

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

GUILD FOREST LLC,

Plaintiff,

vs.

SPOTIFY USA INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

Case No:

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Guild Forest LLC (“Plaintiff” or “Guild Forest”) files this Complaint against Spotify USA Inc. (“Defendant” or “Spotify”) for infringement of United States Patent No. 8,046,697 (hereinafter “the ‘697 Patent”).

PARTIES AND JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff is a Texas limited liability company with its office address at 3000 Custer Rd., Suite 270-7003, Plano, TX 75075.

4. On information and belief, Defendant is a Delaware corporation with a principal address of 45 W. 18th Street, 7th Floor, New York, NY 10011. On information and belief, Defendant may be served with process through its agent, National Registered Agents, Inc. at 160 Greentree Drive, Suite 101, Dover, DE 19904.

5. On information and belief, this Court has personal jurisdiction over Defendant because Defendant has committed, and continues to commit, acts of infringement in this District, has conducted business in this District, and/or has engaged in continuous and systematic activities in this District.

6. On information and belief, Defendant's instrumentalities that are alleged herein to infringe were and continue to be used, imported, offered for sale, and/or sold in this District.

VENUE

7. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because Defendant is deemed to reside in this District.

COUNT I
(INFRINGEMENT OF UNITED STATES PATENT NO. 8,046,697)

8. Plaintiff incorporates paragraphs 1 through 7 herein by reference.

9. This cause of action arises under the patent laws of the United States and, in particular, under 35 U.S.C. §§ 271, *et seq.*

10. Plaintiff is the owner by assignment of the '697 Patent with sole rights to enforce the '697 Patent and sue infringers.

11. A copy of the '697 Patent, titled "System and Method for Customizing an Interface Related to Accessing, Manipulating and Viewing Internet and Non-internet Related Information," is attached hereto as Exhibit A.

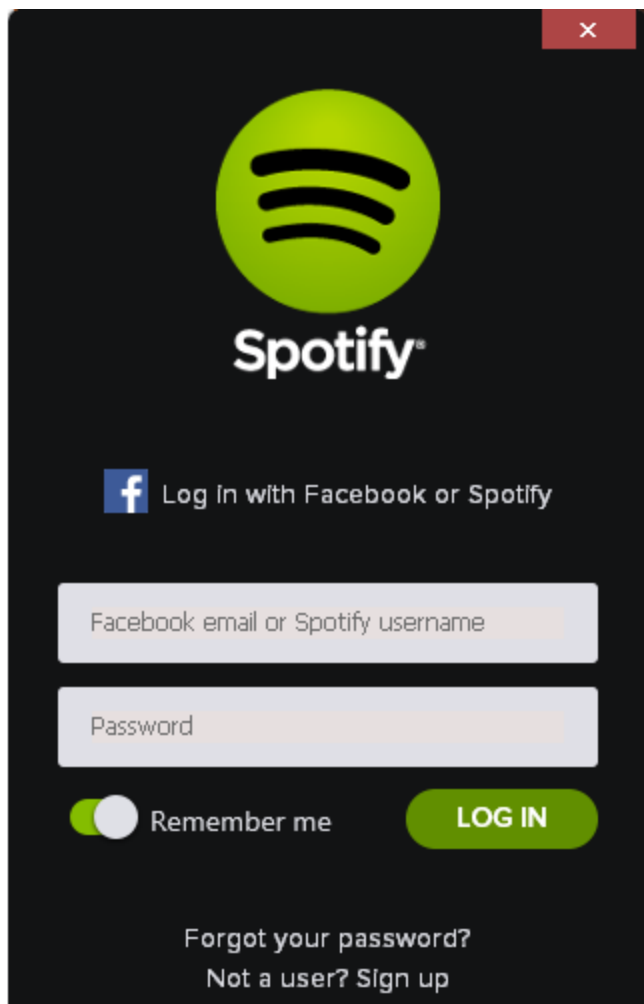
12. The '697 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

13. On information and belief, Defendant has infringed and continues to infringe one or more claims, including at least Claim 1, 2, 8, and 9 of the '697 Patent by making, using (including during testing and maintenance), importing, selling, and/or offering devices, platforms,

