

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADIONA IP, LLC,)
)
Plaintiff,)
) Civil Action No. 1:18-cv-717-LPS-CJB
v.)
) JURY TRIAL DEMANDED
PEAG, LLC,)
)
Defendant.)
_____)

FIRST AMENDED COMPLAINT

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

THE PARTIES

1. Adiona is a Texas limited liability company with a place of business located at 5068 West Plano Parkway, Suite 300, Plano, Texas 75093.
2. Defendant Peag, LLC is a Delaware company with, upon information and belief, a place of business located at 17950 Preston Road, Suite 360, Dallas, Texas 75252.
3. Upon information and belief, Defendant conducts business as JLab Audio.
4. By registering to conduct business in Delaware, Defendant has a permanent and continuous presence in Delaware.

JURISDICTION AND VENUE

5. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
6. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
7. 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.

8. Venue is proper in this district pursuant to § 1400(b).

THE PATENT-IN-SUIT

9. On March 20, 2007, U.S. Patent No. 7,194,520 (the "'520 patent"), entitled "Content Player for Broadcasting to Information Appliances," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '520 patent is attached hereto as Exhibit A.

10. Adiona is the assignee and owner of the right, title and interest in and to the '520 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. 7,194,520

11. Adiona 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 has infringed and continues to infringe at least claim 8 of the '520 patent by making, using, importing, offering for sale, and/or selling, methods of broadcasting media content to an information appliance from a personal computer that is linked to a network, including, but not limited to, Epic Sport Wireless Earbuds ("Earbuds"), Metal Bluetooth Rugged Earbuds, JBuds Pro Bluetooth Signature Earbuds and Epic2 Bluetooth Wireless Earbuds, Flex Bluetooth Active Noise Canceling Headphones, Omni Folding Bluetooth Over-Ear Headphones, Neon Bluetooth Wireless On-Ear Headphones, JBuddies Studio Bluetooth Over Ear Folding Kids Headphones, Crasher XL

Splashproof Bluetooth Speaker, and Crasher Mini Splashproof Bluetooth Speaker (collectively, "Accused Instrumentalities"), because each and every element is met either literally or equivalently.

13. Upon information and belief, Defendant used the Accused Instrumentalities via its internal use and testing in the United States, directly infringing one or more claims of the '520 patent.

14. For example, to create its User Manuals for the Accused Instrumentalities, Defendant used the Accused Instrumentalities.

15. A representative Accused Instrumentality is the Earbuds. A true and correct copy of the User Manual for the Earbuds is attached hereto as Exhibit B and available at https://cdn.shopify.com/s/files/1/0240/9337/files/Epic_Sport_Wireless_Manual_Web.pdf?8236497378117889033 (last accessed Aug. 14, 2018), and Defendant used the Earbuds to create the User Manual.

16. More specifically, the Earbuds is a speaker system (i.e., an information appliance) with Bluetooth connectivity which allows a user to connect with the speakers wirelessly using the Bluetooth-connectivity of a smartphone or tablet running iOS or Android ("computing device"). *See* Ex. B at p. 1. The computing device can access the Internet using Wi-Fi. Once connected to the Earbuds, the computing device can stream music to the speaker. *See id.*; *see also* <https://www.jlabaudio.com/collections/bluetooth/products/epic-sport-wireless-fitness-earbuds?variant=12096989560958> ("Earbuds Info") (last accessed Aug. 14, 2018). To stream/play music on the Earbuds, the computing device is connected to the speaker over Bluetooth (i.e., a bi-directional communication link). *See* Ex. B at p. 1. The computing device can play music of

various audio formats ("media content"), and it can be in one room while wirelessly connected through Bluetooth to Earbuds located in another room.



BLUETOOTH 4.2

Enjoy wireless freedom with Bluetooth 4.2 with aptX. From up to 30 feet away from your device you can control all your music with the in-line remote; play, pause, skip tracks, change volume, and answer and hang up phone calls while you GO.

Earbuds Info; *see also* Shawn McClain, What Are the Limitations of Bluetooth (available at <https://www.techwalla.com/articles/what-are-the-limitations-of-bluetooth> (last accessed Aug. 14, 2018)). The computing device can download audio files (e.g., programs) using the Internet and store them in its internal storage. The Earbuds can control playback from the computing device, which means the Earbuds transmits control signals to the computing device.

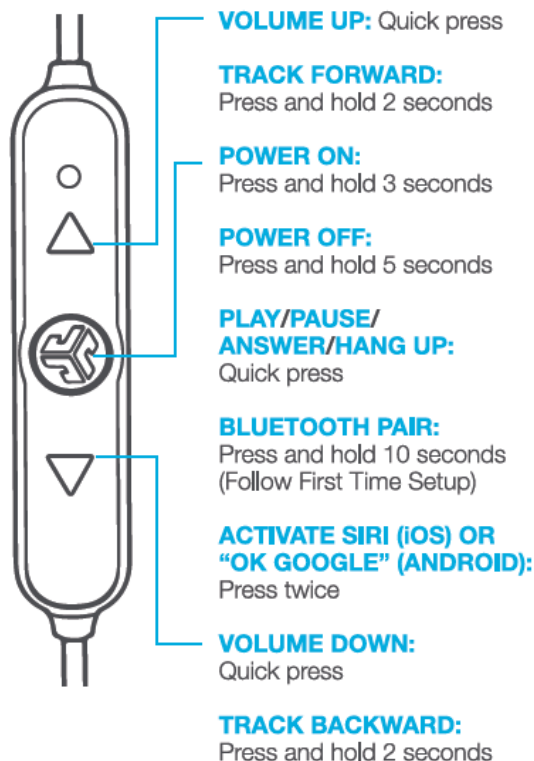


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Earbuds Info. For example, if the play/pause button on the Earbuds is pressed, a control signal will be generated and transmitted to the computing device via Bluetooth and the computing device will either broadcast or pause the music to the Earbuds, which will receive and playback or pause the song; if the track forward button on the Earbuds is pressed, a control signal will be generated and transmitted to the computing device via Bluetooth and the computing device will broadcast the next song to the Earbuds.

