Even so, Plaintiff is not required to  
26 prove egregiousness in its pleadings. “Even after Halo, broader allegations of  
27 willfulness, without a specific showing of egregiousness, are sufficient to withstand a  
28



1 motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL  
2 326406, at \*3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion to dismiss and  
3 noting “Defendants’ argument seems to conflate the standards for pleading willful  
4 infringement with the standards for proving willful infringement.”).

5  
6 69. A jury is capable, and indeed required, to examine facts that plausibly support a  
7 finding of willful infringement. Here, the facts provide “a sufficient predicate” to  
8 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,  
9 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,  
10 including whether the infringer knew of the other’s patent protection and  
11 investigated, the infringers behavior, defendant’s size and financial condition,  
12 closeness of the case, duration of misconduct, and remedial action taken by defendant  
13 once it was notified of infringement, as factors that are “a sufficient predicate” of fact  
14 to support a jury’s finding of willfulness).

15  
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17  
18 70. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts  
19 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,  
20 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*  
21 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege  
22 knowledge or intent “generally, just as the rule states—that is, simply by saying that  
23 [it] existed.” *Id.* at 1547.

24  
25  
26 **COUNT 3:**

27 **INFRINGEMENT OF U.S. PATENT NO. 7,813,506 B2**

28 71. Blue Spike incorporates by reference the paragraphs above and below.

GARTEISER HONEA – TRIAL ATTORNEYS

1 72. The '506 Patent is presumed valid, enforceable, and was duly and legally issued  
2 by the United States Patent and Trademark Office.

3 73. These claims are directed to a non-abstract improvement in computer  
4 functionality, rather than a method of organizing human activity or an idea of itself.  
5  
6 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,  
7  
8 2018).

9 74. The specification of the '506 Patent explains both the problem in the prior art  
10 and the benefit of the computer-implemented invention. This difference is not “well  
11 known” or “conventional.” A human cannot perform these tasks.

12 75. Without a license or permission from Blue Spike, Defendant has infringed and  
13 continues to infringe on one or more claims of the '506 Patent—directly,  
14 contributorily, or by inducement—by importing, making, using, offering for sale, or  
15 selling products and devices that embody the patented invention, including, without  
16 limitation, one or more of the Accused Products and Services, in violation of 35  
17 U.S.C. § 271.

18  
19  
20  
21 **Direct Infringement.**

22 76. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products  
23 and Services which practice all the elements of the '506 Patent. For instance, the  
24 Accused Products and Services infringe claim 6 of the '506 Patent which recites:

25  
26 A method for distributing accessible digital content,  
27 comprising:  
28 providing a digital content comprising digital data and file  
format information;

1 selecting a scrambling technique to apply to the digital  
2 content;  
3 scrambling the digital content using a predetermined key  
4 resulting in perceptibly degraded digital content wherein  
5 the scrambling technique is based on a plurality of  
6 predetermined criteria including at least the criteria of  
7 reaching a desired signal quality level for the digital  
8 content; and  
9 distributing the scrambled digital content.

10 77. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products  
11 and Services which institute systems and processes for distributing digital content  
12 incorporating scrambling techniques.

13 **Indirect Infringement.**

14 78. Defendant has been and now is indirectly infringing by way of inducing  
15 infringement by others and/or contributing to the infringement by others of the '506  
16 Patent in this State, in this judicial district, and elsewhere in the United States, by,  
17 among other things, making, using, importing, offering for sale, and/or selling,  
18 without license or authority, infringing services for use in systems that fall within the  
19 scope of one or more claims of the '506 Patent. Such products include, without  
20 limitation, one or more of the Accused Products and Services. By making, using,  
21 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is  
22 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.  
23

24 79. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).  
25 Defendant performed actions that induced infringing acts that Defendant knew or  
26 should have known would induce actual infringements. *See Manville Sales Corp. v.*  
27  
28

1 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*  
2 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding  
3 of inducement requires a threshold finding of direct infringement—either a finding of  
4 specific instances of direct infringement or a finding that the accused products  
5 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*  
6 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

9 80. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent  
10 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.  
11 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*  
12 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is  
13 necessary, direct evidence is not required; rather, circumstantial evidence may  
14 suffice.”).

17 81. Defendant took active steps to induce infringement, such as advertising an  
18 infringing use, which supports a finding of an intention for the accused product to be  
19 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,  
20 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the  
21 contributory infringement doctrine “was devised to identify instances in which it may  
22 be presumed from distribution of an article in commerce that the distributor intended  
23 the article to be used to infringe another’s patent, and so may justly be held liable for  
24 that infringement”).  
25  
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1 82. It is not necessary for Plaintiff to indicate specific customers directly infringing  
2 the Patents-in-Suit through the use of Defendant's products and services. *See In re*  
3 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.  
4 Cir. 2012).

5  
6 **Induced Infringement.**

7  
8 83. Defendant induces infringement of its customers, who use the infringing  
9 functionality, and its partners and resellers, who offer for sale and sell the Accused  
10 Products and Services.

11  
12 84. Defendant induces end users of the Accused Products and Services to infringe.  
13 Defendant induces its customers to infringe at the very least by providing  
14 information on how to access the Internet via its router system.

15  
16 85. Defendant also provides customers other incentives to use the infringing  
17 services, such as advertising. *See Exhibit B; see Power Integrations v. Fairchild*  
18 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts  
19 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)  
20 directed to a class of direct infringers (e.g., customers, end users) without requiring  
21 hard proof that any individual third-party direct infringer was actually persuaded to  
22 infringe by that material.”).