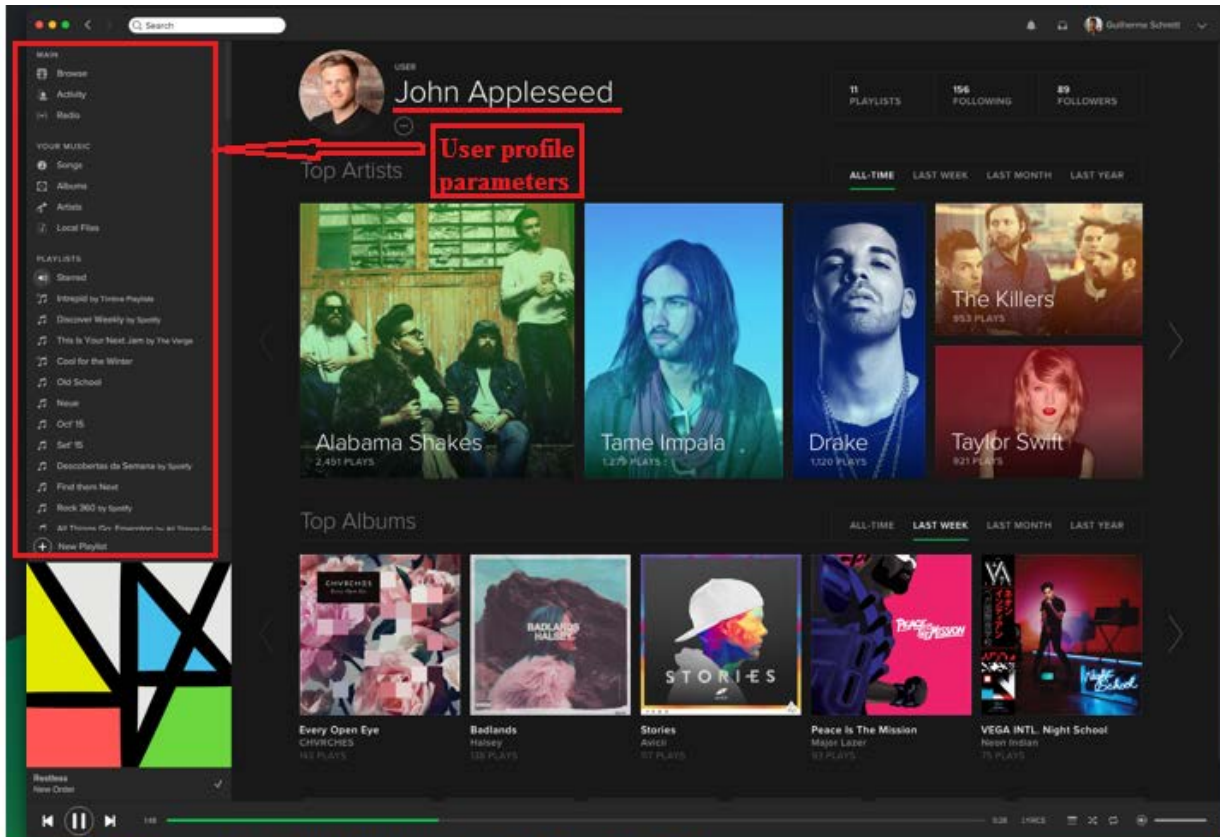
systems, and/or methods for creating a user profile for use in Internet-based advertising, which is/are covered by at least Claims 1, 2, 8, and 9 of the '697 Patent. Defendant has infringed and continues to infringe the '697 patent directly in violation of 35 U.S.C. § 271.

14. Defendant sells, offers to sell, and/or uses social media platforms, such as Spotify.com, and any similar products ("Product"), which infringe at least Claims 1, 2, 8, and 9 of the '697 Patent.