BUTTON FUNCTIONS



Ex. B at p. 2. The Earbuds are a Bluetooth speaker that includes a radio which transmits data using frequency hopping spread spectrum signal (FHSS) carrier.

1.1 OVERVIEW OF BR/EDR OPERATION

The Basic Rate / Enhanced Data Rate (BR/EDR) radio (physical layer or PHY) operates in the unlicensed ISM band at 2.4 GHz. The system employs a frequency hopping transceiver to combat interference and fading and provides many FHSS carriers. Basic Rate radio operation uses a shaped, binary frequency modulation to minimize transceiver complexity. The symbol rate is 1 megasymbol per second (Msym/s) supporting the bit rate of 1 megabit per second (Mb/s) or, with Enhanced Data Rate, a gross air bit rate of 2 or 3Mb/s. These modes are known as Basic Rate and Enhanced Data Rate respectively.

Bluetooth Core Specification v 5.0 at p. 167 (available at https://www.bluetooth.org/DocMan/handlers/DownloadDoc.ashx?doc_id=42104 (last accessed Apr. 27, 2018)).

17. Upon information and belief, the computing device includes a controller, a memory, a network connection device, a display system, and an input/output system, the controller configured to communicate with the memory, the network connection device, the display system, and the input/output system with a system bus.

18. Adiona's initial complaint was filed on May 11, 2018.

19. Defendant was served the initial complaint on May 14, 2018.

20. Thus, Defendant has been on notice of the '520 patent since, at the latest, the date it was served the Complaint.

21. On July 2, 2018, Adiona informed Defendant that its earbuds and headphones infringed the '520 patent.

22. Upon information and belief, Defendant has not altered its infringing conduct after receiving the initial complaint or being informed that the Accused Instrumentalities infringed the '520 patent.

23. Upon information and belief, Defendant's continued infringement despite its knowledge of the '520 patent and the accusations of infringement has been objectively reckless and willful.

24. In particular, Defendant's customers' and end-users' use of Defendant's products that include methods of broadcasting media content to an information appliance from a personal computer that is linked to a network, including, not limited to, the Accused Instrumentalities, is facilitated by the use of technology patented under the '520 patent. Thus, Defendant's customers and end-users are able to use and benefit from a method of broadcasting media content an information appliance from a personal computer that is linked to a network, the personal

computer in communication with the information appliance by a bi-directional communication link between the personal computer and the information appliance.

25. On information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its website, advertising and sales personnel, the use of its products that infringe the '520 patent when used as intended by Defendant's customers and end-users. Defendant's customers and end-users use such products (including, e.g., the Accused Instrumentalities). Defendant further instructs its customers and end-users how to use such products in a manner that infringe the '520 patent (e.g., through on-line technical documentation, instructions, and technical support). Defendant further instructs its customers and end-users to infringe the '520 patent through the products themselves, e.g., through instructions.

26. In particular, Defendant instructs its customers and end-users through at least on-line support instructions and documentation over the Internet how to use the Accused Instrumentalities.

27. Defendant still further makes such products accessible to its customers and end-users via the Internet, thus enabling and encouraging its customers and end-users to use such products to infringe the '520 patent.

28. On information and belief, even though Defendant has been aware of the '520 patent and that its customers and end-users infringe the '520 patent since no later than the date it was served the Complaint and Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such products to avoid infringing the '520 patent nor informed its customers or end-users how to avoid infringing the '520 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 customers or end-users since it became aware of the '520 patent.

29. 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 and end-users, do not constitute direct or indirect infringement of the '520 patent. To date, Defendant has not produced any opinion of counsel, request for opinion of counsel relating to the scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '520 patent. In addition, Defendant has not produced any complete evaluation, analysis, or investigation relating to the validity of the '520 patent.

30. 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 and end-users to use its products in a manner that infringe the claims of the '520 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 their customers and end-users to use their products in a manner that infringe the claims of the '520 patent.

31. 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 '520 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 their actions constituted, and continue to constitute, infringement of the '520 patent and that the '520 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 users and/or customers with instructions on how to avoid infringement of the '520 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 '520 patent. As such, Defendant willfully, wantonly and deliberately infringed and is infringing the '520 patent in disregard of Adiona's rights under the '520 patent.

32. Adiona is entitled to recover from Defendant the damages sustained by Adiona as a result of Defendant's infringement of the '520 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

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

PRAYER FOR RELIEF

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

- A. An adjudication that Defendant has infringed the '520 patent;
- B. A judgment that Defendant induced infringement of the '520 patent;
- C. An award of damages to be paid by Defendant adequate to compensate Adiona for Defendant's past infringement of the '520 patent 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. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of the '520 patent subsequent to the date of its notice of the '520 patent;

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

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

Dated: August 17, 2018

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2018, I electronically filed the above document(s) with the Clerk of Court using CM/ECF which will send electronic notification of such filing(s) to all registered counsel.

/s/ Richard C. Weinblatt
Richard C. Weinblatt #5080