23  
24  
25 86. Defendant had knowledge of the '506 Patent at least as early as the service of  
26 this complaint, and has known since then that the Accused Products and Services  
27 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its  
28

1 customers and partners to infringe. It does so through its instructions accompanying  
2 the Accused Products and Services, its technical support, demonstrations and  
3 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '506  
4 Patent by actively inducing infringement.  
5

6 87. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts  
7 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,  
8 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*  
9 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege  
10 knowledge or intent “generally, just as the rule states—that is, simply by saying that  
11 [it] existed.” *Id.* at 1547.  
12

### 13 **Contributory Infringement.**

14  
15 88. Defendant is also a contributory infringer. In addition to proving an act of  
16 direct infringement, plaintiff contends that defendant knew that the combination for  
17 which its components were especially made was both patented and infringing.  
18

19  
20 89. The contributory infringement doctrine was devised to identify instances in  
21 which it may be presumed from distribution of an article in commerce that the  
22 distributor intended the article to be used to infringe another’s patent, and so may  
23 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*  
24 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).  
25

26 90. Defendant contributed to the infringement by providing the Accused Products  
27 and Services to its customers, partners and resellers.  
28

1 91. The accused functionality in the Accused Products and Services has no  
2 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d  
3 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a  
4 contributory infringement claim applies to an infringing feature or component). An  
5 “infringing feature” of a product does not escape liability simply because the product  
6 as a whole has other non-infringing uses. *See id.* at 1321.  
7  
8

9 **Plaintiff Suffered Damages.**

10 92. Defendant’s acts of infringement of the ’506 Patent have caused damage to Blue  
11 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as  
12 a result of Defendant’s wrongful acts in an amount described in the prayer below.  
13 Defendant’s infringement of Blue Spike’s exclusive rights under the ’506 Patent will  
14 continue to damage Blue Spike, causing it irreparable harm, for which there is no  
15 adequate remedy at law, warranting an injunction from the Court.  
16  
17

18 93. On information and belief, the infringement of the ’506 Patent by Defendant has  
19 been willful and continues to be willful. Defendant had knowledge of the ’506 Patent,  
20 including but not limited to at least one or more of the following events:  
21

- 22 a. The filing of Blue Spike’s complaint against Defendant.
- 23 b. In the course of its due diligence and freedom to operate analyses.
- 24 c. News coverage of Blue Spike’s enforcement of this patent against other  
25 infringers.  
26  
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28



1 94. On information and belief, Defendant has had at least had constructive notice  
2 of the '506 Patent by operation of law. Plaintiff believes the evidence provided shows  
3 Defendant's willful infringement is egregious. Even so, Plaintiff is not required to  
4 prove egregiousness in its pleadings. "Even after Halo, broader allegations of  
5 willfulness, without a specific showing of egregiousness, are sufficient to withstand a  
6 motion to dismiss." *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL  
7 326406, at \*3 (D. Del. Jan. 8, 2018) (denying a defendant's motion to dismiss and  
8 noting "Defendants' argument seems to conflate the standards for pleading willful  
9 infringement with the standards for proving willful infringement.").

10 95. A jury is capable, and indeed required, to examine facts that plausibly support a  
11 finding of willful infringement. Here, the facts provide "a sufficient predicate" to  
12 support a jury's finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,  
13 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,  
14 including whether the infringer knew of the other's patent protection and  
15 investigated, the infringers behavior, defendant's size and financial condition,  
16 closeness of the case, duration of misconduct, and remedial action taken by defendant  
17 once it was notified of infringement, as factors that are "a sufficient predicate" of fact  
18 to support a jury's finding of willfulness).

19 96. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts  
20 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,  
21 1545-47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*  
22  
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1 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege  
2 knowledge or intent “generally, just as the rule states—that is, simply by saying that  
3 [it] existed.” *Id.* at 1547.

### 4 5 **REQUEST FOR RELIEF**

6 Blue Spike incorporates each of the allegations in the paragraphs above and  
7 respectfully asks the Court to:  
8

9 (a) enter a judgment that Defendant has directly infringed, contributorily  
10 infringed, and/or induced infringement of one or more claims of each of the Patents-  
11 in-Suit in the amount of reasonable royalty based on revenue of accused product and  
12 service and more if damages are trebled;

13  
14 (b) enter a judgment awarding Blue Spike all damages adequate to compensate it  
15 for Defendant’s infringement of, direct or contributory, or inducement to infringe, the  
16 Patents-in-Suit, including all pre-judgment and post-judgment interest at the  
17 maximum rate permitted by law;  
18

19  
20 (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for  
21 Defendant’s willful infringement of one or more of the Patents-in-Suit;

22 (d) issue a preliminary injunction and thereafter a permanent injunction enjoining  
23 and restraining Defendant, its directors, officers, agents, servants, employees, and  
24 those acting in privity or in concert with them, and their subsidiaries, divisions,  
25 successors, and assigns, from further acts of infringement, contributory infringement,  
26 or inducement of infringement of the Patents-in-Suit;  
27  
28

1 (e) enter a judgment requiring Defendant to pay the costs of this action, including  
2 all disbursements, and attorneys' fees as provided by 35 U.S.C. § 285, together with  
3 prejudgment interest; and  
4

5 (f) award Blue Spike all other relief that the Court may deem just and proper.  
6

7 **DEMAND FOR JURY TRIAL**

8 Blue Spike demands a jury trial on all issues that may be determined by a jury.  
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Respectfully submitted,

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*Counsel for Blue Spike, LLC*

GARTEISER HONEA – TRIAL ATTORNEYS

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this date stamped above.

/s/ Randall Garteiser

GARTEISER HONEA – TRIAL ATTORNEYS