15. Regarding Claim 1, the Product creates a user profile (e.g., a user profile for online interest-based advertising) in a computer implemented guide on a computer system (e.g., the Spotify.com server). The Product creates a user profile (e.g., a user profile for online interest-based advertising) of a user of the accused system when the user creates an account at Spotify.com. The Product collects basic user information (e.g., user name, birth date, gender, country etc.) from the user's Spotify account information. The Product also monitors the user's activity on Spotify.com and learns about the user's interests (e.g., a user's likes, follows, and browsed interests etc.). The Product also scans local applications (e.g., phonebook, GPS application, etc.) of the user computer and scans their data (e.g., contact information, GPS data, etc.). These elements are illustrated in the screen shots below and/or in screen shots provided in connection with other allegations herein.



<https://stackoverflow.com/questions/24276500/spotify-facebook-login>



<https://dribbble.com/shots/2304592-006-Spotify-User-Profile-Concept>

4. How do we collect your personal data?

We collect your personal data in the following ways:

1. When you sign up for the Spotify Service - when you sign up to the Spotify Service, we collect certain personal data so you can use the Spotify Service such as your email address, birth date, gender, and country.
2. Through your use of the Spotify Service - when you use the Spotify Service, we collect personal data about your use of the Spotify Service, such as what songs you have played and what playlists you have created.
3. Personal data collected that enables us to provide you with additional features/functionality - from time to time, you also may provide us with additional personal data or give us your permission to collect additional personal data e.g. to provide you with more features or functionality. As described further below (see Voluntary Music Data), we will not collect photos, precise mobile device location, voice data, or contacts from your device without your prior consent. You always will have the option to change your mind and withdraw your consent at any time.
4. From third parties - we will receive personal data about you and your activity from third parties, including advertisers and partners we work with in order to provide you with the Spotify Service (please see 'Sharing your personal data' Section 7 below). We will use this personal data either where you have provided your consent to the third party or to Spotify to that data sharing taking place or where Spotify has a legitimate interest to use the personal data in order to provide you with the Spotify Service.

We use anonymised and aggregated information for purposes that include testing our IT systems, research, data analysis, creating marketing and promotion models, improving the Spotify Service, and developing new features and functionality within the Spotify Service.

<https://www.spotify.com/us/legal/privacy-policy/#s13>

5. What personal data do we collect from you?

We have set out in the tables below the categories of personal data we collect and use about you:

Personal data collected when you sign up for the Spotify Service

Categories of personal data	Description of category
Account Registration Data	<p>This is the personal data that is provided by you or collected by us to enable you to sign up for and use the Spotify Service. <u>This includes your email address, birth date, gender, postal code, and country.</u></p> <p>Some of the personal data we will ask you to provide is required in order to create your account. You also have the option to provide us with some additional personal data in order to make your account more personalized.</p> <p>The exact personal data we will collect depends on the type of Spotify Service plan you sign up for and whether or not you use a Third Party Service (as defined in the Terms and Conditions of Use, such as Facebook) to sign up and use the Spotify Service. <u>If you use a Third Party Service to create an account, we will receive personal data via that Third Party Service but only when you have consented to that Third Party Service sharing your personal data with us.</u></p>

<https://www.spotify.com/us/legal/privacy-policy/#s13>

Personal data collected through your use of the Spotify Service

Categories of personal data	Description of category
Spotify Service Usage Data	<p><u>This is the personal data that is collected about you when you are using the Spotify Service - this may include:</u></p> <ul style="list-style-type: none"> • Information about your type of Spotify Service plan. • <u>Information about your interactions with the Spotify Service which includes the date and time of any requests you make, songs you have listened to, playlists you create, video content you've watched, and your interactions with other Spotify users. This also may include details of your use of Third Party Applications and advertising you receive.</u> • <u>User Content (as defined in the Terms and Conditions of Use) you post to Spotify including messages you send and/or receive via Spotify and your interactions with the Spotify Customer Service team.</u> • <u>Technical Data which may include URL information, cookie data, your IP address, the types of devices you are using to access or connect to the Spotify Service, unique device IDs, device attributes, network connection type (e.g. WiFi, 3G, LTE, Bluetooth) and provider, network and device performance, browser type, language, information enabling digital rights management, operating system, and Spotify application version.</u> Further details about the technical data that is processed by us can be found in our Cookies Policy. • <u>Motion-generated or orientation-generated mobile sensor data (e.g. accelerometer or gyroscope) required for the purposes of providing specific features of the Spotify Service to you.</u>

<https://www.spotify.com/us/legal/privacy-policy/#s13>

Personal data collected with your permission that enables us to provide you with additional features/functionality

Categories of personal data	Description of category
Voluntary Mobile Data	<p>In addition to the mobile data we collect to provide you with the Spotify Service (outlined above), you also have the option to give us your consent to collect additional personal data from your mobile device to provide you with features/functionality that will enhance your Spotify Service experience.</p> <p>We will not access any of the personal data listed below without first obtaining your consent:</p> <ul style="list-style-type: none"> • <u>Your photos</u> - If you give us permission to access your photos or camera, we will only access images that you specifically choose to share with us and metadata related to those images, such as the type of file and the size of the image. We will never scan or import your photo library or camera roll; • <u>Your precise mobile device location</u> - If you give us permission to access your precise location, this enables us to access your GPS or Bluetooth to provide location-aware functionality in the Spotify Service. Please note that this does not include your IP address. We use your IP address to determine non-precise location, for example, what country you are in to comply with our licensing agreements; • <u>Your voice data</u> - If you give us permission, this enables us to access the voice commands captured via your device microphone to enable you to interact with the Spotify Service with your voice. Please note you will always have the ability to turn off the microphone feature; and, • <u>Your contacts</u> - If you give us permission to access your contacts, this enables us to access individual contacts stored on your device to help you find friends who use Spotify.

<https://www.spotify.com/us/legal/privacy-policy/#s13>

6. What do we use your personal data for?

When you use or interact with the Spotify Service, we use a variety of technologies to process the personal data we collect about you for various reasons. We have set out in the table below the reasons why we process your personal data, the associated legal bases we rely upon to legally permit us to process your personal data, and the categories of personal data (identified in [Section 5 "What personal data do we collect from you?"](#)) used for these purposes:

Description of why Spotify processes your personal data ("processing purpose")	Legal Basis for the processing purpose	Categories of personal data used by Spotify for the processing purpose
<u>To provide, personalize, and improve your experience with the Spotify Service and other services and products provided by Spotify, for example by providing customized, personalized, or localized content, recommendations, features, and advertising on or outside of the Spotify Service (including for third party products and services).</u>	<ul style="list-style-type: none"> • Performance of a Contract • Legitimate Interest 	<ul style="list-style-type: none"> • Account Registration Data • Service Usage Data
<u>To understand how you access and use the Spotify Service to ensure technical functionality of the Spotify Service, develop new products and services, and analyze your use of the Spotify Service, including your interaction with applications, advertising, products, and services that are made available, linked to, or offered through the Spotify Service.</u>	<ul style="list-style-type: none"> • Performance of a Contract • Legitimate Interest 	<ul style="list-style-type: none"> • Account Registration Data • Service Usage Data
To communicate with you for Spotify Service-related purposes.	<ul style="list-style-type: none"> • Performance of a Contract • Legitimate Interest 	<ul style="list-style-type: none"> • Account Registration Data • Service Usage Data

<https://www.spotify.com/us/legal/privacy-policy/#s13>

Categories of Recipients	Reason for sharing
Service Providers and Others	<p>We use technical service providers which may operate the technical infrastructure that we need to provide the Spotify Service, in particular providers which host, store, manage, and maintain the Spotify application, its content and the data we process.</p> <p>We use technical service providers to help us communicate with you, as described in Section 6 of this Policy.</p> <p>We use marketing and advertising partners to show you more tailored content, or to help us understand your use of the Spotify Service, to provide you with a better service. We also may share personal data with certain marketing and advertising partners to send you promotional communications about Spotify.</p>
Spotify Partners	<p>If you access the Spotify Service through an offer that you received or purchased from a third party such as your mobile network operator, we share personal data with that third party about your use of the Spotify Service, such as whether and to what extent you have used the offer, activated a Spotify account, or actively used the Spotify Service.</p> <p>Depending on how you sign up for the Spotify Service (e.g. through a third party service or a mobile provider), we share your Spotify username or other Account Registration Data as necessary to enable your account.</p> <p>We also may share your personal data in a pseudonymised format with our music industry partners to help them understand how the content they license to us is performing and to enable you to listen to streaming content via the Spotify Service.</p> <p><u>We also share your personal data in a pseudonymised format with marketing partners who help us with promotional efforts and with advertisers that allow us to offer a free service.</u></p>
Academic Researchers	<p>We will share your personal data for activities such as statistical analysis and academic study but only in a pseudonymised format.</p>

<https://www.spotify.com/us/legal/privacy-policy/#s13>



Reach an engaged audience

Your audience listens in real-time moments throughout the day. Learn how they stream on Spotify, and how to connect with them in the right context.



Tell your brand's story on Spotify

Bring your brand to life with captivating audio, video, and display ad formats.



Understand the impact

Put our streaming intelligence to work for your brand. Our suite of measurement products can help you quantify the true impact of your messaging.

<https://spotifyforbrands.com/en-US/>

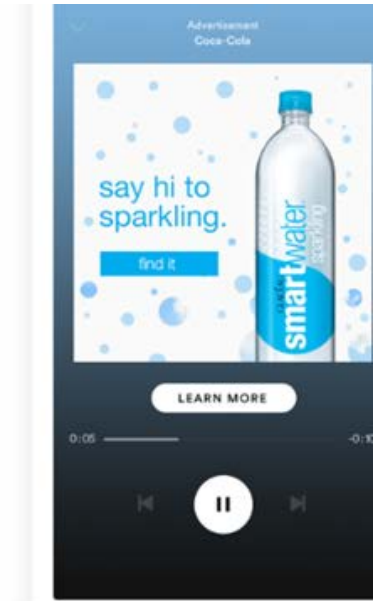
FEATURED FORMAT

Reach the right people,
wherever they're listening
with Spotify Audio ads

Connect with Spotify listeners across devices and platforms as they stream music throughout their day.

SEE ALL SOLUTIONS

<https://spotifyforbrands.com/en-US/>



The more they stream, the more we learn.

User engagement fuels our streaming intelligence — insights that reflect the real people behind the devices. These real-time, personal insights go beyond demographics and device IDs alone to reveal our audience's moods, mindsets, tastes and behaviors.

We've found that how people stream actually tells us a lot about who they are. Our data team has identified five key streaming habits that can help you understand your audience, and better inform your planning. The most exciting part? This new research is starting to reveal the streaming generation's offline behaviors through their streaming habits.

<https://spotifyforbrands.com/en-US/audiences/>



<https://spotifyforbrands.com/en-US/audiences/>



<https://spotifyforbrands.com/en-US/audiences/>

Reach the right audience

Age & Gender

Connect with your buying target across platforms with Spotify's first-party age and gender data.

Language

Reach people according to language preference, specified upon registration.

Interests and Behaviors

Engage demographic-based and interest-based audience segments, crafted by analyzing our users' streaming behavior on Spotify alongside their broader interests and behaviors, fueled by leading third-party data providers in select markets.

Playlist

Connect with people who are listening to music tailored to specific activities and moods.

Genre

Deliver your message immediately after a user has listened to a specific genre.

Platform

Dynamically serve campaigns to users based on their active platform.

Location & Time of Day

- Reach listeners in a specific country, region, state, city, or DMA. We serve ads based on the current location where the audio is being streamed.
- Our listeners are engaged from morning to night, not just during traditional peak hours. Connect with your audience at the right time to suit your messaging or complement your broadcast buys.

What is interest-based advertising?

Interest-based advertising -- which is also sometimes called "online behavioral advertising" -- uses information gathered about your visits over time and across different websites or applications in order to help predict your preferences and show you ads that are more likely to be of interest to you. For example, a sporting goods manufacturer might work with an advertising network that collects and uses interest-based advertising information to deliver ads to the browsers of users that have recently visited sports-related sites, or an airline might direct ads to users that recently visited mobile travel apps.

How does interest-based advertising work?

When a user visits a web site or app that participates in an advertising network or works with other online advertising companies, these advertising companies gather information about the user's browser or device in order to tell when that same user browser or device visits other web sites or apps within the same network - even if these content offerings are run by different companies or have different web addresses or brands. Over time, the information gathered about the browser or device may help predict the user's likely interest in particular categories of ads: for example, users who frequently visit baseball-related Web sites might receive more ads for the "baseball/sports enthusiast" category, or users who engage with automobile review apps might receive more ads for the particular models of cars that interest them.

<https://www.aboutads.info/how-interest-based-ads-work>

HOW DO I GET PLACED IN INTEREST CATEGORIES AND GROUPS?

The basic way you are placed into an interest category or group on a browser is based on your visits to websites. Let's say an NAI member company partnered with a clothing retail website that you visit. That NAI member would assign an ID to your browser usually by storing a unique ID number in a text file or cookie on your browser. This is then matched to a "clothing shopper" category by pairing that ID number with interest categories/groups in an online database.

Unique ID Number	Matched Categories
450982374	"Male", "Age 25-34", "clothing"

Other information can be used to match you into a group, as well. For example, if you have previously purchased oxford shirts from that retail website, the website could tell the NAI company to also match "oxford shirt buyer" to the ID.

On mobile apps, the process is similar but it uses a different set of technologies. The mobile operating system you use, like Android or iOS, is likely to provide an identifier specifically for advertisers to use. This Mobile Advertising Identifier functions similarly to a cookie. It enables advertisers to identify your behavior across apps, without needing to use a more permanent phone or tablet identifier. Most of these identifiers include privacy options that allow users to reset the assigned identifier or to opt-out of Cross-App Advertising.

To do Cross-App Advertising, the NAI member may work with an app so that it can send them information relevant to your preferences. For example, if you open an app to look for highly rated local seafood restaurants, that app may tell the NAI member that a user with your device identifier may be interested in seafood, and that the user is in downtown Manhattan. This information may be used to show ads for more local seafood places.

Mobile Device Identifier	Matched Categories
AEBE52E7-03EE-455A-B3C4-E57283966239	"Male", "Age 25-34", "seafood", "downtown Manhattan"

<https://www.networkadvertising.org/understanding-online-advertising/how-does-it-work>

16. The Product creates a user profile database (e.g., a Spotify user profile database for advertisement) for storing user profile parameters (e.g., location, user device, age, etc.). The

Product derives user profile parameters (e.g., location, user device, age, etc.) from basic information in a Spotify user account, monitors interests based on user activity, and also collects local application data (e.g., contact information, GPS data, etc.) from a user's device. The Product creates a database for storing said user profile parameters for use in directed advertising. These elements are illustrated in the screen shots provided in connection with other allegations herein.

17. The Product monitors a user's interactions (e.g., browsing, following) from a user computer (e.g., a smartphone enabled with the Spotify app, a computer, or a laptop) with remote Web (e.g., the activity on the Spotify.com website or on other third party websites which are partnered with Spotify.com) and non-Web related (e.g., gathered device data such as mobile/network operator, ISP, time zone etc.) sources of content. The Product utilizes cookies to monitor a user's interactions (e.g., what is liked, browsed, bought) on Spotify.com or partnered third party websites. The Product also utilizes cookies to monitor non-web related information such as off site, mobile/network operator etc. These elements are illustrated in the screen shots provided in connection with other allegations herein.

18. The Product scans local memory (e.g., a user device's storage) of the user computer (e.g., a smartphone enabled with Spotify app, a computer, or a laptop) to examine local applications (e.g., Spotify will scan local applications on a user computer such as a phonebook, location application, or media managing applications to collect data). The Product extracts information about local applications (e.g., a phonebook, location application, or media manager application) of a user computer. These elements are illustrated in the screen shots provided in connection with other allegations herein.

19. The Product scans local memory (e.g., storage of a user device) of the user computer (e.g., a smartphone with Spotify app, a computer, a laptop) to examine local application

applications (e.g., local applications of a user computer such as phonebook, location application, media manager application (i.e., gallery), etc.) data information content (e.g., contact information, GPS data, media files/photos/videos, etc.). The Product reads local application data (e.g., contact information, GPS data, media files/photos/videos, etc.) from local applications (e.g., local applications of a user computer such as phonebook, location application, media manager application (i.e., gallery), etc.) of a user computer (e.g., a smartphone with Spotify app, a computer, a laptop). These elements are illustrated in the screen shots provided in connection with other allegations herein.

20. The Product determines interests of the user based on said steps of scanning (e.g., the accused system scans a location application of a user computer to determine GPS data of the user computer to determine interests a user might have based upon their location), the interests comprising at least one interest that is not selected from a predefined list of potential interests (e.g., interest in content tied to a particular location that is determined based on GPS data is not selected by a user from a predefined list). The Product determines user interest based on a user's location so that advertisements related to said location can be appropriately served to the user. These elements are illustrated in the screen shots provided in connection with other allegations herein.

21. The Product automatically derives user profile parameters (e.g., location, user device, user device operating system, about, etc.) based on said step of monitoring and said steps of scanning (e.g. the accused system will gather user information by monitoring user activity on the Spotify.com website and scanning a user device for data such as GPS coordinates, contacts etc. These elements are illustrated in the screen shots provided in connection with other allegations herein.

22. The Product updates the user profile database (e.g., a Spotify user profile database

used for advertisement purposes) based on the user's use of the computer system (e.g., a user's access of Spotify). The Product updates a database (i.e., user profile database) for storing user profile parameters with newly derived user profile parameters (e.g., geographical location, age, etc.) so that customized and targeted advertisements can be served. These elements are illustrated in the screen shots provided in connection with other allegations herein.

23. Regarding Claim 2, the Product uses the user profile parameters are used to identify new content items of interest to the user. The Product updates the user profile database (e.g., a Spotify user profile database used for advertisement purposes) based on the user's use of the computer system (e.g., a user's access of Spotify). The Product updates a database (i.e., user profile database) for storing user profile parameters with newly derived user profile parameters (e.g., geographical location, age, etc.) so that customized and targeted advertisements can be served. These elements are illustrated in the screen shots provided in connection with other allegations herein.

24. Regarding Claim 8, the Product derives a plurality of sets of user profile parameters for a plurality of users, each of the plurality of sets being derived according to the activity of that user. The Product updates the user profile database (e.g., a Spotify user profile database used for advertisement purposes) based on the user's use of the computer system (e.g., a user's access of Spotify). The Product updates a database (i.e., user profile database) for storing user profile parameters with newly derived user profile parameters (e.g., geographical location, age, etc.) so that customized and targeted advertisements can be served. These elements are illustrated in the screen shots provided in connection with other allegations herein.

25. Regarding Claim 9, the Product uses the plurality of sets of user profile parameters to identify new content items for the respective users. The Product updates the user profile

database (e.g., a Spotify user profile database used for advertisement purposes) based on the user's use of the computer system (e.g., a user's access of Spotify). The Product updates a database (i.e., user profile database) for storing user profile parameters with newly derived user profile parameters (e.g., geographical location, age, etc.) so that customized and targeted advertisements can be served. These elements are illustrated in the screen shots provided in connection with other allegations herein.

26. Defendant's actions complained of herein will continue unless Defendant is enjoined by this court.

27. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

28. Plaintiff is in compliance with 35 U.S.C. § 287.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

(a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;

(b) Enter an Order enjoining Defendant, its agents, officers, servants, employees, attorneys, and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 8,046,697 (or, in the alternative, awarding Plaintiff a running royalty from the time of judgment going forward);

(c) Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;

(d) Award Plaintiff pre-judgment and post-judgment interest and costs; and

(e) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Dated: September 25, 2018

Respectfully submitted,

DEVLIN LAW FIRM LLC

/s/ Timothy Devlin

Timothy Devlin (#4241)

tdevlin@devlinlawfirm.com

1306 N. Broom St., 1st Floor

Wilmington, Delaware 19806

Telephone: (302) 449-9010

Facsimile: (302) 353-4251

JAY JOHNSON

State Bar No. 24067322

D. BRADLEY KIZZIA

State Bar No. 11547550

KIZZIA JOHNSON, PLLC

1910 Pacific Ave., Suite 13000

Dallas, Texas 75201

(214) 451-0164

Fax: (214) 451-0165

jay@kjpllc.com

bkizzia@kjpllc.com

ATTORNEYS FOR PLAINTIFF